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**Case Study
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THE 1991 CONSTITUTIONAL ASSEMBLY

and its Role in the Construction of a Democratic Colombia

Written for IDEA INTERNATIONAL, Stockholm

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INTRODUCTION Stockholm,
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I circulated the account of Colombia's 1991 constitution that I wrote for IDEA INTERNATIONAL among some colleagues and friends, wishing to know their reactions.

One of them said: "This is a terrible story" , and suggested that I should place it in the context of the violence and unreason that prevails everywhere in the world, in order to make it clear that Colombia is not an exceptional case.

I count myself among those who think it necessary to confront the truth in order to build upon it, but I recognize that the attitude of this friend resembles, more than mine, that of Colombians in general. Polls indicate that in my country the majority of people count themselves happy, in spite of the terrible things that happen around them. But perhaps this optimism is due to the fact that social events which ought to look abnormal to any observer have become part of the daily life of most Colombians.

In contrast, another friend alerted me to the fact that, although it is impossible in a document of this sort to enumerate and name all the victims of the Colombian tragedy, in the passages describing the systematic wiping out of the political party Unión Patriótica during the 1980s I failed to mention the murder of José Antequera, the young Secretary of the party, who was gunned down in broad daylight in Bogotá's airport.

He is right. I also failed to mention the 1988 murder of Carlos Mauro Hoyos, who served as the nation's Attorney General. He was killed by the mafia on his way to the airport in Medellín, despite being heavily escorted. I also did not mention the innumerable members of the public force who risked their lives and lost them in the defense of the society and its institutions, killed by outlaws who sought and

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continue to seek power in Colombia. They met the same fate that has been met by too many judges, public servants, journalists, and ordinary citizens.

Perhaps I should also mention that, together with Enrique Parejo, Luis Carlos Galán, and Rodrigo Lara I shared the fight for the dignification of politics, for social justice,

and against the corruption of power by organized crime. In the document below I speak of the deaths Galán and Lara. Parejo, who succeeded Lara as Minister of Justice, was shot in the face in Budapest, where he was serving as ambassador. Fortunately, he survived.

I think that, in addition to these supplementary notes, it would be illustrative for those who do are not acquainted with the magnitude of the Colombian catastrophe to know that in 1989 the drug mafia blew up a civilian plane with hundreds of passengers traveling from Bogotá to Cali. Car bombs were planted across the country, blowing up, among other things, the buildings of the daily El Espectador, and of the Department of Internal Intelligence. Antonio Roldán was killed by a car bomb at the time in which he was governor of Antioquia.

With respect to the political history of the country it was pointed out to me that I was not clear in stating that, during the National Front period (1958-1974), besides splitting the three branches of government between the Liberal and Conservative parties exclusively, the Presidency was alternated every four years between these two parties.

A person I have known since childhood let me know that the document recounts the experiences of that generation of Colombians who have followed the life of the country from the mid-twentieth century until today.

Before writing I met with several leaders to find out their thoughts on the historical significance of the 1991 Constitutional Assembly and its impact in the strengthening of the democracy. Among them were high court judges, lawmakers, cabinet members, colleagues in the Assembly itself, writers, and journalists. In general terms, we coincided in our views, which I then stated in the document below. I take this opportunity to thank them for the many enjoyable conversations.

Rather than rigorously investigate the historical context for the 1991 Constitution, I aimed to recreate in these pages the situations that originated the constitution-framing process, in the midst of which the writing of the charter took place. I attempted to transmit situations and feelings that are exceptional.

In a democracy, it is possible to know when there will be elections for executives and legislators, but impossible to foresee when there will be a constitutional assembly. Only extraordinary events trigger them, bringing about a confluence of powers, energies, and expectations that are unique.

IDEA INTERNATIONAL wants to increase our knowledge of these events and capitalize on existing experiences in an effort to better prepare the international community to help societies which are undergoing constitution-framing processes. The aim is to overcome the conflictive situations that bring about those processes. This is an important effort, because constitutional assemblies present exceptional opportunities for democracies at a crossroads. If these processes are botched, however, they can bring about frustration, generate new problems, and close down options.

I have wanted to leave the message that no two constitutional assemblies will be the same, and that, if the goal is to provide help, from the outside, by offering ways to give assemblies fluidity, by disseminating information about previous experiences, and by suggesting options, the starting point must be the exploration of the deep reasons that originate and condition the constitution-making process. No social or historical current is irrelevant, no sentiment leading to the extraordinary suspension of existing laws and institutions in order to reorganize political power should be ignored.

Similarly, none of the protagonists of the events that give rise to a constitutional assembly can be ignored, because in the long run differences will reappear, perhaps exacerbated. And it is not a good idea to miss the opportunity of adjusting and giving cohesiveness to societies whose members are dissatisfied with the way they interact, adjudicate their differences, and organize political power.

Constitutional assemblies are meeting points, at the summit of power, among social and political factions that have been painfully divided. If the assemblies are to serve their purpose, representatives from the factions in conflict need to be present, and work in a spirit of toleration and innovation, not of imposition and strife. A constitutional assembly is convened when war is no longer a way to erase differences.

For this reason a constitutional assembly needs to bring together enemies, or, at best, people of sharply dissenting views. Accords which are not reached by the protagonists of the conflict they intend to resolve cannot be effective. It is also senseless to attempt to legitimize dogmas which could not be imposed by force. A constitutional assembly is successful if it gives rise to compromises, if it brings about more complex answers to the pressing questions that any of the parts could have proposed by themselves.

International cooperation can bring to the discussion formulas that have proved successful in other contexts, experiences of different countries, knowledge of historical events, blueprints of thriving institutions. Once the assembly members have convened and are deliberating, this information will be useful and timely. But in the end it will be them who judge it and use it in the light of their realities, their way of thinking, and the nature of their problems.

A further aspiration of the international community could be to serve as a mediator among parts in order to ensure that the meeting across the discussion table is one of dialogue and exchange of points of view, in which the will to conciliate and find peaceful solutions to existing differences prevails.

The world's democracies are bathed in rivers of blood that run through the centuries. The most useful help that can be given to countries in the process of reshaping their democratic culture is that which can help in avoiding the continuation of bloodshed.

MAIN TEXT Colombia, September 14, 2004

1. The role played by constitutional assemblies in Colombia

Colombia had a number of constitutional assemblies in the nineteenth and twentieth centuries, with the last one convening in 1991. Although these assemblies represent extraordinary events in the political life of the country, they are also part of its tradition. It is interesting to attempt to understand their significance and their impact.

A constitutional assembly marks a foundational event, when a people decide to organize themselves as an independent nation, or when in the course of a nation's sovereign existence, those who live in it wish to reform their institutions in order to acknowledge hitherto unrecognized social realities, or to reach agreements that will allow them to overcome large-scale conflicts. It may also occur that constitutional assemblies are formed by political forces who find themselves in power and wish to consolidate their advantages and privileges. All of these cases have obtained in Colombia's history.²

2. What kinds of events or conflicts have given rise to constitutional assemblies in Colombia?

Hispanic America was marked by the shock and the brutality of its conquest. This process involved the wholesale massacre of its aboriginal tribes, the theft of its resources, the profanation of its cultures, the exploitation of the indians, the slavery of Africans, the imposition to entire peoples of belief systems and forms of life. The political and economic institutions that were set up to govern the conquered lands were conceived in order to entrench the domination of whites and of the Catholic church, and the power of the largest cities.

Luis López Guerra and Luis Aguiar de Luque (2001). *Las Constituciones de Iberoamérica*. Madrid: Unión Iberoamericana de Colegios de Abogados / Colegio de Abogados de Madrid.

Ever since the time of the conquest Colombia has been stained by the politics of imposition and exclusion, and this is reflected in its history by an endless trail of political struggle and civil war. In the nineteenth century and during the first half of the twentieth, wars were promoted by political elites seeking to cement their power, increase the advantages they could gain from the state, and accumulate privileges. After the second half of the twentieth century, the protagonists of the war have been people issuing from marginalized social sectors rebelling against injustice, discrimination, and arbitrariness.

Each period of violent confrontation is capped by agreements aiming to change or renew the institutions, sometimes by means of a constitutional assembly, as it happened several times in the nineteenth century, and again in 1991. Since 1810, when Colombia declared its independence from the Spanish crown, eleven constitutions have been passed. The last constitutional assembly was convened in 1991. It composed the charter currently in effect.

The main difference between the constitutional assemblies of the nineteenth century

and that of 1991 is that whereas the former ones were conformed by delegates chosen by the politically predominant groups of the major cities, exclusively representing the interests of the powerful, the delegates to the 1991 assembly were elected by universal suffrage among candidates representing not only established political parties but also a number of citizens' constituencies.³

3. The basis of the Colombian conflict

This society was born with malformations that have impeded its flourishing as a democracy. The defects are not only due to problems with the institutions it inherited, but also to cultural traces that are difficult to eradicate. These traces are to be found in the consciences and in the behavior of individuals and of whole communities.

The cultural shock of the conquest continues even to this day. Ever since the time of colonization, the white elite has dominated the indians. It has controlled their lives, and it has trampled their customs. It took away their land and property. It also indoctrinated them, by catechism. In their consciences were installed the principles of the Catholic faith, and they were formed in the practice of that faith's rituals. Throughout this time, indians have been ruled by a government that has never consulted them, that operates in ways foreign to their tradition, and in which they have been offered no opportunity to participate. All the same, they have been made part of the productive apparatus—their labor has been exploited—without receiving in return any form of protection. Until quite recently, indians were no more than passive and submissive subjects. Whatever protection they have enjoyed has been granted under the guise of Christian charity, not as an acknowledgment of their rights.

Carlos Lleras de la Fuente and Marcel Tangarife Torres (1996). *Constitución Política de Colombia: origen, evolución y vigencia*. Bogotá: Biblioteca Jurídica Diké.

This has been a five century-long process, in which visions of life and of politics have become entrenched, with the racial question in a position of prominence. Whites rule, and have undisputable rights over people of other races. Indians, unable to expel the invader, resigned themselves to those strange neighbors, to the power structures they imposed, and to their culture. These values and ways of behavior have, with the passage of the centuries, become traits of the culture.⁴

To this bleak picture is added the implantation of black slaves brought *en masse* from Africa beginning in the sixteenth century, for the exploitation of the mines. Members of this racial group, torn away from their environment, were oppressed and domesticated under the structures created by the whites, as the indians had been in their own soil.

Although there was miscegenation, there was never integration of whites, indians, and blacks. Mestizo culture is an extension of white culture. The indians and blacks who did not mix and preserved their unity and race have been marginalized.

Racism has been a determining factor in the Colombian social order, in the country's

institutions, and in the values, attitudes, and behavior of its people. Indian communities continue to be decimated. Their leaders and their members have been and continue to be massacred by whites who invade their lands, commercialize their archaeological heritage, or explore and exploit underground natural resources in their land. They are also in the cross-fire of factions of whites who war among themselves for economic or political reasons, and do not allow indians to remain neutral in the conflict.

In Colombia the crime of a black killing a white has been different from that of a white killing a black, or a white an indian, or an indian a black. These crimes are valued, investigated, and judged differently, and punished with more or less severity according to the race of the protagonists. Indians and blacks are punished more cruelly, with less regards for their rights, and less scruples regarding their possible innocence.

Or, looking at things from another point of view, it is considered to be a normal state of affairs for there never to have been high governmental or military figures who are indian or black. Even the church, who has since the time of the conquest attempted to protect indians and blacks, has never in this country had bishops of those races.⁵ Nevertheless the circumstances just described, despite their salience, are not regarded as obvious. At least they are not the subject of debate. Perhaps this itself is part of the problem.

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Emilio Yunis Turbay (2004). *¿Por qué somos así? ¿Qué pasó en Colombia? Análisis sobre el mestizaje*. Bogotá: Temis.

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Manuel Zapata Olivella (2002). 'Declaración de la Primera Conferencia Nacional Afrocolombiana: "una minga por la vida".' See <http://www.alainet.org/docs/2840.html>
But despite the fact that in the social clubs of large cities where the elites take their leisure indians and blacks never alternate with whites except as employees, and that the private schools offering privileged educations are almost exclusively populated by white children, it is not the case that the differences and tensions among the races are insurmountable. Away from the major cities, for example, the levels of racial tolerance, or indeed, of integration, are higher than in the major urban centers, and in some cases, as in the Atlantic coast, are quite acceptable. This in part depends on the number of minorities as a proportion of the population, and in part on the economic status of people. For money is, in Colombia as in many other places, a leveling factor.

The 1991 Constitutional Assembly was the first time in Colombia's history in which indians were represented by one of their own in a legislative corporation. At a particularly difficult point in the negotiations, when the entire process was on the verge of collapse, Lorenzo Muelas, leader of the Guambiana community, exorcized the crisis by addressing the assembly on the following terms: "It has taken us five hundred years to get to this stage, and we refuse to leave!"

After the Assembly, the protagonism of indians in public life has been notable. They secured the rights they demanded. Their congressional representatives and their local leaders are prominent, and indian communities are regarded as definitive in the social

and political balance of the country. The people of the Cauca province have elected as their governor a member of an indian tribe, something unimaginable prior to 1991. At the time of this writing 60.000 indians are marching for three days from Villarica to Cali, demanding the respect of their autonomous territories that is specified in the Constitution. This kind of mobilization is unprecedented.

4. The fundamental problem of exclusion

It is not superfluous to remind oneself that Colombians form an extraordinary human conglomerate. The virtues of each ethnicity, manifest in the daily life of the country, are manifold. They give the nation its identity—its culture, folklore, literature, art, science, sport, work, and entrepreneurship.

Where, then, is the fault line? In the political order, which has not recognized the reality of the society, has not learned from history and fails to interpret correctly the complexity and multiplicity of factors that coincide in the human and social events that constitute the nation. Democracy is far from being realized in this country, insofar as decisions, opportunities and power are arbitrarily limited to exclusionary parties. There has been progress, however, especially since the enactment of the 1991 charter.

Discrimination has enormous consequences in people's lives. Centralization and the abandonment of communities for racial or class reasons are sources of violence, displacement, inequality, acute poverty, and destitution.⁶ Colombia has more violent deaths, in proportion to its population, than almost any other country in the world. Unemployment is as high as anywhere. Over ten million people live with less than a dollar per day, and over twenty-two million people with less than two dollars per day.⁷ In the last decade the war has forced the displacement of around four million people, out of a total population of 44 million.

To show to what degree certain populations have been forsaken, it suffices to say that indigenous communities inhabiting the banks of the river San Juan suffer from *pián*, an illness similar to leprosy, that was thought to have been eradicated from the face of the world and that can be cured with low-cost treatments. Or take the province of Chocó (bordering on the north with Panama), which has the highest biodiversity on Earth, fine woods, minerals, ample water sources, and coasts on both the Pacific ocean and the Caribbean sea. Yet the economic and political powers of the country have never shown an interest to develop the region, despite its productive potential and its geopolitical importance.⁸ Part of the reason is that the region is inhabited by blacks.

5. The specter of exclusion

Exclusion does not stop there. The family is plagued by sexism, which makes women and children victims of discrimination and violence. Prior to the 1991 Constitution there existed few legal spaces for the protection and empowerment of women. Custom and the mechanisms of power isolated them, and punished those who rebelled against sexual oppression, or against being confined to the home and made to work endless,

unpaid hours. In rural zones, and in poor urban zones, the exploitation and subjection of women continue, but at least now they are illegal.

The 1991 Constitution made available to ordinary citizens a series of legal avenues enabling to sue for the protection of their fundamental rights, and these have been an effective instrument to break with the tradition of exclusion, and to transform the society.⁹ Of course, of equal importance has been the very recognition of those fundamental rights in the Constitution, including specific rights designed to protect women and children.¹⁰

Exclusion is also manifest at the political level. For example, women acquired their status as citizens only fifty years ago, in August of 1954, which is to say one

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'Coincidencias y diferencias en la estimación de la pobreza.' See: <http://www.contraloriagen.gov.co/html/publicaciones/>

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See: http://www.dane.gov.co/inf_est/vitales.htm 8 Zapata Olivella (2002).

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Juan Carlos Esguerra Portocarrero (2004). *La protección constitucional del ciudadano*. Bogotá: Legis Editores. 10

Claudio Arturo Laguado Duca (2004). *La política social desde la constitución de 1991 ¿una década perdida?* Bogotá: Centro de Estudios Sociales, Universidad Nacional de Colombia.

hundred and fifty years after the republic was established. Until 1936, only men who knew how to read and write, and who had patrimony, could vote. Under those circumstances decision power was reduced to less than 10% of the adult population, white men in their totality.¹¹

The victims of exclusion are always the weak, the poor, those with physical disabilities. The latter, however, came under the explicit protection of the 1991 Constitution.¹²

To show the level of neglect to which handicapped people had been subjected, one needs only to cite the case of the mass transit system in Medellín, the second largest city in the country. In that city was built, during the 1980s, a subway system that serves around 400.000 passengers per day. The system cost over 2.200 million dollars, but provides no access to the handicapped. By contrast, and under the new Constitution, the city of Cali, with over two million inhabitants, elected in 2003 a blind, Afro-Colombian mayor.

But the fact cannot be hidden that the large majority of Colombians who are poor, who cannot read and write, who belong to ethnic minorities, as well as women and children—in sum, the weak—suffer from exclusion. Their rights are ignored, and their options to accede to power are limited. Exclusion marks the history of Colombia. The face of that mark is violence, civil war. And after a period of war there usually comes a new

constitutional assembly.

6. From civil wars to new constitutions

Two centuries have elapsed since Colombia declared its independence, and has attempted to establish itself as a democracy. But during over half of that time, as has been noted, the country was ruled in the interests of minorities. Slavery was legally abolished in the middle of the nineteenth century, but subsisted in practice until the beginning of the twentieth. And social marginalization, which might be called a form of slavery, has always been endemic.

The revolution that led to independence at the beginning of the nineteenth century was not popular. It had its origins in the fact that the aristocracy grew tired of paying taxes to the Spanish crown, and was precipitated under the pretext that the kings of Spain had been overthrown by the Napoleonic armies, who commanded no allegiance from the colonies.

That local aristocracy, who descended from Spaniards but had been installed in the New World for several generations, enjoyed economic and social power from the beginning of colonial times. Now they wanted political power as well, without

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Ana Victoria Vásquez Cárdenas and Mario Alberto Montoya Brand (2002). 'Lo colectivo en la constitución de 1991'. See: <http://www.eafit.edu.co/NR/rdonlyres/D2712D7A-3DFF-4C05-800D-A626E94620BD/0/Cuaderno6.pdf>

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Vásquez Cárdenas and Montoya Brand (2002).
sharing it with the crown. They found a way to finance a war of independence, in great part with loans secured in England. And they enlisted for the enterprise the common people, which furnished both fighting power and cannon fodder. The military leaders of the independentist army benefited from the training they received in the imperial one, to which they belonged as officers throughout colonial times.

Ever since 1811, when Colombia's first constitution was enacted, these documents have been drafted by politicians acting in representation of the ruling social and economic elites.¹³ Constitutional assemblies were conformed by handpicked delegates chosen by the aristocracy, and whose points of reference were neither popular expectations nor the social reality in the country's various regions, nor even the international context of other Latin American republics passing through a similar historical moment, but the political theories and the constitutions imported from Europe and North America, which were used partly as foils to justify and sustain the hierarchical order that had given the white oligarchy power and privilege during over a century and a half.¹⁴ This tradition was broken in 1991.¹⁵

Whereas previous constitutions were written according to the designs of the winners of

the war that led up to their enacting, the war that has torn the country over the past fifty years has no winners. Indeed, the members of the 1991 assembly represented, in good measure, the losers.

Given the fact that Colombia's last constitution, passed in 1886, was in effect for over one century (i.e. until the current charter was enacted in 1991) one might conclude that the tampering with constitutions for political advantage is restricted to the nineteenth century. But this is not entirely the case, because over the years a series of amendments were introduced by Congress to the 1886 text, and those amendments were passed, in large part, behind closed doors by politicians who reflected the excluding, aristocratic, racist, and sexist nation that has been described above. There were debates, to be sure, and plenty of rhetoric. But at the end of the day the political chiefs were able to write in the norms that best suited them and their limited constituencies, all the while distracting their followers in the popular classes by giving the appearance of promoting reform. Even so, as the century unfolded, norms slowly approached democratic ideals, and there was increasing openness to political dissent, as well as somewhat better attention to social problems.¹⁶

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Jaime Castro (ed.) (1987). *Constitución política de Colombia*. 3ª Edición. Bogotá: Editorial Oveja Negra.

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Abel Cruz Santos (1971). *Congreso de Cúcuta de 1821, Constitución y Leyes*. Bogotá: Biblioteca Banco Popular, Vol. 21.

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López Guerra and Aguiar de Luque (2001).

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Oscar Rodríguez Salazar (ed.) (1986). *Estado y Economía en la Constitución de 1886*. Bogotá: Contraloría General de la República.

7. Fraud is also part of this story

It should also be noted that to the patterns of privilege and discrimination that stain the history of the republic is added the problem of electoral fraud. Fraud has been habitual in Colombia, and has been accepted among the society's ruling classes as something normal and acceptable, as it guarantees something like their natural right to power, which they abrogate for themselves, and in the absence which they would consider the nation to be in danger.

Electoral fraud has been responsible for a number of tragedies in Colombia, resulting from the indignant and violent reaction of sectors that were cheated. The guerrilla group Movimiento 19 de abril (M-19) was formed immediately after the presidency was openly stolen from Gustavo Rojas Pinilla, in 1970. The trail of violence that was left behind by this movement ended with the peace process that took them to the Constitutional Assembly of 1991, in which they played a leading role. Their list had more representatives than that of any other party, and their leader presided over one of the

assembly's three corporations.¹⁷

Fraud, this mockery of democracy, which alters the will of the people and generates throughout the years uninterrupted chains of spurious powers, has not been completely eliminated, despite the 1991 Constitutional Assembly's efforts to make the electoral authorities independent from the influence of other powers. More time is needed to eradicate this additional factor of exclusion and arbitrariness.

But there is more. When cheating has not been sufficient in the past to maintain the *status quo*, what follows is assassination as a political practice. Three leaders who at different points of the twentieth century represented non-conformist sectors of society, and who were steadily ascending towards the presidency, have been assassinated at the peak of their political careers: Rafael Uribe Uribe (1904), Jorge Eliécer Gaitán (1948), and Luis Carlos Galán (1989). All three of them were Liberals. But there were others belonging to other parties, such as Jaime Pardo Leal (1986), Bernardo Jaramillo (1990), Carlos Pizarro (1990), Alvaro Gómez (1997), all of them gunned down in the front lines of democratic combat.

8. From the violence of the aristocracy to the violence of the people

In the nineteenth century and until the beginning of the twentieth, civil wars were promoted by local powerbrokers in order to defend their economic and class interests. Factions were somewhat doctrinaire, inasmuch as they either defended the Catholic church, or resisted its encroachment on the state. And factions also were somewhat pragmatic, inasmuch as they supported centralization or

'Historia de los procesos de diálogo y negociación en Colombia'. See: <http://www.ideaspaz.org/proyecto03/boletines/boletin02.htm>
decentralization, or further or lesser governmental intervention in business, according to their own financial interests.¹⁸

In 1948, however, the nature of civil confrontation changed. For the first time popular masses felt themselves enfranchised in politics, with a candidate who actually represented their class interests. But this leader, Jorge Eliécer Gaitán, was murdered, and the people were thrown into confusion and desperation. From that point on, the civil war acquired different characteristics and meanings. And it has been prolonged and cruel as never before.

In the second half of the twentieth century, in order to perpetuate political violence, or to make it sharper, or in an effort to end the confrontation by completely eliminating rivals, the parts of the conflict have committed all manner of atrocities. And, to complete the picture, in the midst of this conflict there arose with increasing force groups of common delinquents that took advantage of the confusion and of the terror in order to further their criminal activities. The cast of characters includes drug dealers,

arms dealers, smugglers, mercenaries, launderers of money coming from illicit activities, kindappers, extortionists, promoters of gaming and prostitution.¹⁹

The armed confrontation takes place in this labyrinth of people and situations. Thus, a struggle which originated with injustice and social and political exclusion eventually became one fueled by money from illegal businesses, depraved by terrorism, and marked by the rampant violation of human rights.²⁰

9. A Constitutional Assembly for a moment of desperation

At the time which can be considered the most critical of the of the last fifty years of the Colombian conflict, the Constitutional Assembly surfaced as a way to escape the crisis. It was summoned by popular voices that grew increasingly louder, and included in particular the voice of the young. The call was heard at the highest levels of state by the President, and by the Supreme Court.

It was a desperate exit in order to regain faith in the future and construct new social pacts and new political institutions that could give fresh air and viability to the nation as a democracy.

The last constitution of 1886 was also originated by civil revolt. In 1885 a war had broken out over the questions of centralization of power, and of the power that the Catholic church should wield in the state, its influence over public education,

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Leopoldo Uprimmy (1971). *El Pensamiento Filosófico y Político en el Congreso de Cúcuta*. Bogotá: Ministerio de Obras Publicas, Imprenta del Instituto Caro y Cuervo. ¹⁹ 'Criminalidad en Colombia'. See: <http://www.banrep.gov.co/docum/borrasem/intro004.htm>

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Malcolm Deas and Fernando Gaitán (1995). *Dos ensayos especulativos sobre la violencia en Colombia*. Bogotá: FONADE. Hernando Gómez Buendía, (1999). *¿Para dónde va Colombia?* Bogotá: Tercer Mundo Editores.

and the recovering of some of its patrimony, which had been confiscated. This came on the heels of another constitution, that of 1863, which had introduced federalism and separated church from state, and had also been the result of a civil war.

Even though the 1886 constitution included attempts to remedy some forms of exclusion and inequality, it did not entirely prevent bloodshed. In the 1940s, the period known as Violence (La Violencia) exploded. This was a war between Liberals and Conservatives that continued until the 1970s. Hostilities were finally ended by means of a political compromise called the National Front (Frente Nacional), signed between the leaders of both parties, which guaranteed their equal sharing of power, and which was ratified by means of a referendum, thus elevating it to the status of a constitutional norm.

The violence between political parties was overcome, but it made room for other forms

of violence which have reproduced and transmuted themselves until today. The country is still in a conflagration whose flames are fanned by forces at the margins of the law, even though the 1991 Constitution gave Colombian society a new consensus, together with ample and modern mechanisms through which conflicts can be settled without falling back on internecine strife. But a culture of violence is not done away with overnight, especially when democratic behavior has not yet taken hold in new customs and social norms that go beyond written statutes.

10. The circumstances surrounding the 1991 Constitutional Assembly

During the 1980s were murdered in Colombia many important personalities. The first to fall was the Minister of Justice, Rodrigo Lara, in 1984. Then, in 1985, came the Supreme Court tragedy, in which eleven Supreme Court Justices lost their lives, together with as many auxiliaries of the Council of State, and over a hundred others. The killings occurred after the court's buildings were taken by M19 guerrilla commandos, who acted in alliance with drug dealers; among those who died were all of the magistrates of the Penal Chamber of the Supreme Court, who were about to rule on the constitutionality of extradition.

A year later, in 1986, Jaime Pardo, the candidate by the Unión Patriótica to the presidential elections that had taken place earlier that year, was murdered. Shortly thereafter the turn came to Guillermo Cano, director of *El Espectador*, one of the foremost daily newspapers in the country. And from that point onwards the list extends to an untold number of congressional representatives, judges, magistrates, mayors, governors, city council representatives, union leaders, journalists, and more. The massacre was grotesque.²¹

Pedro Valenzuela (2002). 'Reflexiones sobre interpretaciones recientes de la Violencia en Colombia', *Reflexión Política*, 8 (30).

The case of the Unión Patriótica (UP) reveals the magnitude of the commotion. The UP was the political force that represented former members of the Communist party, and former members of the FARC guerrilla movement who had demobilized pursuant to peace agreements negotiated during the administration of President Belisario Betancur, between 1982 and 1986. The UP fielded candidates for the elections of 1986, for both chambers of Congress and for the Presidency. Some of its candidates were elected to Congress, having earned a significant number of votes. But their persecution came quickly. Close to three thousand UP leaders across the country were eliminated between 1986 and 1990, which effectively put an end to the efforts of the forces of the extreme left to participate in the political process. The massacre was capped by the murder of Bernardo Jaramillo when he was running for President on the UP ticket during the 1990 election.

In this decade of violence a number of phenomena converged. Drug dealers, commanding criminal structures and enormous fortunes, were gaining space and

becoming established in different social, economic, and political circles. The mafias allied themselves with corrupt traditional politicians who saw a possibility to enlarge their power, and to get rich with illicit money. Meanwhile, the mafias had no scruples in killing those who stood in their path to power.

Corrupt officers of the security forces also had their share in the killings, as well as links with drug dealers. The officers of the Colombian public forces have been trained since the 1950s with the doctrine of national security dictated by the United States during the Cold War—a doctrine that singled out communism as the principal enemy of democracy around the world. Some members of the security organisms offered protection to drug dealers as they installed laboratories for the production of illicit substances, and as they laundered the money made from the sale of these substances via the purchase of vast tracts of land. The pretext of the alliance was to facilitate the elimination of communists, through the offices of paramilitary armies funded by the drug dealers.

In 1989 was assassinated Luis Carlos Galán, who at that time was the country's most important political leader. Ten years earlier he had founded the political party Nuevo Liberalismo, in conjunction with Rodrigo Lara (the Justice Minister who had been killed in 1984), and other political leaders—including the present writer. The movement was a reaction against the corruption and anachronism of traditional parties, especially the Liberal party, to which the leaders formerly belonged. At the time of his killing Galán was poised to win the presidency, according to the polls, and was a figure who gave hope to Colombians of the possibility of reversing the trend of violence and social deterioration.

But Luis Carlos Galán and Bernardo Jaramillo were not the only presidential candidates murdered in the presidential elections of 1990. That year also was killed Carlos Pizarro, former guerrilla leader of M-19, who some months earlier had led that armed group to sign a peace treaty with the government. Thus disappeared in a single year three young leaders of enormous charisma, who were building the most important process of transformation of the democracy in half a century.

In this bloodbath were drowned the hopes of Colombians. The state, the institutions were on the border of collapse. Citizens felt that the order under which they lived, and the values that governed it, were not sufficient to guarantee the preservation of life in dignity and peace, or to allow for progress in justice. They felt estranged from this country whose best leaders were assassinated in the midst of their democratic fights.

This was the atmosphere under which the thought started to grow that a constitutional assembly should be convened in order to found the nation anew. In order to clean the slate and start over with new pacts and new institutions.²²

Students and young citizens were definitive in this process. They collected the popular sentiment and expressed on the streets, and came up with the proposal of adding a ballot on the day of the presidential elections. This ballot would ask for the convening of a national constitutional assembly. It was called the "seventh ballot". President Virgilio

Barco acceded and ruled by extraordinary decree that electoral authorities should add the seventh ballot on election day. The vote was massive and established the popular mandate that allowed the convocation of the assembly.

11. More on the National Front

As has been outlined, the history of Colombian constitutions was built throughout the nineteenth and twentieth centuries from war to war, assembly to assembly, referendum to referendum. Those were the successive rituals.

The three steps are present in the 1886 constitution: civil war, constitutional assembly, referendum. Of course, the last two steps were conducted under the iron hand of those who had prevailed in the battleground. This charter was in effect for a long time, being periodically reformed via legislative acts of Congress. But the convulsion of the mid twentieth century brought times of political and juridical anomaly, in which institutions were overcome.

With the murder of Gaitán in 1948 a war broke out between the Liberal and the Conservative parties, and gave way to the already-mentioned period of the Violence. The killings lasted ten years and hundreds of thousands of people lost their lives by reason of their party affiliation.

Gaitán had been a Liberal leader. His rebelliousness against the oligarchy and his fiery oratory struck a chord among the masses of the poor; the popularity he

See Lleras de la Fuente and Tangarife Torres (1996).

enjoyed among common people is unmatched in the country's history. He was a cultured man, and his party had traditionally championed the weak, promoted equality, and defended civil liberties.²³ He deliberated with the people, and constructed with them a program of mobilization of the masses, of seizing power at the ballot box, of the abolition of privileges, and of punishment of exploiters. The public rallies before which he spoke were massive, more so than those seen in recent times.

His murder drove the people wild. Bogotá was set on fire. It is not known how many people were killed in the aftermath of his murder. Violence took hold, especially in rural areas.

Four years later, in 1952, the army staged a *coup d'état*. General Rojas Pinilla was in power for nearly four years. He summoned his own constitutional assembly, in an attempt to reform the charter. But violence continued to rage furiously and Rojas Pinilla was overthrown amidst a civic mobilization headed by students, workers, business leaders, as well as by the leaders of the Liberal and Conservative parties.

Those leaders then signed the pact known as the National Front. Its text, embodied as new articles to the constitution, was taken to popular consultation in 1957, in an event

known as 'The Plebiscite'. Among a series of measures approved by the citizens by their vote, the most important were those that determined that state power was to be shared henceforth by the two political parties, for the period of four presidential cycles (i.e., during sixteen years). The participation of other political movements was not contemplated in the accords.²⁴

This arrangement gave the legal monopoly of political power to two excluding forces, and the three branches of government were invaded by two-party rule. Among the worse consequences of this deal—assuming one can speak of better or worse in this recipe for disaster—must be counted the politization of the judicial branch.

Incidentally, the 1991 Assembly took key steps in order to ensure that the judicial branch enjoys high levels of independence: in the selection of its personnel, in the managing of its budget, and in the autonomy of its rulings. But it must be admitted that administrations and legislatures continue to besiege the judiciary on a daily basis, in order to obstruct or even deprive it from its independence. The 1991 assembly also modernized the structure of the judicial branch, creating, in addition to the Supreme Court, the Constitutional Court, the Council of Judicature, and the office of the Attorney General. But it will be difficult to change the culture of the invasion of politics into the administration of justice fostered during the National Front.

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Gerardo Molina (1978). *Las ideas liberales en Colombia*. Bogotá: Tercer Mundo Editores

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Francisco Leal Buitrago (1996). *Tras las Huellas de la Crisis Política*. Bogotá: Tercer Mundo Editores. The National Front period tainted political customs and deformed the practice of democracy for years to come. If parties did not have to compete for power, they also did not have to work hard on advancing a coherent and distinctive platform. The size of the state ballooned, and its administration became corrupt. The mechanisms of control, the equilibrium brought about by competing forces, disappeared. Public policy became anodyne. The party system became a source of privileges and back-scratching.

But that is not the worse, Not only were political minorities marginalized by the two-party rule, but they were also persecuted. Protest was stigmatized, criticism was punished, inconformity was oppressed, debate was silenced. And as was bound to happen, the voices of dissent that found no room to speak within the system were marginalized, and took up arms. Between the 1960s and the 1970s several guerrilla movements were born, among them the FARC and the ELN, both still active today.²⁵

This story indicates that the collapse that led to the Constitutional Assembly of 1991 was rooted in the past, especially in the vices created by the National Front. After 1991 the openness to participation has vastly increased. The members of this democracy needed to reclaim the sense that the country belongs to all of its citizens, and not just to a few elites. They were eager to move beyond a system that had hitherto relied on restrictions on civil liberties imposed via a decreed state of emergency that lasted, uninterrupted, for several decades, and that raised the specter of repression, arbitrariness, and

militarization. And it needed to see in the public arena new faces, to hear new ideas, and to engage in new ways of conduct. Chief among them, the practice of peace.

12. Attempts were made to reform the Constitution

In 1968, Congress changed the 1886 constitution. The previous reform had taken place in 1945 (the reforms that had been approved by the National Constitutional Assembly during the Rojas Pinilla dictatorship were annulled via the 1957 Plebiscite). The 1968 reform regulated the dismantling of the National Front, without otherwise facing the political problems the Front had created.²⁶

Then, four successive administrations—the governments of Alfonso López, Julio César Turbay, Belisario Betancur, and Virgilio Barco—attempted to reform the Constitution, but failed. López sought to convene a constitutional assembly in order to modify the administration of justice, and to promote decentralization. But his proposed reform, together with the next two, was stopped by the Supreme Court because procedural errors were made in their passage by Congress. The last reform, proposed by the Barco administration, was sunk in its last scheduled

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Deas and Gaitán (1995).

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Hernando Yepes Arcila (1974). *La Reforma Constitucional de 1968 y el Régimen Político Colombiano*. Manizales: Biblioteca Autores Caldenses, Séptima Época, Vol. 41. debate. The Senate, in full session, decided to halt its passage, because the House of Representatives had allowed the interests of illegal drug dealing organizations to influence the text of the reform act during the second round of revisions. Drug dealers were fighting a deadly fight to make extradition illegal, and a number of representatives had allied themselves with the mafia and attempted to modify the Constitution in their favor. This occurred a few weeks after the murder of Luis Carlos Galán, who was at the time an active senator, and who had staunchly fought the incursion of drug cartel influence into politics and society.

During these sixteen years of frustrations, the political system in Colombia asphyxiated. No new scenarios for coexistence could be found, as the deteriorating political situation required. And it was evident that the fault belonged to the political class that had been formed during the time of the National Front, and that acted according to habits proper to that period. In short, the establishment resisted change.

This led to an aversion to traditional political parties and to the political class, and to the inclination of the people to reward “antipoliticians” with their vote. But those years of frustrated reforms also created the awareness that the institutions needed to be transformed, and to a certain degree the public was educated about the issues surrounding reform. When the bloody scenario of the 1980s made evident that current institutions were being overcome by events, the people themselves advanced the idea that a new constitution was needed to start afresh, and to reconcile Colombians.

Because confidence in politicians was low, and because these politicians had been unable to bring about reform, the people summoned the constitutional assembly directly.

This popular demand was so strong, that a restriction against popular consultation enacted in the 1957 plebiscite was set aside. For the seventh ballot was just this kind of consultation, yet the Supreme Court did not oppose it and avowed the legitimacy of President Barco's decree summoning a constitutional assembly.

13. The design of the process

President César Gaviria was elected at the beginning of 1990 in the same elections as those containing the seventh ballot. In the end, this ballot was not officially counted. The reason is that the outcome of this vote was known to be almost equivalent to the sum of the votes for each of the presidential candidates: every voter cast a vote for his or her candidate, and one for the seventh ballot. Nobody had opposed the ballot, campaigned against it, or contested its legitimacy—it was surrounded by a sense of social consensus. It was the consensus of the nation to find a way out of the most critical crisis of the previous forty years.

This overwhelming vote created an obligation for President Gaviria. And indeed, a few weeks after taking office, in August 1990, after consulting with political and social forces, he determined the composition of a constitutional assembly and the manner of election of its delegates, fixed limits to the time in which it would be in session, and to the topics it would treat, and called for elections.²⁷

Elections were held in December 1990, calling for the selection of seventy delegates. It was the first time that members of a legislative corporation were elected not by regional but by national vote. The voting system itself was also new, with voters finding, at the voting booth, a card with all the candidates, organized by lists. Voters marked the card with their choice of list.

It was also the first time that the state gave financing to the candidates. Candidates could inscribe themselves provided they could show the support of a certain number of citizens, via their signature. This opened up spaces for representation to new social and regional forces.²⁸

Acting members of Congress could not be inscribed, unless they resigned from their positions by a certain deadline. Few did so, as the members of both the Senate and the House had been elected earlier that year. This measure was intended to distance the constitutional assembly from the influence of politicians who, during decades, had been unable or unwilling to bring about the reforms the country badly needed. The political class, whose prestige was low, was thereby partly sidelined.

The decree that called for the convening of the assembly was challenged before the Supreme Court. As was mentioned, the 1957 plebiscite forbid popular consultations, such as the seventh ballot. Furthermore, this ballot was not formally counted, because there existed no exact norms for how to do it. Finally, the 1886 Constitution, still in

effect, allowed for constitutional amendments to be made by Congress only.

But the Supreme Court sided with the overwhelming will of the people. Beyond that, it voided the limitations on the topics that the assembly could treat imposed by the decree calling for the convening of the Assembly, with the argument that no organism of the state could impose limits that citizens themselves had not fixed when they called for the formation of a constitutional assembly. And indeed the seventh ballot imposed no limits on the topics that the assembly could treat.

In other words, the assembly's task was not to reform the existing constitution, but to write a new one.

14. Deliberation and consensus

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Humberto de la Calle (2004). *Contra todas las apuestas. Historia íntima de la constituyente*. Bogotá: Editorial Planeta.

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Lleras de la Fuente and Tangarife Torres (1996).

From the moment in which the seventh ballot was included in the presidential vote, several citizen's working sessions were organized around the country that debated about the kinds of institutions the new constitution should contemplate. These sessions were set up at universities, community organizations, professional associations, guilds, neighborhoods, schools, labor unions. They were promoted by organizations and by social leaders. Their conclusions were submitted to the constitutional assembly, and constituted the basic material for its work. These popular contributions were classified by the assembly's staff and given to its members as they came upon the topics of deliberation.

This popular discussion was a determining factor in giving the assembly the consensual character it exemplified. It was the time and place in contemporary history in which Colombians agreed, without anyone's imposition, about how they want to live, resolve their conflicts, be governed. It was also a time in which remaining differences were accepted.

This is not to say that consensus was total. The government prevented the armed insurgency from participating in the Assembly. The day in which the Assembly was elected, it bombarded one of the FARC's bases in la Uribe. Thus the FARC were put on notice that the process did not include them, or the ELN, that at the time was allied with them in the so-called 'National Coordinated Guerrilla'.

15. The election

The vote for delegates to the Constitutional Assembly was not high. Around three million votes were cast, out of a total possible 18 million. Around five million votes total had been cast in the presidential elections of the same year, where President Gaviria had

been elected with roughly 2.800.000 votes.

Only the more committed segments of the population expressed themselves at the voting booth. But these were votes in conscience, different from those cast in standard elections in which the outcome will have an impact on which communities get budgetary aid, or who gets jobs.

The job of the delegates would only last six months, and was not richly remunerated. Professional politicians, who rely on party machinery to turn out votes, were at the margin of a process that did not favor them. They did not become candidates, nor did they play a leading role in the process.

The results of the election, which was open to candidates with a civic profile, and which took place in an idealistic environment of political renewal, and not of factional competition for the power, were pluralistic and balanced. Delegates

Lleras de la Fuente and Tangarife Torres (1996).
from multiple political forces, issuing from a diversity of regional and social milieus, were elected in order to remedy longstanding patterns of exclusion and injustice. A number of social sectors were represented for the first time.

There were delegates from the traditional parties, ex guerrilla fighters, indian leaders, businessmen, social leaders, labor leaders, peasants, journalists, clerics, academics. There were women, young people, people of different ethnicities. Not everyone was erudite, not everyone was professional, and the majority did not have experience with legislative work. They competed as equals at the ballot box and were all elected by universal ballot, so in their deliberations they addressed each other as equals. The only exception were four delegates from insurgent groups which in those days negotiated their return to civil life, partly because of the scenario made possible by the summoning of the Assembly. These delegates were added directly to the assembly by the government.

16. Two anecdotes

Two Afro-Colombians played a role in the constitutional assembly. Both of them, it should be noted, were men of impressive achievements.

One was the coach of the national football team, who was around that time one of the most popular figures in the country. A dentist by profession, he had taken the team to the World Cup. There was never in the assembly hall as many journalists or as much public as on the day in which he was invested. He came to the debates only once, read his declaration, and said good-bye. He had been elected on the M-19 list.

The other one was the assembly's Secretary General, not a delegate himself, but chosen for that duty by the delegates. He was an illustrious Colombian, a university

professor, and an expert on constitutional law. He was the corporation's most important executive.

During the final, historical act in which the Constitution was signed and proclaimed, he did not accompany the delegates and the President of the Republic. Delegates were astonished to find out that he was not allowed to enter the hall by order of one of the assembly's three presidents, who represented the Conservative party (the other two represented the Liberal party, and the M-19). This was, in effect, the first violation of the 1991 Constitution.

17. The assembly from the inside

The atmosphere was one of reconciliation. Present were the forces that had been at war, from the left, from the right, from their racial or gender differences, because of their regional, class, or economic interests, or because of their religions. Old hatreds needed to be set aside in order to resolve by negotiation what had not been resolved by force during decades of violent confrontations. A pact of coexistence was sought that would substitute imposition and exclusion.

According to experts, the resulting constitution is too lengthy. But there were numerous differences to resolve, agreements that needed to be written down, for all to see, to demonstrate what had been won and demand that it was obeyed. It was the way to triumph over a lack of mutual trust, in a nation with a history of painful and tragic betrayals. The 1991 Constitution is not perfect—no such document ever is—but it does answer to the will and the needs of the people.

One could breath, during the deliberations, an air of mutual consideration and respect. Despite their differences, delegates treated each other as equals, and all themes were accorded careful consideration. All alternatives were analyzed, however far-fetched some appeared to be. There was always a willingness to find points of agreement, and to understand the kinds of claims each delegate sought to vindicate.

It should be added that in the assembly were present individuals who had in the past personally attacked one another, physically or morally. But to agree to be there was to agree to recognize one another, on the civilized and respectful plane of democracy. This atmosphere of respect was constructive, and served the delegates well in their exhausting labor. For 74 delegates were massed together during six months of twelve-hour days of study, deliberation, and negotiation.

18. The agreements

Out of nothing internal procedural rules were drafted. This was not easy, because actors in their majority did not know each other, and were inexperienced. And in any case there was a desire not to work according to traditional political methods.

Negotiations to elect the leadership were intense. No delegate had a clear

advantage. A tripartite presidency was chosen, with a leader from each of the three strongest political forces. Everyone felt represented.

The most momentous decision taken by the Assembly was to shut down Congress, whose members had been elected only a few months before for a term of four years, and to call for new elections under the framework of the new Constitution. The assembly considered that it did not make sense to hand over the new charter to the old power structures.

Since political interests were concerned, and since the established order and certain acquired rights were being undermined, it was crucial to make it clear that the decision was not arbitrary, and did not issue out of personal ambition or vindictiveness. The formula chosen for this purpose was for the delegates to declare themselves ineligible for the projected upcoming congressional elections. The delegates would in fact have enjoyed an advantage in those elections, because the prestige of the Assembly was notable. But the shutting down of Congress corresponded to no ambition on the part of delegates to jump from one position in the Assembly to a seat in the new Congress.

19. The Constitution after the Constitutional Assembly

After its passage, the Constitution left the hands of those who drafted it, who knew it best, and who felt the biggest commitment to see it developed in laws, administrative acts, and political attitudes.

There have been numerous efforts to weaken the Constitution, by both legislatures and administrations. The charter has been reformed 18 times in 13 years. Attempts are constantly made to deride it, manipulate it, misinterpret it, and make its implementation difficult. This is comprehensible. The Constitution embodies a new set of values, which will not be universally shared overnight.³⁰

In any case, the country's old ruling class, with their habits and vision, did not disappear. Many political leaders have resisted the change, and are resentful of a constitutional process that was a direct renunciation of their non-transparent way of conducting national politics, along avenues that had failed to lead the country towards peace and progress.

The only provision that was taken in order to defend the constitution against its foreseeable sabotage was to create a Constitutional Court, the last instance of interpretation of the charter. The Court has done a notable job since 1991. It has defended the democratic and humanistic spirit of the Constitution, and the rule of law. And it has protected the charter against repeated attacks.

Attempts have been made to change the Constitution without regard for the formal avenues provided for its amendment, and at the margin of the conceptions that inspire it and render it coherent. The Constitution's ideological commitments are constantly besieged by those who do not agree with the amplitude of the social pact implicit in it,

and would prefer to back down from it.

All of which means that Colombia continues to be rocked by the same waves of disagreement that endlessly take the country from periods of violence to negotiating tables and back. It is not improbable that when the days of counterreform are passed, the country will find itself once again enmeshed in violence, which will demand suing for a new Constitution and a new social pact.

But this does not mean that the 1991 Constitution is dead. On the contrary, it has enormous popular support. After all, it was drafted in consortium with the people,

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See <http://www.georgetown.edu/pdba/Constitutions/Colombia/col91.html> and has proved its virtues over the years it has been in effect, whenever its spirit has been followed and its letter obeyed.

20. The Constitutional Assembly in the eye of the storm

The Assembly was often put under extraordinary pressure. This was bound to happen. The state was being remade, along with the rules of the game of social and economic life.

Groups representing different productive sectors kept advisors in the rooms of the building that were open to the public. These advisors followed what was being discussed and agreed upon, and would try to influence those delegates whom they knew or in whose confidence they were. They gave them studies, and material with which to argue in debates. It was not, however, an aggressive presence. The most important groups sought to influence the Assembly indirectly, via the media and the administration.

When the rules were defined, the Assembly decided to accept as the administration's interlocutor the Minister of the Government (i.e. the Secretary of the Interior). He became, therefore, an additional member of the Assembly, without the power to vote. He was present during the debates, and participated in them.

Delegates had presented, at the beginning, their constitutional projects. In the case of the movements with the largest number of delegates, complete proposals were brought in. Smaller groups representing more focused religious, ethnic, or regional interests, brought proposals concerning those themes. Some delegates who were elected outside of a party structure brought their own complete or partial projects, according to the extent of their motivation. And the government presented its own project. The set of all these proposals, given equal consideration, together with the contributions from the citizen's working sessions, constituted the raw material from which the Constitution emerged.

The government defended its positions and had specialists who followed the deliberations step by step. Delegates with which it had party or other affiliations were

consulted with in private.

The most powerful private economic groups did try to directly pressure the delegates. CEOs and advisors tried to enter into the deliberations, and attempted without scruples to exercise their influence. This was facilitated, as usual and among other things, by the fact that they were financial contributors to electoral campaigns.

The success of the major economic groups in influencing the deliberations was compounded by the support they were offered by print, radio, and TV media outlets of which they are the owners. In the halls were present journalists working for the major news groups, who would cover the event and who would exercise pressure in an attempt to favor shareholder interests. Independent journalists did not act in the same way.

The major economic groups also exercised their influence through the government, which has always been their ally. Had all of these interests not exerted their various pressures, the Constitution would be more democratic. In economic concerns, and in what respects the regulation of the communications industry, private interests prevailed, as well as inequalities.

The armed forces were discreet, even though they were concerned about the issue of military justice. But no chances were taken. The M-19 was emerging from clandestinity and wanted to find reconciliation with the establishment, and, above all, did not want to provoke their former opponent in the battlefield. And few of the other delegates were inclined to pick that fight. Perhaps a new constitutional assembly will have to breach that subject, if the FARC and the ELN are to return to civil life. (On the other hand, the judging of civilians by military courts was eventually prohibited, after three votes were taken, two of which were frustrated, but not due to pressures imposed by the military).

The Catholic church threw its weight in. It wanted to preserve its jurisdiction over the civil acts of persons, retain certain privileges that dated from the nineteenth century, deriving from the Concordat (a special agreement between the state and the Vatican), and to benefit from special treatments which would set it apart from other religions. But these other religions, which have gained followers in many communities, were represented by delegates who worked actively to block any form of religious discrimination from entering the letter of the Constitution. They succeeded.

The church was successful, however, in blocking the passage of an article proclaiming a woman's right to freely elect maternity. This issue kept delegates under constant siege. It was not possible to evade the topic. The article was voted upon by the Assembly in full—which some delegates tried in vain to prevent—and although the measure failed, it did receive a surprisingly high number of votes. The very fact that the issue was debated at all, and voted upon, represents indubitable progress, especially for the many women who continue the effort to make abortion legal.

21. Life threats

Something that was more difficult to predict was the fact that the lives of several delegates would be under threat by criminal organizations, that sought at all costs to make extradition illegal. Their campaign succeeded.

Numerous delegates received communications in which it was announced to them that they would be killed if extradition was not abolished. At the same time, drug dealers kidnapped and held hostage seven important figures of national life, in order to pressure the Assembly. And, as if that were not enough, during the deliberations a former Magistrate of the Council of State, and former Minister of Justice, Enrique Low Murtra, was assassinated in the streets of Bogotá. He had been a decisive enemy of organized crime, and a defender of extradition.

Some years later the press spoke about the purchase of consciences. It is something that was not brought to the light during the Assembly and about which there exist no pronouncements from the judiciary or any other authority.

In a subsequent amendment to the 1991 Constitution, the banning of extradition was reversed, making the option legal again.

22. Political threats

The Assembly had the complete backing of President César Gaviria. To his great credit, he not only allowed the process to go forward, but promoted it at various turns.

Other politicians, who felt that their privileges were being restricted, and who were observing the workings of the Assembly from the sidelines with a certain degree of impotence, did not hide their wish that some obstacle would derail the process. In this they allied themselves with some media outlets, who broadcast negative news and predictions about the Assembly's work. But these attempts did not represent a serious danger.

The pressures applied by traditional politicians, bureaucrats, and certain private interests responded to the fact that the Assembly had as its mandate to close the open veins of corruption. The Constitution created a large variety of control mechanism, several of them available to citizens and communities, and imposed harsh sanctions on corruption.

Delegates were careful not to step over the few limitations that were imposed on the Assembly's own functioning, so that those possible faults would not be used by the enemies of the process to launch legal attacks on the new Charter before the highest tribunals. These precautions worked.

The risks, which were calculated, would come later. Powerful forces attempt at each turn to either bring down or neutralize the 1991 constitution. They have made some inroads, but not enough so as to think that the fundamental provisions of the Charter have ceased to apply in full force. In addition, strong political and social sectors are decided to defend the Constitution from such attacks.

23. Throwing wrenches in the gears

The hostilities against the Constitution were begun by the legislators elected to the new Congress, many of whom had been revoked by the Constitutional Assembly.

Their first act, after a new Congress was elected, was to change the rules of Congress. The Constitution was strict in establishing ineligibilities and incompatibilities, and also in defining duties to avoid the problems of corruption and dereliction that had discredited politicians and their parties. What was approved subsequently has been disastrous. Congressmen exploit public coffers by not showing up for their duties, and sending in deputies who then become eligible for lucrative pensions.

Some have attributed these abuses to the Constitution. They do so either in bad faith or because they cannot distinguish the amendment from the original text. The change was done quickly and only experts were aware of it.

And that is not the end. The Constitution contains a great deal of norms which have not been developed in the body of the law, and therefore remain innocuous. For example, those referring to the administration of territory, which establish scenarios of decentralization and regional development that are essential to resolve critical social conflicts.

In other cases laws have been passed with the intention of nullifying the projections made in the Constitution. This has been the case of the mechanisms for popular consultation, which opened the doors of participative democracy and gave citizens the possibility to resolve directly, with their vote, situations which the administration or other authorities cannot or do not want to resolve. The mechanisms have been rendered inoperative by new laws.

To enumerate the number of ways in which the political class has inveighed against the Constitution would be endless. They inveigh by acting, or by failing to act. But they play with fire. The civil war has not ended, and indeed propagates every day. And the Constitution, which was conceived as a way to reach peace, has not been as useful as it could have been, because it was taken hostage by its enemies 13 years ago.

24. A great advance

Colombia has possibly not had a more important political event in the last century than the passing of the 1991 Constitution. Not just because of the norms it enacted, which refreshed the institutions, the society, and the democracy. The hundreds of thousands of direct suits, of popular actions, and of petitions, which have empowered the most vulnerable individuals and communities and served for the assertion of their fundamental rights, which had been trampled or ignored for generations, have by themselves constituted a revolution. They have helped to avert the anger of individuals and communities who suffer from arbitrariness, exclusion, or neglect from the state. They have therefore turned people away from weapons and towards the law.

When will the results be felt? Perhaps they will be reaped by Colombians not yet born. A Constitution by itself will not be sufficient to alleviate the injustices that have been accumulating over many generations. But the Constitution did immediately bring back hope to a population that was frustrated and weary. It also gave Colombians the opportunity to deliberate, to reflect, to plan for a peaceful future. And for the first time the people in the streets and the fields did not have to wait for politicians to resolve their problems, as had always been the case. Such an opportunity might not come again.

The Assembly, by the way in which it was constructed, and by the way in which it operated, was a collective attempt to resolve conflicts within the law, and not by force. This is the most valuable aspect of the experience. The Constitution brought to the institutions values of humanism and equality, and provided tools for popular participation in the conduct of the state, and in the course of society. This is possibly irreversible. They are conquests that took two centuries to achieve.

A risk of the experience is for it to raise exaggerated expectations. Many believe that a new Constitution will resolve by itself all manner of problems, and are soon disillusioned. It is indispensable to educate the population so that such problems do not arise, endangering the stability of the institutions.

25. Observations

Delegates to the Constitutional Assembly did not have a clearer source of inspiration than the messages of the popular working sessions, and the voices of the people that made themselves heard across the country in the electoral campaign. To the Assembly were brought directly the concerns of the people and of the communities.

The event was not a council of learned people. On the contrary, it brought together people of different backgrounds, and this made possible the encounter of the multiple realities that the delegates represented, and that conform this nation, diverse in its regions, cultures, ethnicities, development levels, and ways of thinking. The Assembly was creative and peaceful and this was an achievement in itself, because the different currents that were represented had long antagonized one another. It resulted in a series of agreements and compromises. Some mistrusts were erased, some distances were shortened. A way was shown.

Some delegates looked at other constitutions to verify technical aspects. But ideas and concepts were not copied wholesale. Few delegates had the opportunity to meet with foreign experts or with foreign politicians who had been through similar experiences. No channels were established to facilitate this sort of exchanges, which would have been useful. Nor was there much time for them to have occurred.

The international community had little to do with the process. It happened too quickly for foreign experts to intervene. Help from outside would have been helpful, on the condition that it would have been respectful of the fact that a society needs a certain

intimacy in this kind of process, in which the people dig into their experiences and attempt to identify the mistakes that are not to be committed again, and the dreams that for once have a chance to become realities.

The Colombian experience shows that a constitutional assembly can be a powerful way of propelling the development of budding democracies. The process can be enormously helped by the backing and cooperation of the international community, so that it can move with fluidity and in a more informed way, thus reducing its risks and enhancing its potentials, and its chances of success. Constitutional assemblies have to deal with complex questions—in the Colombian case, for example, the question of the administrative and fiscal decentralization, and, at the limit, the question of the territorial autonomy of certain regions—that a hastily organized corporation is not prepared to deal with them. Outside technical help in such cases would be extremely valuable.

A Constitutional Assembly is not usually a planned event, but a solution that is proposed and adopted with stunning rapidity. It is also an endeavor that carries enormous risks: its failure can be catastrophic. It is therefore advisable to take any possible precaution to avoid such a turn of events.

APPENDIX Colombia, November 26, 2004

In this appendix I answer questions formulated by IDEA INTERNATIONAL in relation to the main text.

1. Youth

1. 1.1 The students and youth who promoted the “seventh ballot” mobilized spontaneously in their call for the convening of a constitutional assembly. This was their only end, and their movement ended with the official convocation of the Assembly.

2. 1.2 They were not originally backed up by national opinion: rather, they interpreted it, expressing what many people felt and thought. They were a

catalyst. The idealism and freedom from corruption of the youth movement attracted all sectors of society, who could trust their motivations without reservations.

1.3 The ruling President, Virgilio Barco, supported the seventh ballot.

.2. Violence

1. 2.1 The violence that afflicted Colombia at the time of the constitutional assembly was the continuation of the violence that raged since the beginning of the 1980s. To the insurgency and ordinary delinquency were added the forces of the drug cartels, which in turn gave rise to paramilitarism.

2. 2.2 More than a product of the violence, the Constitutional Assembly was a

product of the frustration of the people with anarchy, and with the inability of the State to organize daily life, adjudicate differences, and give direction to the society's progress. Colombians felt that a new constitution would provide a fresh start.

3. 2.3 Violence was and is a consequence of the existence of factions that do not feel identified with the institutions, that do not find a place in society, and seek to fulfill their ends by force. But there is inconformity beyond those who turn to violence – there are sectors of society who do not believe in the social order and are not committed to the collective endeavor.

4. 2.4 In the end, the society changes the way it is organized to be rid of the weight of the disenfranchisement that is expressed by violence or skepticism. Experience has proved that Congress will not make the necessary changes. So the society forced that change, by means of a new constitution.

5. 2.5 In fact, public opinion saw in the new constitution a panacea. This is the reason the process revived people's hope.

.3. Minorities

1. 3.1 In Colombia, exclusion does not only affect minorities, but also majorities. The poor are the excluded group *par excellence*.

2. 3.2 The exclusion of ethnic, cultural, and regional minorities, added to the exclusion of the majority constituted by the poor, has been the reason why, throughout history, the population is dissatisfied and does not trust the institutions.

3. 3.3 The weight of this situation is especially felt in times of extreme violence. These are the times in which the society is transformed, in which major changes are effected. The constitutional assembly results from a situation in which the inconformity of passive minorities and majorities reaches a breaking point. They become active in the midst of the agitation caused by violent minorities.

4. 3.4 The interest of the minority groups in the new constitution consisted in being recognized in their difference, in being guaranteed respect, and in being considered as equals before the law.

.4. Gender

1. 4.1 There were no groups officially representing women at the Assembly. The established feminist groups made their positions known and promoted them among the representatives and in public opinion, in an effort to have them taken into account.

2. 4.2 In general, women claimed major victories in the Constitution. These victories were the result of the conscience that had been formed in the society through time, and of the activism of groups that had long been fighting for those advances. Society was ready for the changes – it was prepared for them by their occurrence elsewhere in the world. The changes only needed an opportunity to materialize.

3. 4.3 There are no provisions in the Constitution to specifically favor the election of women for public posts, but the conditions of equality that were created expanded the amount of opportunities for women to participate in the allocation of social and political responsibilities.

4. 4.4 There has not been since 1991 a notable increase women in elected positions, but this is sure to happen over time, and it will not surprise anyone.

5. 4.5 At the high levels of the executive branch the presence of women has steadily increased since the passing of the Constitution. The same goes for the judicial branch.

6. 4.6 There were 4 women delegates to the Constitutional Assembly, out of 74 members. Their contribution was notable in all respects, and was not limited to gender

issues. They were elected on the same lists as men, and acted in the same capacities. The first period of work of the Assembly was presided by a woman.

7. 4.7 Today, the ratio of women representatives to elected bodies such as the Congress is not much larger than 4/74, but it has grown. The House of

Representatives is currently presided by a woman. This has happened on other occasions after 1991, but not before. The Constitutional Court has also been presided by a woman.

1. 4.8 There are no feminist organizations in Colombia whose aim is to directly participate in politics. There are organizations who seek the application of the Constitution and the law, who seek redress in specific cases, and who further women's causes. They act at different levels in society, not only the political one.

2. 4.9 Women were involved in the "seventh ballot" movement – some of the leaders of the movement were women, and they participated at the same level as men.

1. 4.10 During the Assembly's deliberations women's organizations promoted gender interests through their own publications, through direct interaction with the representatives, and by being present at the deliberations. They also made their points of view known through the media.

2. 4.11 Some of the forces represented in the Assembly, and some of the delegates, were more committed than others to the resolving of gender issues. In the end, the balance is that the Constitution issues norms protecting the equality of women, and provides several mechanisms for the defense of their interests. Moreover, the Constitution guarantees the possibility of their participation in all democratic scenarios.

3. 4.12 Within a framework that promotes equality, women participate in the construction of the peace through their initiatives and leadership, which are of increasing importance.

.5. Conflicts

1. 5.1 The issue of extradition had an undue influence in the Assembly, until the matter was voted on. Delegates were acting under the threat of terrorism, and many of them were threatened directly, but the issue was not debated until the time it was to be voted on. In general, the Assembly worked in the elaboration of the charter at the margin of this circumstance.

2. 5.2 The climate of danger did influence the extradition vote.

3. 5.3 On this issue, as well as in others surrounding the Constitution, the United States Embassy was prudent, as were all other diplomatic delegations. That being said, the deliberations were closely observed.

.6. Public Opinion

1. 6.1 In general, public opinion followed closely the working of the Assembly. The media covered the event closely, and a number of social organizations were in charge of divulging, explaining, and commenting on the constitution-making process.

2. 6.2 Much discussion, oral and in print, surrounded the themes on which the Assembly treated, and its decisions were widely commented. Specialized analysis were done in the media, in the academy, and among guilds and interest groups. The population was kept informed, and was in touch with the tasks and decisions of the

Assembly.

3. 6.3 The deliberations of plenary sessions were broadcast live over cable television. It was the first time something of the sort had been done. In fact, the decision to broadcast was adopted after a series of debates. Some feared that it might cause polarization and violence in the community, but, in the event, the opposite happened. Since 1991, several sessions of Congress are broadcast live and this type of coverage tends to increase. This has been very useful for the democracy.

4. 6.4 The Assembly enjoyed the respect of public opinion because it was seen at work with uncommon dedication. The public had enormous interest in what happened in the Assembly, because its decisions affected it directly. In addition, the public saw that the changes that had long been awaited were becoming a reality.

5. 6.5 At the end of the task, the population was grateful towards the Assembly and its delegates, who enjoyed a good measure of prestige. The Constitution was popular, and continues to be.

.7. Inclusion

1. 7.1 The insurgent movements FARC and ELN were two main forces that were excluded from the Assembly. The reasons for this exclusion were never explained.

2. 7.2 The government repudiated these organizations from the day of the election of the delegates, as is explained in the main text.

3. 7.3 The guerillas could have been included in the process through accords preceding the Assembly, or during the course of its deliberations, when the President agreed to talks with them in Caracas.

4. 7.4 The FARC petitioned for their leader to be heard by the Assembly. He wanted to explain what he understood to be the reasons for the armed

conflict in Colombia, and thus to contribute to the work of the Assembly, if only in this tangential way.

1. 7.5 The Assembly invited him, but the President of the Republic did not authorize his presence.

2. 7.6 There were no other excluded sectors. The elected assembly men and women represented the differences that are manifest in Colombian society. The rules of the election and the nature of the event contributed to this pluralism and variety.

3. 7.7 The development of organized political forces, strong and plural, is the best guarantee of inclusion.

4. 7.8 The disgust of the population with traditional political leaders and public institutions was a result of their inefficacy. They failed to resolve the problems experienced by communities and persons.

5. 7.9 This perception reinforced the idea that the public sector was plagued by corruption, and that the money collected in taxes did not return to the community in the form of services.

7.10 One decade after the passing of the Constitution, the public's perception of politics and politicians has not improved. As was explained in the main text, after the assembly, the way of doing politics was not renewed, nor were the politicians.

.8. Sustainability

1. 8.1 The changes achieved by constitutional assemblies are sustainable insofar as they interpret the society correctly, and insofar as the members of the society organize themselves in political parties and in other forms of participation, seeking ways to defend and develop those changes.
2. 8.2 Also indispensable are the education of the population, and the dissemination of the Constitution.
3. 8.3 As was discussed in the main text, certain groups attempted to erode the power of the Constitutional Assembly, as it threatened their own power. They succeeded in influencing some decisions. Some groups, such as the traditional political parties, lost power. Others, such as the economic conglomerates, did not – in fact, in certain aspects, they amassed more.
4. 8.4 The drug mafia lost power, insofar as the judicial branch was strengthened, and an eminent domain law was passed allowing the State to appropriate their assets.
5. 8.5 The ability of terrorism to intimidate, and to condition the decisions of politicians and of the State, is undeniable. The Assembly had its taste of this. The drug mafia uses terrorist methods, and in addition it has a huge corrupting power. Despite this, the country has resisted its influence in heroic ways.
6. 8.6 The capacity of legitimate economic groups to influence political bodies is a different matter. The Assembly tasted this as well.
7. 8.7 The main causes of the weakness of political bodies in the face of private interests are financial dependence, and the influence of a privately owned media. This is the reason why the financing of political parties and the way publicity used in political campaigns are central concerns of democracies. The autonomy and fairness of the State depends on the way in which these issues are regulated.

.9. Political Parties

1. 9.1 Colombia's traditional political parties had preserved their power in spite of the low esteem in which they were held due to the fact that they were the only ones who could change a constitution that they themselves had tailor-made to preserve their interests. This was the very reason why they did not change it.
2. 9.2 The 1991 Constitution wrenched power from their hands and changed the rules of the political game.
3. 9.3 Nevertheless, upon their return to Congress, the old parties have impeded the implementation and development of the new Constitution, and have limited its renovating power. Still, new political forces have formed, and the expectation of change remains.
4. 9.4 It is hard to measure the degree to which the Constitution has been developed. It offers the possibility of advancing on many levels, according to the political will of the parties in power. Up until now, progressive forces have not been dominant. In many cases, laws have been passed which run counter to the democratic spirit of the Charter. In other cases, the directives of the Constitution have been ignored, and have not been interpreted in new laws. Finally, the Constitution itself has been amended, to the detriment of its democratizing force.
5. 9.5. Nonetheless, the achievements of the 1991 Constitution survive in their fundamentals. Its spirit and its judicial dictates orient the society and the State. There are many opinion currents, popular movements, civil society organizations, and political parties which stand ready to defend the Constitution.

10. Democratic Construction

1. 10.1 The Colombian conflict persists and in many aspects it deepens, due to the incapacity of leaders and organizations to change their dynamics.
2. 10.2 The Constitution offers tools to advance towards reconciliation, but these are not used to the fullest. Leaders and parties have neither the will, nor the strength, nor the discipline to promote a consensus within the existing legal framework.
3. 10.3 The climate of reconciliation of the Constitutional Assembly was not transmitted to regular political life. In their majority, the protagonists of the Assembly disappeared from the public scene, and politics returned to the hands of the traditional actors.