



## The Loving Embrace: Women's Legal Mobilization in favor of a Feminist Constitution in Colombia in 1991

Alma Beltrán y Puga

To cite this article: Alma Beltrán y Puga (2022): The Loving Embrace: Women's Legal Mobilization in favor of a Feminist Constitution in Colombia in 1991, Women's History Review, DOI: [10.1080/09612025.2022.2121026](https://doi.org/10.1080/09612025.2022.2121026)

To link to this article: <https://doi.org/10.1080/09612025.2022.2121026>



Published online: 09 Oct 2022.



Submit your article to this journal [↗](#)



View related articles [↗](#)



View Crossmark data [↗](#)



# The Loving Embrace: Women's Legal Mobilization in favor of a Feminist Constitution in Colombia in 1991

Alma Beltrán y Puga 

## ABSTRACT

What do women contribute when constitutions are written? How can they make their voices and proposals heard? Can feminism shape constitutional law? These are the main questions in the narrative of the feminist movement's participation in the shaping of the 1991 Colombian Constitution. The objective of the essay is to recover the role of women in lawmaking while applying a gender lens to historical methodologies, by using documental evidence from the national archives and newspapers to uncover their actions and voices, as well as conducting interviews with feminist leaders in Colombia active during the 1990s. These findings show the repertoires of action of the women's movement taking advantage of a crucial political opportunity to write constitutional law, as well as the obstacles and trade-offs they faced to advance women's human rights in Colombia's new charter. The essay argues that, despite the strategic feminist mobilization to include women's reproductive rights in the Constitution, the political alliances outside (and inside) the National Constitutional Assembly between the Liberal Party and the Catholic Church blocked some of their demands, especially with regard to voluntary motherhood. The conclusions identify the feminist heritage of the new constitutional order that emerged as a result.

## KEYWORDS

Women's rights mobilization;  
feminist constitutions;  
Colombia; feminist  
historiography; divorce;  
abortion

## Introduction

As Catherine Mackinnon notes, 'women have not, in general, written or agreed to Constitutions.'<sup>1</sup> Women writing constitutional texts are indeed a rare historical phenomenon. Usually, constitutions are issued by male-dominated assemblies and their content strongly shaped by masculine views. Colombia's current Constitution is not the exception to this rule. Only four women, out of the seventy-four elected representatives to the National Constitutional Assembly (NCA from here), directly participated in writing the 1991 Constitution. None of them belonged to the feminist movement. However, the Constitution finally embedded a series of women's human rights. This article argues the feminist movement played an important role in advancing those rights although it faced considerable obstacles to achieve political representation within the NCA and not all of its demands were included in the final text. While

family rights, equality and non-discrimination, freedom of religion and conscience were recognized as fundamental rights, voluntary motherhood was definitely excluded.<sup>2</sup>

This essay tells the story of the feminist movement in its quest to include women's human rights in the current Constitution adopted in 1991. I argue that their demand of reproductive freedom was not introduced due to the political alliances between the liberals and the Catholic Church outside (and inside) the NCA. In contrast with other women's rights proposed by the feminist movement such as divorce, domestic work, equality and non-discrimination on the grounds of sex, and religious freedom, their demand of 'voluntary motherhood' was too controversial for the elected representatives and the liberal government to reach a consensus within the NCA and with the hierarchy of the Catholic Church. Nevertheless, the feminist mobilization for the recognition of voluntary motherhood promoted constitutional debates inside the NCA that would not have taken place otherwise.

Therefore, the objective of the essay is to reclaim the role of women in making law (the supreme law of a country) while applying a gender lens to historical methodologies. In other words, my aim is to contribute to a *feminist historiography of law*. Following Joan Scott's enterprise of looking at history through a gender lens, I endeavor to reveal a new history, one that pursues more meaningful explanations, recognizes the importance of new characters involved in forging normative fields and gives visibility to the collective actions of women, which are usually forgotten in the history of law.<sup>3</sup> Using gender as a category for historical analysis is also a way for contemporary feminists 'to show the inadequacy of existing bodies of theory to explain persistent inequalities between men and women.'<sup>4</sup> Gender is understood here as 'a constitutive element of social relations based on perceived differences between the sexes' and 'a primary way of signifying relationships of power.'<sup>5</sup> In other words, gender is a way of decoding social relations and understanding complex connections between law and social change. Applying a gender analysis to history opens new questions about normative events through time as well as the distribution of power in the creation of law itself.

Doing feminist historiography also means facing methodological challenges to conduct comprehensive research to understand women's past deeds and their relationship to legal change. For example, how can we trace feminist movements through time? Where shall we look for evidence of the participation of women's movements in the creation of law? How can we assess the impact of their mobilization in the resulting legal reforms? Certainly, lawyers are not usually trained to do so. Thus, by digging into the constitutional debates of the NCA on record in the General Archives of the Nation, the main national newspapers between 1988–1991, as well as conducting interviews with twenty-two feminist leaders and relevant political actors, active in Colombia during the 1990s, I was able to uncover the feminist movement's actions and voices in constitutional law-making. These three types of sources are triangulated against each other to corroborate conclusions on the participation of the movement in the creation of the 1991 Constitution.

The findings show the repertoires of action of the feminist movement taking advantage of a crucial political opportunity to write constitutional law, as well as the obstacles and trade-offs it faced in advancing women's human rights in the new charter. The essay draws on social movements literature to analyze how the feminist movement in Colombia organized to participate in drafting the Constitution and forged new alliances to

achieve its aims. In line with existing literature that agrees collective actions or sustained efforts over time are the basis of cohesive social movements,<sup>6</sup> this article understands the feminist movement as a web of sustained collective efforts over time to improve the situation of women in the public and private spheres.<sup>7</sup> Social movements usually claim to speak on behalf of a constituency lacking formal representation in politics, to make public demands and pursue social transformation.<sup>8</sup> Thus, ordinary people engage in *contentious politics* challenging authorities, elites, and opponents to make their demands heard.<sup>9</sup>

Historically, changes in political opportunities and constraints have moved social movements to employ a repertoire of collective action strategically.<sup>10</sup> Relying on common purposes and solidarity, this repertoire encompasses a set of performances and available strategies used by social movements to engage in contentious politics, such as protests, media campaigns and standings. The dynamics of contentious politics also trigger the mobilization of human and economic resources, networks and alliances among organizations and the framing of social causes in the public discourse. Existing cultural analysis of social movements has also focused on how collective identity is built, as well as the role of emotions and narratives in social mobilization.<sup>11</sup>

The literature has basically studied how social movements originate and interact with their opponents, how they persist or decline over time, formulate strategies, and organize to achieve social transformation. Within this literature, the role of law in social mobilization has been analyzed both as a normative field where social movements act and as 'a strategic resource for the conduct of social change.'<sup>12</sup> The study of legal mobilization is broadly understood as how 'law is mobilized when a desire or want is translated into an assertion of right or lawful claim.'<sup>13</sup> In other words, the emphasis lies on how social movements use law to promote entitlements or uphold legal claims. Nevertheless, it is worth keeping in mind that legal mobilization is a contested notion in this literature and some authors restrict their analysis to the use of litigation by social movements before courts.<sup>14</sup> Considering its results, the feminist mobilization in Colombia during the 1990s, with its aim to intervene in the writing of the Constitution, can fit into a broader definition of legal mobilization. As proposed recently by Lehoucq and Taylor, legal mobilization could be defined as: 'the use of law in an explicit, self-conscious way through the invocation of a formal institutional mechanism.'<sup>15</sup>

However, the present research adopts a view of the law as an object of historical study, a normative field in which social movements work, which is closer to Bourdieu's notion of the law, that is a symbolic field of meaning, with discursive plasticity that can be manipulated by the social practices of the actors forging the field.<sup>16</sup> Thus, this article analyzes how the feminist movement and other relevant actors intervened in the field of constitutional law during the NCA to create Colombia's foundational legal text in 1991. It describes the collective repertoire of action and mobilizing structures of the feminist movement engaging in a legal forum, the NCA, with a clear aim: to include women's rights in the Constitution as fundamental rights. The questions surrounding this mobilization are: what were the strategies used by the feminist movement to make their voices heard in crafting the 1991 Constitution? What networks and alliances were forged to achieve that end? What were their constitutional proposals and how were they integrated? What type of constitution did they envision? What are the contributions of

women when a constitution is written? How was the discourse of women's human rights used by feminists?

### ***The legacy of the 1886 Constitution: Church and state relations regarding abortion and divorce in Colombia***

Colombia's Constitution of 1886 established Catholicism as the official religion of the nation and considered God a source of legal authority. Together with the Concordat, an international treaty subscribed between the Colombian State and the Vatican in 1887, constitutional and canonical law favored the Catholic Church to guide public education and intervene in family matters. As Arias notes, 'the State recognized, for over a century, the moral and social utility of Catholicism.'<sup>17</sup> Thus, religious marriages were the social norm in the country and also had civil effects. Canon law regulated marriages and disputes between spouses regarding alimony, child custody and marital property.

The State could intervene in these family issues when religious marriages were inscribed in the civil registry. After the Second Vatican Council took place, urging for modernization of the Catholic Church around the world, some changes occurred in Church and State relations in Colombia during the 1970s. The Concordat was softened in 1974 during the last days of President Pastrana, a conservative ally of the Vatican. Although the Catholic Church preserved its privileges over education and family matters, the Concha Law of 1924 was abolished. This law obliged Catholic persons to renounce to their faith if they wanted to celebrate a civil marriage. Considering the claims to modernize the Church from the Vatican, the State appeared in favor of religious liberty by ending barriers for civil unions to take place.

A series of family law reforms followed the modification of the Concordat. Gender equality between spouses was advanced by Decree 2820, issued by liberal President Alfonso López Michelsen in 1974.<sup>18</sup> This decree balanced gender relations within the family by eliminating the husband's power over the personal sphere of women and children. Afterwards, civil divorce was possible when President López Michelsen in 1976, with the support of the feminist movement, passed a law through Congress considering it would only apply for civil marriages, preserving the religious bond for Catholic unions.<sup>19</sup> The legal changes proposed by the liberal government of President López Michelsen were aligned with the feminist movement claims for gender equality in the family, that resonated with the international discourse promoting women's rights by the United Nations.<sup>20</sup>

However, abortion remained completely criminalized and attempts to liberalize its practice in Congress failed. In 1975, the first UN conference on women was held in Mexico City where the 'Decade of Women' (1975–1985) was proclaimed. That year liberal Senator Ivan López presented the first bill to decriminalize abortion for health reasons until the twelve weeks of pregnancy.<sup>21</sup> In Medellín, the feminist movement held its first national meeting in 1978 to define Colombia's role in the International Campaign for Abortion Rights.<sup>22</sup> The feminist movement concluded the need of sexual education, as well as the recognition of the right to contraception and to choose the number of children were urgent.<sup>23</sup> In 1979, liberal representative Consuelo Lleras proposed to decriminalize abortion, also during the first twelve weeks of pregnancy, for three reasons: sexual violence, a risk to the life or health of the woman and fetal

malformations.<sup>24</sup> It considered abortion a social problem affecting mostly poor women and caused by the use of illegal services that endanger women's lives.<sup>25</sup> This second bill was supported by the feminist movement.<sup>26</sup>

The same year, transnational feminist networks promoted the celebration of the Convention to Eliminate all Forms of Discrimination Against Women (CEDAW). The Colombian government signed the treaty in 1980 and it became part of Colombia's legal framework in 1981.<sup>27</sup> The Colombian feminist movement considered CEDAW 'an important international instrument for the equal participation of women in development, in a social context where discrimination due to sex is prevalent.'<sup>28</sup> Although there was a new criminal code published in 1980, abortion remained a crime. Two more bills presented by liberal senators during this decade intended to decriminalize abortion in some circumstances, as previous bills had proposed.<sup>29</sup>

Regarding decisions on women's fundamental rights and gender policy issues, Colombia followed the pattern of South American countries during the 1990s, where the turn to democracy, changes in Church and State relations, the mobilization of liberal reformers, feminist movements and international norms 'shaped the state policy on abortion, divorce and gender equality in the family.'<sup>30</sup> Considering all these elements, this research shows that the aim to promote democracy and pacify the country by the liberal government of President César Gaviria, the changes in Church and State relations (due to the rise of Christians as a significant minority pushing for religious freedom), and the mobilization of the feminist movement adopting a human rights discourse were significant factors for family rights, including divorce, to be established as civil rights in the new Constitution of 1991.

Divorce and abortion contested traditional family values and Catholic ideas regarding fixed gender roles and the sacredness of life. However, divorce has been an 'easier' issue to reform in family law than abortion in criminal law in South America.<sup>31</sup> Feminist movements have played a significant role in promoting both of them as fundamental rights of women. The feminist movement in Colombia has been a pioneer in trying to include voluntary motherhood while the Constitution of 1991 was crafted, arguing in favor of the separation of Church and State and religious pluralism.

### ***The idea of a new constitution***

By the 1990s, the idea of writing a constitution to restore the state from its political crisis was not new in Colombia.<sup>32</sup> A seemingly endless number of violent incidents associated with the increasing rhythm of the internal armed conflict and the narcotics frenzy throughout the 1980s propelled President Virgilio Barco (1986–1990) to open a dialogue in 1988 to reform the 1886 Constitution. To give just two examples of the most traumatic incidents in this string of atrocities: in November 1985, the M-19 guerrilla seized the Palace of Justice, where several Supreme Court justices were killed in a series of confusing events that included extreme use of force by the security forces, and in 1989 Luis Carlos Galán, the presidential candidate of the 'New Liberalism' was assassinated at a political rally.<sup>33</sup> President Barco proposed constitutional reforms to build a *participative democracy* with 'new scenarios of popular participation, different to electoral politics,'<sup>34</sup> such as the referendum and popular initiatives to legislate. He also considered the constitutional

expansion of human rights, implementing new judicial mechanisms for their protection, and a reform to the justice system necessary.<sup>35</sup>

During these constitutional dialogs in 1988, the 'Group of the Seventeen', a Bogota-based feminist collective, presented a proposal that envisioned a Feminist Constitution. Speaking on behalf of the group before Congress, the lawyer Ligia Galvis remembers:

The parliament was full of women. The military, which had spoken before us, were terrified to see all those women entering Congress. I was the spokesperson for the Group of the Seventeen. I had to follow a script because we had limited time. We were allowed only 15 minutes to speak. I told the President [of Congress]: 'Dear President, with all due respect, 15 minutes are totally insufficient for the centuries of silence women have been subjected to. I will not comply with the time allocated.'<sup>36</sup>

The document presented to Congress, signed by 33 organizations, included a feminist preamble of the Constitution that began with a feminine form for 'We the people of Colombia', proclaimed the faith in fundamental rights, the principles of dignity and equality among men and women, in order to ensure justice, liberty and peace within a democratic regime consolidated by the rule-of-law.<sup>37</sup> The feminist proposals included reforms to Title III of the 1886 Constitution to recognize the principles of equality among men and women, non-discrimination due to race, sex, religious beliefs, ethnicity, place of birth, and family origins. Other articles included reproductive freedom (voluntary motherhood for women), protection of the rights of children and diverse family arrangements. The chapter on social and economic rights comprised the rights to work, adequate living standards, social security, health, education and the 'freedom to teach' according to democratic principles and fundamental liberties. In addition to freedom of conscience, the separation of church and state was justified to guarantee religious liberty and diversity.<sup>38</sup>

These were not minor requests. The 1886 Constitution declared in its Preamble that God was the authoritative source of power. Article 38 spelled out the alliance crafted by the Conservative government of President Rafael Núñez and the Catholic Church at the end of the nineteenth century, declaring Catholicism as the religion of the nation.<sup>39</sup> Articles 53–58 gave the Catholic Church privileges over public education and evangelical missions in indigenous territories. These faculties were reaffirmed by the Concordat, (an international treaty between the Vatican and Colombia), signed in 1887. The Concordat also established a prominent role for the Catholic Church regarding the administration of civil ceremonies and rites, such as marriage, birth and death registries and the use of cemeteries.<sup>40</sup>

Feminist activists had criticized this treaty underscoring the consequences of Catholicism for women's lives. Socorro Ramírez, a feminist presidential candidate in the 1978 elections, considered that the Concordat 'had placed women in a position of inferiority, as a source of sin and temptation, and at the same time consecrated them as mothers and wives, submissive and obedient. These values impregnated daily life and in the Civil Code.'<sup>41</sup> Besides perpetrating discrimination against women, the Concordat violated religious freedom by establishing Catholic education in schools and promoting Catholic marriages over civil ones.<sup>42</sup> Thus, Catholic unions had civil effects in Colombia, leaving those persons of Catholic faith, who desired a civil marriage, in a position to publicly renounce their creed until 1974. Given this, civil marriage and divorce were not



socially accepted since most people married according to the Catholic rites, rendering them unable to separate.<sup>43</sup>

The 1886 Constitution imposed a religious social order upon women, who were expected to marry in Church and comply to traditional feminine roles of submitting to their husband, having children and tending to domestic chores. The 1991 Constitution was a revision of this religious normative order. The feminist movement wanted a secular constitution to remove the historic privileges granted to the Catholic Church, establishing women's human rights as fundamental ones. The feminist movement organized a series of workshops in Medellin to discuss the constitutional reforms and the implementation of the CEDAW Convention at the end of 1989. Women's human rights and the legalization of abortion were a focal point of these talks.<sup>44</sup>

### ***Feminist mobilization for the NCA***

Marta Tamayo, a member of the Feminist Collective of Bogota (before the Group of the Seventeen), considered it a duty and a historic necessity for feminists to participate in the writing of the new Constitution as primary legislators. 'For the first time in the history of Colombia we have the opportunity to participate in the most important political act of the country: the reform to a fundamental charter, the Constitution.'<sup>45</sup> In order to do so, the autonomous feminist movement, composed of different feminist organizations around the country, launched the national campaign 'Women in the Constitutional Assembly' with the slogan 'Democracy in the nation and in the house! A Constitution for Life! Women, without you, nothing is possible!'<sup>46</sup>

The autonomous feminist movement was not a casual umbrella name for all feminist groups scattered around Colombia. As second-wave feminism strengthened transnationally and international discourse positioned women's issues as human rights, women's groups in Colombia also professionalized and self-identified as feminists. The First Latin American Feminist 'Encuentro' held in Bogota in 1981 reflected the concerns and divisions not only of Colombian feminists, but also those of all feminists in the region.<sup>47</sup> Debates around political autonomy and 'double militancy' were the central question of feminist mobilization during the 1980s. Colombian feminists were divided into those who believed in autonomous strategies for achieving gender justice and those who had a 'double militancy', as members of political parties or holding a public office.<sup>48</sup>

The autonomous position made significant headway in the First Encuentro in Bogota.<sup>49</sup> These tensions amongst Colombian feminist leaders prevailed until the national plebiscite of 1990 opened the door for the drafting of a new Constitution. The recently elected President Gaviria supported the popular vote for a new Constitution and his government was also a key actor throughout the constitutional reform process. The new Constitution was a symbol of hope for common Colombians that the persisting violence devouring the country would end. The NCA working towards this fundamental charter was regarded as the dove that would deliver a legal instrument to achieve peace.<sup>50</sup>

It was also a legal pact between the four strongest political forces at the time (the Liberal Party, the Social Conservative Party, the National Saving Movement, and the Democratic Alliance M-19 from demobilized guerrillas) to redefine judicial institutions, expand fundamental rights and recognize an ethnically, socially and ideologically diverse nation.<sup>51</sup> In other words, since the 1991 Constitution was an open window to revisit the



foundational values of the nation, the delegates to the NCA had to represent the diverse Colombian society that claimed for inclusion in the new constitution (such as indigenous peoples, afro-descendents, women, children, adolescents and evangelicals).

Nevertheless, the call to integrate the NCA was part of a previous agreement between the main four political forces trying to reach a consensus to pacify the country which excluded other minority political actors and social movements.<sup>52</sup> The feminist movement thought this agreement violated the national plebiscite, limited popular sovereignty to discuss constitutional issues in the NCA and, by comparison to other political parties, put the feminist movement at a significant disadvantage regarding conditions of participation in the NCA.<sup>53</sup> Finally, in order to elect delegates to the NCA, all political forces put forward lists for the popular vote.

It was clear the feminist movement had a political opportunity to participate in the NCA in this new political context. However, this opening was a limited one. The feminist movement made an internal political agreement to have a delegate in the NCA and urged all women to put forward a single list of feminist candidates.<sup>54</sup> The agreement called for a Constitution that included the principles of the CEDAW Convention, the interests of all members of society, constitutional mechanisms to eliminate discrimination against women and a justice system based on human rights.<sup>55</sup> The political campaign launched by the feminist movement justified the need for a feminist delegate arguing women were 52% of the population and highlighting the issues of the feminization of poverty and the lack of recognition of domestic work.<sup>56</sup>

It promised to establish women's rights in the new Constitution (i.e. equality and non-discrimination, free motherhood, the recognition of domestic work and diverse family arrangements); the separation of church and state; and the creation of a national entity to promote public policies for women.<sup>57</sup> Different distinguished women activists were considered as candidates for the list. The Collective of Women of Bogota proposed Elena Páez de Tavera, National Director of Volunteer Work in Colombia, as head of the list, urging the movement to make a decision on this matter<sup>58</sup> in order to begin gathering the 10,000 signatures for her NCA candidacy.<sup>59</sup>

### ***The loving embrace: a national feminist encounter***

Given the need to act quickly to achieve direct political representation within the NCA, the autonomous feminist movement called a national meeting titled 'A Loving Embrace' in Bogota in April 1990 in order to articulate strategies and organize.<sup>60</sup> As recalled by Elizabeth Quiñones, one of the organizers, the meeting was expected to be a re-encounter of feminist organizations to create a new political culture, inside and outside the movement, leaving behind the divisions of the past:

The proposals of this new political culture are the result of painful individual and collective breakups, a past of non-identity and authoritarianism, insecurity and hostility, of competition between women. They have been materialized in documents, slogans, protests and statements severely questioned, and finally they have allowed us to advance towards a practical knowledge subject to those demands.<sup>61</sup>

The 'Loving Embrace' took place in October of 1990, two months before the national elections for the NCA. The objectives of the feminist meeting were to promote a regional

dialogue regarding the current national situation, the implementation of the CEDAW Convention and the Constitutional reform from a gender perspective, as well as strengthen the networks among the different existing organizations based on solidarity.<sup>62</sup> While singing and dancing, the feminist movement discussed its position towards the State, the traditional and recent political actors, analyzing as main topics: the living standards of women, their political participation and conditions in the labor market, family and community life, and the collective actions to be carried out in relation to the new constitutional order.<sup>63</sup>

This mobilization presented the feminist movement with new questions about the meaning of constitutional law and how to intervene in its creation. Feminists of the House of Women [Casa de la Mujer], a leading organization working with socio-economically marginalized women, had changed their views of law. Having previously portrayed law as an instrument of the dominant classes,<sup>64</sup> leaving women on the margins, based on a Marxist position, they now considered constitutional law as a historic opportunity to 'pay the debts of the institutional democracy that Colombians highly need'.<sup>65</sup> Feminists asked themselves some basic questions: can constitutionalism be democratic? What is a Constitution? What are human rights? Why do women have to participate in the making of constitutions?<sup>66</sup>

Besides these theoretical questions, the feminist movement faced practical challenges with respect to the articulation of their constituencies in order to be in a good position 'to become a real political force to craft public policies, design collective strategies to advance women's interests inside the Constitutional Assembly [NCA], and identify allies and opponents during the constitutional negotiations.'<sup>67</sup> Thus, they agreed to launch a feminist 'Campaign for Life' and participate widely in the constitutional reforms, acting promptly to present proposals to the Gaviria government on the implementation of Law 51/1981 (the recognition of CEDAW's Convention in the legal order) and the participation of women in public policy.<sup>68</sup> Despite the enthusiastic atmosphere of the meeting, the feminist movement did not reach a consensus on who should be the feminist candidates heading the electoral lists for the NCA because internal tensions prevailed,<sup>69</sup> leading to further divisions.

On one hand, Norma Villarreal, a feminist professor at the National University of Colombia, was one of the potential candidates to head a list together with Rosa Turizo, a liberal suffragist, who had established the *Unión de Ciudadanas de Colombia* [Union of Female Citizens], one of the oldest organizations dedicated to the promotion of civil and political rights of women. The slogan of their joint national campaign read 'Woman: vote for you, woman!' Sending letters to women, their proposals for the NCA were to guarantee equality and non-discrimination for women in the family, labor, political, religious, cultural and health sectors.<sup>70</sup> Another sector of the movement, close to Left-wing political parties, supported the candidacy of Mari Sol Isaza, a feminist activist from Cali, to be included in the lists of one of the recognized four political forces, namely the M-19 guerrilla turned political party.<sup>71</sup> However, they did not receive an answer.

The lists of the feminist movement failed to gain enough popular support on their own and they also revealed themselves unable to include a feminist candidate in the lists of any of the four political forces. Lacking direct representation in the NCA, they had to strategically mobilize to advance women's rights in the new Constitution. Thus, the 'National

Network of Women and the Constitutional Assembly' (hereafter National Women's Network) was born the 4 May 1991 in Cali during a national women's encounter.<sup>72</sup> Made up of 75 organizations from 14 regions of the country, the explicit goal of this network was to mobilize women through meetings and newsletters about the activities planned to advance women's rights in the NCA.<sup>73</sup> It was not only feminist groups that participated in it, but women from a number of diverse sectors such as rural communities, labor unions, universities, and regional education and health committees. This indicates the capacity of the feminist movement to forge alliances with different social organizations.

### ***Feminist constitutional proposals***

What does a feminist Constitution look like? A basic, but essential, component is that it has to explicitly name women's human rights in the text. Taking into account women's rights established in the CEDAW Convention, the autonomous feminist movement presented their proposals for constitutional reform in a series of national roundtables organized by Gaviria's administration before the NCA began its mandate.<sup>74</sup> These proposals fell into four broad categories: (1) civil and political rights; (2) economic, social and cultural rights; (3) family and reproductive rights; (4) church and state relations.

In addition to the Feminist Preamble, inspired by the proposal the Group of the Seventeen put forward to Congress during the previous Barco administration, the feminist movement wanted to include the following amongst the **civil and political rights** in the Charter: the recognition of the principle of equality and non-discrimination on the grounds of gender, sexual orientation, religious beliefs, cultural, economic or social conditions; freedom of association and participation of women in decision-making institutions; the right to personal integrity, conscientious objection, and the prohibition of slavery and sexual serfdom.<sup>75</sup>

Regarding **social, economic and cultural rights**, they proposed the right to work, including the recognition of maternity leave and the social value of domestic work; social security, education free of discrimination and the prohibition to promote degrading messages or images against women in the media.<sup>76</sup> **Family and reproductive rights** to be included should consider maternity and paternity as social functions and the State should therefore guarantee voluntary motherhood for women, as well as freedom to choose in all biological, psychological and economic and social process related to reproduction; the recognition of family arrangements based on voluntary relations, respect, solidarity and equality of all family members; the education of children as a joint responsibility of parents and society, and the freedom of parents to decide the order of the last names of their children.<sup>77</sup>

The Network of Women of Manizales, based in western Colombia, drafted a constitutional proposal that included a specific chapter on family rights, guaranteeing family relations and equality principles treating women and children as family members.<sup>78</sup> A group of 50 organizations in Cali proposed the constitutional protection of the family, including diversity of family arrangements and the regulation by the state of all forms of legal unions and separations.<sup>79</sup> With respect to **church and state relations**, the feminist movement wanted the clear separation of these two spheres, and the recognition of freedom of religion and conscience, including the right to not be disturbed because of

one's religious beliefs or compelled to carry out religious practices.<sup>80</sup> The proposals of the Union of Female Citizens of Cali left open the possibility to enter into international treaties with the Vatican.<sup>81</sup>

To advance these proposals in the NCA, the National Women's Network had a constant presence during the constitutional debates. They organized meetings and working breakfasts with members of the NCA, sending them letters and briefs.<sup>82</sup> María Teresa Garcés and Aida Avella, two of the four women elected to the NCA, recalled their close relationship with the women's groups.<sup>83</sup> According to María Teresa Garcés, 'it was not easy for women to be part of the NCA because their participation in political parties in Colombia had been very scarce.'<sup>84</sup> Only eight of the 119 lists of candidates to the NCA were head by women.<sup>85</sup>

The NCA began its sessions on 5 February 1991. Since none of the four political forces had won a majority of seats in the popular elections,<sup>86</sup> no group could exercise full control over the agenda or impose their views during the debates.<sup>87</sup> Constitutional reforms were approved in the NCA based on consensus-building around the majority perspective. However, the NCA had a democratic tone and wanted to take into account the social diversity of Colombia,<sup>88</sup> which made stronger political parties more sensitive to the voices of minority groups in the constitutional debates. A significant characteristic of the political composition of the NCA is that, while the women's movement failed to introduce a representative, the religious minorities, such as the Christian Union, and the indigenous movement had two representatives (only one with full voting rights in the latter case).

A total of 150 proposals dealing with women's were received by the NCA, including those of the feminist movement and the ones made by various representatives directly or their coalitions.<sup>89</sup> The constitutional proposals led by Carlos Lleras de la Fuente; Horacio Serpa, Guillermo Perry, Eduardo Verano, Aída Avello Esquivel, Francisco Rojas Birry, Arturo Mejía Borda, Iván Marulanda, Jaime Fajardo, Darío Mejía and Antonio Navarro Wolff took into account several propositions made by the feminist movement on the four categories of rights described above.<sup>90</sup> Women's rights were discussed as a 'package' of constitutional reforms that comprised a bill of family rights, and included rights for women, children, adolescent, senior and disabled persons.<sup>91</sup>

The Fifth Commission of the NCA, composed mostly of members of the Liberal and Democratic Alliance M-19 parties in favor of religious pluralism, drafted and discussed the bill that later became articles 42 and 43 of the 1991 Constitution, which deal with the protections of vulnerable groups and individuals. The bill recognized:<sup>92</sup>

- The family as the fundamental group unit of society, formed by natural or legal relationships, and the free decision of a man and woman to engage in marriage.
- Equality of rights and duties of the spouses and respect among all members of the family.
- Sanctions against domestic violence.
- Equality of all children: born from a marriage, out of wedlock or through artificial means.
- The right of the couple to decide freely and responsibly the number of children, the time intervals between births and how to raise them.

- The regulation of the civil procedures by the state with respect to all marriages, their dissolution and the effects of divorce.

Considering the reception of 680 constitutional proposals regarding the rights of women, children, adolescent, senior and disabled persons, the Fifth Commission underscored the national interest of including the rights of these groups in the Constitution. Its members believed that these entitlements should be discussed together since they were widely considered interrelated. According to the National Administrative Department of Statistics, the Fifth Commission had noted a significant increase in marital separations and cohabitation in the last decades in Colombia and justified the need to recognize family arrangements through 'natural or legal bounds' by introducing divorce as a constitutional right, as well as the freedom of couples to choose the number of their children.<sup>93</sup>

Nevertheless, its members considered divorce as 'not the ideal situation', but a necessary option 'when the well-being of the family and especially of children demand this solution.'<sup>94</sup> Inspired by the legislation of Catholic European countries and President Gaviria's proposal for constitutional reforms in favor of divorce, the formula that reached a consensus in the NCA was 'to end the civil effects of marriage by divorce according to civil law.' Now part of the family rights recognized under article 42 of the Constitution, this formula intended to preserve the sanctity of religious marriage, as required by the Catholic hierarchy from the liberal government of Gaviria.<sup>95</sup>

Part of the package of women's rights drafted and discussed by the Fifth Commission, the feminist movement's proposal of a right to voluntary motherhood, which could open the window for legal abortion, was considered controversial in the NCA. These rights also included equality of opportunities among men and women, the protection of women before and after labor, and a subsidy to women heads of families.<sup>96</sup> The bill recognized the discrimination suffered by women in the social, political and labor sectors, considering it necessary to include the elimination of all forms of discrimination as established in the CEDAW Convention ratified in Law 51/ 81 in the final text of the Constitution.<sup>97</sup> However, to justify a different legal treatment to women regarding maternity, the Fifth Commission used a rather conservative discourse that portrayed women as 'mothers of life'.

Considering motherhood a vital social function it was essential for the State to protect women from early 'childhood [with a view towards] taking care of her realization as individual', by providing medical and nutritional care for the adequate development of pregnancy.<sup>98</sup> Nevertheless, the Fifth Commission considered it a mistake to prevent pregnant women from working. On the contrary, the state had to protect female heads of households and allow them to continue working and taking care of the newborn by establishing special measures for them.<sup>99</sup> When the propositions of the Fifth Commission on equality between men and women and the special measures to protect maternity were adopted, they made use of similar language in article 43 of the 1991 Constitution.

Despite the Fifth Commission's interest in establishing legal measures for women regarding maternity, the right to voluntary motherhood was not included in the final bill of women's rights to be discussed in the plenary of the NCA. The Fifth Commission estimated the regulation of abortion should be a legislative endeavor to be pursued by

Congress although it recognized 'the social problem of illegal abortions, taking into account [that] its prohibition takes many lives of women and children'.<sup>100</sup>

### ***The counter-mobilization of the Catholic Church against divorce and abortion***

The introduction of divorce and abortion in the 1991 Constitution meant confrontations with the Catholic Church, who had privileges over the regulation of marriage and defended human life as sacred. However, divorce was discussed and accepted inside the NCA while abortion was excluded from the constitutional debates mainly because it was considered 'too controversial'. The conservative national Colombian newspaper *El Tiempo* [*The Time*] referred to these two topics remarking that, 'The proposal of divorce was adopted, considering the strict legal regime submitting many persons to marital problems. Another troublesome proposal that was at first included in the bill, approving abortion, was excluded from the constitutional debates last Friday.'<sup>101</sup>

The President of the Episcopate, Monseñor Rubiano, expressed the opposition of the Catholic Church to recognizing divorce as a constitutional right, by saying that the institution would 'never [be] willing to accept divorce for Catholic marriage, because it cannot conceive that the government, interested in strengthening family union, is in favor of a Constitution helping to destroy it.'<sup>102</sup> During a clerical meeting in May of 1991, Rubiano argued that 'Catholic marriage is a divine institution that cannot be dissolved. [However] The Church recognizes that the State manages the civil effects of marriage.'<sup>103</sup> When the Catholic hierarchy initially became aware of the intention of the Gaviria administration to introduce divorce in the Constitution,<sup>104</sup> bishops all over the country mobilized against it.

The Episcopate drafted a proposal demanding the preservation of the name of God in the preamble of the Constitution; the protection of the right to life; guarantees for religious freedom that recognized the Catholic faith as a social fact, the protection of marriage and family, as well as the freedom to teach and the right of parents to choose the education of their children.<sup>105</sup> Posters referring this Catholic declaration of rights were plastered on church walls<sup>106</sup> and priests across the country urged their parishioners to sign this petition to be presented to the NCA.<sup>107</sup> The Catholic hierarchy also requested that a special commission to attend their constitutional petitions was created.<sup>108</sup>

For the Catholic Church, the constitutional recognition of divorce meant losing the social and legal regulation over marriage, as well as opening the door for the renegotiation of the Concordat.<sup>109</sup> Under this international treaty, marriage appeared as 'unbreakable', and separations were only possible through Catholic annulments before religious tribunals. However, the annulment left the 'sacred union' between the spouses untouched, declaring only a 'separation of bodies.' The fact that Concordat denied the faculties of the state to resolve disputes over the civil effects of Catholic marriages (custody over children, alimony and marital property) put those married following Catholic rites in a difficult legal situation once they separated *de facto*. For instance, they were not able to marry again in Colombia because the second marriage could be held 'invalid' or considered a bigamous offense.

Therefore, those who found themselves in this situation traveled to neighboring countries that allowed civil marriage and divorce, such as Venezuela or Panama, to remarry. Although they would face the same legal problems as marrying again in



Colombia because many of these marriages were not considered valid by Colombian authorities, they provided some social acceptance for the new couple. By 1991, even the conservative newspaper *El Tiempo*, considered divorce as a necessary legal option:

The persons who fail in a Catholic marriage do not find a solution to build a new home in the [current] legal framework. The ones who want to rebuild their lives are forced to bigamy, cohabitation or a marriage outside the country. (...) The state cannot be ignorant of this reality. It has the obligation to promote just and decent solutions to those who want to legally remarry.<sup>110</sup>

On the other hand, abortion was portrayed as an 'immoral' subject, even if the laws allowed its practice.<sup>111</sup> The cardinals urged Pope John Paul II to issue a religious circular regarding the right to life.<sup>112</sup> In an interview with the Colombian ambassador to the Vatican, the Pope had condemned the violence suffered by Colombian people, maintaining that the legalization of divorce, abortion and euthanasia would have negative consequences for society.<sup>113</sup> Despite the counter-mobilization of the Catholic Church against these topics, the approval of divorce in the NCA seemed imminent because divorce had a favorable audience who generated internal consensus around this particular subject. Several representatives from the Democratic Alliance M-19 and the Liberal Party, including two of the NCA Presidents, Horacio Serpa and Navarro Wolff, were in favor of its inclusion.<sup>114</sup>

The continued opposition of the Catholic Church was seen as 'not in tune' with modern times.<sup>115</sup> For *El Tiempo*, the Catholic Church should desist from

forcing couples to remain together, against their will, frightened by a legal limbo. This clerical attitude imposes religious beliefs because whoever disagrees has no legal protection. In a democracy, religious beliefs are not an imposition but an option, free from legal threats.<sup>116</sup>

In this sense, the possibility of divorce was a question of laicism and Colombian religious minorities, such as the Christian Union, were also interested in the constitutional recognition of religious freedom as well as in the state recovering its legal faculties over marriage and its dissolution.

### **Reproductive rights at stake**

After the CEDAW Convention became domestic law in 1981, the feminist movement's efforts concentrated in fostering a public debate for the recognition of sexual and reproductive rights, the right to free motherhood and sexual orientation.<sup>117</sup> Other actions to promote women's health were: consolidation of women's groups and networks to give counsel, denounce and formulate proposals to improve public health services for women; design of educational guidelines regarding reproductive and mental health, as well as sexuality issues.<sup>118</sup> Abortion as one of the main causes of maternal mortality was also part of the feminist movement's discourse.<sup>119</sup>

Maternal mortality was associated with poor quality in health services, abandonment of pregnant women, absence of social networks and violence during pregnancy.<sup>120</sup> In 1987 and 1989, two bills were proposed by liberal Senators Eduardo Romo and Emilio Urrea, respectively, to decriminalize abortion in some circumstances, such as, if the pregnancy presented a serious danger for a woman's physical and mental health, sexual



violence or fetal malformations.<sup>121</sup> However, neither was approved by Congress. In 1989, induced abortions represented 22% of unintended pregnancies in Colombia.<sup>122</sup>

The plenary sessions of the NCA began on 15 May 1991. The next morning, the National Women's Network organized a working breakfast with representatives Ivan Marulanda and Eduardo Verano, from the Liberal Party, Otty Patiño, Angelino Garzón, Marcos Chalita and German Rojas from the Democratic Alliance M-19, and some of their advisors.<sup>123</sup> 60 women from Bogota, Medellin, Cali and from rural communities, represented by ANMUCIC, attended. The feminist movement presented its constitutional proposals and argued in favor of the right to voluntary motherhood. As stated in a feminist newsletter, 'the representatives recognized the strength of the National Women's Network and its important role in the upcoming constitutional debates, committing to defend some of our claims'.<sup>124</sup> Profamilia, a renowned private institution providing sexual and reproductive health services in Colombia since 1965, was also asked by the NCA to 'justify and explain why family planning should be considered a person's right' in the new Constitution.<sup>125</sup>

Considering the plenary sessions were the last chance to include the right to voluntary motherhood in the Constitution, the National Women's Network agreed to prepare briefs to clarify this concept, call a press conference, send messages through one of the most popular radio stations in Colombia, Caracol Radio, throughout the next fifteen days to raise awareness of their proposals, and continue their personal contacts with NCA delegates.<sup>126</sup> Argelia Londoño, a feminist activist in Medellin, believed the inclusion of the right to voluntary motherhood in the Constitution implied guarantees to exercise maternity 'as an act of celebration and not of suffering' and as a fundamental right, 'giving autonomy and liberty to those women who want to be mothers as part of their fulfillment as human beings. Liberty and autonomy are opposed to obligation and destiny'.<sup>127</sup>

After a difficult debate, the plenary of the NCA closed the discussion and voted on a series of rights, including divorce for all religious marriages, on 11 June 1991.<sup>128</sup> The package of family rights was voted on in the first discussions of the plenary the previous day. The Liberal Jaime Benítez Tobón and the Conservative Rodrigo Lloreda 'urged to solve the serious social problem that fundamentally affects children living in problematic homes'.<sup>129</sup> It was also reported that

abortion was discussed in the sub-commission and the Fifth Commission as well for several months, but it was excluded to avoid divisions in the plenary and resistance from the Catholic Church and other sectors. This topic will be left in hands of the Congress.<sup>130</sup>

The NCA had the final voting session on the bill on family and women's rights presented by the Fifth Commission on 14 June 1991. The constitutional articles on family rights that included divorce for all marriages were approved with an outstanding majority of 55 votes and two abstentions.<sup>131</sup> Women's rights to equal opportunities and measures to protect maternity were approved by the same majority and only one abstention.<sup>132</sup> After the plenary finished voting on these articles, Ivan Marulanda, a delegate of the Liberal Party, requested a secret ballot on those articles that established the 'right of a woman to choose motherhood according to the law'.<sup>133</sup>

Marulanda's proposal was rejected by a majority of 40 votes, with 25 votes in favor and three abstentions. The response to the feminist network's petition, supported by 50,000

signatures handed in that same day,<sup>134</sup> to re-open the discussion on voluntary motherhood and hear the statements of the National Women's Network, who were in the audience, was also negative.<sup>135</sup> Despite the successful outcome with regard to divorce, the feminist movement regretted the exclusion of abortion since 'the right to voluntary motherhood is a notion beyond the decriminalization of abortion, it enables women to decide whether to have children or not in safe conditions.'<sup>136</sup>

Given that the right to voluntary motherhood was understood as the right to abortion by the political actors of the NCA and the Catholic Church, the Liberal Party resisted introducing this issue into the debates fearing that it will polarize the NCA.<sup>137</sup> The Catholic Church stated its position on women's rights before the final voting sessions when it met with Humberto De la Calle, the Minister of Government: 'Minister, the Church cannot accept divorce, but maybe our rejection can be easily handled, under the condition that abortion is not allowed in the Constitution. In addition, the civil effects of religious marriages should be preserved.'<sup>138</sup>

The feminist movement knew this kind of negotiations would impede the constitutional recognition of voluntary motherhood. Olga Amparo Sánchez, director of *Casa de la Mujer*, remembers:

But the Church said to them, 'if voluntary motherhood is approved, we will establish that life starts with conception.' The female representatives of the NCA called us and asked: 'what do we do?' We decided to lose the right to free motherhood to avoid the clause of the protection of life and we had divorce as a consolation [prize]. The Church did approve divorce because the reality was people did not marry and got separated. The reality was the use of contraception to remove the burdens of procreation. There were several elements for the Church to approve divorce. It was the triumph of political pragmatism.<sup>139</sup>

Indeed, there were several reasons for the introduction of divorce in the 1991 Constitution and the exclusion of abortion or 'voluntary motherhood.' Divorce was not only a feminist proposal, restricted to the women's groups of Cali and Manizales, but also a broader social claim. The national media reflected the convenience of solving legal problems for separated couples married through the Catholic rite and President Gaviria was interested in advancing it as a constitutional right. According to Manuel José Cepeda, constitutional law expert and advisor of the government during the NCA: 'The government put the topic on the agenda. Nobody dared to do it in Colombia because it was a delicate subject.'<sup>140</sup> Divorce collected different allies on its way to the NCA. The Liberal Party formed an 'an implicit and obvious alliance'<sup>141</sup> with the Christian-Evangelical communities, a religious minority interested in diminishing the privileges of the Catholic Church.

De la Calle recalls that the NCA started with 'ideas of separation between the Church and the State, as well as equality for all religions.'<sup>142</sup> He added:

We found a very productive alliance to achieve that [goal] with the evangelical communities, particularly though paradoxically, with Mrs. Viviane Morales. She keenly supported the constitutional process because the essence of her triumph was religious equality. What they needed was a Constitution recognizing the rights of all the churches.<sup>143</sup>

Divorce meant recovering the faculties of the State in the regulation of all marriages and their civil effects, which in turn entailed religious equality. As a concession to the Catholic Church, the constitutional formula of divorce respected the sanctity of religious

marriage, by establishing only the 'end of civil effects through divorce according to law.' Nevertheless, while phrased in this way, divorce would not dissolve the religious union,<sup>144</sup> some lawyers close to the Episcopate found it 'a tough blow for the Catholic religion'.<sup>145</sup> Soon after the 1991 Constitution was enacted, the Catholic Church had to face the renegotiation of the Concordat.<sup>146</sup>

Unlike divorce, the right to voluntary motherhood (or abortion) was not able to gain necessary allies along the way. Being a demand specific of the feminist movement alone, it caused resistance among the members of the Liberal Party and the Democratic Alliance M-19, two key political actors in the advancement of women's human rights in the NCA. The four female members of the NCA were divided on the issue. All of them agreed that abortion could be allowed only in certain circumstances, as in cases of rape or for health reasons, but not as a broad liberty afforded women.<sup>147</sup> Two of them considered the right to life should be defended as a constitutional right. Abortion also generated controversy outside the NCA. On the one hand, religious minorities did not favor abortion in the same way as they supported divorce. On the other hand, since this would mean a greater confrontation with the Catholic Church, President Gaviria did not commit to advance reproductive freedom of women as a fundamental right.

Considering both issues (divorce and abortion) were brought by liberal advocates and the feminist movement to the National Constitutional Assembly (NCA), abortion was defeated even as a topic for plenary discussion due to major public contestation and a fear of the Church wrath by the NCA representatives. As Htun observes: 'Bishops act to ensure that little electoral benefit will be gained from violating their principles. Fear of Church wrath prevents many politicians from acting on the basis of their increasingly liberal views.'<sup>148</sup> Thus, the Catholic Church continued to be the most significant opponent to the inclusion of women's reproductive rights in the Constitution of Colombia, as the right to voluntary motherhood entailed abortion as a fundamental liberty.

## Conclusions

The remaking of constitutional agreements poses questions about governance, human rights, and the recognition of diverse interests of historically discriminated groups. In the past, it has been difficult for women to engage in this task as 'primary legislators' due to the prevalent masculine domination of constitutional assemblies. However, the feminist mobilization in Colombia to advance women's rights in the 1991 Constitution has left behind several lessons for constitutional law making. In spite of the absence of direct political representation within the NCA that forged this foundational text, the feminist movement advocated for the inclusion of a broad scope of women's rights to promote the principles of equality and non-discrimination in the public and private spheres, such as family relations, political opportunities, the recognition of domestic work, religious freedom and the separation of church and state. The right to voluntary motherhood and divorce were two of their most controversial claims.

This instance of feminist mobilization is an example of what social movements do when they lack direct political representation to change the law. Deploying a repertoire of collective actions since 1988, when President Virgilio Barco announced the opening of a national dialogue for constitutional reform, the feminist movement was able to organize to craft constitutional proposals and present them to the government. The

feminist mobilization for constitutional reform intensified as the country voted in favor of developing a new Constitution in 1991 as advocated by the newly elected President César Gaviria. Thus, the feminist movement had a constant relationship with the NCA, used the media to deliver messages, set up meetings and encounters to discuss the proposals, and formed a new National Women's Network to create alliances with other women's groups and social sectors. This network still exists and is a legacy of the 1991 constitutional process that enabled the feminist movement to strengthen its mobilizing structures.

Therefore, the feminist movement contributed to the constitutional debates of 1991 in different ways. First, by highlighting controversial issues on the political agenda, such as the right to voluntary motherhood, that would have otherwise been off the table. Reproductive freedom was not included as a fundamental right in the constitutional text in the end, mainly because of lack of consensus between the political forces inside and outside the NCA, considering the strong opposition of the Catholic Church towards abortion. However, other women's human rights, such as civil divorce for all marriages, equality between men and women, the ban on domestic violence and support for maternity care were advanced by the 1991 Constitution.

The ratification of the CEDAW Convention by Colombia and its inclusion in the legal order through Law 51/ 1981 also had a positive catalyzing effect on the discussion of women's rights in the NCA. It should be noted that women's rights were debated within a 'package' of human rights of historically discriminated groups comprising the rights of children, adolescent, old and disabled persons. The articles that correspond to this package were drafted by the Fifth Commission of the NCA, mainly composed by members of the Liberal Party and the Democratic Alliance M-19, which saw the convergence of some members of the demobilized guerrilla and representatives from different progressive sectors of society.

Feminist movements will always encounter resistance in the quest for constitutional law-making. The clear opponent in the Colombian case was the Catholic Church. The Catholic counter-mobilization against the inclusion of divorce and abortion in the Constitution was significant in a country with such an important Catholic heritage. Nevertheless, the Church lost the battle against divorce as the pragmatic alliance between the Liberal Party, in government at the time and a strong force within the NCA, pushed this issue through the debates and included it in the final text of the 1991 Constitution. Along with the recognition of religious freedom and equality for all churches, this opened the door to the renegotiation of the Concordat, giving way for a new era for church and state relations in Colombia.

## Notes

1. Catharine A. MacKinnon, 'Foreword', in *Feminist Constitutionalism: Global Perspectives*, ed. Beverley Baines, Daphne Barak-Erez, and Tsvi Kahana (Cambridge: Cambridge University Press, 2012), ix.
2. Voluntary motherhood is understood as a woman's right to freely choose maternity.
3. Joan W. Scott, Gender: 'A Useful Category of Historical Analysis', *The American Historical Review* 91, no. 5 (1986): 1053–75.
4. Scott, 'Gender: A Useful Category', 1066.
5. Ibid., 1067.

6. Sidney G. Tarrow, *Power in Movement. Social Movements and Contentious Politics* (Cambridge: Cambridge University Press, 2011); Charles Tilly, *Social Movements, 1768–2004* (London: Paradigm Publishers, 2004); Suzanne Staggenborg, *Social Movements* (Oxford: Oxford University Press, 2015); David A. Snow, Donatella Della Porta, Bert Klandermans, and Doug McAdam, ed., *The Wiley-Blackwell Encyclopedia of Social and Political Movements*, vol. 2 (Hoboken: Blackwell Publishing, 2013).
7. See Rupp and Taylor's definition of feminist movements: Leila J. Rupp and Verta Taylor, 'Feminism and Social Movements', in *The Wiley-Blackwell Encyclopedia of Social and Political Movements*, vol. 2, ed. David A. Snow, Donatella Della Porta, Bert Klandermans, and Doug McAdam (Hoboken: Blackwell Publishing, 2013), 459.
8. Tilly, *Social Movements*.
9. Tarrow, *Power in Movement*.
10. Tarrow, *Power in Movement*, 29.
11. See Francesca Polletta and James M. Jasper, 'Collective Identity and Social Movements', *Annual Review of Sociology* 27 (2001): 283–305.
12. Michael McCann, 'Law and Social Movements', in *The Blackwell Companion to Law and Society*, ed. Sarat Austin Sarat (Oxford, 2004), 508.
13. Ibid.
14. See, for example, Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago Press, 1998); Lisa Vanhala, 'Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK', *Law and Society Review* 46, no. 3 (2012): 523–56; Mary Gallagher and Yujeong Yung, 'Getting Schooled: Legal Mobilization as and Educative Process', *Law and Social Inquiry* 42, no. 1 (2017): 163–94.
15. Emilio Lehoucq and Whitney K. Taylor, 'Conceptualizing Legal Mobilization: How Should We Understand the Deployment of Legal Strategies?', *Law and Social Inquiry* 45, no. 1 (2020): 179.
16. Pierre Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field', *Hastings Law Journal* 38, no. 5 (1986): 805–13.
17. Ricardo Arias, *El episcopado colombiano: intransigencia y laicidad (1850–2000)* (Bogotá: Universidad de Los Andes, Facultad de Ciencias Sociales, CESO, Instituto de Antropología e Historia, 2003), 22.
18. Ministry of Justice, Decree 2820/1974, February 4, 1975.
19. Law 1 of 1976 establishing divorce for civil marriages, regulating the separation of bodies and goods in civil marriages and canonic ones.
20. Esmeralda Arboleda, *El Tiempo de la Mujer* (Bogotá: Instituto Colombiano de Cultura, 1977).
21. Cecilia Barraza and Claudia Gómez, *Un derecho para las mujeres: la despenalización parcial del aborto en Colombia* (Bogotá: La Mesa por la Vida y la Salud de las Mujeres, 2009), 11.
22. María Cristina Suaza, *Soñé que soñaba. Una crónica del movimiento feminista en Colombia de 1975 a 1982* (Bogotá: Agencia Española de Cooperación Internacional para el Desarrollo en Colombia AECID, 2009), 55.
23. Suaza, *Soñé que soñaba*, 56.
24. Barraza and Gómez, *Un derecho para las mujeres*, 12.
25. Ibid.
26. Suaza, *Soñé que soñaba*, 67.
27. The CEDAW Convention was approved by the Colombian Congress through Law 51 of 1981.
28. Olga Amparo Sánchez and others, *Las mujeres en la década 1985–1995. Crecimiento y fortalecimiento del movimiento social de mujeres* (Bogotá: UNIFEM, 1994), 22.
29. See Barraza and Gómez, *Un derecho para las mujeres*, 15–6.
30. Mala Htun, *Sex and the State. Abortion, Divorce and the Family Under Latin American Dictatorships and Democracies* (Cambridge: Cambridge University Press, 2003), 1.
31. Ibid.

32. Previous attempts to reform the 1886 Constitution were made in the 1970s. President López Michelsen issued a decree containing several constitutional reforms in 1976, but the Supreme Court invalidated it. Following in his footsteps, President Turbay tried to do the same in 1979, but the decree was toppled again when it reached the Supreme Court.
33. Marco Palacios, *Entre la legitimidad y la violencia. Colombia 1875–1994* (Bogotá: Editorial Norma, 1995).
34. Virgilio Barco, *Proyecto de reforma constitucional: democracia participativa y justicia social* (Bogotá: Banco de la República, 1988), 3.
35. Ibid.
36. Ligia Galvis, in discussion with the author, Bogotá, 5 February 2019.
37. Letter to the Minister of Government César Gaviria Trujillo regarding the constitutional reform. Signed by: Unión de Ciudadanas de Colombia, Colectivo de Mujeres; Casa de la Mujer, Unión de Mujeres Demócratas de Colombia (UMDC); Colectivo de Mujeres Manuela Sáenz, Colectivo Manuela Beltrán; Comisión de Mujeres de la Asociación Distrital de Educadores (ADE); Cooperativa Multiactiva de Patio Bonito Limitada; Equipo de Trabajo con Organización de Mujeres de Sectores Populares; Asociación Colombiana de Trabajo Voluntario (ACOVOL), Coordinación Colombiana de Trabajo Voluntario (CCTV); Asociación de Mujeres Campesinas e Indígenas (AMUCIC), Organización Femenina del Nuevo Liberalismo; Asociación Nacional de Amas de Casa Rurales (AMAR); Integración de Líderes Femeninas Social y Comunal de Bogotá, Taller de Recursos para la Mujer; Asociación de Mujeres profesionales y de Negocios. Universidad Nacional de Colombia. Universidad Nacional de Colombia (unpublished document, Bogotá: Archives of the Biblioteca Digital Feminista Ofelia Uribe de Acosta, March 1998), 1–13.
38. Ibid., 5–10.
39. See Lars Schoultz, 'Reform and Reaction in the Colombian Catholic Church', *The Americas* 30, no. 2 (1973): 229–50. Núñez started out as a radical liberal, but by 1886, already on his third term, he had become increasingly conservative and pro-clerical. Known as the leader of the 'Regeneration' movement, which aimed to restore Catholic morality and order in Colombia, the highlight of his administration was the enactment of the 1886 Constitution.
40. See articles 17–19 of the Concordat of 1887.
41. Socorro Ramírez, 'A Hundred Years of Concordat between the Catholic Church and the Colombian State', *Mujer Fempress* 4 (1986).
42. Ibid.
43. Divorce was only possible for civil unions in 1976. Religious courts settled conflicts among Catholic spouses through religious annulments.
44. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 2, Report of the Workshop 'Constitutional Reform and Law 51' (unpublished document, Medellín, December 1989), 16–7.
45. Marta Tamayo, 'The democratic personality, an alternative ethical proposal of the autonomous feminist movement' (unpublished document, personal archives of Marta Tamayo, facilitated to the author, Bogotá, 30 June 1990).
46. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 2, 'Proposals of Women to be discussed in the Constitutional Assembly, presented by Ser Mujer' (working paper, Bogotá, 5 August 1990).
47. Sonia E. Álvarez, 'Advocating Feminism: The Latin American Feminist NGO "Boom"', *International Feminist Journal of Politics* 1, no. 2 (1999): 181–209.
48. María Emma Wills, *Inclusión sin representación. La irrupción política de las mujeres en Colombia 1970–2000* (Bogotá: Grupo Editorial Norma, 2007).
49. Olga Amparo Sánchez, in discussion with the author, Bogotá, 14 February 2019.
50. See Julieta Lemaitre Ripoll, *La paz en cuestión: la guerra y la paz en la Asamblea Constituyente de 1991* (Bogotá: Universidad de Los Andes, 2011), discussing the different meanings of peace during the national debates in forging the Constitution of 1991.
51. See Gabriel Murillo, 'Prólogo', in *La Constitución de 1991: ¿un pacto político viable?*, ed. John Dugas (Bogotá: Universidad de Los Andes, 1993).



52. See Murillo, 'Prólogo' en *La Constitución de 1991*, the Agreement of 2 August 1990 between these four political forces included the integration, organization and issues to be taken up by the NCA. The Supreme Court eliminated the restricted constitutional topics for discussion contained in this agreement, thus opening the space for wide debates.
53. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 2, 'Women before the National Constitutional Assembly, Political Agreement', signed by Helena Páez de Tavera, Corporación Palabra de Mujer, Casa de la Mujer, Promujer (Centro de Información y Recursos para la Mujer), Proyecto Mujer Foro Nacional por Colombia, Taller de Recursos para la Mujer, Rosa Inés Ospina y Gloria de los Ríos de Mujeres por Colombia, Marisol Isaza de la Alianza Democrática M-19, Amparo Guerrero del Proyecto Mujer Visión Mundial, Fundación Diálogo Mujer (unpublished document).
54. Ibid.
55. Ibid.
56. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 2, 'Report of the Internal Workshop of Women's Groups regarding the Autonomous Feminist Movement and the National Constitutional Assembly, 31 March 1990, Bogota, Theater Corporation of La Candelaria' (unpublished document).
57. Ibid.
58. Elena Páez had a previous political career. She was Vice-Minister of Work (1983–1984), advisor in the Mayor's Office of Bogota and Ex-President of the Union of Women Citizens of Colombia in Bogotá, an NGO dedicated to promoting civil and political rights of women.
59. Archive of Colombia, Collection of 'Women's Rights Battles', Box 2, 'Announcement to women, September 15th, 1990', signed by Marta Tamayo de Corporación Palabra de Mujer; Gloria de los Ríos, Rosa Inés Ospina, Sonia Mahecha y María Elvira Domínguez de Mujeres por Colombia; Marta Leonor Rivera de Casa de la Mujer; Marisol Isaza de la Alianza Democrática M-19; Margarita Jaramillo de Promujer, Rosa Emilia Salamanca de Proyecto Mujer; Ofelia Gómez Taller de Recursos para la Mujer, Amparo Guerrero de Proyecto Mujer Visión Mundial; Fundación Diálogo Mujer, Cine Mujer, Equipo de Trabajo con Mujeres de Sectores Populares; Ofelia Romero de Wills e Inés Martínez (unpublished document, Bogotá).
60. Elizabeth Quiñones, 'Expectations towards the Women's Meeting, A Loving Embrace for Life', General Archive of Colombia, Collection of 'Women's Rights Battles', Box 2 (unpublished document, Bogotá, 30 April 1990).
61. Ibid.
62. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 2, 'National Meeting of Women, A Loving Embrace for Life' (unpublished document, Bogotá, October 1990), 13–5.
63. Ibid.
64. See *Nuevos espacios y otros retos. Propuesta a las mujeres* (Bogotá: Casa de la Mujer, 1986). Feminist theory of social change in the 1980s was influenced by Marxism. Thus, the dominant classes refer to economic and political elites in Colombia.
65. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 2. Casa de la Mujer, 'Women and the Constitutional Assembly', Discussion Paper presented by the group 'Casa de la Mujer' for the National Encounter of Women 'A Loving Embrace for Life' (unpublished document).
66. Ibid.
67. Elizabeht Quiñones, General Archive of Colombia, Collection of 'Women's Rights Battles', Box 2, 'Social Movement and Autonomous Feminist Movement' (unpublished document, Bogotá, October 1990), 13–5. Discussion paper presented in the Loving Embrace Encounter.
68. Ibid.
69. Norma Villaeral, in discussion with the author, Bogotá, 20 November 2018.
70. Rosa María Turizo de Trujillo and Norma Villarreal, General Archive of Colombia, Collection of 'Women's Rights Battles', Box 2, Open Letter to the Women of Colombia (unpublished document, Medellín, November 1990).



71. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 2, 'Memorandum for Navarro Wolff and colleagues of the A.D. M-19, sent by Mari Sol Isaza and Groups of Women' (unpublished document).
72. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 3, 'Report of the Project "Women and the Constitutional Assembly"', Document of the Women of Colombia to the NCA' (unpublished document).
73. Ibid.
74. Beatriz Quintero, *Las mujeres colombianas y la Asamblea Nacional Constituyente de 1991. Participación e impactos* (CEPAL, Comisión Económica para América Latina y el Caribe, Unidad Mujer y Desarrollo, Corte Nacional Electoral, 2005).
75. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 2, 'Proposals of the Collective of Women of Bogotá', presented in the roundtables towards the National Constitutional Assembly; Female Union of Citizens, 'Circular No. 134, Cali Section, Women for the Constitutional Assembly' (unpublished document); Quintero, *Las mujeres colombianas*.
76. Ibid.
77. Ibid.
78. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 3, 'Women and Family in the Constitutional Reform', Roundtable of Manizales (unpublished document).
79. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 3, 'Constitutional proposals of reform of 50 groups of Cali, the Women's Office and the Major of Cali' (unpublished document).
80. General Archive of Colombia, 'Memorandum for Navarro Wolff'.
81. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 2, Female Union of Citizens, 'Circular No. 134, Cali Section, Women for the Constitutional Assembly' (unpublished document).
82. María Teresa Garcés, in discussion with the author, Bogotá, 4 September 2018.
83. Aída Avella, in discussion with the author, Bogotá, 7 September 2018; María Teresa Garcés, in discussion with the author, Bogotá, 4 September 2018.
84. Ibid.
85. Socorro Ramírez, General Archive of Colombia, Collection of 'Women's Rights Battles', Box 3, 'Women, Participation and Democracy' (unpublished document).
86. The Liberal Party had 25 elected representatives (33.7% of the seats); the Democratic Alliance M-19 had 19 representatives (25.7%); the National Salvation Movement had 11 (14.9%), the Social Conservative Party—5 (6.8%); Independent conservatives—4 (5.4%); the Christian Union, Patriotic Union, Indigenous Peoples and the EPL—2 (2.7%). The movements of PRT and Quintin Lame (of indigenous origins), both formerly armed guerrilla groups who demobilized under President Barco, had 1 representative but no vote. See John Dugas, 'The development of the Constitutional National Assembly', in *La Constitución de 1991, ¿un pacto político viable?* ed. Jhon Dugas (Bogotá: Universidad de los Andes, 1993).
87. Ibid.
88. Humberto de la Calle, in discussion with the author, Bogotá, 26 September 2018.
89. Quintero, *Las mujeres colombianas*.
90. Ibid.
91. Archives of the National Constitutional Assembly, Bank of the Republic, 'Bill of family rights, women, children, adolescents, old and disabled persons' (unpublished document, 15 May 1991, Fifth Commission of the NCA). The next three references are all from this quote.
92. Ibid.
93. Ibid.
94. Ibid.
95. Humberto de la Calle, in discussion with the author, Bogotá, 26 September 2018.
96. Archives of the National Constitutional Assembly, Bank of the Republic, 'Bill of Family Rights'.

97. Ibid.
98. Ibid.
99. Ibid.
100. Ibid.
101. Hermógenes Ardila, 'Listo para votación el divorcio católico', *El Tiempo* (11 June 1991).
102. 'No de la Iglesia al divorcio', *El Tiempo* (15 May 1991).
103. Ibid.
104. 'Proponen divorcio para el matrimonio católico', *El Tiempo* (1 February 1991).
105. 'Plebiscito católico será llevado a registraduría', *El Tiempo* (19 March 1991).
106. Ibid.
107. 'Iglesia: plebiscito contra el divorcio', *El Tiempo* (18 March 1991).
108. Ibid.
109. The last revision to the Concordat was made in 1974 during the Lopez Michelsen administration. The most significant change was abolishing Law 54/ 1924, known as the 'Concha Law,' which forced Catholic persons to publicly renounce their faith if they wanted to engage in a civil marriage. This was a social scandal in Colombia during the first half of the 20th century. Law 1/1976 was issued after this modification to allow civil divorce only for civil marriages.
110. 'La reforma al Concordato', *El Tiempo* (16 February 1991).
111. 'El Vaticano: aborto legal e inmoral', *El Tiempo* (8 April 1991).
112. Ibid.
113. 'El Papa contra el aborto y el divorcio en Colombia', *El Tiempo* (22 March 1991).
114. 'Iglesia: Plebiscito en contra del divorcio', *El Tiempo* (18 March 1991).
115. Juan Carlos Botero, 'Una iglesia desintonizada', *El Tiempo* (22 March 1991).
116. Sánchez and others, 'Las mujeres en la década 1985–1995', 49.
117. Ibid.
118. Ibid.
119. Sánchez and others, 'Las mujeres en la década 1985–1995', 45.
120. Ibid.
121. See Barraza and Gómez, *Un derecho para las mujeres*, 15.
122. Guttmacher Institute, 'Unintended Pregnancy and Induced Abortion in Colombia', (Fact Sheet, October 2013): <https://www.guttmacher.org/fact-sheet/unintended-pregnancy-and-induced-abortion-colombia>
123. General Archive of Colombia, Collection of 'Women's Rights Battles', Box 3, 'National Women's Network and the Constitutional Assembly' (unpublished document, newsletter No. 2, Bogotá, 16 May 1991).
124. Ibid.
125. Carlos Daguer and Marcelo Riccardi, *Al derecho y al revés. La revolución de los derechos sexuales y reproductivos en Colombia* (Bogotá: Profamilia, 2005), 117.
126. Ibid.
127. Argelia Londoño, General Archive of Colombia, Collection of 'Women's Rights Battles', Box 3, 'Women and the Constitutional Assembly' (unpublished document, Medellín, *Mundo*, 17 June 1991), 3.
128. Hermógenes Ardilas, 'Listo para votación el divorcio católico', *El Tiempo* (11 June 1991).
129. Ibid.
130. Ibid.
131. Archives of the National Constitutional Assembly, Bank of the Republic, Plenary Sessions Transcription (unpublished document, 14 June 1991), 123–4.
132. Bank of the Republic, 'Plenary Sessions', 133. The next three references are all from this quote.
133. Ibid.
134. Ibid.
135. Ibid.
136. Beatriz Quintero and others, *Las mujeres en la década de 1985–1995*.

137. Humberto de la Calle, in discussion with the author, Bogotá, 26 September 2018.
138. Humberto De la Calle, *Contra todas las apuestas: historia íntima de la Constituyente de 1991* (Bogotá: Planeta, 2004).
139. Olga Amparo Sánchez, in discussion with the author, 14 February 2019.
140. Manuel José Cepeda, in discussion with the author, 28 March 2019.
141. Humberto de la Calle, in discussion with the author, Bogotá, 26 September 2018.
142. Ibid.
143. Ibid.
144. Manuel José Cepeda, in discussion with the author, 28 March 2019.
145. Carlos Castrillón, *El concordato y la Constitución de 1991: historia de una transgresión del Derecho* (Bogotá: San Pablo, 1995), 16.
146. Hubert Ariza, 'Se inicia negociación del Concordato con la Iglesia', *El Tiempo* (24 July 1991).
147. 'Qué opinan las mujeres constituyentes sobre el aborto', *El Tiempo* (16 April 1991).
148. Mala Htun, 'Life, Liberty, and Family Values: Church and State in the Struggle Over Abortion in Latin America', in *Contemporary Catholicism, Religious Pluralism, and Democracy in Latin America*, ed. Frances Hagopian (Notre Dame: University of Notre Dame Press, 2009), 337.

## Acknowledgements

The author would like to thank Adriana Rudling for her help reviewing the English grammar and spelling of the essay.

## Disclosure statement

No potential conflict of interest was reported by the author(s).

## Notes on contributor

*Alma Beltrán y Puga*, Professor of Law at University of El Rosario, Colombia and affiliated researcher at the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School. She is also a member of Red Alas, a Latin American network of legal scholars working to advance gender studies in legal research and education. Her research focuses on how law is used by social movements in historical contexts, reproductive rights and feminist legal jurisprudence. Her last publications deal with conservative lawyers' countermobilization regarding abortion in Colombia (<https://doi.org/10.18800/derechopucp.202201.002>) and the contemporary debates on gender, sexuality and family law in a collective work (<https://doi.org/10.12804/urosario9789587848663>). She is currently editing her PhD thesis on divorce law reform and feminist movements in Colombia (1930–1991) to be published soon as a book.

## ORCID

*Alma Beltrán y Puga*  <http://orcid.org/0000-0001-5931-8361>