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JUDICIAL ACTIVISM IN A VIOLENT CONTEXT:

THE ORIGIN, ROLE, AND IMPACT OF THE COLOMBIAN CONSTITUTIONAL COURT*

JUSTICE MANUEL JOSÉ CEPEDA-ESPINOSA

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The Constitutional Court, created in 1991, is the highest judicial body
in Colombia. It also has the greatest responsibility of all Colombian courts.
First, the Court has the responsibility of interpreting and preserving the
integrity of a new, very progressive Constitution in a country that
currently faces a sort of Leviathan. Colombia faces a recurring nightmare,
where irregular armies and terrorism defy democratic institutions, and the
Court has the duty to interpret and enforce the Constitution to protect the
rights of the people.

Some people think that the Constitution is best suited for Switzerland. Nevertheless, one of the first objections raised against the 1991 Constitution by those
who defended the previous 1886 Constitution was that it promised too much for a country like
Colombia, and that it seemed to have been conceived for a society that was living in peace. Hence
these critics revisited the common phrase with which Víctor Hugo disqualified the 1863 Colombian
Constitution, which also contained a generous bill of rights and followed the federal model: “it is a
constitution fit for angels.”

It seems over simplistic to state that there exists a “culture of violence” in Colombia, or that
Colombia is a “violent country.” However, Colombia has in fact suffered the burden of different types of
violence: the so-called “wars” of the nineteenth century, during which nine significant “civil wars,”
two international armed conflicts with Ecuador, and dozens of regional revolts took place, especially
during the “Federal” period. After those involving independence from Spain, the most important
internal conflicts during this Federal period were: (a) the “War of the Supremes” (1839–1841), which
raised with the pretext of countering a national law that suppressed monasteries with less than eight
members and committed their assets to educational purposes, but which in fact served as an excuse to
join a number of local leaders (remnants of the Independence period) with substantial popular support
in the south of the country against the central government; (b) the 1854 Coup d’Etat, led by rebel army
leader José María Melo with popular support, and the corresponding reaction by supporters of the
government; and (c) the so-called “Thousand Day War” (1899–1902), which was a violent