

Constitution-Making in a Time of Cholera[†]: Women and the 1991 Colombian Constitution

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with the collaboration of

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A. Of *Reivindicaciones* and Reforms

[†] The title of this article has been inspired by Colombian Nobel Prize-winning author GABRIEL GARCÍA MÁRQUEZ's novel *EL AMOR EN LOS TIEMPOS DEL CÓLERA* (1985), which has been translated into English under the title *LOVE IN THE TIME OF CHOLERA* (1988). As with all translations, something is lost, however. The Spanish plural "*tiempos*" is more global, more enduring than the English singular "time." Further, in Spanish, *cólera* has a figurative as well as a medical definition, meaning passion or fury as well as a certain fearsome disease. The title is appropriate for Colombia's constitution-making in the summer of 1991 in both figurative and clinical senses.

^{††} Professor of Law, University of Alabama School of Law. Translations from Spanish-language sources are the author's, unless otherwise noted. This article is part of a larger project by the author on women and constitution-making. See also Martha I. Morgan, *Founding Mothers: Women's Voices and Stories in the 1987 Nicaraguan Constitution*, 70 B.U. L. REV. 1 (1990). It is also in part a product of the interest shared by the author and collaborator in abortion and reproductive freedom in the Americas. The primary research for this article was done in Colombia during May and June of 1991 and was supported by grants from the University of Alabama Law School Foundation and the Capstone International Program Center.

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INTRODUCTION

Does law imitate life or does life imitate law?¹ Constitution-making is a time for asking the larger questions about law and life, about what a society is and what it wants to become. As women and other marginalized groups demand to have their voices heard in contemporary constitution-making, new questions are being asked, and views about the very nature of constitutionalism are changing.

In the wake of the dissolution of the Soviet Union, U.S. constitutional advisers are participating in the drafting of new constitutions around the world. Although such sharing of knowledge and experience can be important, sharing must be a two-way process. It is a particularly appropriate time to reflect, not just on what U.S. constitutional scholars can contribute to this contemporary flood of constitution-making, but also on what we can learn from other countries' constitutional experiences. As such a reflection, this article focuses on the recent Colombian constitutional process as a setting for examining questions about how, if at all, women's interests can be advanced through constitution-making.

As if lifting a page from the novel by Gabriel García Márquez,² Colombians wrote their 1991 Charter during a time of *cólera*—both literally

1. Although we who make our living with law may find it hard to admit, law is often only a poor and outdated attempt to reflect some of life's teachings. On the other hand, many of us believe that law at times can be a teacher itself and can play an interactive part in shaping what a society wants to become.

2. Ironically, in recent works, García Márquez has turned increasingly to historical sources for his inspiration: "I have realized as I grow older that history, in the end, has more imagination than oneself." Roger Cohen, *García Márquez Looks at Life, Love and Death*, N.Y. TIMES, Aug. 22, 1991, at C11, col.3.

and figuratively.³ Understanding the violence of Colombian society is crucial both to comprehending how, after more than one hundred years, Colombians came to frame a new constitution, and to recognizing the hurdles women faced in trying to influence its drafting. Amid the well-publicized exploits of drug traffickers and still-armed left- and right-wing guerrilla forces, seasoned politicians from the traditional liberal and conservative parties and new factions of these parties sat down with former guerrillas, indigenous leaders, and evangelicals in a desperate attempt to solve the problems facing this complex and contradictory country through dialogue rather than violence. The Constitutional Assembly was unlike anything Colombia had ever known; voices never before present were being heard in the seats of power.⁴

Despite its diversity, the body was not fully representative of Colombian society. Latin America's third largest country, Colombia has a population of approximately thirty million people, of whom nearly seventy percent now live in urban areas. According to the Colombia Information Service, sixty percent of the population are *mestizos* (mixed Spanish and indigenous), twenty percent are Euro-American, fourteen percent are mulattos, four percent are Afro-American and two percent are indigenous peoples.⁵ Although indigenous people elected two of their representatives to the Assembly, an organization representing the black population of Colombia failed to elect any of its list of candidates.⁶ Most strikingly under-represented were women of any color—only four of the seventy-four members of the Assembly were women. Mindful of the importance of the moment, Colombian women outside the Assembly sought to take advantage of the opening provided by the constitutional process, trying

3. In early June 1991, Colombian President César Gaviria's liberal government was feverishly engaged on at least four fronts: first, in Caracas, Venezuela, talking with the largest of Colombia's remaining armed guerrilla movements about the conditions for their disarmament and re-entry into the civilian political processes; second, in Medellín, Colombia, negotiating with druglord Pablo Escobar over the conditions of his surrender and the size and accommodations of the prison being prepared for him; third, in Bogotá, Colombia, dealing with the Constitutional Assembly charged with reforming the country's 1886 Charter, now working late into the evenings to write a new constitution before its July 4th deadline; and, finally, on Colombia's Pacific Coast, coping with the deadly cholera epidemic that attacked the largely black population of Buenaventura and threatened to spread to other sections of the country.

4. The two most striking symbols of this diversity were Antonio Navarro Wolff, former M-19 guerrilla leader who wore a coat and tie and presided over the Assembly as one of its three presidents, and indigenous peoples' representative, Lorenzo Muelas, who wore his traditional blue skirt, poncho, and black derby throughout the sessions.

5. COLOMBIA INFORMATION SERVICE, COLOMBIA: LAND OF CONTRASTS 4 (1990).

6. Interview with Mercedes Moya Morena, National Coordinator of Black Communities, in Bogotá, Colombia (May 25, 1991). Moya Morena, an industrial engineer and community worker from the coastal section of Chocó, was one of the defeated candidates on this list and later acted as an active lobbyist for Colombia's black population during the Constitutional Assembly. The Assembly did include a representative who would have been considered black by many in the United States; however, notions of race and color differ significantly in Colombia. For a recent discussion of how "race" is defined in the United States, see F. JAMES DAVIS, WHO IS BLACK: ONE NATION'S DEFINITION (1991) (tracing the development and impact of the unique "one-drop rule" used to define African ancestry in the United States). For further critique of the U.S. system of racial classification, see Neil Gotanda, *A Critique of "Our Constitution is Color-Blind,"* 44 STAN. L. REV. 1, 23-36 (1991). See STEPHEN JAY GOULD, THE MISMEASURE OF MAN (1981) for an assessment of scientific racism and its impact upon views of race. See generally MARVIN HARRIS, PATTERNS OF RACE IN THE AMERICAS (1964); MAGNUS MÖRNER, RACE MIXTURE IN THE HISTORY OF LATIN AMERICA (1967); RACE AND CLASS IN LATIN AMERICA (Magnus Mörner ed., 1970).

to influence the drafting of the new Constitution and to set the stage for future legislative struggles over gender justice in this still classically *machista* society.

This article is an account of these women's story—their successes, their failures, their hopes for the future. Their story is told not just out of a strong sense of the need for the telling, though perhaps this is primary in all storytelling. Equally strong is my belief that feminists and other progressives in the United States have much to learn from Latin American women and their struggles.

As women and other marginalized groups are demanding to be heard and sometimes being allowed to participate in constitution-making, they are changing our conceptions of "founding fathers" as well as of constitutions and what they should embody and reflect.⁷ Constitutionalism embraces more than traditional notions of separation of powers and civil liberties; constitution-making provides a forum for integrating diverse groups and reconciling differing views about what a society should be.

The Colombian constitutional process offers an opportunity to further explore the relationships between women's movements, law, and the state⁸ in Latin America.⁹ Given the challenge made by Latin American women to established notions of the boundaries between public and private spheres and their argument that concepts such as democracy, equality, and human rights are applicable to the home, the family, and the workplace as well as to the traditional political arena, these women's participation in constitution-making provides fertile ground for assessing how, if at all, women's interests can be advanced through law and the state. Colombian women's experience can be used to examine various theses on the relationship between law and social change.

Pointing to the gap between "equality on paper" and "equality in the streets," Eschel Rhoodie posits that men's attitudes are more important than constitutions and laws in determining women's advances, and that cultural, religious, and social traditions pose greater impediments to women's equality than do laws.¹⁰ Rhoodie's theses underscore the links between a country's

7. See, e.g., Morgan, *supra* note ††.

8. I use the abstraction "state" (to conform with the literature) to refer to the institutionalization of governance, mindful that concretely the term refers to groups of human beings who exercise governmental power over groups of human beings. I am thankful to my colleague Jerry Hoffman for reminding me of the importance of making concrete the discussions of the state.

9. For recent discussions of relationships between women's movements and the state in Latin America, see SONIA E. ALVAREZ, *ENGENDERING DEMOCRACY IN BRAZIL: WOMEN'S MOVEMENTS IN TRANSITION POLITICS* (1990); *THE WOMEN'S MOVEMENT IN LATIN AMERICA: FEMINISM AND THE TRANSITION TO DEMOCRACY* (Jane S. Jaquette ed., 1989); Susan C. Bourque, *Gender and the State: Perspectives from Latin America*, in *WOMEN, THE STATE, AND DEVELOPMENT* 114 (Sue E. M. Charlton, Jana Everett and Kathleen Staudt eds., 1989); Michelle A. Saint-Germain & Martha I. Morgan, *Equality: Costa Rican Women Demand the Real Thing*, 11 *WOMEN AND POLITICS* 23 (1991). FRANCESCA MILLER, *LATIN AMERICAN WOMEN AND THE SEARCH FOR SOCIAL JUSTICE* (1991) provides an historical overview. For general discussion of social movements in Latin America, see *POWER AND POPULAR PROTEST: LATIN AMERICAN SOCIAL MOVEMENTS* (Susan Eckstein ed., 1989).

10. ESCHEL M. RHODIE, *DISCRIMINATION AGAINST WOMEN* 9-10 (1989):

Thesis One: Attitudes of men in general determine the pace and extent of women's advance, and

socio-economic environment and women's position in society. They do not, however, resolve the question of to what extent gender interests *can* be advanced through law and the state and what strategies are needed for the task.

On this point, Sonia Alvarez notes that feminists differ on whether the state should be seen as "worst enemy" or "best friend" of gender-based struggles.¹¹ Alvarez stakes out a middle position, concluding that "feminists should neither dismiss the State as the ultimate mechanism of male social control nor embrace it as the ultimate vehicle for gender-based social change."¹² Stressing the importance both of examining differing political and historical contexts and of seizing available space, she calls for further study of "cross-cultural experiences of feminist attempts to influence State policy 'in the meantime,' while patriarchal practices and assumptions remain embedded in the structures and policies of socialist and capitalist States."¹³

This article examines one such recent attempt—that of Colombian women's groups to use the space provided by their country's recent constitutional process to advance their agendas. It begins with a look at the changing social context of Colombian women's lives and the events leading up to the 1991 Constitution. Section II describes Colombian women's participation in the constitutional process, analyzes the specific issues that women raised during this process and the results they obtained, and examines women's participation in the first elections called for by the new Constitution. The final section offers some reflections on the legacy of Colombia's constitutional process for women.

Avoiding the sportscaster's impulse to frame the questions as "Who won?" and "What was the score?", this final section considers the relationship between law and social change by exploring the difficult questions of how women's participation affected the Constitution and how the Constitution is likely to affect women. It briefly compares Colombian women's experiences with those of women participating in recent constitutional processes in Brazil and Nicaragua to provide a broader perspective on how gender interests can be advanced through constitution-making.

not so much constitutional or other legal provisions.

Thesis Two: Women are hampered in their quest for equality by cultural, religious, and social tradition in the Western world, far more than by legal impediments.

[Thesis Three applies to discrimination against women in African and Muslim states.]

Thesis Four: Laws passed to protect the position of women have not always had the desired effect; in fact, in certain areas laws have worked to the detriment of women's position.

Thesis Five: Constitutional and statutory provisions for the rights of women and laws promulgated to implement ratification of the United Nations' convention to eliminate all discrimination against persons on grounds of gender are not a guarantee that the laws are applied or the objectives vigorously pursued; in fact, behind the facade of these laws, discrimination against women not only persists but also, in some countries, has broadened.

11. ALVAREZ, *supra* note 9, at 27-32, 269-274. Among U.S. feminist theorists, Alvarez identifies Catharine MacKinnon and Kathy Ferguson as holding the "worst enemy" view, i.e., the state as immutably masculine; Alvarez identifies Frances Fox Piven and Barbara Ehrenreich as adopting the "best friend" view, at least with respect to the Welfare State.

12. *Id.* at 273.

13. *Id.*

Colombian women's story shows that successful legal strategies for advancing gender interests must be broad-based and multi-focused and must carefully analyze the existing gaps between law and life. Strategies for changing the substantive content of law must be accompanied by education and enforcement strategies.¹⁴ If one sees law as a vehicle for social change rather than solely as a vehicle for social control, gaps between the law in books and the law in action can be the catalyst for real changes in the status of women.¹⁵ Gaps between law and life do not always point in one direction. Areas where law has not kept pace with the realities of women's changing lives exist alongside areas where the realities of life lag behind formal legal guarantees. Different "gap closing" strategies are called for in each instance.

Although the new Colombian Constitution falls far short of what leading Colombian feminists sought and leaves untouched areas where law presently ignores the realities of Colombian women's lives, it does provide important "paper" guarantees that can be used in organizing and empowering women. If enforced, these guarantees can narrow the gap between formal and real equality. Finally, Colombia's new charter serves as a model, albeit imperfect, for a new constitutionalism that emphasizes the importance of integrating diverse social groups into the quest for a peaceful society.

I. WOMEN IN COLOMBIAN SOCIETY AND THE PATH TO THE 1991 CONSTITUTION

Latin American social movements, Susan Eckstein emphasizes, cannot be fathomed without careful attention to "contextual factors shaping responses to grievances."¹⁶ A hallmark of feminist jurisprudence is detailed analysis of the historical and political context which are inextricable parts of the tapestry of women's existence. For Colombian women, the texture of this tapestry is both rich and complex.

A. *The Changing Role of Women in Colombian Society*

As is true for other Latin American women, the historical roots of Colombian women's involvement in politics are deep, though sometimes hard to trace. Prior to the Spanish conquest in the late fourteenth and early fifteenth

14. See generally EMPOWERMENT AND THE LAW: STRATEGIES OF THIRD WORLD WOMEN (Margaret Schuler ed., 1986).

15. See, e.g., Jim Russell, *Reproductive Health: The United Nations Convention on the Elimination of All Forms of Discrimination Against Women as a Catalyst for Change in Colombia*, 49 U. TORONTO FAC. L. REV. 106 (1991).

16. POWER AND POPULAR PROTEST, *supra* note 9, at 33:

Class and market relations, gender, politics, and religion may be sources of rage, but . . . the ways discontent is expressed may vary considerably. Historical evidence suggests that local institutional structures and cultural milieux, interclass ties and alliances, and perceived options all condition whether and how shared grievances are defied and resisted. Only when "conditions are ripe" will people publicly protest en masse conditions they believe to be unjust.

centuries, the indigenous Chibcha society had a matrilineal system of succession to office.¹⁷ Women participated in the slave revolts of the late 1700's as well as in the later stages of the independence movement in the early 1800's. During the struggle for independence, women served in combat roles (generally disguised as men), did espionage work, travelled with the troops as *juanas* or camp followers, and contributed financially and personally to the war effort.¹⁸ At the end of the nineteenth and beginning of the twentieth centuries, women also participated in the Thousand Days War.¹⁹

Women's involvement in the struggle for independence from Spanish rule (which for Colombia came in 1819) resulted in little, if any, positive change in their status in society.²⁰ Simon Bolívar, whose leadership of the independence movement earned him the title of the Great Liberator, had no interest in women's liberation, warning his sister that "[a] woman ought to be neutral in public business. Her family and her domestic duties are her first obligation."²¹ Indeed, post-independence civil codes tended to restrict, rather than expand, the rights that women had possessed during the colonial era.²² Latin American civil codes generally were based on the French Napoleonic Code which provided that "[t]hose persons without rights at law are minors, married women, criminals, and the mentally deficient."²³

Following independence and the failure of Gran Colombia (Bolívar's federation including present-day Colombia, Ecuador, Panama, and Venezuela, which lasted only until 1830), women in the province of Vélez experienced one historic but short-lived gain. When the 1853 Constitution of New Granada (as Colombia continued to be known until 1863) allowed the provinces to adopt their own constitutions, Vélez responded with a radical charter extending the right to vote to all inhabitants over twenty-one years of age or married.²⁴

Although the 1853 Constitution of Vélez did not explicitly refer to gender, the electoral law enacted to effectuate it just days after its adoption specified that separate voter lists be maintained for men and women, leaving no doubt that women were eligible to vote. The extent to which women actually voted is less clear, but according to some accounts, they did participate in elections in 1853 and were viewed as partially responsible for the election of Ramón

17. SISTERHOOD IS GLOBAL 159 (Robin Morgan ed., 1984).

18. Evelyn Cherpak, *The Participation of Women in the Independence Movement in Gran Colombia, 1780-1830*, in *LATIN AMERICAN WOMEN* 219-234 (Asunción Lavrin ed., 1978).

19. See Carlos Eduardo Jaramillo Castillo, *Las Juanas de la Revolución: El Papel de las Mujeres y los Niños en la Guerra de los Mil Días*, 15 ANUARIO COLOMBIANO DE HISTORIA SOCIAL Y DE LA CULTURA 211-230 (1987).

20. Cherpak, *supra* note 18, at 229-231.

21. *Id.* at 229-30.

22. See *id.* at 230.

23. Napoleonic Civil Code, *quoted in* RHODIE, *supra* note 10, at 61.

24. CARLOS RESTREPO PIEDRAHITA, *I CONSTITUCIONES DE LA PRIMERA REPUBLICA LIBERAL 1853-1856*, 173-78 (1985). Although some women theoretically would have met the definitions of citizenship and eligibility for suffrage in some earlier Colombian constitutions, their inclusion had surely not been intended. Cherpak, *supra* note 18, at 22.

Mateus, a congressional candidate who tried but failed to convince the national legislature to extend women's suffrage throughout the country.²⁵

The Vélez experiment was not looked upon favorably in other parts of the country. One writer expressed his sentiments in the August 14, 1855, edition of the Bogotá newspaper, *El Tiempo*:

We believe that the disposition that makes women voters and eligible for election emanates more from gallantry than from political thinking. The woman will carry the opinion of her husband, father, brother, or lover to the electoral urns. . . Stay in the house. . . Stay there and leave to us the pleasure of making presidents and dictators, of plotting in elections, of insulting ourselves in congress, of lying in the newspapers and of fraternally killing ourselves in our civil wars . . .²⁶

Similar views were expressed by women themselves, as evidenced by Soledad Acosta de Samper, writing in 1851 in *La Mujer*:

[W]omen should not actively participate in politics. It is far from us to advocate the absurd emancipation of women, nor do we intend to ask that they aspire to political posts or be seen fighting around electoral tables, no, this is not her mission, and indisputably her Constitution, her character and natural occupations would never permit these. But there remains for them the most noble part, the moral influence in the transcendental and fundamental issues of the society She has the duty to understand what the parties want and aspire to, then she will exercise her influence. If women are "the angel of conscience" in each home . . . their mission is eminently moral.²⁷

The issue of women's suffrage surfaced again in the debates surrounding the adoption of the 1886 Colombian Constitution. During the Constituent Assembly, Jesús Casas Rojas responded to the argument that universal suffrage was a fundamental right of all citizens, reflecting the tenor of the times:

This argument proves too much and consequently, proves nothing. If it were solid, it would mean that women, children, and even crazy people could vote because all of them have obligations In other times they have tried to give the vote to women; but today no one talks about this as it seems ridiculous; and there has never been anyone who

25. RESTREPO PIEDRAHITA, *supra* note 24, at 176.

26. Quoted in Suzy Bermúdez Q., *Mujer y Familia Durante el Olimpo Radical*, 15 ANUARIO COLOMBIANO DE HISTORIA SOCIAL Y DEL LA CULTURA 57, 73 (1987).

27. *Id.* at 74.

tried to give the vote to children and crazy people. And why is this? The reason is obvious: it is because the value of the vote depends on its quality, and not on its number, that is, it depends on the competency of the voters.²⁸

During this Constituent Assembly, Miguel Antonio Caro proposed that if universal male suffrage were accepted, fathers of families should be given two or more votes because "a father of a family is not an isolated individual, but the legitimate head and representative of his little kingdom."²⁹

Given the conservative attitudes that prevailed in the decades following independence and the lack of feminist consciousness among women, Colombian women did not make real gains in their political and legal status until the twentieth century. During the so-called Liberal Republic (1930-46), which followed fifty years of domination by the Conservative Party, upper-class women began to organize and push for equal civil and political rights for women.³⁰ Women were granted legal capacity to administer their property in 1932,³¹ rights of access to higher education in 1933,³² and the right to hold non-elected public offices in 1936.³³

While recognizing the pressure from feminist and suffragist movements to extend human rights to women, Colombian legal historian Magdala Velásquez Toro concludes that the process of legal emancipation of Colombian women has been dominated by men.³⁴ She attributes the legal emancipation of women to the actions of progressive governments and the catalyst of economic necessity.

During the 1930's, when the country was recovering from the Great Depression and expanding its industrial base, women were recognized as a legal entity. To incorporate women into the capitalist system as wage earners (previously any income would have been controlled by the husband), it was necessary to free women from patriarchal family

28. *Id.* at 75-76.

29. *Id.* at 64-65.

30. Diana Medrano & Cristina Escobar, *Pasado y presente de las organizaciones femininas en Colombia*, in *MUJER Y FAMILIA EN COLOMBIA* 229 (Elssy Bonilla C. ed., 1985).

31. See generally, Edith E. Scott, *Married Women's Rights Under the Marimonial Regimes of Chile and Colombia: A Comparative History*, 7 *HARV. WOMEN'S L.J.* 221 (1984).

32. Prior to 1933, when the government first authorized secondary schools to award *bachillerato* degrees to females, they received teachers' training as *normalistas*. Some private high schools, however, had begun to provide females with a curriculum similar to that leading to a *bachillerato* before 1933. In 1929, Sofía Quijano de Ayram, director of a girls' high school, founded Colombia's first law school for women, the Instituto Montessoriano which later disappeared. René de la Pedraja Tomán, *Women in Colombian Organizations, 1900-40: A Study in Changing Gender Roles*, 2 *J. WOMEN'S HIST.* 98, 101-102 (1990).

33. CONSEJERÍA PRESIDENCIAL PARA LA JUVENTUD, LA MUJER Y LA FAMILIA, *LINEAMIENTOS HACIA UNA POLÍTICA INTEGRAL PARA LA MUJER COLOMBIANA* 5 (1991) [hereinafter *LINEAMIENTOS*].

34. Magdala Velásquez Toro, *Colombia: Legal Gains for Women*, in *EMPOWERMENT AND THE LAW*, *supra* note 14, at 71, 73.

relations. Similarly, women began to enter technical and higher centers of learning as the demand for educated and skilled labor increased.³⁵

Ironically, after unsuccessful proposals to extend the franchise to women in 1936,³⁶ 1944, and 1946, women finally obtained the right to vote in 1954, during the country's only military dictatorship (1953-57).³⁷ Esmeralda Arboleda de Uribe and Josefina Valencia de Hubach participated in General Gustavo Rojas Pinilla's National Constituent Assembly that, in 1954, unanimously approved the right to vote for women.³⁸ Colombian women first exercised this right secured as a constitutional guarantee in the Constitutional Reform Plebiscite of December 1, 1957, when political elites believed that women voters were needed to ensure ratification of the National Front and bring an end to *La Violencia*.³⁹ Article 1 of the reform provided: "Women will have the same political rights as men."⁴⁰

In 1974, President Alfonso López Michelsen fulfilled his campaign promises to women by promulgating Decree 2820⁴¹ which abolished *potesad marital* (the husband's marital rights over the wife and children) and otherwise granted men and women equal rights. Although Colombia ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women in 1981, it was not until July 3, 1990, during the closing days of the administration of President Virgilio Barco, that regulations implementing this

35. *Id.*

36. For excerpts from the Senate debate over women's suffrage in January 1936, when the 1886 Constitution was reformed to broaden male suffrage and to permit women to hold positions of authority and jurisdiction (but not elected offices), see REPORT OF THE INTER-AMERICAN COMMISSION OF WOMEN TO THE EIGHTH INTERNATIONAL CONFERENCE OF AMERICAN STATES ON THE POLITICAL AND CIVIL RIGHTS OF WOMEN 34-38 (Inter-American Commission of Women ed., 1938).

37. Medrano & Escobar, *supra* note 30, at 231, 236-38. Colombia was one of the last Latin American countries to extend the franchise to women. Ecuador was first in 1929, followed by Brazil and Uruguay in 1932, Cuba in 1934, and El Salvador in 1939. With the exception of Paraguay, which did not recognize women's suffrage rights until 1961, other countries in the region extended this right during the 1940's (seven countries) and the 1950's (seven countries, including Colombia). Countries viewed as having the strongest democratic traditions (or the highest levels of economic development or female literacy) were not necessarily the first to grant women voting rights. Rather, one must look to historic factors within individual countries. Jane S. Jaquette, *Female Political Participation in Latin America*, in SEX AND CLASS IN LATIN AMERICA: WOMEN'S PERSPECTIVES ON POLITICS, ECONOMICS AND THE FAMILY IN THE THIRD WORLD 217, 222-23 (June Nash & Helen Icken Safa eds., 1980). However, commonly held assumptions about women's conservatism and dependency on the Church often influenced countries' handling of the suffrage issue. THE WOMEN'S MOVEMENT IN LATIN AMERICA *supra* note 9, at 3.

38. Shirley Harkness & Patricia Pinzon de Lewin, *Women, the Vote, and the Party in the Politics of the Colombian National Front*, 17 J. INTER-AM. STUD. WORLD AFF. 439, 440-41 (1975).

39. Medrano & Escobar, *supra* note 30, at 237-238. For discussion of the turbulent period in Colombian history to which this term refers and of the National Front that sought to end it, see discussion *infra* note 69.

40. Quoted in MARÍA ISABEL PLATA & MARÍA YANUZOVA, LOS DERECHOS HUMANOS Y LA CONVENCION SOBRE LA ELIMINACION DE TODAS LAS FORMAS DE DISCRIMINACION CONTRA LA MUJER 79 (1988).

41. RHODIE, *supra* note 10, at 332.

law were promulgated.⁴² Many complained that the regulations were too little, too late. Writing for *mujer/fempress*, Socorro Ramírez, a noted feminist writer and historian who had been a socialist presidential candidate in the late 1970's, explained that the regulations re-enumerated some of the principles of the Convention but failed to take affirmative steps toward elimination of discrimination.⁴³ She noted that a year after the regulations were adopted, the Committee of Coordination and Control, established by the regulations, still had not met.

Some more concrete changes in women's legal status have occurred in recent years, however.⁴⁴ In 1990, President César Gaviria created the *Consejería* for Youth, Women and the Family (appointing a man to head it). One of its first steps was to establish special *Comisarías de Familia*, offices open twenty-four hours a day to receive charges related to domestic violence and to offer conciliation services to families in conflict.⁴⁵ In December 1990, a law recognizing and governing the formation and dissolution of consensual unions or *de facto* marriages was passed.⁴⁶ At the same time, the government complied with earlier agreements to extend paid maternity benefits from eight to twelve weeks for women covered by social security. Benefits were also extended to parents who adopt children under seven years of age, and women were permitted to give one week of leave to their husband or companion to care for a newborn child while she recuperates from childbirth.⁴⁷ Amendments to the labor code also established sanctions against employers who terminate women because of pregnancy and authorized women to sue for reinstatement in such cases.⁴⁸

Although women constitute approximately half of Colombia's voters and participate actively within political parties, few women have held elected offices. Prior to the adoption of the new Constitution, women held only one percent of the Senate seats in the national Congress and 5.2% of those in the House. Their representation in local offices was also low—only 2.5% of municipal council members and four percent of *alcaldías populares* were women.⁴⁹ Worldwide, women hold only eleven percent of national parliamentary seats; in the United States and most of Latin America, their

42. Decreto No. 1398, "Por El Cual Se Desarrolla La Ley 51 de 1981, Que Aprueba La Convención Sobre La Eliminación De Todas Las Formas de Discriminación Contra La Mujer Adoptado Por Las Naciones Unidas" (July 3, 1990).

43. Socorro Ramírez, *Del Dicho al Hecho Hay Mucho Trecho*, (draft article written for publication in *MUJER/EEMPRESS*, on file with author).

44. *Id.*

45. For a critical discussion of the effectiveness of "women's institutions" including women's councils and women's police precincts in Brazil, see ALVAREZ, *supra* note 9, at 241-48.

46. Ley 54 de 1990 (Dec. 28, 1990), *Diario Oficial*, at 10 (Dec. 31, 1990).

47. Ley 50 de 1990 (Dec. 28, 1990), *Diario Oficial*, at 1, 4-5 (Jan. 1, 1991).

48. Under the new provisions, such women have a right to the salary and benefits they would have earned had they not been terminated, in addition to 60 days extra salary. *Id.*

49. LINEAMIENTOS, *supra* note 33, at 24. Cf. Harkness & Pinzon de Lewin, *supra* note 38, at 439 (characterizing as unstable the relatively low national representation of Colombian women (3.5%)).

participation is below ten percent.⁵⁰

As in much of Latin America, women have had much greater success in gaining access to appointed judicial posts than to elected offices. At least in the lower levels of the judicial system, women judges are common.⁵¹ Several factors may account for this, including the increasing numbers of women law students and lawyers, the relatively lower status of judges in civil law systems, and a perception that women judges are more honest.⁵²

In a recent ranking of the status of women in the Americas (including Canada and the United States),⁵³ Colombia placed exactly in the middle of the twenty-five countries rated. The ranking, by the Population Crisis Committee, gave Colombia a score of 43.5 out of seventy-five points for women's well-being in areas of health, marriage and children, education, employment, and social equality, and a "gender gap" score of 16.5 out of a possible twenty-five points for its progress in closing the gap between men's and women's statuses, yielding a combined total score of sixty out of 100 points. The United States led the rankings with a combined score of 82.5 (60.5—women's status score and 22—gender gap score) and Haiti was at the bottom with a total score of 43.5 (29—women's status score and 14.5—gender gap score). Among other South American countries, Uruguay, Argentina, Venezuela, and Ecuador ranked above Colombia, and Chile, Peru, Paraguay, Brazil, and Bolivia fell below.

In her study of the changes that have taken place in Colombian women's lives since the 1960's, Carmen Elisa Flórez concludes that the most fundamental changes have been for upper-class urban women, a very small proportion of the society.⁵⁴ Her study looks at changes in areas such as education, participation in the labor force, marriage, sexuality, birth rate, maternity, family planning, abortion, and power relations within the family. For other women, the changes have been much less significant except in terms

50. *International Women's Rights Action Watch*, THE WOMEN'S WATCH 8 (Jan. 1992). Norway, Sweden, Finland, Denmark, Cuba, and Guyana however, have over 30%, while Australia, India, Africa, France, and England have below 10% participation. *Id.*

51. More than one-third of judges are women in Chile, Costa Rica, Peru, and the Dominican Republic. See Tirza Rivera Bustamante, *Las juezas en Centro América y Panamá: Algunas consideraciones para su estudio*, in LAS JUEZAS EN CENTRO AMÉRICA Y PANAMÁ: UN ENFOQUE AMPLIADO CON LOS CASOS DE CHILE Y ESTADOS UNIDOS 61 (Tirza Rivera Bustamante ed., 1991).

52. See generally Martha I. Morgan, *Juezas en las Americas: compartiendo perspectivas sobre género y toma de decisiones*, in *id.* at 113.

53. See Elsy Bonilla, *Working Women in Latin America*, in INTER-AMERICAN DEVELOPMENT BANK, ECONOMIC AND SOCIAL PROGRESS IN LATIN AMERICA: 1990 REPORT 207, 210-211 (1990).

54. See generally CARMEN ELISA FLÓREZ EN COLABORACIÓN CON RAFAEL ESCHVERRI P. & ELSY BONILLA C., *LA TRANSICIÓN DEMOGRÁFICA EN COLOMBIA: EFECTOS EN LA FORMACIÓN DE LA FAMILIA* (1990). Steffen Schmidt's conclusion about the relationship between class and women's role in Colombian society remains valid:

One is astonished in researching the matter to find a rather large number of very visible, prominent, active, in fact, assertive and commanding, women in various positions and at various points in Colombian time. These women, however, are almost without exception members (new or old) of the ruling class.

Steffen W. Schmidt, *Women in Colombia: Attitudes and Future Perspectives in the Political System*, 17 J. INTER-AM. STUD. & WORLD AFF. 465, 468 (1975).

of birth rate, which has diminished noticeably for women of all classes due to extensive family planning programs.⁵⁵

Not only have the changes in Colombian women's lives been made in accordance to class, they have also done little to foster a well-organized women's movement. While recognizing the progress that has been made in securing formal equality for Colombian women, a recent report by the President's *Consejería* for Youth, Women and the Family concluded:

In Colombia, . . . most of the legislative changes that have benefitted women have come from good initiatives of presidents or the political parties, as responses to the necessities of the society or in response to pressure for the changes at the international level, but not under the auspices of, or from discussion or negotiation with, organized groups of women as usually occurs in other countries.⁵⁶

Gains secured without the active participation of organized groups of women are particularly susceptible to remaining merely as "law in books." Unless accompanied by popular education and enforcement strategies, such legal reforms may have little or no effect on the realities of women's lives.

Given the *Consejería's* report, one might conclude that few women's groups are active in Colombia. Nothing could be further from the truth; many have emerged in recent years, some originating in attempts to eradicate the country's violence by pressing for true democratization.⁵⁷ The problem is that the existing feminist organizations are generally small and chiefly involve women professionals and intellectuals. These organizations also tend to be geographically concentrated in the country's major urban areas, with Bogotá and Cali (the country's third largest city) having the strongest groups. Although popular-sector women's groups do exist, and are geographically more widespread, their work generally has been local and ties between these groups and feminist groups are still weak. Thus, despite the long history of improvements in the legal status of women, Colombian women's groups faced the recent constitutional process, ill-prepared to play strong leading roles as "founding mothers."

B. "We Can Still Save Colombia"⁵⁸

Colombian university students acting under the above slogan were ultimately responsible for initiating the recent Constitutional process. To

55. FLÓREZ, *supra* note 54. In the last thirty years, the percentage of couples using contraceptives has risen from 20% to 66% and the birth rate for Colombian women generally has fallen from 7 to 2.9 children. *Mujer colombiana baja de 7 a 3 hijos*, EL TIEMPO, July 11, 1991, at 1A.

56. LINEAMIENTOS, *supra* note 33, at 23.

57. Socorro Ramírez, *Mujeres, Democracia y Participación*, GACETA, Apr.-May 1991, at 49.

58. I am grateful to Harvey Kline for making me aware of the use of this slogan.

understand the crisis that precipitated their actions and the mission they adopted, two fundamental, if seemingly contradictory, characteristics of Colombian society must be stressed. One is the violence that has become synonymous with daily life for Colombians;⁵⁹ the other is the prominence of law and lawyers within the society.⁶⁰

Colombia is a conundrum, combining a "democratic shell" of a popularly elected government, a relatively successful economy,⁶¹ and a culture of extreme violence.⁶² The violence most commonly associated with Colombia in the U.S. media arises out of guerrilla warfare and drug trafficking;⁶³ the armed forces and paramilitary groups also contribute their share.⁶⁴ In addition, the crime rate is staggering and, though often overlooked in human rights or crime reports, domestic violence is a fact of life for many women

59. See generally VIOLENCE IN COLOMBIA: THE CONTEMPORARY CRISIS IN HISTORICAL PERSPECTIVE (Charles W. Berquist, Ricardo Peñaranda, & Gonzalo G. Sánchez eds., 1992).

60. See Dennis O. Lynch, *Lawyers in Colombia: Perspectives on the Organization and Allocation of Legal Services*, 13 TEX. INT'L. L.J. 199, 200-201 (1978).

61. Jenny Pearce explains the paradox of Colombia's "two economies"—the formal and the informal: Many are baffled by the story of Colombia's formal economy and consistent performance compared to its Latin American neighbours. Colombia was the only Latin American country to sustain growth through the debt crisis of the 1980's. The very same factors that help to explain its success also explain the other side of the story, its failure to meet the needs of the majority of the people. . . . Colombia's formal economy, like its 'formal' political order, is an exclusive realm reflecting the extreme concentration of wealth and power in the society.

JENNY PEARCE, COLOMBIA: INSIDE THE LABYRINTH 69 (1990).

62. Germán A. Palacio Castañeda, *The Crisis of and Alternatives to the State Judicial Monopoly at the End of the 20th Century: Exploratory Notes on the Colombian Case*, MÁS ALLÁ DEL DERECHO/BEYOND LAW, Feb. 1991, at 21. In a similar vein, Rodrigo Uprimny, of the Colombian Section of the Andean Commission of Jurists, refers to Colombia as "characterized by both a paradise of laws and permanent violence." Rodrigo Uprimny, *Sistema judicial y derechos humanos en Colombia and Espacios internacionales para la justicia colombiana*, MÁS ALLÁ DEL DERECHO/BEYOND LAW, Feb. 1991, at 102 (book review). According to Uprimny, the fact that Colombia is considered one of the most stable and solid democracies in Latin America obscures the country's true human rights situation. He points out that political violence in 1989 resulted in approximately 3,000 deaths, as many in one year as occurred in Chile during the notorious sixteen-year military dictatorship of General Augusto Pinochet. *Id.*

63. According to a recent article on the effect of Colombia's drug dealers on the country's judicial system, the Judicial Workers Union reported that between 1981 and the end of September 1991, 242 judges and court officials were killed and approximately 1,600 of the country's 4,500 judges received threats. *Colombia Struggles to Seal Its Judges' Armor*, N.Y. TIMES, Oct. 13, 1991, at A14, col. 1. The President of the Cali Judges Union, Omar Eduardo Garcés, summed up the tragic situation: "We don't know if they'll get more tired of killing us or if we'll get more tired of trying them." *Id.* For a recent discussion of violence in Latin America that includes an examination of Colombia's multi-faceted violence and particularly its impact on one courageous judge, see TINA ROSENBERG, CHILDREN OF CAIN: VIOLENCE AND THE VIOLENT IN LATIN AMERICA 23-76 (1991).

64. Amnesty International's 1991 report summarizes the human rights situation in Colombia from January to December 1990 as follows:

Hundreds of people were executed extra-judicially or "disappeared" after being seized by members of the armed forces or paramilitary groups associated with them. Victims included political activists—including two presidential candidates—and human rights, trade union, and church activists. Scores of peasants were arbitrarily detained, tortured and killed by government troops in counter-insurgency operations. In urban areas "death squad"-style killings of suspected delinquents increased. Political detainees held illegally in army installations were reportedly tortured. Most cases of human rights abuses remained unsolved despite investigative efforts by the Procurator General and some judges. Two army officers were convicted for their part in the killing of 12 judicial officers.

AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 1991 67 (1991).

and children.

Violence and threats of violence pose particular hurdles to the advancement of women's interests. Accustomed to contending with violent abuse in many of their homes, Colombian women who move outside the home to become politically active must also contend with the fear of violent silencing of political activists.⁶⁵ Colombian women have begun describing the status of women in their country by talking about violence. For example, lawyer María Isabel Plata opened a recent discussion of discrimination against Colombian women with an explanation of the country's "culture of violence."⁶⁶ Similarly, Colombian feminists Rosa María Rodríguez and Isabel Barranco's statement to the IV Latin American and Caribbean Feminist Encounter in Mexico in 1987 gave eloquent testimony to how violence permeates Colombian women's lives:

We, Colombian women, have brought in our suitcases, in our backpacks, in our bodies, pieces, fragments from the moment our country is living. We are a collection of differences in unity as women: the Caribbean woman, the mulatta, the Black woman, the indigenous woman, the Criolla, the Zamba. In this space we are with the Latin American and Caribbean women, who feel our daily experience of violence through this Encounter. We couldn't nor wanted to leave behind, at the border, the trace of violence in Colombia.⁶⁷

Colombian women have urged a new analysis of their society's violence, as recounted by Socorro Ramírez:

They have insisted on the necessity of transcending the reading of violence as a simple listing of deaths or terrorist incidents, and upon the appropriateness of also analyzing its internalization as a privileged form of relation and as a mechanism to settle conflicts, in the home or in the street, in the workplace or in organizations, and also those against the State. . . . They have resisted those who think that one has to accommodate oneself to the warlike spirit and that violence can only be answered in its own language. On the contrary, they insist on the

65. Russell, *supra* note 15, at 127.

66. María Isabel Plata, *Colombia: Discriminating Against Women*, 27 U. LOUISVILLE J. FAM. L. 81 (1988-89) (citing COMISIÓN DE ESTUDIOS SOBRE LA VIOLENCIA, COLOMBIA: VIOLENCIA Y DEMOCRACIA 19-22 (1987)):

The general context of violence in Colombia has had and continues to have a decisive influence on the family and its members. Its complexity manifests itself in the various forms and reasons that create and reproduce it. There is the violence of organized crime against politicians, journalists, and private individuals; the violence of guerrilla groups against the state and private individuals; the violence of the state and its institutions struggling to maintain public order against social movements of protest; the violence of individuals who are not organized; and the violence of individuals against members of their families.

67. MILLER, *supra* note 9, at 284 n.164 (citing FEM, Winter 1988, at 5).

urgency of a civil and democratic construction of peace and life.⁶⁸

Violence is not new to Colombian society,⁶⁹ but the level of violence reached particularly alarming proportions following the August 1989 assassination of Liberal senator and presidential candidate, Luis Carlos Galán. His death was attributed to his support for extradition of drug traffickers. The Medellín Drug Cartel responded to President Virgilio Barco's subsequent declaration of a "total war against narcotrafficking"⁷⁰ and to his government's extradition of several drug traffickers to the United States with a campaign of political assassinations that was shocking even in a country long accustomed to violence. The murders of two leftist presidential candidates and numerous police officers, judges, and journalists were attributed to the "Extraditables," as the drug traffickers called themselves.

It was against this dichotomous backdrop of a highly formal and legalistic system and extreme physical violence, and out of the need to restore legitimacy and order to the country's badly discredited institutions, that the country's new Constitution was written. The 1886 Colombian Constitution was the oldest uninterrupted constitution in Latin America, and constitutional scholars and the citizenry alike saw it as a constitution of the nineteenth rather than the twenty-first century.⁷¹ Underscoring the conservative, some would say reactionary, nature of the 1886 Charter, Carlos Restrepo Piedrahita, Director of Department of Public Law at the Externado University of Colombia, identified the four central features of its system of government as: "(a) A unitary Republic, with exaggerated centralism; (b) Presidential government, with accentuated features of *quasi-monarchism*; (c) Asymmetrical separation of

68. Ramírez, *supra* note 57, at 49.

69. In 1948, the violent assassination of Liberal presidential candidate Jorge Gaitán, a radical, fueled a period known as *La Violencia*. At least 200,000 followers of the ruling elites in the traditional Liberal and Conservative parties died, and Colombia's only military dictatorship took place (1953-57). The dictatorship came to an end when the two traditional parties formed a National Front, agreeing to a power-sharing arrangement under which they rotated the presidency between them, and also split congressional seats and other high governmental posts. Colombian voters ratified constitutional amendments approving this compromise in a plebiscite in December 1957. The National Front, partially dismantled by a further constitutional reform in 1968, ended in 1974. Beginning in the early 1960's, in response to the country's glaring economic inequalities, several armed leftist insurgencies began to emerge. During the 1970's, Colombia's drug trade grew rapidly, and by the decade's end, the country had become a leader in the international drug market. See generally HARVEY F. KLINE, *COLOMBIA: PORTRAIT OF UNITY AND DIVERSITY* (1983); PEARCE, *supra* note 61; VIOLENCE IN COLOMBIA, *supra* note 59. By 1984, Colombia was estimated to be the source of 75% of the cocaine available in the United States. STEVEN WISOTSKY, *BEYOND THE WAR ON DRUGS: OVERCOMING A FAILED PUBLIC POLICY* 41 (1990) (citing NATIONAL NARCOTICS INTELLIGENCE CONSUMERS COMMITTEE, *NARCOTICS INTELLIGENCE ESTIMATE*, Fig. 13, at 31 (1984)).

70. CENTRO DE ASESORIA Y PROMOCIÓN ELECTORAL, INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS, *INFORME DE LA MISIÓN DE OBSERVACIÓN, ELECCIONES PRESIDENCIALES COLOMBIA* 10 (1990).

71. Interview with Carlos Restrepo Piedrahita, in Bogotá, Colombia (June 4, 1991). For a general discussion of constitutionalism in Latin America, including an appendix, listing the 253 constitutions promulgated by the twenty Latin American republics since independence, see Keith S. Rosenn, *The Success of Constitutionalism in the United States and Its Failure in Latin America: An Explanation*, 22 INTER-AM. L. REV. 1 (1990); see also Robert S. Barker, *Constitutionalism in the Americas: A Bicentennial Perspective*, 49 U. PITT. L. REV. 891 (1988).

powers; and (d) Obsequious confessional relations with the Holy See⁷² Despite frequent reforms,⁷³ noticeably absent from the century-old charter were many of the liberal guarantees of modern constitutions, including any guarantee of equal protection of the laws. And even guarantees that it did contain were subject to suspension under the state of siege authorized by Article 121—an authority that has been invoked almost continuously since 1948.⁷⁴

In recent years, one aspect of the 1886 Constitution has made constitutional reform particularly difficult (especially when a large part of what needed reforming was Congress): under Article 218, only Congress could amend the Constitution. Although the 1957 reform had been by popular plebiscite and thus departed from the procedure of congressional reform established in the amending clause, Article 13 of the 1957 plebiscite stated that future reforms were to be made solely by the Congress following the procedure set out in Article 218.

The 1991 Constitutional Assembly was not the first recent attempt at constitutional reform. In 1977 and 1979, the Congress passed constitutional reforms that were blocked by the Colombian Supreme Court.⁷⁵ In the late 1980's, President Virgilio Barco began to explore other mechanisms for constitutional reform. On February 20, 1988, he signed an accord with the

72. CARLOS RESTREPO PIEDRAHITA, *LA REFORMA DEL ESTADO EN COLOMBIA* 17 (1990). The 1886 Constitution was drafted by Conservatives in reaction to the Liberal Constitution of 1863 that had established a loose federation with a weak president and anticlerical features.

73. The 1886 Constitution had been reformed or amended seventy times, the five most important occurring in 1910, 1936, 1945, 1957, and 1968. *Id.* at 18.

74. A state of siege declared after the 1984 murder of Justice Minister Rodrigo Lara Bonillo remained in effect during the seven-year period immediately preceding the adoption of the new Constitution.

More than a decade ago, Dr. Alfredo Vásquez Carrizosa, Chairman of the Permanent Committee for the Defense of Human Rights in Colombia, described the situation existing under a state of siege:

The problem of systems of constitutional exceptions in states of law in Latin America takes on particular interest because it poses a contradiction that frequently exists between the *formal constitution* and the *real constitution*. The former contains the guarantees and individual rights, impartiality of law and independence of justice, while the second openly contradicts it.

The State of Law, that is, the state under the formal Constitution, falls apart under circumstances that move the governments to suspend guarantees of liberty and to institute exceptional investigatory and trial procedures for crimes in military courts. It cannot be said, then, that legality has disappeared in the country but that an exceptional state has been implemented. More importance is attached to the words than to the essence of things and legal language is used to avoid saying that the State of Law has disappeared.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, ORGANIZATION OF AMERICAN STATES, REPORT ON THE SITUATION OF HUMAN RIGHTS IN THE REPUBLIC OF COLOMBIA 44-45 (1981) (quoting Dr. Alfredo Vásquez Carrizosa, the Chairman of the Permanent Committee for the Defense of Human Rights in Colombia).

75. RESTREPO PIEDRAHITA, *supra* note 72, at 26. In 1976, President Alfonso López Michelsen proposed an amendment calling for a constitutional assembly, which was approved by the Congress the following year. In a surprising move that many viewed as an overstepping of the bounds of its constitutional authority, the Supreme Court declared the amendment invalid. President Julio César Turbay Ayala's attempt at constitutional reform in 1979 met a similar fate at the hands of the Supreme Court. For a more detailed description of these frustrated reform efforts and of other events leading up to the election of the Constituent Assembly that drafted the 1991 Colombian Constitution, see William C. Banks & Edgar Alvarez, *The New Colombian Constitution: Democratic Victory or Popular Surrender?*, 23 U. MIAMI INTER-AM. L. REV. 39 (1991).

opposition Conservative Party leaders calling for a Constituent Assembly to rewrite the Constitution. He retreated from this idea after the Council of State, which has the power to rule on the validity of administrative acts, decreed suspension of the accord. Instead, Barco presented the proposed amendments to the Congress. His 1988 reform efforts ultimately failed, largely because of disagreements over the politically explosive issue of extradition of drug traffickers.

Despite its failure, the process initiated in 1988 was important for Colombian women. Barco explicitly included women and feminist groups among those invited to submit proposed reforms, providing them with their first opportunity to present proposals for constitutional reform. Seventeen women's groups—including liberals, conservatives, communists, socialists, feminists, and independents—worked for several weeks to reach an agreement on proposals to be presented to the Institutional Reform Commission, which was charged with considering reforms.⁷⁶

The product of consensus among these diverse groups, the proposals were far from radical and avoided mention of controversial issues such as abortion and divorce. The women proposed abolition of all forms of inequality and discrimination, recognition of multiple types of family structures, protection for children and human reproduction, labor rights, and political rights. Although the Colombian media had covered other groups' appearances before the Institutional Reform Commission, it ignored Ligia Galvis' presentation on behalf of the women. Nevertheless, as five ex-generals of the Armed Forces awaited their turn, Galvis read the women's groups' presentation in full, resisting the Commission's efforts to limit her to fifteen minutes.

In addition, from Cali (home to an active strain of Colombian feminism) came a detailed document setting out eleven specific constitutional changes and the reasons for the changes.⁷⁷ Calian women began with the issue of language, calling for the elimination of the "generic" use of masculine pronouns and for the substitution of both feminine and masculine articles before nouns referring to both women and men. Several of their proposals addressed the relationship between the state and religion, particularly the Catholic Church. They called for the removal from the preamble of any reference to God or recognition of Catholicism as the national religion and for the elimination of constitutional authorization for conventions with the Holy See.

Responding to the violence within Colombian society, the women of Cali proposed the addition of clauses guaranteeing a right to peace, personal security, and private life and prohibiting torture and physical or psychological

76. The following description of women's participation in the 1988 constitutional reform process is drawn from an interview with Socorro Ramírez and from two articles by her. Interview with Socorro Ramírez, in Bogotá, Colombia (May 29, 1991); Socorro Ramírez, *Las Mujeres Proponen Reformas Constitucionales*, MUJER/FEMPRESS, May 1988, at 3, 4; Ramírez, *supra* note 57, at 49-50.

77. Interview with María Ladi Londoño, Cali, Colombia (June 14, 1991); PROPUESTAS DE LAS MUJERES DE CALI SOBRE REFORMAS A LA CONSTITUCIÓN NACIONAL (Mar. 15, 1988).

cruelties. Attacking societal violence was not a new strategy for women in Cali. In the late 1970's, they had formed the group, Women Breaking the Silence, to "defend life, and recapture the possibility of dreaming, smiling, foreseeing the future" ⁷⁸

On behalf of working women, the Calian women wanted the Constitution to prohibit employment discrimination based on sex and to specify that women not be fired or refused employment either because of their civil status or because of pregnancy or maternity leave.⁷⁹ Other proposals recognized the right to health care and the free exercise of reproductive rights, and extended special protection to youth and the elderly.

Proposals respecting education not only addressed the elimination of sex discrimination and sexual stereotypes, but specified that religious education be voluntary and extracurricular. Finally, Calian women called for protection by the state of different forms of family and intimate lifestyles and for explicit guarantees of equality, not only with respect to political rights but also in the realms of economic, social, educational, labor, and family rights.

The Congress' failure to approve the 1988 reforms dampened the hope for congressional reform, but in the closing months of President Barco's term, escalating violence that accompanied the 1990 campaigns focused new attention on the idea of a constituent assembly. As mentioned earlier, this time the impetus came from thousands of university students operating under the slogan, "We can still save Colombia." Led by law students at Bogotá's El Rosario University,⁸⁰ they called upon the Colombian voters to express their views by voluntarily casting a so-called "seventh ballot" in the legislative elections of March 11, 1990. This appeal to voters was possible because under existing electoral procedures, ballots were prepared and distributed not by the government, but by parties or organizations fielding candidates. As students and other volunteers monitored the balloting, two million voters marked and deposited this non-binding "seventh ballot," voicing their support for a constitutional assembly.

On May 3, 1990, President Barco further opened the door to constitutional reform when he relied upon legislative powers given to him under the existing state of siege to issue a decree which placed the issue of an assembly on the ballot for the upcoming presidential elections. Despite the questionable legitimacy of this decree, the Colombian Supreme Court upheld it on May 25th, clearing the way for voting on the issue.⁸¹ The Court ruled that the decree was within Barco's legislative powers under the state of siege because

78. Ramírez, *supra* note 57, at 49.

79. Despite prohibitions in the labor code, employers commonly demanded proof that a woman is not pregnant as a condition of hiring. MARÍA LADI LONDOÑO, MUJER, GOBIERNO Y CONSTITUCIÓN 3 (1991).

80. Banks & Alvarez, *supra* note 75, at 55-56.

81. Sentencia de la Corte Suprema de Justicia Sobre el Decreto 927 de 1990, No. 2149 (334-E), May 25, 1990 (*reprinted in* EDMUNDO LÓPEZ GÓMEZ, LA VERDADERA CONSTITUYENTE: ANÁLISIS POLÍTICO Y JURÍDICO 169 (1990)).

the call for a vote on an assembly was related to restoring public order.

The decree called for the voters to respond to the following question:

In order to strengthen participatory democracy, do you vote for the convocation of a Constitutional Assembly, with representation of the social, political, and regional forces of the nation, democratically and popularly integrated, to reform the Political Constitution of Colombia?

On May 27th, the voters of Colombia approved the convocation of a constitutional assembly with 88.89% of those participating in the election voting "sí" and 3.90% voting "no".⁸²

Shortly before assuming the presidency on August 7, 1990, César Gaviria Trujillo entered into an initial political accord with the opposition parties concerning the Constitutional Assembly; and on August 23rd, a further political accord was signed. On August 24th, Gaviria issued a decree calling for December 9, 1990 elections for a Constituent Assembly that would meet between February 5 and July 4, 1991. According to this decree, the question put to the voters would incorporate limitations on the themes that could be considered by the Assembly as agreed to in the political accords of August 2nd and 23rd.

Acting in the face of grave doubts about the decree's constitutionality, the Supreme Court, by a narrow margin, not only upheld the decree's provision for the election of a Constituent Assembly, but also declared unconstitutional the purported limits on the themes that the Assembly could consider.⁸³ The Court approved the election of a Constituent Assembly despite the apparent nonconformity with the amending procedure set forth in Article 218 of the 1886 Constitution and Article 13 of the 1957 plebiscite.

The Court based its opinion on the primacy of the people as the first constituent with ultimate power to adopt a different constitution at any time.⁸⁴ The Court found support in Article 2 of the 1886 Constitution which recognized that "the sovereignty resides essentially and exclusively in the Nation." Although Article 218 prescribed limits on how the Constitution could be reformed by the Congress, neither it nor Article 13 of the plebiscite of 1957

82. INFORME DE LA MISIÓN DE OBSERVACIÓN, *supra* note 70, at 36.

83. Sentencia de la Corte Suprema de Justicia Sobre el Decreto 1926 de 1990, No. 2214 (351-E), October 9, 1990 (*reprinted in* EDMUNDO LÓPEZ GÓMEZ, *supra* note 81, at 261). Fourteen justices agreed that most of the decree was constitutional; twelve would have declared the decree unconstitutional. Banks & Alvarez, *supra* note 75, at 59.

84. The Court's opinion may provide some relief to those who occasionally worry about the validity of the United States Constitution given that its framers disregarded the process for amendment set out in the Articles of Confederation. It should also be of interest to those working on constitutional change in the nations of the Commonwealth of Independent States, Eastern Europe and South Africa. For a recent article that discusses the legitimacy of extra-legal constitutional change or reform outside the amending clauses, both in Colombia and in the adoption of the U.S. Constitution, see Banks & Alvarez, *supra* note 75, at 39.

limited the sovereign power of the people to change their Constitution.⁸⁵ The Court concluded that the decree had to be judged not just by comparing it with these articles, but by its ability to bring about peace. According to the Court, the only limits on the Assembly's power to reform the Constitution were those imposed by the people themselves in the May 27 vote. The Assembly was limited in function to reforming the Constitution for the purpose of strengthening participatory democracy; it had to be popularly and democratically formed, representing the country's social, political, and regional constituencies.

After the Supreme Court's ruling on October 9, only three weeks remained before candidate lists were due for elections to the Constituent Assembly and only two months before the elections themselves. Despite their participation in the 1988 reform efforts, women were not fully prepared to take part in the 1990-91 process.⁸⁶ The accelerated pace of the process contributed to women's poor showing in the elections for the Assembly.

Under the election rules, any organization that obtained 10,000 signatures could field a slate or list of candidates for the seventy elected assembly seats. As is common with multi-seat elections in Colombia, voting was to be by slate rather than by individual candidates; seats would be awarded on the basis of proportional representation, beginning with the top candidates on a list and moving downward. Only eight of the 119 candidate lists presented were headed by women. Although women appeared in lower positions in some lists, their overall numbers were quite low.

Women's under-representation could not be attributed solely to the haste with which the elections took place. Women disagreed among themselves over election strategies. One segment favored the presentation of a separate list composed solely of female candidates. During the period of only three days, feminist organizations gathered the required 10,000 signatures and presented such a list. The list was headed by Rosa Turizo, a prosecutor for the Superior Tribunal of Medellín.

Despite this impressive feat, other women refused to support what they saw as "separatist" strategy. Some chose instead to support the list presented by non-governmental organizations and headed by a woman, Helena Páez, an ex-minister of labor and advisor to the President's Council for Youth, Family, and Women. Still others argued that women should work to convince political parties or other organizations fielding candidate lists to support women's proposals and demands.

Many women supported the *Alianza Democrática M-19* ("AD M-19"),

85. Article 374 of the new Constitution clarifies this matter for the future: "The Political Constitution can be reformed by the congress, by a constituent assembly, or by the people through a referendum." CONST. POL. COL. art. 374 (1991).

86. The following description of women's participation in the elections for the Constituent Assembly is drawn from an interview with Socorro Ramírez and from an article by her. Interview with Socorro Ramírez in Bogotá, Colombia (May 29, 1991); Ramírez, *supra* note 57, at 49-50.

which included eight women among its list of fifty-eight candidates; some did so because they believed it offered the only realistic chance of breaking the long-running two-party hold on electoral politics. The AD M-19 emerged when the M-19 guerrilla organization laid down its arms in March 1990. Joining in an alliance with other progressive groups, AD M-19 then entered electoral politics.⁸⁷ Despite the AD M-19's generally progressive agenda, some questioned the depth of its commitment to gender issues. The refusal of the party leader and former guerrilla, Antonio Navarro Wolff, to confront controversial women's issues resembled the "not now, later" advice that Cynthia Enloe has described as common among nationalist movements.⁸⁸

On December 9, 1990, voters went to the polls to vote for or against the Constitutional Assembly and to select its members. With an abstention rate of seventy-three percent, turnout was even lower than in the May, 1990 presidential election (when over fifty-six percent of the 13,933,853 registered voters did not participate).⁸⁹ Among those voting, more than ninety-six percent supported the Constituent Assembly.⁹⁰

In the end, the women candidates' list and the non-governmental organizations' list headed by Helena Pérez each received only about a thousand votes. Of the four women actually elected, two were from the AD M-19 list: María Teresa Garcés, a lawyer and magistrate on the Administrative Tribunal, and María Mercedes Carranza, a poet and journalist. Helena Herrán, ex-governor of the province of Antioquia, was one of the Liberals elected to the Assembly. Aída Abella, leader of the Central Workers Union, was one of the two representatives of the leftist Patriotic Union to win election. Although the media's refusal to take women candidates seriously contributed to the poor showing of women in the elections for the Constitutional Assembly, women placed much of the blame on their own lack of organization and experience, and on their lack of consensus concerning electoral strategies.

Despite the poor showing of women candidates, the results of the election appeared to mark the crumbling of the two-party monopoly of political elites

87. M-19, or Movement 19, refers to the date of a fraudulent election on April 19, 1970, and also became the name for the guerrilla group formed in 1972. When the M-19 joined with moderate leftist groups to participate in the May 1990 presidential elections, former M-19 leader Carlos Pizarro was its candidate. After hired killers, believed to be working for the Medellín Cartel, assassinated Pizarro, Antonio Navarro Wolff replaced him as the AD M-19's presidential candidate and received 12.6% of the votes in the May 1990 elections. INFORME DE LA MISIÓN DE OBSERVACIÓN, *supra* note 70, at 30-32.

88. CYNTHIA ENLOE, BANANAS, BEACHES, & BASES: MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS 62 (1989):

Repeatedly male nationalist organizers have elevated unity of the community to such political primacy that any questioning of relations between women and men inside the movement could be labeled as divisive, even traitorous. Women who have called for more genuine equality between the sexes—in the movement, in the home—have been told that now is not the time, the nation is too fragile, the enemy is too near. Women must be patient, they must wait until the nationalist goal is achieved; *then* relations between women and men can be addressed. 'Not now, later,' is the advice that rings in the ears of many nationalist women.

89. INFORME DE LA MISIÓN DE OBSERVACIÓN, *supra* note 70, at 36.

90. PRÓLOGO, CONSTITUCIÓN POLÍTICA DE COLOMBIA PROPUESTA POR EL M-19 1 (1991).

that had dominated Colombia since its independence. Most surprising was the success of the AD M-19, which won nineteen of the seventy elected assembly seats (an additional four seats were not elected but allocated to representatives of other former guerrilla organizations). In the nine months since it disarmed, the M-19 had transformed itself from a guerrilla movement, into a mainstream political force—one that many saw as the only alternative for bringing peace and an end to political corruption. It had successfully moved away from the image it acquired after its 1985 capture of the Palace of Justice in Bogotá. The capture led to a violent counterattack by the army in which over 100 persons, including 11 of the 24 Supreme Court Justices (and the only woman to have served on the highest court), were killed. After the elections, as noted previously, former guerrilla Antonio Navarro Wolff, a British-educated engineer who had lost a leg to a hand grenade, shared the presidency of the Constitutional Assembly.

Although factionalism has been the norm in the history of Colombia's traditional parties, some saw the increasing strength of new factions within the parties as further evidence of the breakdown of politics as usual. Particularly impressive was the showing of former Conservative Party presidential candidate Alvaro Gómez Hurtado's National Salvation Movement, which won eleven seats. Gómez, once held captive by the M-19, now shared the presidency with Antonio Navarro and with Liberal Horacio Serpa Uribe. The election of two representatives each by the indigenous communities, the evangelicals, and the leftist Patriotic Union also were "firsts" in Colombian politics.

II. COLOMBIAN WOMEN AND CONSTITUTION-MAKING

A. *Of Reivindicaciones and Reforms*

After the Supreme Court cleared the way for the constitutional process to begin, women joined with other groups and sectors in heeding President Gaviria's invitation (which explicitly included "feminist and women's organizations") to present their proposals for constitutional reform before *mesas de trabajo* (literally, worktables) organized by region and sector. The Constitutional Assembly received over 1,500 proposals through this process. The proposals of the Bogotá women's *mesa de trabajo* covered a wide range of topics. The fundamental proposal was that the principles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women be elevated to constitutional rank. Other proposals were grouped as draft articles on political and social rights, maternity and family, social and cultural rights, and relations between the Church and State.⁹¹

91. PROPUESTAS DE MUJERES A LA ASAMBLEA NACIONAL CONSTITUYENTE (January 1991). The specific proposals were contained in fifteen draft articles:

Although requested by and submitted to the Assembly, proposals from non-governmental organizations did not have the status of draft reforms; the Assembly's ground-rules limited the authority to present draft reforms to five sources: Assembly members themselves, the national government, the primary

Political and Civil Rights

Article A: All men citizens and women citizens have equal rights and opportunities. The State will guarantee the conditions necessary for women to fully exercise their political, economic, social, and cultural rights.

Article B: There will not be discrimination for reasons that are (or are based on) economic, social, cultural, ethnic, gender, religious choice, political, sexual, region of origin, age, or civil status.

Article C: The State will promote free association and civic participation.

Article D: The State will guarantee the effective participation of women in the places of political, economic, social, cultural, and civil decision-making of the nation.

Article E: The State will guarantee the physical and psychological integrity of all persons. All forms of degrading treatment that damage human dignity are prohibited.

Article F: The State will guarantee (the right of) conscientious objection for all persons.

Maternity and Family

Article G: Maternity and paternity serve a social function. The State will protect in a special manner the free choice of women to maternity and all biological, psychological, and socio-cultural processes that are derived from this.

Article H: No process of human fertility that originates from technological and scientific advances can do damage to the universal principles of equality, respect, and free determination of persons.

Article I: The care and upbringing of children is a joint responsibility of fathers and mothers, and of the society in general. . .

Article J: All family structures and forms of union of women and men rest in voluntary agreement, in respect, solidarity, and equality of rights and responsibilities, and produce civil effects that the State will guarantee.

Article K: Full equality of fathers and mothers in the decision about the order of their children's surnames in the civil registry is guaranteed.

Social and Cultural Rights

Article L: Domestic work serves a social function in the production and reproduction of the work force and therefore the State shall guarantee social security to those who perform it. The performance of this work shall be equally shared between those who comprise the family structure. The State shall provide conditions to achieve the socialization of domestic work.

Article LL: No medium of communication can distribute information or messages that degrade or damage the image or integrity of women and men.

Article M: The State shall guarantee that educational contents and practices do not contain any discrimination.

Church-State Relations

Article N: Separation of Church and State is established. This will guarantee liberty of conscience and of worship not contrary to good customs and laws. No one can be disturbed because of their religious opinions, nor compelled to profess beliefs nor observe practices contrary to their conscience.

commissions of the Senate and House, the Supreme Court, and the Council of State. Several of the draft reforms presented by these groups addressed some of the same issues that women had raised in their *mesas de trabajo*.

One analysis of the draft reforms charted those related to women's gender interests under the headings Equality; Right to Life; Protection of Maternity; Family, Labor, Social Security, and Education Rights; and Others.⁹² Fifteen of the eighteen proposals listed included provisions on equality, and all but two of these either specified sex as a forbidden basis for discrimination or spoke of equal rights for men and women. Three of the eighteen proposals, including the government's proposal and that of María Teresa Garcés (AD M-19), included the concept of compensatory or affirmative protection for marginalized groups. Two of the proposals, one by Alfredo Vásquez of the leftist Patriotic Union and one by former President Misael Pastrana of the Social Conservative party, sought to constitutionally prohibit abortion by protecting life before birth. On the other hand, four Assembly members proposed that the new Constitution explicitly protect women's right to free choice with respect to motherhood. These four, all men, included Iván Marulanda of the Liberal party, and Francisco Rojas Berry, who represented indigenous peoples.

The Constitutional Assembly convened on February 5, 1991, to begin its five-month task. From February until the end of April, members met in five commissions (each containing three to five subcommittees) organized by subject matter. These commissions reviewed the draft reforms and prepared draft articles in their assigned subject areas to be submitted to plenary debate. The types of reforms that Colombian women's groups advocated were considered by either Commission One, which had jurisdiction over the preamble and fundamental principles and rights, or by Commission Five, whose coverage included family rights.

Many women were still lamenting their poor showing in the assembly elections while the Assembly members were at work in the commissions and subcommittees considering proposed reforms and preparing draft articles. After watching the process from outside and realizing that time was short, a group of women in Cali decided that organization was required if women hoped to influence the outcome of the Assembly's upcoming plenary sessions. On April 19th, 1991, they sent a letter inviting women from throughout the country to come together and agree upon strategies. The letter focused on the issue of reproductive freedom:

Dear Friends:

In spite of the historical and social importance [of the moment] that we are experiencing in the country with the realization of the National Constituent Assembly, we painfully note the grand absence of women

92. Chart of Draft Reforms from office of Promujer in Bogotá, Colombia (on file with author).

as a unified group in this national debate, in defending and/or supporting initiatives to protect our specific rights like those related to "free motherhood." Considering that in May the plenary sessions for the approval of our Constitution will be held, we invite you to meet in Cali, all day Saturday May 4, to study and agree on strategies so that the possibility of discussing legislation on abortion is not closed for more centuries in Colombia.⁹³

Shortly before the May 4 meeting, thirty-four women's groups published a statement in one of the country's leading newspapers, "raising [their] voice[s] to say to the women and men Assembly members that in order to advance towards a true democracy, it is necessary to include women's demands in the new political Charter."⁹⁴ The women's demands included: incorporation of the principles of the U. N. convention on eliminating sex discrimination, equal participation in decision-making, social security for domestic work, support for "free choice of motherhood," use of feminine and masculine language in drafting the Constitution, solution of conflict in public and private spheres through dialogue and negotiation, and guaranteed support for victims of violence. They closed the statement with the popular Latin American feminist slogan, "Democracy in the Country and in the Home."

On May 4, women from seven cities responded to the call from Cali. They met there and formed a national pressure group, the Women and the Constituent Assembly National Network (Network). The Network quickly grew to include over seventy organizations from various regions of the country. "Free motherhood" was a key demand, but Network leaders stressed that this concept must not be reduced—as it had been by the Colombian media—to the single issue of abortion. Rather, it must include sex education, access to contraceptives, and a wide range of reproductive choice issues. The Network also called for the adoption of a set of "philosophical-political principles" closely tracking those in the published statement mentioned above, including equality between women and men, compensatory actions on behalf of marginalized groups, free self-determination, equitable participation of women in decision-making, and adequate support for women, sons, daughters, and elderly women and men who are victims of violence. Finally, the Network proposed that "as an expression of non-discrimination against women, the Constitution be written in masculine and feminine [language]."

The Assembly began meeting in plenary sessions in May to review over 600 draft articles that had been approved by the five commissions. They were required to debate each of the articles that would become part of the new Constitution in two plenary sessions. The draft articles from Commissions One

93. Letter from María Ladi Londoño E., Clara Eugenia Charria Q; and Carmen Eliza Alvarez, on *Sí-Mujer* letterhead (Apr. 19, 1991) (on file with author).

94. *Sin los Derechos de la Mujer la Democracia no Va*, EL TIEMPO, Apr. 28, 1991.

and Five were of particular interest to women, and the Network prepared and circulated a list of selected final proposals from these commissions. Commission One's draft articles contained good news and bad. Its draft article on the right to life was silent on when life begins, but its draft article on equality failed to include the concept of compensatory action. Commission Five approved draft articles on the rights of women and on family rights, including the recognition of civil divorce for all marriages. As the plenary debates began, the Network planned a series of activities to publicize their concerns, including a breakfast with Assembly members and/or their aides, radio spots, press conferences and appearances, a campaign of telegrams and letters to Assembly members, and lobbying in the hallways and lobbies of the Bogotá convention center where the Assembly was meeting. A newsletter kept members informed of the Network's activities.

In addition to taking part in the Network's activities, women participated in other organizations attempting to influence the Assembly. These included the National Association of Indigenous and Campesina Women (ANMUCIC), organizations representing Colombia's black population, and the "*Viva la Ciudadanía*" Campaign—a broad coalition of organizations supporting progressive constitutional reforms.

In interviews during the Constitutional Assembly lobbyists for ANMUCIC and women from the national black community revealed that while they shared many grievances with women from other organizations, their emphases differed. Indigenous and campesina women were particularly concerned about health, education, and employment issues.⁹⁵ The lives of rural women (who comprise 30.4% of the country's female population) differ dramatically from those of urban women.⁹⁶ The birth rate for Colombian women in rural areas still averages 4.7 children. They work between sixteen and eighteen hours a day, yet the number of rural women working in salaried positions decreased from thirty-eight percent in 1978 to twenty-eight percent in 1980. Succumbing to parental pressure, 61.73% leave school to help in agricultural work; thirty-five percent of campesina mothers are illiterate.⁹⁷ Black Colombian women face additional difficulties. Mercedes Moya Morena, community leader from the cholera-plagued region of Chocó, contends that it is no coincidence that the regions populated by black Colombians are the most under-developed regions of the country and emphasizes that black women face exploitation based on class, gender, and race.⁹⁸

95. Interview with ANMUCIC leader Leonora Cantaña and other members of ANMUCIC, in Bogotá, Colombia (June 3, 1991). See generally DIANA MEDRANO & RODRIGO VILLAR, *MUJER CAMPESINA Y ORGANIZACIÓN RURAL EN COLOMBIA* (1988).

96. These statistics on rural women come from a study by the Colombian Ministry of Agriculture and the Inter-American Institute for Agricultural Cooperation and are reported in Edmer Tovar M., *Mujer campesina: líder, padre y madre*, EL TIEMPO, June 2, 1991, at 6C, col.1.

97. *Id.*

98. Interview with Mercedes Moya Morena in Bogotá, Colombia (June 1, 1991). An even more isolated segment of Colombia's black population, the English-speaking population of San Andrés (an island

Having debated over 600 draft articles amid active lobbying from many sides, the Assembly finished its first plenary debate with 455 approved articles. Only three days remained in its limited schedule to give the proposals their required second plenary debate.⁹⁹ After late night sessions and despite a last minute computer foul-up, in which the entire text of the Constitution was lost (reportedly due to the hiring of a politically well-connected but technically inexperienced computer "expert"), the new Constitution was approved on July 4, 1991 and took effect at midnight. With 380 articles, the new Colombian Constitution was one of the longest in the world.¹⁰⁰

Analysis of the proposals submitted by Colombian women's groups, the reforms they supported, and the results they obtained reveals that while the groups addressed issues related to home, family, and church—areas traditionally viewed as of primary concern to women—their concerns ran to other realms of politics as well. While any classification oversimplifies and is incomplete, if a variation on a classification scheme suggested by Socorro Ramírez¹⁰¹ is used, the major proposals, as well as the corresponding reforms ultimately adopted, can be grouped under four headings: (1) Non-discrimination and Compensatory Actions; (2) Church-State Relations; (3) Family Relationships; and (4) Free Motherhood.

1. *Non-discrimination and Compensatory Actions*

Not only did the 1886 Constitution fail to include the kind of specific prohibitions on gender-based discrimination generally found in contemporary constitutions, it lacked even a generic guarantee of equal protection common in older constitutions. In 1991, there was general agreement that the new Constitution should contain explicit guarantees of gender equality and non-discrimination. The political accord and presidential decree that led to the

off the coast of Nicaragua), also came to Bogotá to lobby for recognition of their cultural and linguistic rights. See James Brooke, *San Andres Journal; On English-Speaking Isle, Tidal Wave of Spanish*, N.Y. TIMES, July 1, 1991, at A4, col.3.

For a discussion of the black woman in Latin America and the Caribbean by a Colombian woman who is coordinator of the Popular Neighborhoods Organization in Chocó, see Zulia Mena García, *Marcas de Lucha y Resistencia*, GACETA, Apr.-May 1991, at 10, 47. For a general history of Colombia's black population, see ILDEFONSO GUTIERREZ AZOPARDO, *HISTORIA DEL NEGRO EN COLOMBIA* (2d ed. 1986). See also LESLIE B. ROUT, JR., *THE AFRICAN EXPERIENCE IN SPANISH AMERICA: 1502 TO THE PRESENT DAY* (1976).

99. *Asamblea: 455 artículos para discutir en tres días*, EL TIEMPO, June 25, 1991, at 1A.

100. *El Tiempo*, one of the country's two leading newspapers, published an article with colorful bar graphs illustrating an inverse relationship between the length of a country's constitution and its economic prosperity. Silverio Gómez, *Constitución: más pobreza, más artículos*, EL TIEMPO, July 7, 1991, at 1C. According to this article, no nation, other than Canada, with a constitution of more than 170 articles has an average annual personal income of over \$3,200. It reports that Colombia's new Constitution with 397 articles (including transitory articles) is the third longest in the world, while its average income is \$1,200. The average income in the United States—with a constitution counted as having 33 articles, including amendments—is reported as \$19,840. India, with the world's longest constitution (500 articles), has a reported average income of \$340. *Id.*

101. Interview with Socorro Ramírez in Bogotá, Colombia (May 29, 1991).

election of the Constituent Assembly had listed among the human rights that the Assembly might study "the express consecration of the principle of equality, with express reference, among others, to origin, race, color, sex, religion, language, tongue, political opinion or [opinions] of whatever other nature, economic or social position. The actions of the State shall be oriented towards safe-guarding the effectiveness of this principle."¹⁰²

The fundamental proposal of the Bogotá Women's Worktable had been that the principles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women be elevated to constitutional rank. As mentioned above, Colombia had ratified the Convention in 1981 and had issued weak implementing regulations in 1991. Women wanted the new Constitution to reflect both the Convention's prohibitions on discrimination against women, and its approval of the concept of "positive discrimination" as a means of compensating for past discrimination and assuring substantive rather than merely formal equality. In its statement of principles, the Network called upon the state to develop "compensatory actions for marginalized groups," as had three of the Assembly members (including María Teresa Garcés) in their draft reforms.

Commission One approved a draft article on equality that did not include the concept of positive discrimination, but the concept was part of a separate provision approved in the plenary debates. As approved, Article 13 of the new Constitution embodies the twin principles of equality; its final paragraph tracks the language of the proposal submitted by María Teresa Garcés.

All persons are born free and equal before the law, will receive the same protection and treatment from the authorities and will enjoy the same rights, liberties and opportunities without any discrimination for reasons of sex, race, national or family origin, language, religion, or political or philosophical opinion.

The State will promote conditions so that equality will be real and effective and will adopt measures in favor of groups discriminated against or marginalized.

The State will specially protect those persons who because of their economic, physical or mental condition find themselves in circumstances of manifest weakness and will punish abuses and mistreatment that are committed against them.¹⁰³

Article 40, which deals with rights to participation in decision-making power, contains what ultimately could be the new Constitution's most significant provision with respect to women's equality. Article 40 not only guarantees that "[e]very citizen has the right to participate in the formation,

102. LÓPEZ GÓMEZ, *supra* note 81, at 205, 229.

103. CONST. POL. COL. art. 13 (1991).

exercise and control of political power" but also expressly stipulates that "[t]he authorities will guarantee the adequate and effective participation of women in the decision-making levels of Public Administration."¹⁰⁴

Article 40 echoes part of a proposal of the Bogotá Women's Worktable, which had provided that: "The State will guarantee the effective participation of women in places of political, economic, social, cultural and civil decisions of the nation."¹⁰⁵ It is far less specific and radical, however, than the proposal published on March 21, 1991, in one of the country's leading newspapers under the banner, "Communique from the Women of Colombia to the National Constitutional Assembly":

In conformity with the principle of Participatory Democracy, the composition of public power in all its branches (National, Departmental and Municipal), will correspond to the proportionality between men and women, according to the percentages of voting obtained in the immediately preceding popular elections.¹⁰⁶

Several women's groups participated, but Women for Democracy of Cali is specially credited for its role in pressuring a group of Assembly members to support the provision that was approved as part of Article 40. Although the provision is weaker than many women had hoped for, it is one of the few articles of the Constitution that Article 85 declares to be immediately applicable.

In addition to Article 13's general guarantees of non-discrimination and compensatory action and Article 40's provision on participation in decision-making, the new Constitution includes two specific references to equality in its chapter dealing with social, economic, and cultural rights. The first of these, found in Article 42, deals with equality within the family and provides that "family relations are based in the equality of rights and duties of couples and in reciprocal respect among all its members."¹⁰⁷ The second, contained in Article 43, is broader: "Women and men have equal rights and opportunities. Women cannot be subjected to any type of discrimination."¹⁰⁸

104. CONST. POL. COL. art. 40 (1991).

105. Article D, PROPUESTAS DE MUJERES A LA ASAMBLEA NACIONAL CONSTITUYENTE, *supra* note 91.

106. *Comunicado de las Mujeres de Colombia a la Asamblea Nacional Constituyente*, EL TIEMPO, Mar. 21, 1991. For an account of a recent (unsuccessful) attempt by Costa Rican women to secure "real equality" by mandating gender balance among candidates in national elections, see Saint-Germain & Morgan, *supra* note 9. As enacted, the new Costa Rican law rejects "quotas" and instead exhorts parties to develop "efficient mechanisms" for increasing the number of women candidates. In Argentina, the Feminist Political Women's Network lobbied for a Mandatory Quota Law that limits to 70% the candidates of one sex on party lists. Ana María Amado, *Las Políticas a la Ofensiva*, MUJER/FEMPRESS, June 1991, at 4. As originally proposed by the network (composed of 50 women from 15 political parties), the Argentine bill called for a 50/50 gender split. *Argentina: A United Front*, MS. MAGAZINE, Sept.-Oct. 1991, at 10-11. After the bill was approved by the national Senate, women focused lobbying efforts on the house.

107. CONST. POL. COL. art. 42 (1991).

108. CONST. POL. COL. art. 43 (1991).

Equality in the workplace was another concern Colombian women raised during the constitutional process. Despite a labor code that guarantees equal employment practices, the report of Subcommittee One of Commission Five pointed out that though forty-one percent of women were in the labor force in 1989, thirty-five percent of urban female workers were earning below the minimum wage (as compared to sixteen percent of similarly situated men), and fifty-five percent of the unemployed were women.¹⁰⁹ Looking at the rural sector, the report found "women who, not being owners of the land, work without pay—most of the time—because their position is considered one of supportive labor for their husband, parents, or brothers."¹¹⁰ Although the Constitution leaves the details to Congress, Article 53 directs Congress to enact a labor law, and includes equality of opportunity and special protection for women, maternity, and minor workers among the fundamental minimum principles to be considered in such a law. It remains to be seen whether future applications of the principle of special protection for women workers will really provide protection, or will continue, as it has in the past, to have a negative impact on women's ability to obtain and retain jobs.¹¹¹

One of Colombian feminists' proposals that was less than fully accepted had to do with the use of gendered language. Women objected to the "generic" use of the masculine "hombres" (men); some went further and suggested that the Constitution use *both* masculine and feminine articles with nouns referring to people generally. Commission One's provision on equality initially stated that "All people, men or women, are born free and equal under the law and enjoy the same rights and opportunities,"¹¹² but the expression "men or women" was dropped because members believed that the term "person" was sufficient.¹¹³ Although the Constitution does avoid the generic use of "men" and begins by using the word "person," after the first three Titles (dealing with fundamental principles; rights, guarantees and duties; and residents and territory), it is generally written in the masculine.¹¹⁴

2. Church-State Relations

In recent years Colombia, like the rest of Latin America, has proved a fertile ground for protestant evangelicals. But according to 1990 Colombian

109. Subcomisión Primera, Comisión Quinta, Ponencia-Informe, *Derechos de la Familia, el Niño, el Joven, la Mujer y la Tercera Edad*, GACETA CONSTITUCIONAL, Apr. 17, 1991, at 5.

110. *Id.*

111. RHODIE, *supra* note 10, at 334.

112. RED NACIONAL MUJER Y CONSTITUYENTE, PROPUESTAS FINALES PRESENTADAS POR LAS COMISIONES PRIMERA Y QUINTA SOBRE MUJER Y FAMILIA A LA ASAMBLEA NACIONAL CONSTITUYENTE.

113. *Id.*

114. MARÍA LADI LONDOÑO E., MUJER, GOBIERNO Y CONSTITUCIÓN, *supra* note 79, at 2. Aware of the importance of language, Londoño also expressed concern that the term "*honra*" found its way into the new constitution in at least three different places. Articles 2, 21, and 42 all refer to "*honra*" or honor, a term that has traditionally been used in reference to societal norms of a feminine sexuality kept "pure" in a way reflecting a double standard and the sexual and political subordination of women. *Id.* at 4.

Information Service data, ninety-five percent of Colombians are still Catholics.¹¹⁵ Widely regarded as the most powerful, and the most conservative, Catholic Church in Latin America, the Colombian Church has played a part in sustaining the country's oligarchical democracy.¹¹⁶ It also has played a major role in maintaining the societal traditionalism that has limited women's progress. As the 1990-91 constitutional reform process began, negotiations to modify the country's century-old *Concordato* with the Holy See were underway. However, no one doubted that the Church would exercise considerable influence in the constitutional process, especially with respect to issues such as divorce and abortion.

In response to President Barco's 1988 call for proposals for constitutional reforms, Colombian women's groups had begun at the beginning, identifying the Constitution's preamble itself as a key area in need of change. The 1886 Constitution commenced "in the name of God, supreme source of all authority," and in the 1957 plebiscite the preamble's religious grounding was strengthened to read:

In the name of God, supreme source of all authority, and for the purpose of strengthening national unity, one of whose bases is the recognition by the political parties that *the Apostolic and Roman Catholic religion is that of the nation, and that as such the public powers shall protect it and see that it is respected as an essential element of the social order* and to ensure the benefits of justice, liberty and peace, the Colombian people, by national plebiscite, DECREE¹¹⁷

In 1988, the women's groups presented the Institutional Reform Commission with a proposal for a new preamble which omitted any reference to God or to the Catholic Church. It began as follows:

We, the Colombian people, exercising our sovereignty, proclaim our faith in the fundamental rights of human beings, the dignity and worth of the person, the equality of rights between men and women and the equality and respect of the races, cultures and traditions of all Colombians. . . .¹¹⁸

As previously mentioned, the Women's Worktable that met in Bogotá at

115. COLOMBIA INFORMATION SERVICE, COLOMBIA: LAND OF CONTRASTS 4 (1990).

116. Alexander W. Wilde, *Creating Neo-Christendom in Colombia*, in DEMOCRACY IN LATIN AMERICA: COLOMBIA AND VENEZUELA 109, 109 (Donald L. Herman ed., 1988). The Church's explicit ties to the Conservative party have loosened in this century; in the past, the archbishop of Bogotá recommended Conservative presidential candidates.

117. CONST. POL. COL. preamble (1886 as amended) in ALBERT P. BLAUSTEIN & GIBERT H. FLANZ, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Supp. 1988) (emphasis added).

118. Socorro Ramírez, *Las Mujeres Proponen Reformas Constitucionales*, *supra* note 76, at 3.

the end of 1990 included this article on church-state relations among its proposals:

Article N: Separation of Church and State is established. This will guarantee liberty of conscience and of worship not contrary to good customs and law. No one can be disturbed because of their religious opinions, nor compelled to profess beliefs nor observe practices contrary to their conscience.¹¹⁹

The preamble adopted by the Constituent Assembly of 1991 dropped the prior preamble's references to the Roman Catholic religion and God as the source of all authority, but it retained the reference to God as Colombia's protector:

The People of Colombia, in the exercise of their sovereign power, represented by their delegates to the National Constituent Assembly, invoking the protection of God, and for the purpose of strengthening the unity of the Nation and assuring those who make it up life, well-being, work, justice, equality, knowledge, liberty, and peace, within a democratic and participatory legal framework that guarantees a just political, economic, and social order; and committed to impelling the integration of the Latin American community, decree, sanction and promulgate¹²⁰

On its face at least, the new Constitution reflects some significant advances in religious freedom. Gone is the authorization contained in Article 53 of the old Constitution for agreements with the Holy See.¹²¹ Article 18 of the new Constitution continues a guarantee of freedom of conscience,¹²² while Article 19, guaranteeing freedom of worship, establishes equality before the law for all religious beliefs and all churches.¹²³ Article 68, guaranteeing academic freedoms, specifically prohibits obligatory religious education in public schools.¹²⁴

3. Family Relationships

Latin American feminists generally agree on the need to redefine traditional notions of "family" to encompass the reality of the diverse family structures

119. Article N, PROPUESTAS DE MUJERES A LA ASAMBLEA NACIONAL CONSTITUYENTE, *supra* note 91.

120. CONST. POL. COL. pmbi. (1991).

121. CONST. POL. COL. art. 53 (1886 as amended) in BLAUSTEIN & FLANZ, *supra* note 117. Despite this absence, negotiations with the Vatican over reforming the *Concordato* continue. Telephone conversation with María Isabel Plata, Profamilia Family Legal Clinic, Bogotá, Colombia (Apr. 20, 1992).

122. CONST. POL. COL. art. 18 (1991).

123. CONST. POL. COL. art. 19 (1991).

124. CONST. POL. COL. art. 68 (1991).

in their societies.¹²⁵ In Colombia, consensual unions or *de facto* marriages are common,¹²⁶ as are an ever increasing number of families headed by single women. In poor urban areas, the number of families headed by single women has reached twenty-five percent.¹²⁷ War and other forms of violence have also contributed to the number of households headed by grandparents, older siblings, or other relatives.

Before the adoption of the new Constitution, diverse patterns of family relations were further complicated by the government's *Concordato* with the Holy See which precluded the possibility of divorce for those in Catholic marriages. The *Concordato*, first entered into in 1887, granted special privileges to the Catholic Church with respect to social policy, including marriage and divorce, education, and indigenous territories.¹²⁸ After modifications to the *Concordato* in 1973, civil marriages were permitted, and in 1976 divorce was recognized for such marriages.¹²⁹ This left Colombians either divorceable or not, according to the type of their marriage. Despite the availability of civil marriage, eighty percent of Colombians continued to marry within the Church, and thus were eligible only to apply for annulment or a legal separation.¹³⁰ Many Colombians who had once married in the Church resolved the dilemma in future relationships by living together without marrying or by going outside the country to enter into marriages that had no legal effect in Colombia.

Shortly after the Constitutional Assembly began, the hierarchy of the Colombian Catholic Church met and drafted a Pastoral Exhortation to the Constituent Assembly which was signed by seventy-two archbishops and bishops. With respect to divorce, it declared that "[e]stablishment of mandatory civil marriage would be an attack on citizens' religious freedom We call upon Catholics to firmly defend the freedom of contracting indissoluble marriage and that this liberty remain recognized in the legal order."¹³¹

Given the legal nightmare that resulted from the refusal to recognize civil divorce for Catholic marriages, most Colombians seemed to accept the need for change in this area, despite the Church's vocal opposition. On the eve of the Constitutional Assembly's vote on the issue, a national poll showed that

125. Ana Rico de Alonso classifies three types of families in Colombia today: the nuclear, the extended, and the compound. The nuclear family still predominates, but at least 25% of the families in both urban and rural zones are of the extended type and the increasing frequency of separations and "re-coupling" produces a growing number of compound families. Rico de Alonso stresses that the extended family is not just a "rural" phenomenon, but is also common in urban areas as desperate economic conditions lead poor families to seek "economies of scale." Ana Rico de Alonso, *La familia en Colombia: Tipologías, crisis y el papel de la mujer*, in MUJER Y FAMILIA EN COLOMBIA, *supra* note 30, at 35.

126. In Colombia, the number of *de facto* marriages increased from only 10% at the turn of the century to 45.5% by 1964. Ponencia-Informe, *supra* note 109, at 2.

127. LINEAMIENTOS, *supra* note 33, at 19.

128. Wilde, *supra* note 116, at 112.

129. Plata, *supra* note 66, at 82, 84.

130. Socorro Ramírez, *Disolución del Matrimonio entre la Iglesia y el Estado*, MUJER/FEMPRESS, May 1991, at 2.

131. *Las relaciones Iglesia-Estado*, VIDA ECLESIAL, SOLIDARIDAD, Mar. 1991, at 23, 24.

sixty-five percent of those questioned agreed that divorce should be available to end the civil effects of all marriages.¹³² The government's draft reforms had included this change, as had proposals of women's groups and other organizations.

On June 14, 1991, the Constitutional Assembly debated Commission Five's draft reform on divorce and approved it by a vote of fifty-two to three with six abstentions. Evangelical Jaime Ortiz voted against the reform, explaining: "I do not agree that evangelical marriage should have civil effects, only civil marriages can have [such effects]."¹³³

The reform approved became part of Article 42 of the new Constitution:

The forms of marriage, the age and capacity for contracting it, the duties and right of the partners, its separation and the dissolution of its bounds are governed by the civil law. Religious marriages will have civil effects according to the terms established by the law.

The civil effects of all marriages will be terminated by divorce according to the civil law.

Sentences of annulment of religious marriages given by the authorities of the respective religions will also have civil effects in the terms established by law. The law will determine the civil status of persons and the consequent duties and rights.¹³⁴

Immediately after approving this provision, the Assembly rejected a retroactivity proposal by Liberal delegate Jaime Benítez that would have allowed those already married in the Church to avail themselves of civil divorce.¹³⁵

In terms of recognition of different types of family structures, the new Constitution did not adopt the language of the Bogotá women's proposals that explicitly referred to "[e]very family structure and form of union between women and men."¹³⁶ Yet Article 42 did recognize that a family could be formed by "natural or judicial bonds, by the free decision of a man and a woman to contract marriage or by the responsible will to form it."¹³⁷ And Article 43 provided that "[t]he State shall support in a special manner women heads of family."¹³⁸

As previously mentioned, Article 42 guarantees equality of rights and

132. *Inclinación Popular Hacia el Divorcio*, EL ESPECTADOR, June 15, 1991, at 5-A, col.4.

133. *St al divorcio*, LA PRENSA, June 15, 1991, at 9, col.1.

134. CONST. POL. COL. art. 42 (1991).

135. *St al divorcio*, *supra* note 133.

136. Despite this broad language, no attempt was made explicitly to define family to include homosexual couples. Colombian lesbians appear to lag behind their counterparts in some other Latin American countries in political organization; in general, neither lesbians nor gay men seem to have openly identified themselves as a political movement in Colombia.

137. CONST. POL. COL. art. 42 (1991).

138. CONST. POL. COL. art. 43 (1991).

responsibilities among couples and reciprocal respect among family members. It also addresses one of the most troublesome aspects of the violence that is prevalent in Colombian society—family violence. In her recent book, *Five Forms of Violence Against Women*, lawyer and professor Melba Arias Londoño links family violence with what she refers to as the “National Violence” and concludes that “only when there is peace in the homes, will there be peace in Colombia.”¹³⁹ She argues that family violence both reflects and reproduces the National Violence.

Arias states that eighty percent of Colombian women accept domestic abuse as something normal and routine, and that two of ten women are victims of such violence every day. Reliable statistics are hard to obtain because few women report this type of violence. In 1988, women filed 18,000 charges of domestic abuse, but Arias believes that this figure represents only ten percent of the actual number of cases. She reports that one of every four wives is raped by her husband.¹⁴⁰

Domestic violence has not been expressly dealt with in Colombian legislation. Under the penal code, domestic violence is criminally punishable only when it falls within the general category of “*lesiones personales*” (personal injuries), requiring that the injury leave visible scars or marks.¹⁴¹ The penal code does not expressly cover marital rape, but neither does it expressly exclude it. On the other hand, the penal code provides that those charged with crimes of sexual violence may escape criminal liability if they offer to marry their victims.¹⁴²

Commission One’s draft reform on family rights included a clause addressing family violence that was adopted as part of Article 42 of the new Constitution: “Whatever form of violence within the family is considered destructive of its harmony and unity, and will be punished according to the law.”¹⁴³ Whether this provision, when implemented, will prove a step towards unravelling Colombia’s tangled web of violence remains to be seen.

4. *Free Motherhood*¹⁴⁴

Of the issues women raised during the constitutional process, only abortion was more controversial than the issue of divorce. The Catholic Church steadfastly opposed both, and as Liberal Assembly member Jaime Benítez

139. MELBA ARIAS LONDOÑO, CINCO FORMAS DE VIOLENCIA CONTRA LA MUJER 65 (1990). In addition to domestic violence, Arias’ work covers sexual harassment in employment, rape, violence in schools, and violence in the media. See also MARÍA TERESA ARIZABALETA DE GARCÍA, VIOLENCIA CONTRA LA MUJER EN LA FAMILIA (1989).

140. ARIAS LONDOÑO, *supra* note 139, at 58, 62.

141. *Id.* at 60-61.

142. *Id.* at 64-65.

143. CONST. POL. COL. art. 42 (1991).

144. Mónica María Alzate’s collaboration in the research and preparation of this section deserves special mention.

explained, many who were willing to confront the Church on divorce were not willing to deal it a double blow by supporting abortion.¹⁴⁵

Nowhere is the gap between the law as written and the reality of Colombian women's lives more pronounced than with respect to abortion. Although the commentary to the criminal code suggests that "indirect" therapeutic abortions (e.g., those produced by hysterectomies to remove cancer) are not punishable, on its face, Colombia's criminal abortion law is the strictest in Latin America—all abortions are illegal.¹⁴⁶ Article 343 of the code provides a penalty of one to three years imprisonment for a woman who causes her own abortion or permits another to cause it, as well as for anyone who performs such an abortion. Article 345 provides a lesser penalty of four months to one year of incarceration for abortions when the pregnancy results from violent or abusive intercourse or from involuntary artificial insemination. Likewise, Article 328 of the chapter on homicide provides leniency for a mother who, during birth or within eight days thereafter, kills a child who was the fruit of violent or abusive intercourse or involuntary artificial insemination. The penalty is one to three years of incarceration rather than the normal ten to fifteen years imprisonment prescribed for most homicides.

Despite the penal code's criminalization of abortion, one need only leaf through Bogotá tabloids to see that abortions are not only widely available but routinely advertised under headings that leave little doubt what services are

145. Interview with Jaime Benítez, in Bogotá, Colombia (June 1, 1991).

146. For a recent analysis of Colombia's abortion laws, see Miguel Córdoba Angulo, *Aspectos Jurídicos del Delito de Aborto*, DERECHO PENAL Y CRIMINOLOGIA, Jan.-Apr. 1990, at 13. Generally Latin American abortion laws are very restrictive, but their variations contradict the Catholic Church's current absolutist view of when life begins. Cuba is the most liberal—abortions are free and legal on broad medical grounds within the first 12 weeks of pregnancy and criminalized only when performed outside the governing health regulations. CÓD. PEN. arts. 267-71 (Cuba). Since 1980 El Salvador's penal code allows exemptions to its criminalization of abortion in cases involving rape, fetal deformities, or a woman's own negligent or attempted abortion. CÓD. PEN. art. 169 (El Salvador). Several countries treat abortion more leniently if it is performed to save the honor of woman of good conduct. E.g., CÓD. PEN. art. 120 (Costa Rica); CÓD. PEN. art. 165 (El Salvador); CÓD. PEN. art. 129 (Honduras); CÓD. PEN. art. 163 (Nicaragua). In Costa Rica the penalty for abortion also varies according to the stage of pregnancy during which an abortion is performed (i.e., before or after six months). CÓD. PEN. art. 118 (Costa Rica). In October 1990, the Mexican state of Chiapas liberalized its abortion law to allow abortions (during the first 90 days of pregnancy) for single women, for purposes of family planning, and for "imprudent" pregnancies. The new law set off such controversy that it was suspended pending a ruling by the national Human Rights Commission. *Chiapas: Legal Abortion's Toehold in Latin America*, CONSCIENCE, A NEWSJOURNAL OF PROCHOICE CATHOLIC OPINION, Sept.-Oct. 1991, at 9. In 1990, proposals to liberalize criminal abortion laws also sparked heated debate in Argentina and Peru. For an account of the prevalence of illegal abortions among all classes of women in Lima, Peru, see María Rosario Niño Palomino, *El Aborto en el Peru*, Paper presented at the XVIII Conference of the Inter-American Bar Association (Oct. 25-29, 1990) (finding that among an admittedly unscientific sample of 120 women from three socio-economic classes, the number who reported having clandestine abortions varied little and was approximately 90%; what did differ according to class were the conditions under which the abortions were performed and the effects on women's health). Peru's new penal code, enacted in 1991, rejected decriminalization but reduced the penalty for abortions performed in cases of non-marital rape, involuntary artificial insemination outside marriage, and probable birth of a child with serious physical or mental defects. CÓD. PEN. art. 120 (Peru). I am grateful to Reed Boland of the Harvard Law School Library and Editor-in-Chief of the *Annual Review of Population Law* for providing me with copies of this and other recent Latin American legislation.

being offered.¹⁴⁷ If a clinic is now and then closed down in response to some publicity about abortion, frequently the clinic is soon operating openly again. Outside the capital, abortion is also widely practiced.¹⁴⁸ Where there are no clinics, women who can afford to do so find private doctors willing to perform their abortions. Poor women, however, are often forced to turn to neighborhood midwives, or to resort to self-abortion.¹⁴⁹

Given its illegality, reliable statistics about abortion are difficult to obtain. Recent surveys conducted by Profamilia (Colombia's non-governmental family planning organization)¹⁵⁰ have not asked questions about women's abortion practices.¹⁵¹ Using estimation methods based on hospital admissions and

147. For example, 22 of the 36 advertisements on one page of the May 29, 1991 edition of the Bogotá tabloid *El Espacio* featured headlines such as "Pregnant?" or "Worried?" One ad read: "Super-Economical Without Pain." One promised 10-minute service for menstrual delays, and another offered immediate service on Sundays and holidays. Several listed the prices charged for their services (the equivalent of approximately \$15 to \$20). *EL ESPACIO*, May 29, 1991, at 16.

148. Mónica María Alzate Buitrago, *Aborto, Sexualidad y Planificación Familiar en Colombia, Un Estudio de Caso: Armenia, Quindío* (Aug. 9, 1991) (unpublished paper prepared for Women's Studies Practicum, University of Alabama).

149. In 1991, in Bogotá (a rapidly growing city with an official population of around 4 million but estimated by some to be six million or more including suburbs) the cost of an abortion in a clinic was the equivalent of \$15 to \$25. In Armenia (an intermediate size city of from 200,000 to 250,000 people and the capital of the relatively prosperous coffee-growing department of Quindío) there were no clinics and the few doctors who performed abortions charged the equivalent of \$90 to \$180. Midwives, *curanderas*, and nurses' aides charged the equivalent between \$25 to \$30. *Id.* at 8. In 1991, a young Colombian woman with a graduate degree could expect to earn the equivalent of around \$200-\$300 a month in Bogotá. By comparison, a live-in domestic worker in Armenia earned the equivalent of approximately \$35 a month for working more than twelve-hour days.

150. Founded in 1965, Profamilia has been largely responsible for the lowering of the population growth rate from 3.4% in 1964 to 1.8% in 1990. *PROFAMILIA* Dec. 1990, at 5. The most commonly used method of contraception is female sterilization, followed by the pill and IUD's. In 1990, 82,000 IUD's were dispensed, the number of female sterilizations was 72,552, and vasectomies numbered 4,844. 25 AÑOS *PROFAMILIA: COLOMBIA 1990* (folder containing statistics on program). In addition, 5,444,480 packs of birth control pills, 6,407,785 condoms, and 3,179,764 vaginal tablets were distributed from 11,663 sales locations in 815 cities. *Id.*

151. Profamilia has been supported in part by U.S. A.I.D. funds and some outside the organization have suggested that this may account for the absence of abortion-related inquiries. The U.S. government's Mexico City Policy, originally put forward by the U.S. delegation to the U.N. International Conference on Population in Mexico City in 1984, is often described as the United States government's international counterpart to the domestic "gag-rule" recently upheld by the U.S. Supreme Court in *Rust v. Sullivan*, __ U. S. __, 111 S.Ct. 1759 (1991). By prohibiting foreign non-governmental organizations (NGO's) who receive U. S. government family planning funds from performing or actively promoting abortion as a method of family planning (even if funded by private sources), President Reagan's policy statement went beyond Senator Helms' 1973 amendment to the Foreign Appropriation bill that prohibited the use of U.S. funds for providing abortions. Responding to the Mexico City Policy, A.I.D. drafted a standard clause for agreements concerning foreign NGO's defining "actively promoting abortion" to include "providing advice and information regarding the benefits and availability of abortion," "encouraging abortion," and "lobbying a foreign government to legalize or make available abortion." *Quoted in Planned Parenthood Fed. v. Agency for Intern. Dev.*, 915 F. 2d 59, 61 (2d Cir. 1990), *cert. den.*, __ U.S. __, 111 S.Ct. 2257 (1991).

The "chilling effect" of this policy on recipients fearful of losing funding extends beyond the words of the standard clause itself. In some Latin American countries, recipients have reportedly refused to treat women suffering from botched abortions (though this is allowed under the policy) or have neglected to enter the fact of abortions on their medical records. Others reportedly have refused to purchase equipment needed to treat spontaneous or botched abortions (such as vacuum aspirators) out of fear this would be seen as evidence that abortions were being performed. Maggie Bangser, Program Officer, International Women's Health Coalition, Panel Presentation at *A Mosaic for Choice: A National Conference for State Pro-Choice Coalitions*, Atlanta, Georgia (Sept. 27, 1991). Planned Parenthood Federation of America's legal challenge to the Mexico City Policy was followed by A.I.D.'s termination of its 19-year funding to the family

fertility data, Susheela Singh and Deidre Wulf estimate that over 250,000 induced abortions were performed in Colombia in 1985.¹⁵²

According to Dr. Alberto Rizo, a gynecologist in Bogotá, both the number of abortions and the number of maternal deaths due to abortions have diminished somewhat in recent years.¹⁵³ He attributes the decline in abortions to the fact that now approximately two-thirds of women of reproductive age use some form of contraception. Rizo reports that between 1969 and 1987, the maternal mortality rate fell from twenty to ten deaths per 10,000 births and the percentage of these deaths caused by complications from induced abortions fell from fifty percent to between fifteen and twenty-five percent. He credits an increasing sophistication in the methods used by traditional abortionists. Dr. Jorge Villarreal, director of Unidad Materna, a women's health clinic in Bogotá, notes that a few years ago abortion was the primary cause of maternal deaths; now he places it in third or fourth place.¹⁵⁴

Despite improved mortality rates, Rizo and others are quick to note that the overall figures are not representative of all groups of Colombian women. For example, in the coastal areas (where most of Colombia's black population lives) and in intermediate and smaller cities, the rate of use of contraceptives is lower and safe abortions are less available. Adolescents also face particular problems. Only about twenty-five percent of adolescents use contraceptives, according to Rizo. Psychologist Margarita Escobar expresses alarm at Colombia's high number of adolescent pregnancies.¹⁵⁵ The information adolescents receive about sexuality and contraception comes with inhibitory moralism. Their sexual relations are spontaneous and unplanned and they seek contraceptives only after they have become sexually active. Many also express fear about secondary effects on their health from contraceptives.

In her book, *Single Adolescent Mothers*, Ana Rico de Alonso concludes that "the level of lack of information and misinformation about biological processes (among adolescents) is very high."¹⁵⁶ Of fifty young mothers interviewed, she found that fifty-four percent were ignorant about contraception or abortion when they first became pregnant. Twenty-two percent of the young

planning organization's international program. PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., 1990 ANNUAL REPORT 15 (1991) (describing Planned Parenthood's refusal to participate in "government-sponsored malpractice"). Shortly after the decision in *Rust*, the U.S. Supreme Court let stand the Second Circuit Court of Appeals' decision upholding the constitutionality of the Mexico City Policy. See *Planned Parenthood Fed. of Am., Inc. v. Agency for Int'l Dev.*, 914 F. 2d 59 (2d Cir. 1990), *cert. den.*, ___ U. S. ___, 111 S. Ct. 2257 (1991). Congressional proposals to overturn the Mexico City Policy cleared both houses in 1991, but President Bush threatened a veto and conferees dropped the provision. Craig Lasher, *Exporting Abortion Politics: The Battle Over International Family Planning Assistance*, CONSCIENCE, A NEWSJOURNAL OF PROCHOICE CATHOLIC OPINION, Sept.-Oct. 1991, at 22.

152. Susheela Singh & Deidre Wulf, *Estimating Abortion Levels in Brazil, Colombia and Peru, Using Hospital Admissions and Fertility Survey Data*, INT'L. FAM. PLAN. PERSPECTIVES, Mar. 1991, at 8, 12.

153. Interview with Dr. Alberto Rizo, in Bogotá, Colombia (May 27, 1991).

154. Interview with Dr. Jorge Villarreal, in Bogotá, Colombia (May 29, 1991).

155. Interview with Margarita Escobar, in Bogotá, Colombia (May 29, 1991), summarized in Alzate Buitrago, *supra* note 148, at 4.

156. ANA RICO DE ALONSO, MADRES SOLTERAS ADOLESCENTE 67 (1986).

women reported that they had had an induced abortion. Of these, seventy-two percent had had only one abortion, eighteen percent had had two, and nine percent had had three.¹⁵⁷ Socorro Ramírez has reported on two more recent studies showing that these statistics are on the increase.¹⁵⁸ Of the five percent of adolescents surveyed who had gotten pregnant at fifteen to seventeen years of age, seventy-five percent of them had not believed it could happen. Of these, sixty-six percent had induced abortions and 8.3% aborted spontaneously.

Although abortion is a fact of life for many Colombian women, religious attitudes continue to influence views on the legalization of abortion. Having had one or more abortions does not necessarily translate into support for its legalization. Even women hospitalized for abortion frequently report that they consider abortion a sin.¹⁵⁹ And these attitudes do not seem to have changed much among young Colombians. Although recent studies showed that the majority of teenagers who became pregnant had abortions, 87% of the teenagers surveyed opposed the legalization of abortion.¹⁶⁰

The 1991 constitutional process was not the first attempt to address the problem of abortion in Colombia from a legal perspective. From 1975 to 1989, four attempts to bring Colombian law closer into line with the social reality of the country had all failed.¹⁶¹

157. *Id.* at 75.

158. Socorro Ramírez, *Sexualidad Temprana y Tardia Reparación de Tradiciones*, MUJER/FEMPRESS, Aug. 1991, at 10.

159. FLÓREZ, *supra* note 54, at 184.

160. Socorro Ramírez, *supra* note 158.

161. The description of these bills which follows is translated from Alzate Buitrago, *supra* note 148, at 15-18, and is based in part on *Sí-Mujer, Proyecto de Ley Para la Legalización del Aborto en Colombia* (chart summarizing major aspects of the bills):

In July 1975, Liberal senator Iván López Botero initiated the attempt to liberalize Colombia's abortion laws by presenting a bill to regulate the therapeutic interruption of pregnancies in Colombia. *Proyecto de Ley Por la Cual Se Reglamenta la Interrupción Terapéutica del Embarazo* (June 20, 1975). The bill would have required married women to have the consent of their husbands and authorized abortions within the first 12 weeks of pregnancy in the following cases:

When the life or health of the woman was in danger.

When the child that would be born would have an incurable genetic illness or injury.

When the woman was younger than fifteen or older than 45.

When the pregnancy was the product of violence, incest, or deception.

When the woman had not had an induced abortion in the last twelve months.

Two years later, during a medical meeting in Bogotá, Dr. Botero spoke about the ineffectualness of criminal laws prohibiting abortion and their effect on the society's conception of law: "The [use] of law as an abstract symbol disconnected from reality [damages] the conception of just law, creates disorder, and contributes to discrediting law leaving it reduced to a simple fiction." *Conferencia Dictada por Iván López Botero el 25 de Marzo de 1977 ante el Foro Medico Reunido en el "Salon Esmeralda" del Hotel Tegendama*, at 13.

In September 1979, Liberal congressional candidate Consuelo Lleras de Samper, daughter of a former president, submitted a draft law "To protect the health and life of the women who inhabit Colombia." *Proyecto de Ley 'por el cual protegen la salud y la vida de las mujeres que habitan en Colombia,'* (September 1979). Ninety members of Congress supported the bill, but it too failed to gain majority support. María Cristina Alvarado, *90 Parlamentarios Respaldan el Proyecto sobre Aborto*, EL ESPECTADOR, Oct. 4, 1979, at 1-A. More restrictive than Botero's earlier proposal, this bill authorized abortions (during the first twelve weeks of pregnancy) in only three cases:

When the pregnancy resulted from violent or abusive sexual intercourse (if proved to a judge).

When the pregnancy presented an imminent danger to the life or physical or mental health of the woman.

The constitutional process provided a new forum for the debate over abortion. As we have seen, women demanded a constitutional basis for reform of the law criminalizing abortion in their proposals for the new Constitution. The Church joined issue in the bishops' February 1991 Pastoral Exhortation to the Assembly, demanding that the Constitution include among its fundamental human rights "[t]he right to life, from conception until natural death."¹⁶²

In April, Subcommittee One of Commission Five of the Constitutional Assembly raised hopes for decriminalization of abortion when it presented a proposed article on free choice of motherhood among its draft articles on the rights of women. The proposal provided that "[m]otherhood serves a social function and cannot be the cause for discrimination. Women are free to choose the option of motherhood, in the terms of the law."¹⁶³ The report accompanying the proposal explained:

The legislature could authorize women to choose in whatever case or circumstances, or [could provide] that abortion would only be permitted in specific restricted cases of rape, or serious danger to the mother's life, or serious congenital illness. [The legislature] would decide what

When the fetus presented malformations.

In support of her proposal, Lleras noted that while abortion is a crime, it is essentially a crime of women and mostly of poor women. She recalled Simone de Beauvoir's statement that abortion is a crime of class. Consuelo Lleras de Samper, *Legalizar el aborto: Una necesidad social impostergable*, EL TIEMPO, Oct. 7, 1979.

Eight years later, in July 1987, another proposal to decriminalize certain abortions was presented, but it drew little attention. Proyecto de Ley 'Por medio del cual se legaliza parcialmente el aborto, reformando el Artículo 386 del Código Penal Colombiano' (July 1987). Presented by another Liberal senator, Eduardo Romero Romo, the proposal was essentially the same as that of Lleras except that it also authorized abortions for women who were drug addicts with physical or psychological problems and when the pregnancy was the result of involuntary artificial insemination. Unlike the earlier two proposals which required the consent of a woman's husband or parent or legal representative, the 1987 one required only the consent of the pregnant woman herself.

The most recent attempt to pass legislation decriminalizing abortion was a proposed law presented by the late Liberal senatorial candidate Emilio Urrea Delgado in November of 1989. Proyecto de Ley 'Por la cual se legaliza el aborto en Colombia,' (Nov. 1989). By far the most liberal of the proposals, Urrea's authorized abortions in the following cases:

When there was serious danger to the physical or psychological health of the woman.

Based on the socio-economic condition of the woman, family, or couple.

Based on the circumstances (e.g., violence) in which the conception occurred.

Malformation of the fetus.

Departing from earlier proposals' requirement that authorized abortions be performed within the first twelve weeks of pregnancy, Urrea's bill allowed abortions for any of the approved causes within the first 90 days of pregnancy, but allowed those for the first and last listed causes after 90 days as well. Not surprisingly, this proposal was also rejected.

In his "Exposition of Motives" accompanying the bill, Urrea defended women's rights. "Machismo, like a hypocritical ghost in our society, has impeded our coming together in unity in the struggle for women's rights. The formidable battles in the world for women to obtain full justice in respect to rights have come to us late and still its absence on the Colombian horizon is evident and cruel." *Exposición de Motivos* 4.

Alzate Buitrago, *supra* note 148, at 15-18 (citation form supplied by author).

162. VIDA ECLESIAL, *supra* note 131, at 23.

163. Ponencia-Informe, *supra* note 109, at 6.

is best for the country.¹⁶⁴

One of the country's leading newspapers interviewed the Assembly's four women delegates following the subcommittee's proposal that the Constitution authorize free motherhood, and found that they disagreed among themselves on the abortion issue.¹⁶⁵ Aída Abella of the leftist Patriotic Union expressed open support for full reproductive choice:

"I am in agreement that women have free choice about motherhood, it is something that is ours, so we have the right to decide."¹⁶⁶ Marfa Mercedes Carranza of the AD M-19 felt that legalization of therapeutic abortions was as much as could be hoped for.

I favor the legalization of therapeutic abortion, that is in cases of malformation of the fetus or rape. Although I would ask for total legalization, this is too much; I would resign myself to this other.

Also, it seems unjust to me that women from high society have the possibility of having it done in Miami or in sophisticated clinics while the woman of the people has it done in the worst conditions, exposing herself to death or being left sterile.¹⁶⁷

María Teresa Garcés, also of the AD M-19, and Liberal Helena Herrán took more restrictive positions.

Garcés: I am against abortion understood as the interruption of pregnancy. I believe that in very extreme cases it could be legalized, for example, when there is rape, malformation of the fetus, or illness that is contagious from the mother to the child.

In addition, it seems to me that the members of the constituent assembly are supposed to defend life and this is an interruption of it.

I believe it is a subject that should not be in the Constitution; it is more of a scientific issue. It should be left to legislation.¹⁶⁸

Herrán: I do not agree with abortion. This is a complex topic, seen in general form, it could damage Colombian morality.

But, when a woman runs risks with a pregnancy, the child has malformations or there is a rape, these are cases where I agree that they must be studied and a determination made about the life of human beings.¹⁶⁹

164. *Id.* at 5.

165. *¿Qué opinan las mujeres Constituyentes sobre el aborto?*, EL TIEMPO, Apr. 16, 1991, at 7A.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.* Interviewed during the plenary sessions in June, these women generally reiterated their earlier

Subcommittee One of Commission Five decided to withdraw its proposal because it considered abortion too controversial; attempts to deal with abortion during Commission One's consideration of fundamental principles met a similar fate. Assembly members feared that opening debate on this explosive issue would offend public sensibilities, create obvious tensions with the Catholic Church, and, perhaps most importantly, take up too much of the extremely limited time available for plenary debate.

When the Women and the Constituent Assembly National Network was formed in early May, it began to contact Assembly members putting pressure on them to approve the proposal concerning free motherhood, as well as other women's proposals. The Network made a concerted effort to prevent reduction of the issue of free motherhood to a debate over abortion. In its literature and in contacts with Assembly members and the media, the Network stressed that their demands included a broad range of rights related to reproductive health and sexuality.¹⁷⁰ Cali's María Ladi Londoño, one of the founders of the Network, has written widely on sexuality and reproductive rights, and deserves particular credit for developing the Network's broad definition of free motherhood.¹⁷¹

Even though both Commissions One and Five had decided not to address the abortion issue in the draft proposals they presented to the full Assembly, Liberal Assembly member Iván Marulanda Gómez (himself a member of Subcommittee One of Commission Five) promised Network members that he would raise the issue during the plenary debates. On June 14, 1991, he kept his promise, introducing language recognizing the right to free motherhood (in

statements. Garcés speculated that legislation decriminalizing certain abortions could pass in the near future; but not, she stressed, a proposal for "free motherhood." Interviews in Bogotá, Colombia with Aída Abella (June 1, 1991); Helena Herrán (June 5, 1991); María Mercedes Carranza (June 5, 1991); and María Teresa Garcés (June 5, 1991).

170. One bulletin listed the following aspects:

- Promotion of work and life environments that do not harm human fertility and prevention of risks.
- Information, education, and orientation on the exercise of a free and responsible sexuality.
- Organization of programs directed at preventing undesired pregnancies.
- Free and safe access to modern and traditional methods of controlling human fertility and to voluntary surgical sterilization.
- Guarantees that processes of human fertility originating in technological and scientific advances do not endanger the universal principles of persons' equality, respect, and free determination.
- Providing health services that guarantee a chosen motherhood, safe and free of risks during the periods of gestation, birth, and nursing. Social services supporting the care and raising of children.
- No employment discrimination based on maternity or civil status.
- Guarantees of free and responsible adoption.
- Autonomy to decide about motherhood and provision of health services within the terms provided by law.
- Elaboration of a population policy on a human scale that does not threaten sovereignty and individual rights. The policy must be developed respecting the particularities of ethnicity, class, sex, age, and religion.

MUJER Y CONSTITUYENTE RED NACIONAL.

171. See generally MARÍA LADI LONDOÑO E., *PRÁCTICAS DE LIBERTAD EN SEXUALIDAD Y DERECHOS REPRODUCTIVOS* (1991); MARÍA LADI LONDOÑO, *EL PROBLEMA ES LA NORMA: ENFOQUES LIBERADORES SOBRE SEXUALIDAD Y HUMANISMO* (1989).

conformity with the law) and calling for a secret vote on the proposal. The same day that the Assembly approved the new Constitution's provisions on divorce, it rejected Marulanda's proposal by a vote of twenty-five in favor, forty opposed, and three abstentions. The new Constitution would remain silent on the issue of abortion.

Certain aspects of women's broad demands for reproductive freedom fared better with the Assembly. Indeed, one reading Article 42's guarantee of the right of couples "to freely and responsibly decide the number of their children"¹⁷² without knowing the constitutional history of the abortion debate or the usage of this language in other documents might assume it provided support for abortion rights. Instead, it seems to be understood to guarantee only family planning rights other than abortion.¹⁷³ In addition, Article 43 of the new Constitution provides that "[d]uring pregnancy and after birth [women] shall enjoy special assistance and protection from the State, and will receive support benefits from it if they then become unemployed or abandoned." It further states that "[t]he State shall provide help in a special manner to women heads of family."¹⁷⁴ And, as discussed earlier, Article 53, directing the Congress to enact a labor law, includes protection for women and maternity among the fundamental minimum principles lawmakers must consider in enacting such a law.

B. "A Peaceful Revolution?"

Addressing the Assembly and the nation on the evening of July 4, 1991, President Gaviria described the Assembly's work as "truly a peaceful revolution" and announced the end of the country's existing seven-year state of siege.¹⁷⁵ Under Article 213 of the new Constitution, the power to establish a state of siege was replaced by the more limited power to declare a state of exception. The previous day, the "Extraditables" of the Medellín Drug Cartel, had announced that their military arm would disband in exchange for the Constitution's prohibition of extradition. Earlier, on June 19, druglord Pablo Escobar had entered his specially-designed prison, hours after the Assembly had first approved the article prohibiting extradition.

The end to extradition was the price the drug traffickers extracted in return

172. CONST. POL. COL. art. 42 (1991).

173. The 1985 Guatemalan Constitution explicitly protects human life from conception (CONST. POL. GUAT. art. 3), yet provides that all Guatemalans have the right to freely decide the number and spacing of their children (CONST. POL. GUAT. art. 47). Article 16(e) of the U.N. Convention on the Elimination of All Forms of Discrimination Against Women guarantees women "The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means to enable them to exercise these rights." *Convention on the Elimination of All Forms of Discrimination Against Women*, art. 16, opened for signature Mar. 1, 1980, G.A. Res. 34/180, U.N. GAOR, 34th Sess. Supp. No. 46, U.N. Doc. A/34/36 (1979).

174. CONST. POL. COL. art. 43 (1991).

175. Douglas Farah, *Colombia's New Constitution Goes Into Effect*, WASH. POST, July 5, 1991, at A14.

for promises to end their violence (if not their trade). It was a price most Colombians, including most women, seemed willing to pay. Extradition to the United States offended the Colombians' sense of national sovereignty. Moreover, after the violent reaction to the extradition of several drug traffickers in the early days of President Barco's "total war," Colombians were realistic enough to realize that the Cartel wielded tremendous power and that the Constitutional Assembly had little choice in this matter. The best that the country could hope for was a strengthening of its weak criminal justice system. The new Constitution attempted to do this, in part, by establishing the office of Attorney General. The Attorney General's office would play the evidence-gathering role in criminal proceedings, a function that formerly had been assigned to the judges.¹⁷⁶

A different price was extracted by the *Alianza Democrática* M-19 and others who had formerly been excluded from the seats of political power. During the Assembly, AD M-19 leader, Antonio Navarro, joined forces with the conservative National Salvation Movement leader, Alvaro Gómez, to win approval for an immediate dismissal of the sitting national Congress whose members had been elected to four-year terms in March, 1990.¹⁷⁷ The new Constitution set October 27, 1991, as the date for elections for a new Congress and reduced its membership from 313 (and an equal number of alternates) to 263, with some of its seats (two in the 102-member Senate and up to five in the House of Representatives) reserved for indigenous, ethnic, or minority party candidates.

Pending installation of the new Congress on December 1, 1991, President Gaviria was granted legislative powers along with a thirty-six-member Special Commission which would exercise veto power over his measures. Dubbed the "mini-Congress," this Commission was representative of the parties and groups

176. Judicial killings, however, have continued. In late September 1991, a judge and a judicial secretary were killed in Cali. Shortly after, the interim legislative commission ratified a presidential decree providing anonymity to judges in drug cases, guarding their identity by allowing them to sit behind two-way mirrors and to speak through voice distorters. *Colombia Struggles to Seal Its Judges' Armor*, *supra* note 63. Under President Gaviria's policy of non-extradition and more lenient treatment of drug traffickers, the rate of convictions has risen from less than 10% to 70% in ordinary courts. *Id.* For a perspective on the drug-related violence by a lawyer and human rights activist who is also a former Colombian judge, see Jorge Gómez Lizarazo, *Colombian Blood, U.S. Guns*, N.Y. TIMES, Jan. 28, 1992, at A21, col.2. ("drug-related violence continues because it is generally tolerated and often supported by the security forces.").

177. Responding to a widespread public perception of congressional corruption, the Assembly had made congressional reform a key element of the new Constitution. In addition to abolishing the existing Congress and reducing the size of future congresses, the new Constitution provided for national, instead of regional election of senators; removed congress members' control over regional funds; cut their funds for international travel; eliminated alternate members; barred members from holding posts elsewhere in the government; barred relatives from holding posts; and provided for recall elections. The presidency was modified to require election by a majority rather than a plurality of the votes; and terms were limited to one four-year period. The office of vice-president was created and departmental governorships were changed to require an election rather than presidential appointment. See Harvey F. Kline, *A Comparison of 'Democratic' Features of the Colombian Constitutions of 1886 and 1991* (1991) (chart of features, on file with author). The new Constitution modified the judicial branch by creating a new Constitutional Court and by establishing an Attorney General's office as part of the judiciary. CONST. POL. COL. arts. 239, 249 (1991).

that made up the Constitutional Assembly:¹⁷⁸ twelve of its members were Liberals, nine were from the AD M-19, and five were from the National Salvation Movement; representatives of indigenous peoples and another former guerilla group, EPL (Popular Army of National Liberation) each had two seats; and evangelicals and the leftist Patriotic Union had one seat each. The remaining four seats went to the traditional conservatives of the Social Conservative Party. Women were better represented than in the Constituent Assembly, filling seven of the thirty-six seats.

Once the new Constitution was approved and the mini-Congress seated, attention focused on the October 27 elections for the new national Congress and departmental governors. Women who had participated in the constitutional campaign stated their determination to make their presence felt during the elections. Although memories of the women's largely unsuccessful efforts in the hurried election campaign for the Constitutional Assembly were still fresh, the women's hopes were buoyed by the new Constitution's commitment to women's participation in decision-making and by the more favorable representation of women in the mini-Congress than had existed in the Constitutional Assembly or in previous congresses.

Following the adoption of the new Constitution, Women for Democracy adopted as one of its express goals the vigilant monitoring of the new Constitution's provisions guaranteeing women's rights.¹⁷⁹ The group's leaders pledged to field candidates in the October elections. Angela Cuevas, the group's president, announced: "Our goal is that half the Congress be women and that in the next few years we have a *presidenta* (woman president) of the Republic."¹⁸⁰

The Women and the Constituent Assembly National Network ("Network") was more realistic about short-term strategies for increasing women's political participation. Meeting in mid-July to consider their post-constitutional agenda, Network members debated different strategies for influencing the upcoming elections and agreed on negotiating with other parties over lists that reflected the Network's programmatic concerns.¹⁸¹ One leader wrote that the Network hoped to be able to participate with their own lists in the 1994 elections.¹⁸² Under its new name, the National Women's Network, the group had grown to include more than eighty organizations from 16 cities. In the months following the adoption of the new Constitution, the Network focused on educating women about their rights and on preparing women to influence the new Congress. The importance of focusing on the new Congress was twofold:

178. *Quién es quién en el 'mini-Congress,'* EL TIEMPO, July 6, 1991, at 8A.

179. *Participación Política de las Mujeres,* MUJER/FEMPRESS, Sept. 1991, at 13. With respect to women's participation in decision-making, the group called upon President Gaviria to include distinguished women judges in filling the new openings in the judicial branch.

180. *Surge movimiento por los derechos políticos de la mujer,* EL PAIS, July 18, 1991, reprinted in MUJER/FEMPRESS, Sept. 1991, at 21.

181. RED NACIONAL DE MUJERES, CIRCULAR NO. 6, at 3 (July 17, 1991).

182. Letter from María Ladi Londoño E. of Cali, Colombia, to author (Sept. 9, 1991).

the new Congress would be faced with implementing the new Constitution's guarantees; it also held the power to address gender issues not addressed in the Constitution (such as full reproductive freedom).¹⁸³

When the lists of candidates for the October elections were filed in late August, it was clear that in Colombia, as in other parts of the world, the goal of gender balance remained a dream. Of the 3,298 candidates for all posts, only 485, or 14.7%, were women. Women comprised 179 of the 1,047 candidates for the Senate, 296 of the 2,108 candidates for the House, and 10 of the 143 candidates for departmental governors.¹⁸⁴

During the electoral campaign, *El Tiempo* ran a feature story on four of the women candidates, but the story ran in the "Life Today" section, not as straight news.¹⁸⁵ Two women senatorial candidates got mentioned in the foreign press accounts of the election—Vera Grabe, who had been known by the guerrilla name of "Compañera Julia" and who now led the AD M-19's Senate list,¹⁸⁶ and Regina Betancourt, the leader of the Metapolitical Unitarian Movement and a self-proclaimed clairvoyant.¹⁸⁷ Both were successful: Grabe and the list she headed obtained more votes than any other single slate.

The October 27th elections left more questions than answers about Colombia's future, especially its women's future. Although heralded as "smashing" the 150-year-old two-party hegemony of Colombian politics,¹⁸⁸ the elections handed the traditional Liberal Party a majority in each of the two houses of Congress (fifty-six of the 102 Senate seats and eighty-seven of the 161 seats in the House) along with eighteen of the twenty-seven governorships. Indeed, the elections resulted in the "rebirth" of the Liberal party which had fallen from receiving approximately fifty-eight percent of the vote in the March 1990 congressional elections to receiving only thirty-one percent of the vote in the election for the Constitutional Assembly in December 1990. The results marked a defeat for the Conservatives who won only fourteen Senate seats, and about twenty-one percent of the House seats. But two recent offshoots of this party picked up seats as well; the New Democratic Force won nine Senate seats and the National Salvation Movement won five seats in the Senate and twelve in the House. The AD M-19 captured nine seats in the Senate, fourteen House seats, and no governorships, slipping from the twenty-seven percent of the votes it received in the Constitutional Assembly elections. The leftist Patriotic Union captured one Senate seat and three posts in the House. Women candidates were elected to only seven percent of the seats in the new Congress (seven Senate seats and twelve House seats), along with one governorship.

183. RED NACIONAL DE MUJERES, CIRCULAR NO. 7, at 1-4 (Aug. 1991).

184. *La Elección en Cifras*, EL TIEMPO, Oct. 27, 1991, at 1B.

185. *Mujeres con voz y voto*, EL TIEMPO, Oct. 15, 1991, at 1C.

186. Douglas Farah, *Colombian Vote Marks Power Shift; New Parties Make Inroads in Congress*, WASH. POST, Oct. 28, 1991, at A16.

187. Adrian Croft, *Low Poll Turnout May Weaken Colombia Government in Peace Talks*, REUTERS, Oct. 28, 1991, available in LEXIS, Nexis library, Wires files.

188. David Mutch, CHRISTIAN SCI. MONITOR, Oct. 29, 1991, at 2 (News Currents Section).

Two Senate seats went to indigenous peoples' representatives in a special circumscription and one seat in the House went to a representative of the indigenous peoples. Representatives of evangelical organizations won three seats in the Senate and one in the House.¹⁸⁹

Voter turnout disappointed those who had hoped that the elections would demonstrate public support for President Gaviria's policies of leniency toward drug traffickers and negotiations with guerrillas. On election day, Gaviria asked the voters to send a message to the still-armed guerrillas that there is a "new, more optimistic Colombia." He warned that those who failed to vote would be "signing a blank check on an account to which they have deposited their future and that of their children."¹⁹⁰ Despite these pleas, approximately two-thirds of the eligible voters stayed home.

There are several explanations for the low voter turnout. First, low voter participation has been the rule in Colombia; in fact, the abstention rate was even higher (seventy-three percent) in the elections for the Constitutional Assembly. Another factor was the complexity of the ballots and the lack of effective campaigning. A total of 3,298 candidates competed in the elections for 263 seats in Congress (102 seats in the nationally-elected Senate and 161 in the regionally-elected House) along with 143 candidates for the twenty-seven departmental governorships. The candidates represented twenty-three parties and sixty-four political groups, and parties fielded multiple lists of candidates, adding to voter confusion. Voters faced 630 different lists of candidates for the 263 congressional seats. At the polls, one seventy-year-old-woman described the ballot as "a real mess . . . I have never seen so much anarchy. No one can tell who is in this election."¹⁹¹

Violence and fear of violence may have also affected the turnout, as extremist attacks had escalated shortly before the elections. Two candidates had been wounded—one fatally—and a candidate's wife and several other people had also been killed. Moreover, allegations that some of the candidates had been bought by the country's drug barons did nothing to raise voter confidence.¹⁹²

A pre-election poll found that ninety percent of Colombians had no confidence in politicians.¹⁹³ One post-election analysis pointed out that although there were some new and younger faces in the new Congress, more than sixty percent of the senators had been incumbents and predicted that the new Congress would be dominated "*por los mismos, con las mismas*," (by the

189. For charts listing the election results, see EL TIEMPO, Oct. 29, 1991, at 8A, 11A, 15A.

190. *Liberals step into lead in Colombian elections*, AGENCE FRANCE PRESSE, Oct. 28, 1991, available in LEXIS, Nexis library, Wires file.

191. Frederico Fullea, *Army guards polling places during elections*, UNITED PRESS INTERNATIONAL, Oct. 27, 1991, available in LEXIS, Nexis library, Wires file.

192. Adrian Croft, *Colombians Vote Under Heavy Security For Congress, Governors*, REUTERS, Oct. 27, 1991, available in LEXIS, Nexis library, Wires File.

193. Andre Birukoff, *Legislative elections Sunday expected to broaden Colombian politics*, AGENCE FRANCE PRESSE, Oct. 24, 1991, available in LEXIS, Nexis library, Wires file.

same leaders with the same followers).¹⁹⁴

III. REFLECTIONS ON THE LEGACY OF THE 1991 COLOMBIAN CONSTITUTION FOR WOMEN

Well-told stories speak for themselves, but they often say different things to different listeners. During the research for this article, the author and the collaborator often approached our subject from our own distinctive perspectives.¹⁹⁵ Through sharing our views, we each broadened our understanding of both our cultures.

In this spirit, what follows are some preliminary reflections on the legacy for women of the recent Colombian Constitutional process. Phrasing the questions as "who won?" or "who lost?" misperceives the nature of the quest for gender equality; the struggle is a process, not divisible like sporting events that are easily separated into discrete periods where points can be totaled and victors declared.¹⁹⁶ Nevertheless, we can learn by comparing the progress women have made and the ground they have lost under specific circumstances.

Three broad questions are addressed in this section: (1) whether, and to what extent, women and women's groups made a difference in the Colombian constitutional process, (2) whether, and to what extent, the constitutional process and the new Constitution are likely to make a difference in the lives of Colombian women, and (3) what does this study of the Colombian constitutional process add to the discussion of the relationship between

194. *Análisis*, EL TIEMPO, Oct. 29, 1991, at 15A. The March 8, 1992 elections for mayors, city councils, and departmental assemblies were dominated by the country's two traditional political forces. The Liberal party was considered the winner, taking approximately 38% of the mayoral races. *Liberales ganaron 387 alcaldías*, EL TIEMPO, Mar. 11, 1992, at 7A. Liberals won the mayor's race in Bogotá, but lost in the next three largest cities of Medellín, Cali, and Barranquilla. *No se desbordó la abstención*, EL TIEMPO, Mar. 9, 1992, at 1A. Despite their divisions, conservatives remained the second strongest political force. The AD M-19 suffered a serious defeat, winning only two mayoral races. Although the abstention rate was 58.3%, the 41.7% participation rate exceeded that of the October 1991 congressional elections when only 35.1% of those eligible voted. *Liberales ganaron*, EL TIEMPO, Mar. 11, 1992, at 7A.

Overall election results for women candidates were not immediately available to the author, but on an election day that coincided with the International Women's Day, women won seven of the twelve mayoral races in the department of Quindío. *Habrá matriarcado en las alcaldías de Quindío*, EL TIEMPO, Mar. 10, 1992, at 7A. In addition to reporting on women's success in Quindío, *El Tiempo* ran an article on a Bogotá prostitute who lost her bid for a seat on the city council yet "won" because she decided not to return to prostitution, instead pledging to work for the social rehabilitation of the country's prostitutes and in the fight against AIDS. *Gané: ya no soy prostituta*, EL TIEMPO, Mar. 9, 1992, at 7B. Another electorally unsuccessful woman candidate, sociologist Carmen Inés Cruz, was featured as waging a last minute campaign that "scared" the political chiefs in her region. *Carmen Inés Cruz asustó a los caciques tolimeses*, EL TIEMPO, Mar. 9, 1992, at 8A.

195. For example, one of the author's goals in writing about Latin American women is to challenge the myth prevalent in U.S. society that these women are passive and politically inactive. With this goal in mind, one runs the risk of painting too rosy a picture of their achievements. On the other hand, the collaborator, who is now studying the history of women's movements in the United States, is wont to despair and describe Colombian women as "one hundred years behind."

196. Martha I. Morgan, *The Mother Law: Nicaraguan Women and Democratization in the 1990's*, XXIII SECOLAS ANNALS 138, 148 (1992). U.S. feminists are discovering all too well the cost of feeling victorious at an earlier stage in our struggle for reproductive freedom.

women's movements, law, and the state.

One legacy of the participation of women and other marginalized groups in modern constitution-making is an opportunity for reconsideration of what constitutions and constitution-making are all about. The Colombian Supreme Court underscored this point when it spoke of the "evolution of Constitutional Law and the role of constitutions in the modern world,"¹⁹⁷ in its October 1990 opinion approving the election of the Constitutional Assembly. According to the Court, a Constitution initially functioned to limit the exercise of power and to distribute competencies, but today it also functions to

integrate diverse social groups, to conciliate opposing interests, in the search for what has been called constitutional consensus, so that agreement on the content of the Constitution becomes a fundamental premise for the establishment of public order, the attainment of social harmony, the coexistence of citizens and peace, with all that concept implies, as the ultimate end of governmental organization.¹⁹⁸

The more difficult issue is not the general question of the effect of the participation of marginalized groups in modern constitution-making but the specific assessment of the influence that Colombian women and women's groups exerted during the recent constitutional process. Within the Constitutional Assembly, the four women members played active roles as individuals, but their numbers were far too small—and their politics too varied—to exert significant influence as a group. Although both María Teresa Garcés and Áída Abella presented proposed reforms that addressed women's interests in several respects,¹⁹⁹ women Assembly members generally objected to attempts to portray their role as exclusively representing women. Three of the four expressly disassociated themselves from "feminists," though their critiques of feminism ranged from liberal to leftist.²⁰⁰

Outside the Constitutional Assembly, women's groups were slow to meet the formidable challenge of organizing women within the tight time frame set for the process. In the end, their efforts appeared to pay off, but the impressive organization was largely confined to middle and upper-class women. The

197. Sentencia de la Corte Suprema de Justicia Sobre el Decreto 1926 de 1990, *supra* note 83.

198. *Id.*

199. In addition to provisions on equality and compensatory protection, Garcés proposed draft reforms dealing with special protection for the family and for motherhood and proposed that all youths between 16 and 24 years of age be required to perform one year of obligatory social service. Abella presented a draft reform of her own and joined Alfredo Vázquez in submitting another. Topics she covered included equality within the family, special protection for reproduction, maternity leave and protections for pregnant workers, social security protection, family and labor rights. Reflecting a concern about the implications of "advances" in reproductive technology, one of her draft reforms provided that "no process of human fertility that originates in scientific advances shall damage the principles of free respect and personal determination." Chart of Draft Reforms, *supra* note 92.

200. Interviews in Bogotá, Colombia with Áída Abella (June 1, 1991), María Mercedes Carranza (June 5, 1991), Helena Herrán (June 5, 1991), and María Teresa Garcés (June 5, 1991).

Network listed a broad socio-economic range of organizations as members—including organizations of campesina and indigenous women and labor groups—but its leaders and active participants were from a narrower spectrum of the society. Several leaders of the National Association of Indigenous and Campesina Women (ANMUCIC) attended some of the Assembly sessions and lobbied representatives, as did women members of the Black Movement, but, not surprisingly, there was no visible presence of working class or poor women in the constitutional campaign.

The failure to enlist and involve broad segments of Colombian women in the constitutional process was less apparent during the Assembly—when a handful of women lobbyists handing out printed materials could give the appearance of strength—than during the October elections. Despite the hopeful statements about goals for attaining greater representation of women in decision-making posts, the candidate lists and election results made it plain that women were not yet organized to participate equally and effectively in electoral politics.

Given the low level of organization during the constitutional process and the late appearance of the Network and its lobbying activities, the actual effect that women had on the new Constitution itself is difficult to assess. It had been over a century since the previous Constitution was drafted and there was a general consensus that the new Constitution should contain some of the provisions common in contemporary Latin American constitutions, such as guarantees of equality and sections on family rights.²⁰¹ Divorce was more controversial, but it was generally supported by women and men alike.

The subcommittee of Commission Five that proposed (but then rejected) a provision on reproductive choice contained no women members.²⁰² It was one of the members of this subcommittee, Liberal Iván Marulanda, who refused to allow the issue of abortion to be swept under the carpet, insisting that it be put to a vote in the Assembly. Of course, Marulanda did not act in a vacuum; leaders of the Network were in close contact with him on the abortion issue.

More generally, women's active lobbying during the plenary sessions of the Assembly impressed upon representatives the need to take women's concerns into consideration. For example, though women's insistence on gender balance in decision-making posts did not secure a specific quota for women's participation, Article 40's directive to "guarantee the adequate and effective participation of women in the decision-making levels of the Public

201. Jaime Benítez, Liberal representative in the constitutional assembly and member of Subcommittee One of Commission Five (which had responsibility for drafting proposals on the Rights of the Family, the Child, the Youth, the Woman, and the Third Age), emphasized that he had long supported many of the provisions on the rights of women and family based on his experience in government service. Interview with Jaime Benítez, in Bogotá, Colombia (June 1, 1991).

202. See Ponencia-Informe, *supra* note 109, at 2, for a list of the subcommittee members.

Administration"²⁰³ would constitute a significant advance in the feminization of power if implemented and enforced. Whether the enforcement of Article 40 would advance the cause of peace remains to be seen. The preamble to the U.N. Convention on the Elimination of All Forms of Discrimination Against Women links gender balance and peace, affirming that "the cause of peace require(s) the maximum participation of women on equal terms with men in all fields."²⁰⁴ The preamble's premise extends Pope Paul VI's admonition, "If you want peace, work for justice,"²⁰⁵ to gender justice. Unfortunately, there has yet been little opportunity to test the effects of true gender balance in decision-making posts; however, a bill on equal opportunity for women in governmental administrative decision-making posts was one of the first gender-specific measures to be introduced in the new Colombian Congress.²⁰⁶

Colombian women admit that they did not achieve all of their goals in the new Constitution. "[F]rom my feminist perspective," writes María Ladi Londoño, one of the founders of the Network, "I would say that we obtained 50% of what we hoped for. . . . [A]t this historic stage, we did what we could."²⁰⁷

Of course, Colombian women's participation in the constitutional process was important apart from its actual impact on the new Constitution. Despite the women's failure to secure constitutional language addressing all of their concerns, they were able to use the constitutional process to open debate and educate the country about those issues that were ultimately not included in the new charter. In this way, their participation helped set the stage for future reform efforts.

Turning now from a discussion of the way women affected the new Constitution to the question of how, if at all, the new Constitution is likely to affect them, the answers are even less clear. Despite the broad language of some of the Constitution's provisions affecting gender interests, under Colombia's civil law system, Constitutional guarantees generally have no self-executing effect. Their effectiveness, as well as that of most of the Constitution's other provisions, will depend partly on the enactment and enforcement of implementing legislation. The legislative task is enormous, but by April 1992, two gender-specific bills had been introduced in the new Congress.²⁰⁸

203. CONST. POL. COL. art. 40 (1991).

204. *Convention on the Elimination of All Forms of Discrimination Against Women*, preamble, *supra* note 173.

205. Slogan on bumperstickers distributed by the Campaign for Human Development, United States Catholic Conference, Washington, D.C.

206. Telephone conversation with María Isabel Plata, Profamilia Family Legal Clinic, Bogotá, Colombia (Apr. 20, 1992).

207. RONDOÑO, *supra* note 79, at 1.

208. A bill modifying the penal code to specifically address violence against women in their homes and a bill designed to guarantee women equal opportunity to participate in administrative decision-making posts are under consideration. Congressional action on these bills, as well as changes in the divorce laws (delayed during continued negotiations over the *Concordato*), are expected by the end of the year.

Despite any forthcoming implementing legislation, Colombian women recognize that their victory could be a shallow one. They are aware of the particularly wide gulf that exists in Colombian society between the law in books and the law in action. Remember, this is a country where abortion is illegal but tabloids carry pages of advertisements for abortion clinics. "Law and order" is the official mandate of the day, yet violence and institutional impotence are rampant. Nowhere is the "reality gap" wider than that between the formal, legal status of women and their real position in society.

Colombian women are acutely aware of the difference between formal and real equality. They would understand well the lament of Derrick Bell's fictional character Geneva Crenshaw, who, after surveying the history of the civil rights struggle in the United States, concludes: "[W]e have attained all the rights we sought in law and gained none of the resources we need in life. Like the crusaders of old, we sought the holy grail of 'equal opportunity' and, having gained it in court decisions and civil rights statutes, find it transformed . . . into one more device the society can use to perpetuate the racial status quo."²⁰⁹

Aída Abella, of the Patriotic Union, echoed a similar concern when she criticized the Constitutional Assembly for producing merely flowery language, not real change. She warned that the political elites once again were "changing so things can stay the same."²¹⁰ Similarly, in her writing about Colombian women's political participation, Sonia Martínez cautioned, "[E]quality before the law does not necessarily correspond with equality in real life; we must go beyond formal equality. . . ."²¹¹

Recognition of the difference between formal and real equality is reflected in Article 13 of the new Constitution, which supplements a broad definition of formal equality with a provision stating, "[t]he State will promote conditions so that equality will be real and effective and will adopt measures in favor of groups discriminated against or marginalized. The State will especially protect those persons who because of their economic, physical or mental condition find themselves in circumstances of manifest weakness and will punish abuses and mistreatment that are committed against them."²¹² Article 13 is one of the rare provisions that need no implementing legislation because Article 85 deems them to be self-executing. Of course, this too, is the law as it appears in books, not the law in action. The challenge facing Colombians is to close the

Telephone conversation with María Isabel Plata, *supra* note 204.

209. DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987), *construed in* Derrick Bell, *The Elusive Quest for Racial Justice: The Chronicle of the Constitutional Contradiction*, in *THE STATE OF BLACK AMERICA* 1991, 9 (Janet Dewart ed., 1991). *See also* CAROL SMART, *FEMINISM AND THE POWER OF LAW* (1989) (cautioning feminists against falling prey to the "siren call of law").

210. Interview with Aída Abella, *supra* note 198.

211. Sonia Martínez, *Mujer, Vida Doméstica y Participación Política*, in *VOCES INSURGENTES* 225, 231 (María Cristina Laverde Toscano & Luz Helena Sánchez Gómez eds., 1986).

212. CONST. POL. COL. art. 13 (1991).

gap between these two conceptions of law. This will take a broad-based, well-organized and persistent women's movement with coordinated strategies for education and enforcement.

A related problem stems from the fact that many of the Constitution's "guarantees" are what Keith Rosenn has called "aspirational or utopian provisions that are either impossible or extremely difficult to enforce."²¹³ Rosenn argues that many of the social rights contained in modern constitutions (e.g., divorce, family rights, health protection, and education) "seem far more appropriate as part of a political platform or a sermon than in a constitution," and warns that "[i]nclusion of such obviously unenforceable, affirmative constitutional duties encourages citizens to regard the Constitution as an aspirational document rather than a serious limitation on governmental powers."²¹⁴ But constitutions need not be seen as either/or in this sense, and affirmative rights need not be dismissed as merely "aspirational."²¹⁵ Moreover, to the extent that some affirmative rights are aspirational, this should not be seen as an indictment. Constitutions are an important part of the stories a society tells about what it is and what it wants to become.²¹⁶ Latin American feminists are particularly aware that law not only controls, but educates as well.²¹⁷ Constitutionally enshrining formal guarantees will not change the realities of women's lives, but aspirational language can provide a catalyst for organizing and empowering women.

One of the lessons Colombian women have taken away from their participation in the constitutional process and the October elections is the necessity for further education and organization of women from all sectors of society (as well as the education of their husbands, fathers, sons, and male friends). Law can be a tool for social change, but the change itself must take

213. Keith S. Rosenn, *The Success of Constitutionalism in the United States and Its Failure in Latin America: An Explanation*, 22 U. MIAMI INTER-AM. L. REV. 1, 26 (1990).

214. *Id.*

215. Indeed, in the United States many state constitutions go beyond limiting government powers to providing affirmative rights in certain areas. These rights increasingly are proving to have more than aspirational significance. For example, all state constitutions now recognize some affirmative right to a public education and numerous state courts have relied on these provisions to invalidate inequitable or inadequate school financing systems. See *Alabama Coalition for Equity, Inc. v. Hunt & Harper v. Hunt*, C.A. Nos. CV-90-883-R & CV-91-0117-R, Circuit Court for Montgomery County, Alabama, order of August 13, 1991 (holding unconstitutional Amendment 111 to the Alabama Constitution, passed in 1956 to avoid compliance with *Brown v. Board of Education*, 347 U.S. 483 (1954), and declaring in effect Section 256 of the 1901 Constitution of Alabama which affirmatively requires the legislature to "establish, organize, and maintain a liberal system of public schools throughout the state.") The author is one of the cooperating attorneys for the Civil Liberties Union of Alabama, which, along with the American Civil Liberties Union, represents the school children in *Harper v. Hunt* in this ongoing litigation to establish their right to an adequate and equitable public education.

216. Morgan, *supra* note ††, at 3-4, 103-04.

217. "Legislation is barely 10% coercive Ninety percent is educative." Marta Trejos, *Igualdad Real de la Mujer: Consideraciones Metodológicas*, DIVERGENCIAS, Sept. 1988, at 23, 25. Similarly, Nicaraguan feminist and lawyer, Milú Vargas, emphasizes that "laws are instruments for ideological transformation in the long struggle to change the habits, customs, and values that discriminate against women." Milú Vargas, *Las Leyes, Instrumento de Lucha para la Emancipación de la Mujer*, DOCUMENTOS SOBRE LA MUJER, Jan.-Mar. 1989, at 3, 4.

place in the concrete realities of people's lives. Charting its direction following the adoption of the new Constitution, the National Women's Network stressed the importance of education and enforcement strategies. Among the Network's stated objectives are:

- Developing strategies and coordinating actions to obtain implementing regulation of the women's rights contained in the new Constitution. Obtaining those rights that we did not obtain and putting into practice those that we have already obtained but are inoperative.
- Undertaking an overview of the present situation of women in the country and coordinating actions with respect to this.
- Developing a grand educational campaign specially oriented to the female population with respect to women's rights and the new Constitution.²¹⁸

The Network's success will hinge on its ability to actively involve a broad spectrum of women and women's organizations in the pursuit of these objectives.

A third question is the broader one of what the recent Colombian experience adds to the ongoing debate about the relationships between women's movements, law, and the state. Mindful of the limits of law as a tool for social change, Latin American women's movements have nevertheless placed considerable emphasis on legal reform, and have often achieved their most visible successes in this arena.²¹⁹ Although legal reform is only one aspect

218. RED NACIONAL DE MUJERES, CIRCULAR NO. 7 (Aug. 1991).

219. One difference between Latin American and North American women's movements has been in the role of courts in advancing women's rights. Until recently at least, North American women have relied heavily on the courts to advance their gender interests. In Latin America, women's organizations have focused on legislative reform and popular education. Although legal services organizations have engaged in client representation, many of the formal guarantees that Latin American women have secured lack sanctions or enforcement mechanisms. Also, differing perceptions of the role of courts and judges in civil law systems and questions as to their institutional legitimacy and stability contribute to the less significant role of the courts in Latin America. Some feminist lawyers in Latin America are focusing special attention on developing judicial strategies for advancing their agendas. For example, in May 1991, the Latin American Committee for the Defense of Women's Rights (CLADEM) filed a *recurso de amparo* (a Latin American procedure for challenging the legality of governmental actions) contending that the Costa Rican Social Security Administration's policy of requiring spousal consent for sterilization was contrary to the Costa Rican Constitution's guarantee of equality, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, and Costa Rica's recent Law for the Promotion of Social Equality of Women. *Recurso de Amparo, Corte Suprema de Justicia Sala Constitucional*, May 7, 1991 (copy obtained in interview with attorney Rose Mary Madden Arias, San Jose, Costa Rica, May 24, 1991, on file with author). As of mid-April 1992, the Constitutional Chamber of the Costa Rican Supreme Court had not ruled on this case. Women's, medical, and jurists' organizations, the Attorney General and the Women's Defender supported changing the regulation. Telephone conversation with Adriana Urbina of the Centro Para la Administración de Justicia, San Jose, Costa Rica (Apr. 14, 1992). CLADEM has adopted a strategy of "using existing judicial instruments in defense of [women's] rights and developing the concept of alternative uses of law." *Recurso de amparo*. A growing movement of Latin American organizations, referred to as "innovative," "alternative," or "participatory" legal services, has emerged in the past two decades. Fernando Rojas & Jeff Clark, *Editors' Introduction*, MÁS ALLÁ DEL DERECHO/BEYOND LAW, Feb. 1991 at 7. ("Their legal 'practice' aims to mobilize and empower marginalized community groups for political change Thus, individual casework or court challenges often take a secondary role to social education, legal training, community development, and other educational and political tools to

of an integrated strategy for social change, it is useful to consider how the results obtained in the Colombian constitutional process compare with those obtained by women in other Latin American constitutional processes and what accounts for the similarities and differences. Examining women's attempts to advance gender issues in the new Constitutions of Brazil (1988)²²⁰ and Nicaragua (1987)²²¹ helps to place the Colombian experience in perspective.

In her recent book on Brazilian women's movements, Sonia Alvarez sums up the results of the Brazilian experience:

[T]he issues included in Brazil's new Charter are those that promote *gender role equity*, protect women's maternal role, and do not seriously disrupt existing relations of production and reproduction. Constitutional provisions that promoted *gender role change* [footnote omitted] or threatened to alter gender power relations or disrupt capital accumulations were excluded from the final Draft Charter, due largely to concerted, well-financed opposition from powerful capitalist, church, and traditional lobbies.²²²

Alvarez notes that "formal 'equality' before the law was widely acceptable to all but the most reactionary of the Constituents,"²²³ but proposals for decriminalizing abortion, extending maternity leave, and recognizing paternity leave were vigorously opposed. In the end, Brazilian women mobilized to gain acceptance of clauses extending maternity leave from ninety to 120 days and establishing the right to an unspecified period of paternity leave.²²⁴ With respect to abortion, however, Brazilian women were forced to accept a stalemate, withdrawing their decriminalization proposal in return for an agreement to drop an amendment that would have criminalized abortion even in cases of rape, incest, and threat to a woman's life. Overall, eighty percent

encourage self-developed strategies for change." See also, *Introductory Note*, MÁS ALLÁ DEL DERECHO/BEYOND LAW, Nov. 1991, at 7. For a discussion of women's legal services as "innovative," see Russell, *supra* note 15, at 115-118.

220. For general discussion of the new Brazilian Constitution, see Keith S. Rosenn, *Brazil's New Constitution: An Exercise in Transient Constitutionalism for a Transitional Society*, 38 AM. J. COMP. L. 773 (1990); see also Jacob Dolinger, *The Influence of American Constitutional Law on the Brazilian Legal System*, 38 AM. J. COMP. L. 803 (1990). For a brief comment by one of the founding mothers of the Brazilian Constitution written before its final approval, see Verucci, *Postscript: The New Brazilian Constitution*, in D. PATAI, *BRAZILIAN WOMEN SPEAK* 385 (1988).

221. For general discussion of the new Nicaraguan Constitution, see Jules Lobel, *The Meaning of Democracy: Representative and Participatory Democracy in the New Nicaraguan Constitution*, 49 U. PITT. L. REV. 823 (1988); Andrew Reding, *Nicaragua's New Constitution*, 4 WORLD POL. J. 257 (1987), both reprinted in *THE NICARAGUAN CONSTITUTION OF 1987: ENGLISH TRANSLATION AND COMMENTARY* (Kenneth J. Mijeski ed., 1991).

222. ALVAREZ, *supra* note 9, at 252 (emphasis in original) (citing JOYCE GELB & MARIAN LIEF PALLEY, *WOMEN AND PUBLIC POLICIES* (1982)).

223. *Id.*

224. Early reports of the effect of this change indicated that some employers were requiring proof of sterilization before hiring young women or were refusing to hire them at all. Marlise Simons, *Brazil: Women Find Fertility May Cost Jobs*, N.Y. TIMES, Dec. 7, 1988, at 11, col. 1.

of the 102 proposals presented and lobbied for by the Brazilian National Council of Women's Rights (the "*Conselho*", an advisory body created in the Ministry of Justice in 1985), were incorporated into the Constitution, according to Jacqueline Pitanguy, the *Conselho*'s first president.²²⁵

Although the forces differed in Nicaragua,²²⁶ women there also ended up with a Constitution that was silent on abortion after conservatives failed in their efforts to insert a clause protecting life from the moment of conception. Carlos Cuadra of the Marxist-Leninist Popular Action Movement also failed to convince the National Assembly's Sandinista majority to guarantee abortion rights. Sandinista leaders acceded to Cuadra's proposal to recognize "at will" divorce but drew heavy criticism for this from the traditional hierarchy of the Catholic Church. Like the majority of Colombia's Constituent Assembly, the Sandinista leaders were unwilling to confront the Church on abortion as well. On the other hand, as in Brazil and Colombia, formal equality clauses were readily accepted in Nicaragua.

Despite the similarities in women's successes and failures in these three recent Latin American constitutions, there were significant differences in the involvement of women in the constitutional processes. These differences illustrate the importance of Susan Eckstein's emphasis on "contextual factors shaping responses to grievances."²²⁷ In Nicaragua, for example, a more developed women's movement existed than in Colombia, and Nicaraguan women formed approximately 15% of the National Assembly. Yet, these women's efforts were limited by their ties to party-linked mass organizations that were pressured to put certain gender interests aside until "later." In Brazil, growing women's movements have achieved limited success by adopting a two-pronged strategy of exerting gender-conscious political pressure both inside and outside the State.²²⁸ Alvarez explains how Brazilian women pursued this dual strategy:

Some seized the political space made available to women by parties and the post-1983 state governments and promoted innovative changes from within. Others continued organizing at the grassroots level, fostering a critical, organizationally and ideologically autonomous feminist politics, and indirectly legitimating the actions of women active in male-dominant policy arenas. In spite of continuing conflicts among feminists "in" and "out" of "power," this two-pronged strategy proved surprisingly effective.²²⁹

Despite Brazilian women's success in the constitutional process, in 1989 turns

225. JANA EVERETT, *THE GLOBAL EMPOWERMENT OF WOMEN* 4 (1991).

226. See Morgan, *supra* note ††, for a discussion of women and the 1987 Nicaraguan Constitution.

227. POWER AND POPULAR PROTEST, *supra* note 9, at 33.

228. ALVAREZ, *supra* note 9, at 273.

229. *Id.*

in Brazilian political tides resulted in a conservative attack on the *Conselho* that resulted in the resignation of its president, Pitanguy. Resigning—but not resigned—Pitanguy concluded: “It was a political game, and we lost. Yet, the dynamics of power and the conjunction of political forces were changed by the mobilization of women. We are always restarting things.”²³⁰

Colombian women have not yet been able to effectively employ Brazilian women’s “inside-outside” strategy. The few Colombian women who are “in” generally have not identified themselves with gender politics. And though Colombia may be thought of as one of the more “developed” Latin American countries, its women’s movements are comparatively under-developed. Several factors may help explain this. First, as in other parts of Latin America, the male-dominated political elites have frequently co-opted women’s less radical demands before organized pressure could build for their redress. Second, though Colombia has seen increasing numbers of women’s groups in recent years, these groups are still relatively small and the ties among them are weak. Only a “women’s movement” forged from a combination of women’s human rights groups²³¹, feminist groups, rural and urban women’s groups, and groups representing indigenous and black women—groups with different origins and goals—will be able to mobilize and respond to women of different class, ethnic, and religious backgrounds. As we have seen, the Colombian feminist groups that led the pressure campaign during the constitutional process had only limited success in mobilizing the female population behind their gender-interest agenda.²³² The networking that took place during the constitutional process was a starting point, but Colombian feminist groups must continue to strengthen their ties with women’s organizations representing the urban poor, rural, indigenous, black, and other minority women. Despite the attempt by the Women and the Constituent Assembly National Network to incorporate a broad range of women’s organizations and issues, its constitutional agenda did not focus on the specific demands of women from different segments of Colombian society. The new Constitution did contain what Rosenn would call “aspirational” provisions concerning health, education, employment, housing, social security, peace and environmental rights,²³³ as well as provisions acknowledging certain territorial, cultural, and linguistic rights of indigenous peoples. But the Network primarily targeted the gender-specific areas of equality and nondiscrimination, participation in decision-

230. EVERETT, *supra* note 223, at 4.

231. Of course, women’s rights *are* human rights, a point stressed by one of the slogans Colombian feminists used on stickers and posters during the constitutional campaign: “*La Libre Maternidad. Un Derecho Muy Humano*,” (“Free Motherhood: A Very Human Right”).

232. See *supra* text at 406.

233. For example, Article 64 deals with rural workers and provides:

It is the duty of the State to promote the progressive access of agricultural workers to real property in individual or collective form, and to services of education, health, housing, social security, recreation, credit, communications, the marketing of products, technical and managerial assistance for the purpose of improving the incomes and quality of life of the campesinos.

CONST. POL. COL. art. 64.

making, and free motherhood.

Another important factor affecting the strength of the Colombian women's movement is the geography of the country.²³⁴ Mountainous terrain separates dispersed and sometimes isolated population centers, making travel difficult and communication slow. Sectional violence adds to these difficulties.

Geographic isolation is exacerbated by the longstanding failure of the Colombian media to take gender issues seriously.²³⁵ One hesitates to criticize the Colombian media, because it operates under extreme conditions, and has been a frequent target for terrorists of different stripes. Also, competition for headlines is admittedly stiff in Colombia's state of perpetual crisis. But the fact remains that despite their efforts to court the media, Colombian women have garnered much less media attention than their sisters in other parts of Latin America.²³⁶ As Jenny Pearce has written, "[p]olitics in Colombia is very much family business," and "this domination of society by the political families is reflected in the ownership of the press, radio and television."²³⁷ She notes that the two main daily newspapers (*El Tiempo* and *El Espectador*) belong to factions of the Liberal Party and at least a half-dozen smaller papers are owned by former presidents, presidential candidates, or their families; though television is a state monopoly, she identifies all major TV news programs as controlled by children of ex-presidents.²³⁸

Despite the difficulties, the attempt by Colombian women's groups to influence the drafting of the new Constitution provides an example of women pursuing what Sonia Alvarez refers to as "in the meantime" strategies.²³⁹ Their experience supports Alvarez' argument that "*the State is not monolithically masculine* or antifeminist [Rather], under different political regimes and at distinct historical conjunctures, the State is potentially a mechanism either for social change or social control in women's lives."²⁴⁰

234. For discussion of the geographic fragmentation of Colombian social movements, see, Héctor León Moncayo, *Decentralization as a Formula for Democratization: The Case of Colombia*, MÁS ALLÁ DEL DERECHO/BEYOND LAW, July 1991, at 42-45. This fragmentation has been particularly evident in Colombia's guerrilla movement. From the beginnings of the guerrilla movement in the early 60's, four major groups (EPL, M-19, FARC, and ELN) and numerous minor ones jockeyed for control in different regions of the country.

235. For example, when María Eugenia Rojas ran for president in 1974 on the ticket of the National Popular Alliance, the Liberal newspaper *El Espectador* waited until election day to run a feature article on her. Headlined, *María Eugenia Lost Weight to Gain Votes*, the story carried a picture of her making a salad. Harkness & Pinzón de Lewin, *supra* note 38, at 457. María Eugenia Rojas, the daughter of Colombia's only military dictator, Gustavo Rojas Pinilla, was from Colombia's elite, yet involved herself in issues of social justice. Known as "the little mother of the poor," she campaigned for her father in his successful 1966 populist congressional campaign as well as in the 1970 presidential election which he would have won but for electoral fraud. K. LYNN STONER, *LATINAS OF THE AMERICAS* 253 (1989). (The 1970 electoral fraud gave name to the M-19 guerrilla movement).

236. By comparison, the media in Nicaragua and Costa Rica have been much more receptive to the coverage of women's issues. See generally Morgan, *supra* note ††; Saint-Germain & Morgan, *supra* note 9.

237. PEARCE, *supra* note 61, at 185-86.

238. *Id.*

239. ALVAREZ, *supra* note 9, at 273.

240. *Id.* at 272-273.

According to Alvarez, feminists need to "unpack" the State and "find points of access, points where concerted gender-conscious political pressure might make a difference."²⁴¹ Colombian women saw the constitutional process as a point of access and achieved some measure of success.

Colombian women's experience as described here also provides support for Eschel Rhodie's less optimistic theses that men's attitudes are more important than constitutions and laws in determining women's advances, and that cultural, religious, and social traditions pose greater impediments to women's equality than do laws.²⁴² The comparative difficulty in achieving gender role change as opposed to gender role equity is consistent with these premises.

Colombian women are aware that the law cannot save them. But by recognizing the importance of law as a tool and a teacher, and being cognizant of their society's highly formal and legalistic facade, these women have demonstrated their conviction that integrated strategies for eliminating gender discrimination must include components directed at influencing law and the state. Their challenge now is to move beyond legal reform to actively pursue popular education, legal advocacy and enforcement strategies.

CONCLUSION

Colombians: Arms have given you independence, laws will give you freedom.

—Santander²⁴³

It is appropriate that an article about women and the new Colombian Constitution should begin and end with a discussion of violence and law. Colombia's success in making real the guarantees of its new Constitution, including those affecting women's rights, will depend on whether it is able to bring an end to the violence that has paralyzed the country's public institutions. The most important contribution of Colombian feminists to the country's contemporary political affairs may be their emphasis on understanding the relationships between the many forms of violence within the society and their

241. *Id.* Acting pragmatically and aware of contradictions, they well understood Costa Rican feminist lawyer Alda Facio's description of the dilemma facing Latin American feminists:

There are many centuries of thinking of the man as the measure of everything, many centuries of thinking of the woman as different It is urgent to conceptualize a model of the human being that includes us. . . . Unfortunately, the struggle against the horror of sex discrimination doesn't leave time for reflection. Because of this, though it seems contradictory, we have to support measures that tend to better our situation though we know beforehand that they will not carry us to sexual equality. At least they will give us a chance to catch our breath and time to conceive this new paradigm of the human.

Alda Facio, *¿Iguales a Quién?*, MUJER/FEMPRESS, Oct. 1988 at 3.

242. RHODIE, *supra* note 10, at 9-10.

243. This quote by the Colombian vice-president of Bolívar's Gran Colombia was inscribed over the door to the Palace of Justice in Bogotá before its destruction in November 1985. I am thankful to the cover photo on PEARCE, *supra* note 61, for this detail.

persistent call for an end to this violence. In this vein, the newly formed Women for Democracy called on all mothers, wives, daughters, and sisters to dedicate one day a month to think with their families about the necessity for peace.²⁴⁴ Indeed, electoral issues and the Constitution itself will matter little if Colombians fail in the pursuit of peace.

Colombians are living in a time of cholera. Their challenge is to cure the sickness—the violence that is destroying the country—yet preserve the passion needed to face the demands of fulfilling the promise of their new Constitution.

In his recent article on the failure of constitutionalism in Latin America, Keith Rosenn rightly cautions that “Constitutions are not panaceas that can cure unresolved fundamental social, economic, and political problems.”²⁴⁵ On the other hand, the university students who set out in 1990 to “save Colombia” were not simply naive. Notions of constitutionalism change. If one believes that constitutionalism means more than the traditional notions of separation of powers and individual rights, that it also means integrating diverse social groups and achieving “constitutional consensus” among them, the students may have been on to something.

Colombia’s recent constitutional process brought together more diverse groups within Colombian society than had ever before sat around the table of power. The process afforded an opening for marginalized groups to exert pressure both inside and outside the state. Unfortunately, the Assembly was still not fully representative of, or responsive to, Colombian society. Women, in particular, were under-represented at the table and under-organized outside the halls of the Assembly. Consequently, their demands were responded to only partially and then only when they related to gender role equity as opposed to gender role change. Moreover, early elections under the new Constitution suggest that meaningful change may be slow in coming. As one columnist commenting on the recent adoption of the Constitution put it, the new Colombia is “still in diapers.”²⁴⁶

Nevertheless, the constitutional process was an important beginning and offers valuable lessons about the relationships between the state, law, and gender-based political struggles. Advancing gender role change and closing the gaps between law in books and law in action and between formal and real equality will require more than constitutionally enshrined “paper” guarantees—integrated strategies of popular organization and continued pressure for legal reform, accompanied by popular education, legal advocacy, and enforcement, are imperative.

244. *Surge movimiento por los derechos políticos de la mujer*, *supra* note 180.

245. Rosenn, *supra* note 213, at 30.

246. Plinio Apuleyo Mendoza, *Todavía en Pañales*, EL TIEMPO, Aug. 26, 1991, at 5A.

