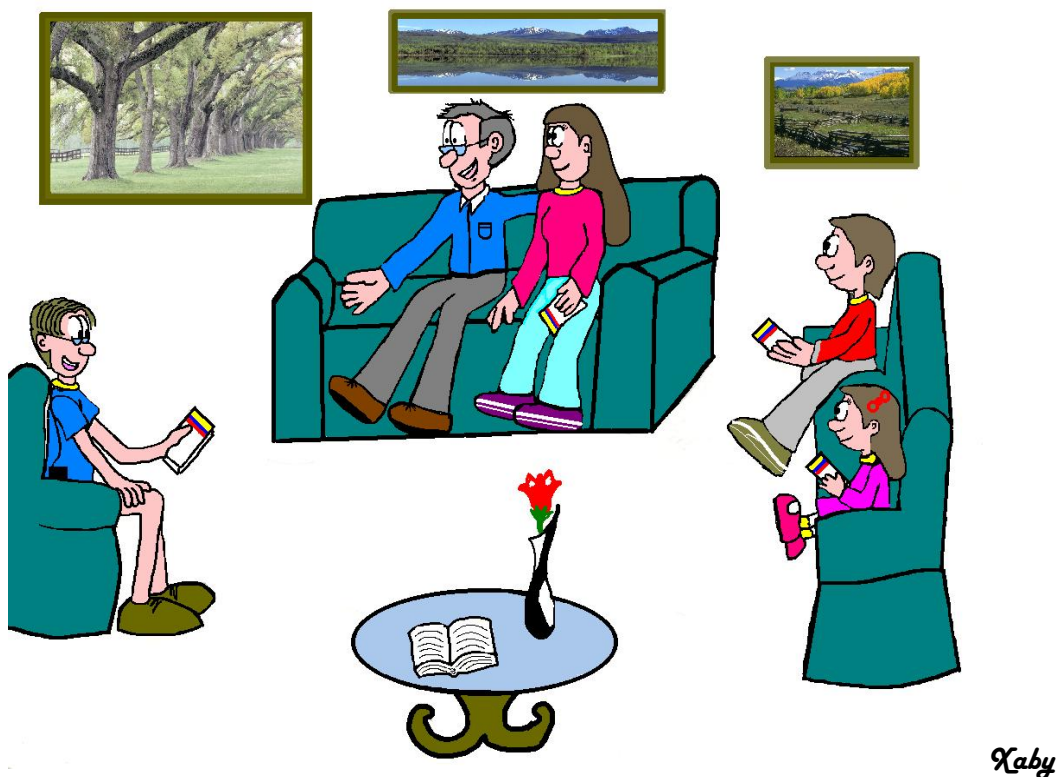


THE READ CONSTITUTION IN FAMILY FOR ALL

THE CHAPTER XIV

THE MECHANISMS FOR THE REFORMATION OF THE COLOMBIAN CONSTITUTION



I. THE DIALOGUE CONSTITUTIONAL: WE HAVE A DIALECTICAL POLITICAL CONSTITUTION AND REFORMABLE

VICTORIA: How well! another time in house, sweet home. That tourist trip for *Bogotá* has gotten rich in relative knowledge to the Organization and the Authorities of the State, on the protection and effective guarantee of the rights and duties of the peoples, as well as on the structure and real operation of the Institutions of the Presidency of the Republic, the Ministries, The General Procurator of the Nation, The General Comptroller of the Republic, the Mayors, the Governors, the councils municipal and the Assemblies; in short, on all the constitutional topics provided in the Political Constitution of 1991. All told this father, today with a lot of happiness I can tell you that from to ask about the Political Constitution of Colombia and to carry out the tourist trip for the real content of the Constitution, as your you have become trained, today I am convinced that I have learned a lot of envelope the Political Code of our country, because really as your you say it is a great one "*The Book with power*".

ARMANDO: Victoria, don't believe you so much. Do I have a Constitution also now and do I know what it contains, for what reason do we use it?, how should we respect and to make that they respect the fundamental rights to the life, the education, the health, the physical and psychic integrity, the honor, the free development of the personality, the intimacy?, and what is more important, before who and why juridical and administrative means are these rights protected?. And all this, because now living the formal or written real and not alone Constitution, I know that as well as the people, the Congress of the Republic or the Assembly National Constituent can create a Constitution, by means of legislative Acts, constituent Acts and for the mechanism of the Referendum, likewise they can reform or to repeal it.

LUCIO: Indeed, dear siblings, our trips for the South of Colombia, for *San Andrés*' Archipelago, *Santa Catalina* and *Providencia* and for *Bogotá*, it has demonstrated us to know which their content of the Constitution is it is necessary to live her, to comment it and even to criticize it as makes it our father. However, as adolescent, wanted to be able to converse with people of my age to suggest them how to study and to understand our Constitution better; and at the same time, to explain to them how before our congressmen, delegated to the Constituent National Assembly, councilmen, deputies or members of the National Government proceed to reform or to repeal the Constitution for their own initiative, they should look for consents in the people or constituent primary, because after all, this is the holder of the sovereignty and of where they emanate the structure, the organization and the operation of the Colombian State.

MARÍA PAZ: If the grandparents and the professors of the College listened to speak our children they would say that they are some constitutionalists in power or at least that Victoria, Armando and Lucio, they have read attentively in family the Constitution that have assimilated it in the practical life along the constitutional tourist trip that we have carried out in this book with the guide and coordination of *Liborio* and mine. For that reason today in the room of our house, we attention our children, to converse on what think, feels and they have assimilated of the Colombian Political Constitution in real and deep form. This gives us happiness and it thrills, because there is forming citizens with future, to children of the Colombian State that respect and they know the Constitution.

LIBORIO: It is gratifying to listen to my family speaking serious and dedicatedly on the Constitution of Colombia. When we begin this constitutional tourist trip, it seemed to be the only one that knew on the content of the Constitution, but with the course of the time my children and my wife were knowing through the diverse chapters of this book, the structure, organization and operation of the branches of the public power, the organisms of fiscal control, of control of the conduct of the public servants and the authorities electoral control and in general on the rights, duties and people's guaranties in front of the State. This constitutional tourist trip for the beautiful natural places of Colombia, provided to my family serious and fundamental arguments to know real and not simply formal content of the Constitution of 1991, because the great book of constituent power that is the Constitution can only be assimilated by all the people when one lives in the reality, it is read understanding its contents and it is applied to all the activities of the daily life, just as made it, the constitutional family in this book.

II. THE CONSTITUTIONAL LESSON: THE COLOMBIANS HAVE CAPACITY SO MUCH TO CREATE A NEW CONSTITUTION AS WELL AS TO REFORM OR TO REPEAL IT.

In the constitutional history of all the Modern States, it is known as “constituent primary” to the people, since it is the foundation or base of the sovereignty. The People as constituent primary it is legitimate to make as undoing a Constitution, previous the majority and qualified consent of the citizens and the execution of some constitutional procedures and consensus of themselves. The people can create or to repeal its own Constitutions or norms juridical rectors of the social life, politics, economic, cultural, labor, educational, and in short, in life integral of a Nation.

The people as constituent primary it can create to structure, to organize and to reform a public power (executive, legislative and judicial and organism of control), to institute some representatives or his delegates that complete specific functions within the different branches of the power rightfully and equally can elect by means of the popular vote to the government or administrative authorities, like to the legislative authorities and exceptionally to the jurisdictional authorities (for example, the justice of the peace). Likewise, can elect by means of the vote to their delegated or integral members of the *NATIONAL CONSTITUENT ASSEMBLY* that will be the representatives of the people or also calls “*derivative constituents*”, as they are also it the Members of the Congress of the Republic or congressmen, capable some and other, to modify, to reform total or partially, or even to repeal the Constitution.

The Constitution of 1991, picking up these universal predicaments, it specified that the people or part of him as qualified citizens, as well as the legislative or constituent organisms (“*derivative constituents*”), they can reform or to repeal the Constitution, previous some constitutional procedures and an agreement on topics of becoming human.

Indeed, a qualified group of citizens, five percent (5%) of the effective electoral census, has legitimate initiative to present reformation projects to the Constitution, by means of the mechanism of the Referendum, on such topics: as the fundamental rights, its protection and defense, the mechanisms of civic participation; among others. The Congress of the Republic on the other hand will complete the legislative step of the convocation law and of the agenda of the initiative and the town or capable citizens to vote finally will approve the normative texts or agendas proposed by means of the affirmative vote (YES) or derogatory (NOT).

The Congress of the Republic, in the main through Legislative Acts, or the Constituent National Assembly, when it is convoked by the people, for exception, they can also reform or to repeal the Constitution, previous the consent of matters or juridical norms and the provided corresponding constitutional procedures of reformation, today per today, in the Constitution of 1991 in the articles 374 at 379, in accordance with the articles 155 and 241, subsection No. 2.

However, all reformation or repeal of the Constitution to initiative of the people or of a group of councilmen or deputies, it is the Congress of the Republic the authority that endorses, approve or conclude the legislative procedure of constitutional reformation.

III. THE CONSTITUTIONAL GLOSSARY

CONSTITUENT ACT: It is a constitutional juridical Norma suitable for reform total or partially the Constitution, initiate, processed and issuing by the Constituent National Assembly, within a period, functions and special attributions determined by the own Assembly.

ELECTORAL CENSUS: Census or it lists potentially of the population capable to vote. In our country the census is carried out with people that have reached the juridical condition of the citizenship and they obtain the document of national identity (or DNI).

JURISDICTIONAL CONTROL: It is the mechanism used by the judicial branch to revise, to modify or to eliminate a constitutional, legal or administrative juridical norm. The jurisdictional Control of the legislative Acts, Constituent Acts and the reformations of the Constitution by means of referendum, it exercises it in Colombia the Constitutional Court by means of some constitutional procedures.

LEGISLATIVE ACT: It is a constitutional juridical Norma suitable for reform total or partially the Constitution and which is made to initiative of the members of the Congress of the Republic (Senate and Chamber of Representatives), through a legislative procedure of two ordinary and serial periods.

NATIONAL CONSTITUENT ASSEMBLY: Constitutional organism, convoked to instances of the people through popular vote, with the only purpose of reforming total or partially the Constitution. The elected members for vote are denominated delegated or constituent and they exercise their exceptional functions in a short and previously established period for the same Assembly.

REFERENDUM: Convocation that one makes to the people so that it approves or reject a project of juridical norm or I repealed or don't already unite norm existent. In Colombia, the mechanism of participation democratic called so much referendum is used to approve or to disapprove constitutional juridical norms (The Constitution), as well as legal juridical norms (laws of the Congress) or administrative juridical norms (Agreements of the Municipal Council, Ordinances of the Departmental Assembly or Resolutions or Decrees of Mayors and Governors, or any other national administrative authority).

IV. THE CONSTITUTIONAL PRECISION: THE REFORMATION OF THE CONSTITUTION FOR THE CONGRESS, THE NATIONAL CONSTITUENT ASSEMBLY AND THE PEOPLE

THE REFORMATION OF THE CONSTITUTION
(Title XIII, articles 374 at 380 of the Constitution)

I. The Reformation of the Constitution. The Political Constitution of Colombia will be able to be reformed by the Congress, by means of Legislative Acts, for the National Constituent Assembly, by means of constituent acts and for the people through of the Referendum.

II. THE LEGISLATIVE ACTS OF THE CONGRESS OF THE REPUBLIC
(Article 375 of the Constitution)

A. THE INITIATIVE: They can present projects of legislative act: The National Government, Ten (10) members of the Congress, twenty percent (20%) of the councilmen or of the deputies and the citizens in an equivalent number at least, at the five (5) of the effective electoral census.

B. THE PROCEDURE: The legislative act must be approved it two ordinary and serial periods. Approved in the first of them by most of the assistants, the project will be published by the Government. In the Second period the approval will require the vote of most of the members of each Chamber. In this period they will only be been able to debate initiatives presented in the first one.

III. THE CONSTITUENT ACTS OF THE NATIONAL CONSTITUENT ASSEMBLY

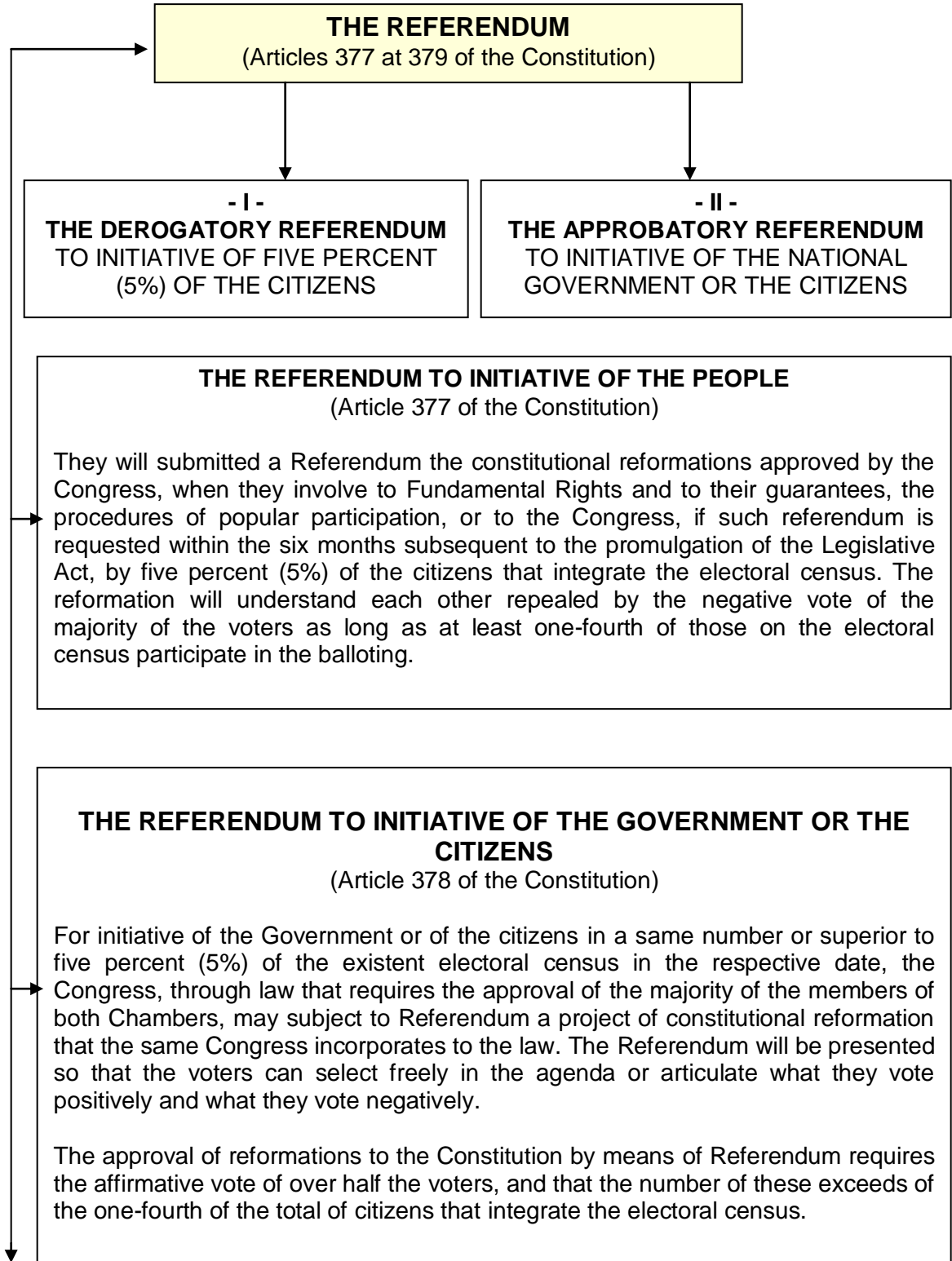
(Article 376 of the Constitution)

1. CONVOCATION: The Congress, by means of law approved by majority of the members of both Chambers, the Congress may prepare that the people in popular voting decides if it convokes a Constituent Assembly with the competition, the period and the composition that the same law determines.

2. APPROVAL: An affirmative vote of the people will convoke the Assembly, when they represent at least one-third of the electoral census.

3. ELECTION OF CONSTITUENT: The Assembly will be elected by the direct vote of the citizens, in electoral act that won't be able to coincide with another election.

4. SUSPENSION OF THE CONGRESS: During the election, the ordinary powers of Congress to amend the Constitution are suspended during the term stipulated so that the Assembly may perform its functions. The Assembly will adopt its own by Laws.



THE UNCONSTITUTIONALITY ACTION OF THE ACTS OF REFORMATION CONSTITUTIONAL

(Articles 379 of the Constitution)

A. CAUSAL:

The Legislative Acts, the convocation to Referendum, the popular consultation or the act of convocation of the Constituent Assembly, they will only be able to be declared unconstitutional when the requirements established in the title XIV of the Constitution, have been violated, that is to say, when the form and substance requirements they have been transgressed in their creation.

B. ACTION:

The public action against these acts will only proceed within one year following their promulgation, with observance of that prepared in the article 241 subsection No. 2 of the Constitution, that is to say, exclusively for errors of procedure in their convocation and implementation.

C. CONSTITUTIONAL CONTROL:

The Constitutional Court decides prior to the popular pronouncement, about the constitutionality of the convocation to a Referendum or a Constituent Assembly to reform the Constitution, exclusively for errors of procedure in their convocation and implementation.

VALIDITY OF THE CONSTITUTION OF 1991

(Article 380 of the Constitution)

The Constitution is repealed until now effective with all its reforms. This Constitution is effective from the day of its promulgation, that is to say, starting from the 7 of Julio 1991, since the Centennial Constitution of 1886, it was repealed

V. THE CONSTITUTIONAL READING: THE REFERENDUM A MECHANISM OF DEMOCRACY PARTICIPATIVA

“The constituent process of 1991 didn't lead from a representative democracy to a participative. With the constitutional referendum we are securing in the social practice and in the Colombian political culture the traffic to the democracy participative. In the deep political crises, the people decide with sovereign by means of institutional channels.

For the first time from the expedition of the new Constitution we must celebrate a national referendum, with the certainty that the matter on which the Colombian Town must pronounce is not of little it mounts. It is to carry out a deep surgery to an institutional fabric that doesn't work regularly through an outline of pesos and counterbalances, giving place to a systemic corruption and an apparent dysfunctional to the interior of the State that affects the own governable and the officeholders' responsi-

bility. We are in presence of an articulate political system about small interests and for the *clientes*. The relationship between the citizen and the institutions is weakened in superlative grade, eaten away by the cancer of the distrust.

The Colombian society won't be able to face its severe problems and to adopt the necessary decisions to solve them without reconstructing the trust. But the trust is born of the clarity and of the capacity of the political system to demand responsibilities to its leaders. The constitutional reformation for whose consideration is summoned the one populate Colombian it is guided to rescue the clarity and the responsibility, eliminating of cut the politics in lower-case, establishing the mechanisms so that the responsibility that fits to the representatives of the citizenship is demanded and transformed the foundations of the exercise of the political power

This referendum is constituted, then, in convocation to the Colombian Town to reconstruct the bases of the representation, to rescue the trust that is needed in order to preserve the social cohesion and to overcome our ailments. Exactly because it is to reconstruct the bases of the political power and that of representation, we appeal directly to the Town, supreme source of all authority in a democratic society and in a State of Right" (*Exposé of motives of the project of referendum of April of 2000*)

"The democratic State cannot be built, but on the bases of a good politics. In the logical order of the factors, the rescue of transparent, effective and noted institutions is matter of the highest priority. That doesn't mean, certainly that is enough for the zeal in that this Government has committed in front of the people what refers to the politics' reformation. It is clear that the high-priority element and condition doesn't mean that it is the only one, not even that of more urgency or importance in the one on the way to the national recovery and of the recon quest of the security and of the well-being of the Colombian society and of the human beings that integrate it. For that reason the political reformation will be an essential fact, like it was said logically high-priority, but in any case the unique ingredient of a global strategy or of group. Without healthy and frank politics it won't become good economy, neither he/she will recover the public trust neither will give in the insecurity, neither they will be solved the deep necessities of the Colombians. But she not is not enough to all these purposes that will have to be solely outlined but conquered starting from a simultaneous effort and of group. He/she understands the National Government that there will be never a good politics, without parties solid and effective.

The recent uncontrollable practice of the mini and of the minor enterprises of voters there is blurred the Congress and it has removed him dignity to the politics. For that reason this whole reformation rests in the zeal of recovering the parties, through the simple mechanism of a threshold that not stimulate the dispersion and on the contrary force to the concentration of forces and of similar thoughts for the construction of the State or so that they serve as alternative of power. It is very painful the prostration of the image that the Colombian town has of its representative corporations. The fact is unequivocal and it cannot be remitted to doubt that that disturbing phenomenon, with which will be impossible to cohabit, has a lot to do with the disintegration of the parties, as much as with practices that degraded the democracy and they produced this painful result." (*Exposé of motives of the project of referendum of October 25 2003, presented to initiative of the National Government*).

VI. THE ACTIVITIES OF THE STUDENT
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I. Supplement the following propositions:

1. The Constitution of 1991 is reformed by _____

2. The legislative Act is _____

3. The constituent Act is _____

4. The Assembly National Constituent is _____

5. The Referendum is _____

6. The Electoral Census is _____

7. They have initiative in the presentation of referendum projects _____

8. The real Constitution is _____

9. The formal Constitution is _____

10. The jurisdictional control of the constitutional reformations exercises it _____

II. Mark with an X, the correct answer that corresponds to the following propositions:**1. The Constitution you can reform for:**

- a) Legislative acts
- b) Constituent acts of the National Constituent Assembly
- c) Referendum to instances of the Government or of the people
- d) All the previous ones
- e) None of the previous ones

- 2. The Political Constitution of Colombia of 1991 expressly repealed:**
- a) The Constitution of *Rio Negro*
 - b) The Centennial Constitution of 1886
 - c) The Constitution of the Sovereign State of the *Cauca*
 - d) All the previous ones
 - e) None of the previous ones
- 3. The National Constituent Assembly this integrated one for:**
- a) Congressmen
 - b) Councilmen
 - c) Deputies
 - d) All the previous ones
 - e) None of the previous ones
- 4. The National Referendum can be to initiative of:**
- a) The people and the National Government
 - b) The people and the President of the Republic
 - c) The people and the Vice-president of the Republic
 - d) All the previous ones
 - e) None of the previous ones
- 5. It can undergo referendum the juridical norms of the level:**
- a) National and Municipal
 - b) National, Departmental and Municipal
 - c) National, Departmental, Districts or Municipal
 - d) All the previous ones
 - e) None of the previous ones
- 6. They don't have initiative in the legislative acts:**
- a) The congressmen
 - b) The senators
 - c) The representatives to the chamber
 - d) All the previous ones
 - e) None of the previous ones
- 7. They are object of approbatory or derogatory referendum, the following topics:**
- a) The fundamental rights, their protection and defense
 - b) The tributes in Colombia
 - c) The structure and operation of the Constitutional Court
 - d) All the previous ones
 - e) None of the previous ones
- 8. The demand of unconstitutionality of the reformatory Acts of the Constitution is made by means of the actions:**
- a) Public of unconstitutionality before the Constitutional Court

- b) Civic before the Council of State
- c) Private of unconstitutionality before the Supreme Court of Justice
- d) All the previous ones
- e) None of the previous ones

VII. THE ACTIVITIES OF THE STUDENT AND DE THE PROFESSOR

I. In study symposium he/she examine and express their opinions on the following themes:

1. Has it changed the daily life, the education, the health, the housing, the work, the family and the recreation, starting from the expedition of the Constitution of 1991? Yes or Not. Why do you reason?
2. Why do you reason you believe that the experts in the matters manifest that the percentage of five percent of the census electoral is a minor proportion for those who present referendum projects to name of the people?
3. Why you reason the departments, the municipalities and the districts have not applied the referendum like mechanism of reformation of administrative juridical norms for the first time?
4. The first and last Assembly National Constituent conformed in 1990-1991 to reform the Constitution of 1886, was constituted for Colombian of different ethnos, professions, religions, and social, economic position and politics. Was this convenient or inconvenience? Why do you reason?
5. Are they or not enough the juridical mechanisms of reformation to the Constitution? Why do you reason?