

**LAW AS A PEACE TREATY: THE CASE OF M-19 AND  
THE 1991 COLOMBIAN CONSTITUTION.**

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## LAW AS A PEACE TREATY: THE CASE OF M-19 AND THE 1991 COLOMBIAN CONSTITUTION

On July 4 1991, President Cesar Gaviria Trujillo (1990-1994) signed the new Political Constitution. In his speech, using Lopez Pumarejo's words for the Liberal Revolution of 1936, Gaviria claimed that the new Constitution symbolized a "friendly liquidation of the past" (Gaceta Constitucional, July 5<sup>th</sup>). In the event, leaders of the most important political forces were present. At the moment of signing the text,<sup>1</sup> Antonio Navarro Wolf (*Movimiento 19 de abril de 1970 M-19*), Alvaro Gomez Hurtado (*Movimiento de Salvación Nacional MSN*) and Horacio Serpa Uribe (Liberal Party) put their hands together and raised them to the sky to show the unity achieved with the Constitution. According to some scholars, the new Constitution represented a new political pact for Colombians, and openness of the political system, and a new *Navigational Chart* for the Colombian state (Dugas 1997, Dugas 1993, and Van Cott 2000).

As a result of the new *social pact*, guerrilla movements became political parties: M-19 became AD-M-19 -the base of today's *Polo Democrático*; and the *Ejército Popular de Liberación EPL* became *Esperanza, Paz y Libertad EPL*. Others simply disappeared and its members joined other political organizations or just decided to resume their normal lives, like it happened to members of the *Corriente de Renovación Socialista CRS* and the *Movimiento Armado Quintín Lame MAQL*. In the new Constitution people were granted rights that they did not enjoy under the old 1886 Constitution. Remedies like the *acción de tutela* and the *acción de cumplimiento* were established to guarantee the protection of fundamental rights and force the government to comply its obligations, respectively. New institutions were created, like the Ombudsman Office and the Constitutional Court. Indigenous peoples and Afro descendants were granted special rights, recognizing the multicultural character of Colombian nation. In sum, the political environment existing prior to 1991 completely changed in a matter of days.

How was this "constitutional revolution" possible? What happened in this country, in the middle of a revolutionary war for more than 40 years (Pardo Rueda, 2004), that it became possible for members of the extreme right to sit together with members of leftist guerrillas and even to have a common agenda in the Constituent Assembly? How friendly was this liquidation of the past? Why, after no more than 15 years, there are attempts to dismantle it and to reverse some of the conquests recognized there? Why the *reformist obsession* has kicked back again (Posada Carbo, 1998)?

There have been several interpretations of this process. According to John Dugas, the 1991 Constitution represents a combination of structural

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<sup>1</sup> It is interesting to note that the text was not ready at the moment of the ceremony, for that reason, delegates had to sign a blank book. This shows the symbolic character of law and the fact that many of the rights recognized in the Constitution remain inapplicable, as if they were in a blank book.

transformations and elite's choices. In his analysis of the process whereby Colombia approved a new Constitution, Dugas writes that traditional theories of democratization are unable to explain the reasons that led to this deepening of democracy in Colombia. A pure model of rational choice is incapable of explaining the reasons why the elites would choose a transformation of the system that have benefited them for such a long time. After showing that the 1991 Constitution represents an effort to reform many of the limitations of the Colombian political system, Dugas goes on to explain how several structural transformations –especially guerrillas' radicalization and drug cartels' terrorism– led to what he calls a “critical juncture” that allowed elites to make the necessary choices to open the political system and deepen democracy (Dugas, 1997).

One of the elements that Dugas highlights is the presence of different political outsiders in the Constituent Assembly. Members of traditional political parties (Conservative -Partido Social Conservador and MSN -; and Liberal party) sat in the Assembly with members of the Student Movement, members of the Universities, Indigenous leaders, and more importantly members of the recently demobilized nationalist guerrilla M-19. This coexistence of outsiders with insiders allowed the elites to make choices more favorable to democracy than to authoritarian rule of limited democracy.

Donna Lee van Cott, in a book that explains the inclusion of indigenous rights in Colombian and Bolivian Constitutions, takes Gaviria's words and use them as her framework to explain the transition in Colombia. According to her, the process of transition led to a “critical juncture” where political elites were able to transform the political system, having in that way a friendly liquidation of the past.

Although these explanations are interesting, they do not quite explain the reasons why political elites would accept outsiders in such an important body -as the Constituent Assembly- in charge of drafting a new Constitution. In their accounts, Dugas and Van Cott privilege the self perception of the elites and give too much weight to the student movement (Dugas, 2001; Orjuela, 1993). In their defense it is necessary to say that Colombian Newspapers and the Supreme Court used the Student movement as a justification for the measures taken to make the transition possible. However a different account is possible: the student movement did not have real power to press for transformations in the country. Its members belonged to the most important private universities, intentionally excluding public universities from participating in the discussions, and one of its leaders was connected to one of the leaders of MSN, which allowed them to use this leader's newspaper as a place to voice their opinions about the crisis in Colombia. Members of M-19 do not give too much weight to this movement, although accept its symbolic importance for the elites: In a country like Colombia is not well seen that the government concedes to the demands of guerrillas (Interviews with Antonio Navarro, Otty Patiño and Rosemberg Pabón).

What characterizes these interpretations is a framework based on the theories of transition to democracy. To Dugas and Van Cott, what happened in 1991 was a process of democratization from above, where political elites decided to

open the political system and to incorporate new actors in the political arena. However, this account is unable to explain the role played by M-19 and other guerrilla forces and the importance of a new Constitution in the discourse of guerrilla since the 1980s. If this were a simple transition to democracy, why the same elites that opened the system are so willing to close it for alternative political forces?<sup>2</sup> In this account law is just a mechanism that reflects the choices of members of the elites. It becomes a technical element that translates technical decisions about how to achieve democracy. Law, in this account, is deprived of its polemical character, is stripped of its political meaning, it becomes a pacified symbol of the elite's choices.

In this paper I want to recover the character of law as *polemos* (Valencia, 1985; Trazegnies, 1981). I want to show the importance of social struggles to open the system and the importance of law for guerrilla movements in Colombia. In my account, law is a space of negotiation, is part of that negotiation, and it symbolizes the agreement between political armed forces. The shadow of war and violence is always there. Members of the M-19 did not forget the perverse effects of the state of siege in the 1886 Constitution and voted for a limitation of the new state of exception. War is what took these forces to the table to negotiate; war gave them power to push some transformations. Elites' choices were determined by the threat that the war was going to be not against the army but against the Oligarchy (Proclama M-19, January 1988). **This** "critical juncture" affected the way law was perceived. From being an instrument of war in the hands of the state, law became a peace treaty, an agreement symbolizing the end of the confrontation.

In the first part of the paper I will analyze the relationship between violence and law, paying special attention to the constitutional history of Colombia. As Rafael Pardo has shown it, in Colombia there have been more than 70 wars in almost 200 years of independent history, showing the importance of war for the development of political relations and for state building (Pardo Rueda, 2004). At the same, there have been a similar number of peace processes, showing the importance of war and peace making for the development of a more open political system in the country (Medina, 2003 and Interview with Rosemberg Pabón). Each one of the constitutions of the 19<sup>th</sup> century was the result of a war and the cause of a new one (Valencia Villa, 1987: 149). War and Constitutions are linked in Colombia, Constitutions are peace agreements reflecting the balance of forces after the battle. As Navarro recently said in a meeting in Medellín (Navarro, 2005), what we had in 1991 was not a transition to democracy but a transition to peace.

## **I. Law, Violence, and Peace: 19<sup>th</sup> Century Colombian Constitutions.**

Law has been defined as command and authority (Hart, 1994). It has been seen as an instrument to bring about order in society. Based on the social contract tradition, law has been perceived as the result of a peaceful agreement between the members of civil society and as an instrument that reflects that social pact

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<sup>2</sup> On the closeness of the system at the time see Gallon (1989).

(Rousseau, 1947). However, in this tradition law is seen as the opposite to violence, that is, violence is external to law, it disappears with the law. This is the tradition followed by interpreters of the 1991 Constitution (Dugas, 1993, 1997; Van Cott, 2000; Buenahora, 1995). In their analysis they see violence as something preceding the law, and law is just a tool to eliminate that violence through a new order of things. For them, once the constitution was approved, the spectrum of the war disappeared and what was left was just peace and order.

This interpretation is based on the idea of the development of law in modern Europe, where war –and for that matter violence- was left in the hands of the state and citizens were deprived of them. At the interior of the state, the latter had a monopoly of violence and for that reason law symbolized a pacified and peaceful community. The idea of war became part of the international relations of states, it was accepted as a form of relating to other states, but in the inside of the state there was the assumption of peace and order. From this point of view, law was deprived of its polemical character; it ceased to be political (Schmitt, 1943, 1980).

Machiaveli and Hobbes recognized the polemical character of law and its violent essence. Thomas Hobbes in his book on the English state recognizes that violence, or the fear of it, is at the base of men's obedience to the law. According to Hobbes, *there must be some coercive power, to compel men equally to the performance of their covenants, by the terror of some punishment, greater than the benefit they expect by the breach of their covenant...*(Hobbes, 1962: 113). In his analysis, Hobbes is showing that law cannot exist without violence, law has to be understood as command but that command cannot be obeyed if people do not fear the law. Sovereignty, for Hobbes, is the creation of an artificial man that is in charge of having the monopoly of fear: it is preferable to fear that one man and not all men (Schmitt, 1996). In this analysis, law is an instrument that pacifies but at the same time and instrument that monopolizes violence and fear. However, in Hobbes' account, war and violence are seen in their separation between the peaceful inside and the warring outside. The monopoly of violence in the interior of the state becomes just fear, terror of the law, and nothing else.

Following Schmitt's analysis of the political, Walter Benjamin studies the relationship between violence and law (Hollis, 2005). In his text, Benjamin shows the lawmaking and law preserving function of the law. In this analysis, Benjamin pays close attention to the question of war. Benjamin knows that war is the extreme of the political situation, where the relationship friend-enemy is at its extreme, and that this is an enmity that we pay with our lives. The political is based on this relation. In this field, the law can either be moral or political. In Schmitt, and Benjamin, law is part of the political, is part of the dichotomy friend and enemy, and it is tied to the extreme violence of the political. Benjamin shows that after the final confrontation, violence makes law, it creates it and it informs it. To Benjamin, Constitutions are not seen as agreements of the social body but as treaties between enemies that decide to end the enmity. Benjamin writes:

Admittedly, military force is used quite directly, as predatory violence, towards its ends. Yet it is very striking that even –or rather precisely- in primitive conditions that scarcely know the beginnings of constitutional relations, and even in cases where the victor has established himself in invulnerable possession, a peace ceremony is entirely necessary. Indeed the word “peace”, in the sense in which it is correlative to the word “war” (for there is also a quite different meaning, similarly unmetaphorical and political, the one used by Kant in talking of “Eternal Peace”) denotes this a priori, necessary sanctioning, regardless of all other legal conditions, of every victory. This sanction consists precisely in recognizing the new conditions as new “law”, quite regardless of whether they need *de facto* any guarantee of their continuation (Benjamin: 240).

After the end of the confrontation, combatants decide to sign a peace agreement. However, this kind of agreements is part of the laws of international war and not of internal wars. Let’s remember that in the European tradition, the state has the monopoly of violence in the inside and the monopoly of war in the outside. There should not be confusion between these two levels. However this is precisely what has happened in Colombia since the beginning of the Republic. There is confusion between the outside of war and the inside of monopolized violence. The state loses that monopoly; law ceases to be an instrument of peace and in the hands of the state –as part of a tradition of authoritarianism- becomes an instrument of war. As a result, peace treaties that were supposed to be agreements between combatants at the international level become part of the inside of the state. The end of violence is symbolized with the agreement between combatants; this agreement takes the form of the Constitution.

### ***Constitutions and Peace Treaties in the History of Colombia: From 1821 to 1957.***

In the Colombian case, law has not been used as a simple instrument that brings about peace. Law is the result and the symbol of some peace that has been achieved after a bloody battle. To Gonzalo Sanchez, in his analysis of Colombian wars, writes that Constitutions in Colombia cannot be seen just a Navigation charts or as documents reflecting a social contract (Sanchez, 1991). They are peace treaties, because political actors have arrived to the point of drafting new constitutions after fighting wars. From the wars of the 19<sup>th</sup> century to the Constitution of 1991, Colombian constitutions have been agreements between factions in a fight; the new 1991 Constitution is just the mirror of the political forces at play. In the 19<sup>th</sup> century until the reform of 1957 Colombian Constitutions were peace treaties celebrated between the liberal and the conservative parties. From 1957 a new war began and the 1991 Constitution mirrors the agreement with one of the actors in combat. In this section I want to show, using Valencia Villa’s, Sanchez’ and Orozco’s analysis, the way the liberal and conservative *armies* fought their wars and how the peace agreement ended up in a constitutional text that was going to be the Navigation chart of the relations between the political forces in the years to come (Valencia Villa, 1986, 1987; Sanchez, 1991; Orozco, 1992). This is to

show how war has a lawmaking power and how this power determines the kind of rights people have in the state and, most important, how it has become one important element in the struggle for rights in Colombia. In a nutshell, there is no such friendly liquidation of the past, in its stead there is violence having a lawmaking function, war precedes law and it is giving it its shape, as Valencia Villa shows, law becomes a strategic part of war, it can be both a tool of war and a symbol of the end of it (Valencia Villa, 1986, 1987).

### *From Independence to the 1886 Constitution*

After the wars of independence of 1810 and 1819, Colombia became an independent Republic, that had certain structural elements, like the confessional character, the importance of the executive, and the centralist character of the Republic with the recognition of some rights for citizens, the same that were written in the Declaration translated by Antonio Nariño. After the Independence of 1810, the creoles fought about the nature of the Republic. There were two sides in the discussion: the centralist, intellectually led by Antonio Nariño, and the Federalist, led by Camilo Torres. The fights between the factions allowed Pablo Morillo to re-conquer Colombia and it was only until 1819 that the Country was going to achieve final political independence in the Battle of Boyacá. After Independence it was clear that the country had to be centralist, not only as a replication of the kind of government existing in the Colonies, but also as an instrument of defense against new attempts by Spain of re-conquering the country.

Once established the Republic new conflicts arose. The fact that the Gran Colombia comprised three different territories made difficult its administration. On the Colombian side, conflicts between Santander and Bolivar about the form of government led to fights and conspiracies. In September 1828 there was an attempt to assassinate Bolivar in the presidential palace. As a result of the disputes, Bolivar had to leave Bogotá and he was heading to Europe when he fell sick and finally died in Santa Marta on December 17<sup>th</sup> 1830. After Bolivar's death the Gran Colombia -Venezuela, Colombia and Ecuador- dissolved and these countries started to exist as independent states. In their attempt to build the state, the factions in power passed constitutions that tried to impose their view of the way the Colombian state should be. It is interesting to note that constitutionalism developed in Colombia at the same time that the laws of war were being incorporated in the wars between the different factions of the regional *caciques*. Between 1858 and 1863 Colombia had three Constitutions that in some way or other reflected the state of the struggle. For the purposes of this paper I want to pay attention to the Constitution of 1863, because it ended the disputes and gave way to a period of relative peace that lasted until 1886.

Mosquera, the leader of Cauca, won one of the civil wars that were fought during that time and in July 8 1861 arrived to Bogotá to become the new president of Colombia. Mosquera wanted to implant a Liberal Republic and a federal system. To pass a new Constitution he called a new Assembly where the losers and the winners of the war negotiated the new rules of the relationships between

the different factions in combat. The Constitution was finally approved by the National Convention in 1863 and it included several rights and institutions that were considered by some unfit for the situation of the country. Legend goes that Victor Hugo, the French novelist, when reading it considered it a constitution for angels (Valencia Villa, 1987: 138).

But this Constitution was passed under the shadow of new civil wars. What is interesting about it is that the framers of the 1863 Constitution decided to incorporate the laws of international war in the text of the Constitution. In cases of civil war the parties in fight were to apply international law, particularly the laws and customs of war, and not the constitution. According to article 91 of the Rionegro Constitution, *jus gentium* is part of national legislation and its rules are to be applied in cases of civil war. Thus, these conflicts can end through peace agreements between the belligerents, who have the obligation of respecting the rules and customs of war between civilized nations. This means, that the Constitution recognized the possibility of agreements between combatants, applying a rule of war between states to fights between political factions. Given the confusion between the inside and the outside of the state, these agreements took the form of a Constitution or a constitutional reform (Orozco, 1992: 105).

With the end of the liberal project the Constitution of Rionegro is attacked by the conservatives, who launched a movement to restore the structures of the state as they existed before 1886. This movement was known as the *Regeneración* and it was led by Rafael Nunez, leader of the conservative party, who along with Miguel Antonio Caro drafted a new Constitution that went back to the structures of centralism and strong presidentialism. Despite the fact that the Constitution was made according to the principles of the winners in the battle, art 121 established the possibility of declaring the state of siege whenever the circumstances advised it. This Constitution is passed under the shadow of war too, and for that reason in this article the drafters of the text decided to incorporate the *jus gentium* as the limits to the actions of the state. This is, in the Constitution it is assumed that the state of siege resembles the wars that preceded the 1886 Constitution and that these wars reflect a lost monopoly of war and for that reason the norms that has to be applied is not that one of the situation of peace –criminal law- but that one of war, namely *jus gentium* and the laws and customs of war between civilized nations.

### **From 1886 to 1957: a new peace treaty between fighting factions**

The Constitution of 1886 was reformed several times until its final demise in 1991. Some of the reforms were the result of the agenda of the president, like the reforms of 1936 when Alfonso Lopez Pumarejo wanted to modernize the country through some economic reforms. These reforms were called the Liberal Revolution, but they were more along the lines of the social democracy of the Weimar Constitution or the *New Deal*, than the liberalism that was applied in the first liberal Republic (Valencia Villa, 1987). But I am interested more in the



constitutional reform of 1957 that was the solution to the wars of the 1950s but at the same time caused the wars of the 1960s to the 1990s.

After the Liberal hegemony (1930-1946), Mariano Ospina, running for the conservative party, was elected president. While he was president the liberal candidate, Jorge Eliecer Gaitán, who was known for his appeal in the masses, was assassinated. This event launched an unprecedented violence in the country where liberals and conservatives fought against each other for about ten years. In the country side liberal towns expelled conservatives and in conservative towns liberals were expelled. Ospina's government was followed by Laureano Gómez' government, considered to be one of the bloodiest and most authoritarian governments in Colombian history. Due to Gomez' illness, Roberto Urdaneta assumed power and ruled the country for about two years. During this conservative administration the government created a secret police and recruited its members mainly from the region of *Chulavita*, reason why this police was known as the *chulavitas*. They were responsible for the killing of thousands of liberals just for their membership to the liberal party. At the same time, in the Llanos and the Coffee region of Colombia, peasants created self defense groups in order to protect themselves from the attacks of the government. They were also responsible for the death of thousands of people in Colombia based just on their political opinions. As German Guzman et al showed in their report about the causes of *La Violencia* in Colombia, during this period more than two hundred thousand people were killed only for their political affiliation. The victims were mostly peasants and working class people (Guzman et al, 1963).

Laureano Gómez returned to office only to be overthrown by Gustavo Rojas Pinilla on June 13<sup>th</sup> of that year. Rojas Pinilla passed a new constitution where some changes were made, amongst them the right to vote for women. However, due to the repressive character of his government and the agreements achieved in Spain by the leaders of the two parties, Rojas was overthrown in 1957 and a military Junta replaced him until new elections were celebrated. In the constitutional reform that a Constitutional Assembly passed, the liberals and conservative decided to share the positions in the government and decided to alternate the presidency, beginning with the liberal party. Thus Aberto Lleras Camargo (1958-1962) was elected as the first president of the National Front. This agreement was seen as a peace treaty between the two forces that were fighting for power in Colombia. They understood that if the reason of the fight was to control the state to pursue their own interests, what best than sharing the government and getting the benefits without the need to fight for it. The National Front is then a peace agreement between liberals and conservatives that kept the country in peace for about four years, because the same way that solved a conflict between factions it created a new one that was going to be the cause of new wars.

### **The Elections of 1970 and the emergence of M-19**

The National Front was supposed to end in 1974. However, in 1968 with the reform pushed by Carlos Lleras Restrepo, the sharing of positions in the

government was going to persist after the end of the alternation of the presidency. The last president of the National Front was going to be elected in 1970 and he had to be a conservative. However, in the 1960s new guerrilla movements were created (FARC and ELN) following the example of the Cuban Revolution and the widespread knowledge of the ideas of Ché Guevara as well as the experience of *La Violencia* and the need to resist the attacks that were coming from the government.<sup>3</sup> The struggles during *La Violencia* led to members of liberal guerrillas to join forces with members of the communist guerrillas fighting in the area of Sumapaz (Pizarro, 1992). In 1966, during the Congress of the Communist party, the Fuerzas Armadas Revolucionarias de Colombia FARC was born. On the elites' side, Alfonso Lopez Michelsen, the son of former president Lopez Pumarejo, created a dissident movement within the liberal party called *Movimiento Liberal Revolucionario* MRL in 1960. Despite the fact that Lopez Michelsen was a member of the Colombian elites, some of its members believed in the revolutionary idea of opening the political system and when Lopez decided to return to the official liberal party in 1968 they left with disappointment and joined the guerrillas.<sup>4</sup>

In 1961, Maria Eugenia Rojas and others created the Alianza Nacional Popular ANAPO to support the ideas and achievements of Rojas Pinilla, who after being exile had returned to Colombia to face justice. The unfair and biased character of the trial led to the creation of ANAPO.<sup>5</sup> Given the fact that during his dictatorship he implemented some populist –and popular- policies he managed to get the support of some members of the popular sector. He ran for the presidency in 1962 but he did not obtain enough votes to put the system of the National Front in check. However, for the elections of 1970 ANAPO had more experience and due to the divisions in the Conservative party, he was then more likely to become president in clean elections. On the 19<sup>th</sup> of April 1970, the elections took place and Rojas Pinilla was leading the race for more than a hundred thousand votes (Premo, 1971 and Pulgarin, 1984, Noriega, 1977, 1998). In the radio reports Rojas was winning the elections when suddenly the president ordered to close the stations and prohibited the radio from giving any report that did not come directly from the government. It is not a surprise that days after the election, Misael Pastrana Borrero, the candidate of the conservative party, was found to be the elected president for a small margin of votes. Members of the ANAPO and the popular sector were outraged, even members of FARC and ELN offered support to Rojas Pinilla, and they were ready to go to the Presidential palace to claim the election for Rojas, using force if that was necessary. But, Rojas decided to avoid

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<sup>3</sup> In the peace process with Pastrana (1998-2002) Manuel Marulanda Velez, aka Tirofijo, mentioned that the fight could have been prevented had the leaders of the 1960s honor their promises of giving peasants a piece of land and some chickens. Instead, Guillermo Leon Valencia (1962-1966) bombarded Marquetalia, where members of the liberal and communist guerrillas were living with their families (Molano, 1985).

<sup>4</sup> Jaime Bateman's mother, Clementina Cayon was an activist in the MRL.

<sup>5</sup> Although Rojas had been a bloody dictator, the trial pushed by the Liberal party in Congress left many people with a bitter taste. They believed that Rojas could have been tried in a more fair way (Ayala, 1995, 1996).

confrontation and recognized Pastrana as the President. This decision disappointed many of the leaders of ANAPO, amongst them Carlos Toledo Plata, who joined a branch of ANAPO called ANAPO socialista.

Members of ANAPO followed the dictator's daughter in order to fight for the presidency in the elections of 1974. However the radicalization of the two branches in ANAPO led to the disappearance of the movement. During the same years, Jaime Bateman, Rosemberg Pabón, Luis Otero, Alvaro Fayad, Ivan Marino Ospina and others left FARC –in fact they were expelled- for contradicting the leadership. Jaime Bateman, as others in M-19, began his revolutionary life as a member of the Communist Youth JUCO. He soon joined FARC and became aide of Jacobo Arenas, one of the leaders of FARC. This is a time where there were some struggles in the revolutionary thought in Colombia, and Manuel Marulanda proposed amongst many things that the war be taken to the cities because in the country side the war that was being fought affected only the peasants and it was not felt by the elites. Bateman believed in these words and started to work along those lines. However, the communist party felt that that was departing from the party lines and Bateman and the others were expelled from the PC and FARC.

Bateman, Luis Otero, Rosemberg Pabon, Elvencio Ruiz, and others created M-19 to fight for democracy and to follow ANAPO and Maria Eugenia Rojas. Their first motto was "*Con el pueblo, con las armas, con Maria Eugenia, al poder*" (Letter to Maria Eugenia Rojas, May 1974). It is important to notice that by this time, M-19 still believed in the revolution via the armed struggle and the possibility of a socialist revolution in Colombia ((Interview Rosemberg Pabon). They saw themselves as members of the petty bourgeoisie who were trying to incorporate themselves in the masses via ANAPO (Letter to members of M-19 by the Comandancia July 1<sup>st</sup> 1977), but they did not see themselves as a Revolutionary army. Their actions in that time were more symbolic and more along the lines of political activism than revolution.

In 1974, M-19 has its first public appearance. That year some members of the group stole Bolivar's sword from the museum in Bogota where it was usually exhibited. The sword became the symbol of this group and later was used to express nationalist Bolivarian character of the group, following the example of the Uruguayan guerrilla Tupamaros.<sup>6</sup> After this act others came: the kidnapping and assassination of Jose Raquel Mercado, union leaders accused of betraying the movement and support the government; the kidnapping of the manager of Agropesca, in order to support workers in the negotiation with the factory (Villamizar, 1995), and the kidnapping and killing of Charles Bitterman, a linguist who worked for the Summer Linguistic Institute (Periódico Mayorías 12 and Mayorías 17).<sup>7</sup> But until that time M-19 was just a group that had developed some

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<sup>6</sup> Even the act of stealing the sword was inspired by Tupamaros. This group stole Artigas flag in Uruguay in order to give to the movement a more nationalist content.

<sup>7</sup> It seems that the kidnapping and assassination created some division in the group. The National leadership sent a letter to the Comandancia de Base to explain their position and clarify some points (Letter February 6 1981).

symbolic actions in their struggle in the country. However, by 1979, and due to the repressive character of the government of Julio Cesar Turbay (1978-1982), members of the group decided to steal five thousand arms from the barracks of the Command of the Armed Forces (Known as Cantón Norte). They did so on the night of December 31<sup>st</sup> 1979, humiliating the armed forces and showing some power of the movement that was giving the step to become a revolutionary army (Interviews with Rosemberg Pabon and Antonio Navarro; Villamizar, 1995). There was a bloody reaction, and almost all of the members of the group and its leadership, with the exception of Bateman, were captured and taken to trial.<sup>8</sup> During these years M-19 did not believe in law, mainly because of the authoritarian character of Turbay's government. But this was going to change in the VIII conference. They even rejected the Constitutional Assembly created by Lopez Michelsen to reform the Constitution and saw it as a way of perpetuating the state of affairs created in 1970 (Villamizar, 1995).

### *Law as an instrument in the war against guerrillas*

Due to the economic transformations occurring in Latin America at the time, there is a need to stabilize the country and pacify the popular sectors. The general strike of 1977 showed the elites the power of the workers movement and the possibility of losing control of the country. Once Turbay took office he declared the state of siege, as all of his antecessors did since 1958 (Gallon, 1979). One of the measures he took was passing the *Estatuto de Seguridad* created along the lines of the doctrine of national security, that at the time was accepted in the military in South America. One of the norms of the Statute was the prohibition of strikes and popular protests and the consideration of strikes as terrorism. The structure of the judicial system was changed and now political crimes were going to be tried by members of the military and following and expedite procedure established in this exception law. As Alejandro Aponte has shown it, this legal situation led the leaders of the guerrillas to use a strategy of *rompimiento*, that is a strategy of denunciation of the system as unfair and illegal and leave the juridical strategy to the stage of *casacion*, which was decided by a Supreme Court made up of civilian judges.

Unsurprisingly members of guerrillas who were tried by these military Courts were found guilty of the crimes they committed (rebellion or sedition) and were sentenced to prison. However, the shadow of international war was still present, because these laws did not try rebels for the crimes committed in combat,

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<sup>8</sup> It is now legendary the many times that Bateman was about to be captured and managed to escape. In one of the occasions he was recognized by one of the members of the military but Bateman reacted by saying that this always happened to him, being confused with that criminal. Bateman's performance was so convincing that the officer let him go (Villamizar 1995, 1997).

that is to say, recognizing their condition as combatants. The trials of the leadership of ELN and M-19 were famous and the audiences for the trial of the latter were taking place when the Dominican Embassy was taken by a group of members of M-19 led by Rosemberg Pabón, aka *Comandante Uno* (Interview with Rosemberg Pabón) with the purpose of showing support to political prisoners and to denounce the human rights violations committed by Turbay's government.

### *The Embassy, the Palace, and the threat to the Oligarchy*

The action in the Embassy had the purpose of advertising the situation of human rights in Colombia and of offering support to those members who were in prison. The demands of the movement were clear: the end of the state of siege, amnesty for all political prisoners in Colombia, and the end of human rights violations. At this point the M-19 had an anti imperialist discourse, product of its nationalism, but it is going along the lines of a liberal bourgeois democracy. In a communiqué of June 1980, after the end of the taking of the Embassy, the group manifests the need of transforming democracy in Colombia. They propose democracy at all levels: political, economic, social, cultural, and military. They even propose bourgeois freedoms and some social welfare for workers.

But it is in 1982 that the movement starts to take law more seriously, criticizing the socialist position of other groups and emphasizing the opening of the political system via the end of the National front, more rights for people, more participation, and rights for the indigenous peoples. In the VII Conference, M-19 threw the wall down some years before the Berlin events, meaning that they were moving from the radical left to a more democratic left along the lines of European socialism (Interview with Otty Patiño). In the Conference, members of M-19 decided to support the idea of a National Dialogue. It is important to remember that since 1979 Jaime Bateman was insisting in the idea of a *Sancocho Nacional*, which was referring to the need of incorporating all political forces in the political system.<sup>9</sup> In the same Conference M-19 made a call to all democratic and political movements to create a broad Movement of National Salvation (*Movimiento de Salvación Nacional*). It is not a surprise that Alvaro Gomez used this same name to call his own movement after being kidnapped and released by the M-19. This Movement was supposed to demand from the government the opening of the political system, dialogue and peace (VII Conference August 7<sup>th</sup> 1982).<sup>10</sup>

M-19 began negotiations with Belisario Betancur (1982-1986) and this led to a new peace process. Betancur decided to pass a new Amnesty law, broader than the one passed by Turbay and it took the idea of M-19 of a national dialogue. During the process, M-19 consulted the bases all around the country and created *campamentos* in cities like Cali, Bogotá and Medellín where they discussed with the

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<sup>9</sup> Jaime Bateman was known for his expressions to describe the Colombian situation, besides the *Sancocho Nacional* he used to say that *La Revolución es una rumba*, to express that Revolution was not a burden for them but a happy task.

<sup>10</sup> The communiqué is signed by the *Comandancia* and it says *con el pueblo, con las armas, al poder*.

bases the reforms that were going to be proposed to the government and the agenda for M-19 as a legal movement.<sup>11</sup> The dialogues ended because of accusations on both sides of launching hostile attacks against the other. M-19 suffered some attacks, the assassinations of two of its leaders, Alvaro Fayad and Ivan Marino Ospina, and decided to try Belisario Betancur for the crime of lying to the country and perpetuating the war. A group of M-19 under the command of Luis Otero with Andres Almarales, Elvencio Ruiz, and Alfonso Jacquin (a lawyer) as one of the members of the group decided to take the palace of justice and demand the presence of the president to be tried by the Supreme Court. It is interesting the path that they chose. They chose properly the only authority that could try the President but they did not calculate the reaction of the government. They were expecting negotiations as the ones they had with Turbay's administration, but here the reaction of the army was thoughtless and launched an attack that lasted two days and cost more than one hundred lives, amongst them the lives of eleven of the Justices of the Supreme Court.

As a result of the attack, the prestige of the group hit bottom and they were seen as fighting a senseless war. In 1986, after the election of Virgilio Barco (1986-1990), M-19 decided to open new channels for a new peace process. However, now this is a group that is seen as defeated and lacking the legitimacy and the support that used to have before the taking of the Palace of Justice. In an interview given in 1986, Carlos Pizarro re-claimed the democratic character of M-19 and claimed not to be a warrior organization. In this interview Carlos Pizarro proposes a new social pact and national dialogue, going back to the lines set up in the VIII Conference and the discourse of Jaime Bateman after 1979 and the communiqués of 1985 (Revista Cromos, June 17<sup>th</sup> 1986).<sup>12</sup> During these years M-19 insists in the need of having a national pact that transforms Colombian democracy and that opens the political system for the inclusion of other groups. From this time M-19 proposes the creation of an Admirable Congress like the one created by Bolivar at the beginning of the Republic. In this Congress, representatives of all the political forces in the country would discuss the shape of the new national pact, that is, they propose the creation of a Popular National Assembly (*Pacto Nacional por un Gobierno de Paz*. Communiqué of September 1987). However, there was a problem that needed to be solved. How to force the government to re-start negotiations in favorable conditions? That is why the M-19 let people know their *proclama* of January 1988. This is an interesting document because it sets the lines of the proposal of M-19 to the elites and it sets the bases of what later was to be the

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<sup>11</sup> This is the base of the success of M-19 in the elections of 1991, because the candidates were known to the public and there was an experience of working in the communities (Interview with Fabio Cardozo).

<sup>12</sup> In the communiqué signed by Navarro, Almarales, Israel Santamaria, and Vera Grabe in february 1985, the M-19 looks for national agreement within the framework of democracy. In this document the group proposes an opening of the political system, *cabildos abiertos* to discuss with people the measure within a framework of participatory democracy, a National Referendum to approve the measures taken and give them constitutional character and a military truce (Letter to the members of the Commissions and Subcommissions of the National Dialogue, February 27<sup>th</sup> 1985).

Constitutional Assembly. In this document they declare peace to the army and war to the elites: *Vida para la Nacion. Paz a las Fuerzas Armadas. Guerra a la Oligarquia. Tenemos un solo proposito: la democracia. Un solo enemigo: la oligarquia. Una sola bandera: la paz.*<sup>13</sup> At the same time they tell the press that they are willing to take the war against the oligarchy and they add that the country is tired of having second class burials and it may need 50 first class burials. As it is clear, and the oligarchy understood it well, this was a direct death threat against the members of the oligarchy (Interview with Rosemberg Pabón). As a result of this new agenda, a group of M-19 kidnaps the leader of the Conservative party and this time decides that it is not going to make the same mistake committed in 1985. They decide not to try Gomez for any crime and in its stead they dialogue with him and show him the need of opening the political system. As a result, Gomez is release months later and decided to support the process. He even created a movement that was called *Movement of National Salvation*, stealing Bateman's ideas of the early 1980s. The elites understood the message, and Barco's government called for a reform of the Constitution. The reform failed for the influence that Pablo Escobar was exercising against Congress, trying to include extradition in the discussion. Barco retired his proposition and the Constitution was not reformed. In November 2<sup>nd</sup> 1989 the government and M-19 signed the peace agreement. In March 9 1990, Barco's administration signed a political agreement that includes a reform to the Constitution or a Constitutional Assembly (Acuerdo Politico, March 9<sup>th</sup> 1990). However it is only under Cesar Gaviria that the peace agreement reaches its final stage: the new Constitution.

### *The 1991 Constitution.*

Virgilio Barco and Misael Pastrana signed what was known as the Pastrana-Barco treaty in order to dismantle the National Front and establish an open political system. However, the Agreement was found to be against the Constitution by the *Consejo de Estado* and Barco decided to introduce his own project of reform based on article 218 of the 1886 Constitution, which established that only Congress could reform the Constitution. In January 1990, drug cartels pressured for the inclusion of an article prohibiting the extradition of Colombians. Due to these pressures the Barco Administration decided to retire the bill and sank the reform. In Congress, then Minister of Government Carlos Lemos Simmons said the following to members of Congress who wanted to include in a referendum the prohibition of extradition for Colombians: *You would be inviting Colombians the 21<sup>st</sup> of January not to a referendum but to a bloodbath. Because this is a topic that, if taken to popular consultation, will cause tremendous violence, deaths, and intimidation*" (Buenahora, 1995: 35).

There were several obstacles to reform the Constitution. On the one hand there was the war against Pablo Escobar. On the other the reluctance of guerrillas,

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<sup>13</sup> Life for the nation. Peace to the Armed Forces. War to the oligarchy. We have one goal: democracy. One enemy: the oligarchy. One flag: peace.

like FARC, to surrender and opt for the democratic transition. They had good reasons to distrust the government. In the elections for the presidency Jaime Pardo Leal (UP), Bernardo Jaramillo Ossa (UP), and Carlos Pizarro (M-19) were assassinated despite the fact that they had police protection. The new political actors did not believe in the political will of Congress to reform the Constitution and they feared pressures like the ones exercised during the failed Barco reform. In the elections in March 1990, students from some of Universities supported the inclusion of a seventh ballot, given that voters were already scheduled to cast votes for six elective offices. However the ballot was not to be counted but it served as a pretext to call for a Constitutional Assembly. Based on the pressure of the student movement, Alvaro Gomez joined them and call for a Constitutional Assembly (Orjuela, 1993; Dugas, 2001). President Barco passed decree 927/1990 in order to ask Colombians in the presidential elections if they supported a Constitutional Assembly. The question received 86.6% of the votes but it did not represent the majority of the population, because the election had a high level of apathy –or fear.

Once Cesar Gaviria took office, he decided to use the emergency powers that he had due to the fact that the country was under state of siege since 1984. Based on those powers, Gaviria made an agreement with the leaders of political parties, with the exception of Pastrana -who decided to not support the process, and set an agenda for the Constitutional Assembly. Decree 1926/1990 went to constitutional review by the Supreme Court and they found that the decree was constitutional with a vote of 14 to 12. However the Court found that the primary constituent, the people, could not be limited by agreements between the parties, and therefore the Assembly could reform and even change the Constitution. Now it was not a matter of a constitutional but a constituent Assembly. The Supreme Court understood the shadow of war that was always over laws in Colombia. It saw that the new constitution was not going to be just a text, it perceived as a peace treaty between the factions at war. In the decision of October 11<sup>th</sup> 1990, the Court wrote that law is related to peace, and that the new Constitution could be a new instrument to finally enjoy the right to peace.



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