

Nicaragua's New Constitution

A Close Reading

By Andrew Reding

In its efforts to undermine the Nicaraguan revolution, the Reagan administration has been little constrained by domestic and international law. It has intervened in Nicaragua's internal affairs and used force against that nation. It has flouted the rulings of the International Court of Justice and obstructed the Contadora process. It has mined Nicaragua's harbors and secretly channeled funds to the contras. In the process, the administration has violated its treaty obligations, shown contempt for the peaceful arbitration of disputes, operated in defiance of Congress, and joined the very ranks of outlaw states for which it otherwise reserves the harshest punishment.

The administration has been able to act so lawlessly for so long, in part, because of its skillful manipulation of the debate over Nicaragua. U.S. officials, generally, have painted Nicaragua in the most pejorative tones. President Reagan has taken the lead in this campaign, describing the Nicaraguan government as a "communist dictatorship," its president as a "little dictator in green fatigues," and speaking of "incontrovertible evidence of the communist religious persecution," of "virtual genocide against the Miskito population," and of "the latest partner of Iran, Libya, North Korea, and Cuba in a campaign of international terror—the communist regime in Nicaragua."

These characterizations have acquired a life of their own quite apart from any rational discussion of their merits. For in such a climate of fanatical anticommunism the issues become clouded and everyone is vulnerable to the charge of being "soft on communism." Congressional opponents of aid to the contras therefore feel constrained to preface their statements with a ritual disclaimer of any sympathy for the Nicaraguan government—a practice dutifully repeated by the press. The *New York Times*, for instance, describes the Sandinistas as "Stalinizing the revolution," before going on to criticize aid to the contras, with the practical, if unintended, effect of lending a semblance of legitimacy to the histrionic statements coming from the Reagan administration. After years of such double-talk the U.S. public has lost all perspective on the situation in Nicaragua—in relation to the gross injustices commonplace before the revolution, the cruelties practiced by "friendly" governments elsewhere, the direction of the revolution, and the responsibility U.S. policy may bear for certain of its excesses.

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The reality of Nicaragua is much different and more complex than the usual characterizations allow. Although most of Nicaragua's leaders subscribe to a Marxist view of history and a Leninist view of the importance of a vanguard party, the Sandinistas have hardly adopted a Soviet model of governance. On the contrary, the country enjoys a vibrant parliamentary opposition—a fact U.S. officials conveniently ignore in their eagerness to sound the death knell for democracy in Nicaragua. As Luis Humberto Guzmán, a Popular Social Christian delegate, told the *Christian Science Monitor* recently, “The United States tries to pretend we [the political opposition] do not exist. We do exist, and we are struggling for the principles of democracy in a constructive way.”¹ What the panic mongers fail to acknowledge is that the Sandinistas have created an entirely new form of Marxism informed by the Christian theology of liberation and a strong nationalist sentiment—both of which are a reaction to the country's long history of social injustice and foreign domination. In essence, the Sandinistas have staked out an innovative middle course between East and West, seeking a creative synthesis of economic and political democracy, Marxist organization, and Christian ethics.

This synthesis is reflected in Nicaragua's new constitution, inaugurated on January 9. As a framework for Nicaraguan society, the constitution provides a useful perspective from which to evaluate the past, present, and projected course of the Nicaraguan revolution. (The fact that it is taken very seriously within Nicaragua, yet has received scant attention in the United States, is but another example of how the debate over Nicaragua is conscribed.) More than just a paper document and more than a Sandinista blueprint, the Nicaraguan constitution represents, at once a public referendum on the seven-and-a-half-year-old Sandinista experiment, a reflection of the many visions that govern the country, and the embodiment of standards whose value even Nicaragua's critics applaud—skeptical though they remain of the Sandinistas' intentions to honor them. In this latter regard, then, the Nicaraguan constitution also represents something a wager, for by these standards will Nicaragua now be judged.

The Constitutional Process

The impetus for drafting a new constitution was manifold. Since 1979, Nicaragua has lumbered beneath a system of legal codes and norms carried over from the Somoza period as well as revolutionary decrees issued by the provisional government. The Sandinistas, therefore, felt the need to overhaul this system and establish one more consonant with revolutionary values and goals. Moreover, the Sandinistas have been anxious to make clear their democratic intent in an effort to garner domestic and international support for their lopsided conflict with the United States. For their part, the three centrist and center-right parties that participated in the constitutional proceedings were eager to maintain continued political pluralism through guarantees of political rights. The constitutional process, then, was largely the result of a sometimes delicate convergence of interests between the political center and the left, which explains why it was rejected from the outset by the right and, ultimately, by the far left.

The initial drafting of the constitution was the responsibility of the Special Constitutional Commission, appointed in April 1985 by the National Constituent Assembly elected five months earlier.² The commission was composed of 22 members: 12 from the Sandinista party (FSLN), three from the Democratic Conservatives (PCD), two each from the

Independent Liberals (PLI) and the Popular Social Christians (PPSC), and one from each of the three communist parties. A deliberate effort was made to respect the results of the 1984 national elections in apportioning seats (see Table 1). In fact, the FSLN agreed to fewer seats on the commission than it was entitled to so that all parties would be represented.³ The opposition enjoyed a further benefit: in the frequent absence of assembly President Carlos Nuñez Téllez, one of nine members of the FSLN National Directorate, a substantial proportion of the constitutional proceedings were presided over by Clemente Guido of the Democratic Conservative party and Mauricio Díaz of the Popular Social Christian party—two of the assembly’s three vice presidents.

Table 1: Nicaraguan political parties and the constitutional process

	FSLN	PCD	PLI	PPSC	PCdeN	PSN	MAP-ML	Null	Total
1994 election for National Constituent Assembly (NCA)									
% votes cast	62.3	13	9	5.3	1.4	1.3	1	6.7	100
% valid votes	66.8	14	9.7	5.6	1.5	1.4	1		100
% seats	63.5	14.6	9.4	6.2	2.1	2.1	2.1		100
seats in NCA	61	14	9	6	2	2	2		96
seats on Special Constitutional Commission	12	3	2	2	1	1	1		22
# of NCA representatives who signed constitution	61	10	6	6	2	2	0		87

FSLN: Sandinista Party. **PCD:** Democratic Conservative Party. **PLI:** Independent Liberal Party. **PPSC:** Popular Social Christian Party. **PCdeN:** Communist Party of Nicaragua. **PSN:** Nicaraguan Socialist Party. **MAP-ML:** Marxist-Leninist Popular Action Movement.

note: One of the PCD and three of the PLI signers were alternates (*suplentes*), legally entitled to sign in the absence of their respective *propietarios*.

The commission began its work in earnest in the summer of 1985. Three delegations traveled to explore the constitutional experiences of other countries. One visited the Soviet Union, Czechoslovakia, Hungary, Bulgaria, and East Germany. A second delegation toured Western Europe: Spain, France, Great Britain, West Germany, and Sweden. The largest delegation visited the more progressive Latin American countries: Argentina, Peru, Venezuela, Colombia, Costa Rica, Panama, and Cuba.

Between August and October 1985, political parties, religious groups, labor and professional unions, and other organizations were invited to meet with the commission to present their views of what the draft should include. Many responded favorably to the invitation, including all seven political parties represented in the National Assembly, each of which made appearances and produced detailed proposals that were printed in their entirety in the independent *El Nuevo Diario*. (The more partisan *Barricada* and *La Prensa* printed excerpts only from those parties expressing their respective ideological viewpoints.) Two newly formed political parties not represented in the assembly, the Trotskyist Revolutionary Workers’ party and the center-right Central American Unionist party, took advantage of this opportunity to make their first public announcements.

The general public was also encouraged to participate in the constitutional debate. After distributing 150,000 copies of the initial draft, completed in February 1986, and after sponsoring a series of 12 televised debates among representatives of opposing parties, the constitutional commission solicited public opinion in a series of town meeting-style open forums called *cabildos abiertos*. Seventy-three such forums were held throughout the country in May and June of last year, drawing about 100,000 citizens. The views expressed at these meetings, in turn, were published in *Barricada* and *El Nuevo Diario* and presented on television.

The centrist Popular Social Christian party participated in the *cabildos* though it expressed concern that the Sandinistas would manipulate the forums by rallying their party faithful.⁴ The Democratic Conservatives, on the other hand, opposed the idea of popular forums on principle, arguing that they infringed on the electoral mandate of legislators and thus undermined representative democracy. Consequently, they urged their supporters to stay away. The Independent Liberals, having by this time withdrawn from the commission (see note 3), followed suit. This meant that the country's two principal center-right parties did not participate in the *cabildos*, though the Independent Liberals printed detailed counterproposals in *La Prensa* and the Democratic Conservatives continued to serve on the constitutional commission itself.

The Coordinadora, a right-wing coalition of three political parties, two labor unions, and COSEP (the High Council of Private Enterprise), having earlier refused to take part in the 1984 elections, extended its abstention to the constitutional process. In view of its close ties to the Reagan administration, the CIA, and the contras,⁵ the Coordinadora's absence from the constitutional process came as no surprise. Even so, elements of the Coordinadora participated indirectly. Mario Rappaccioli, leader of one of the Coordinadora parties, and Alberto Saborio, president of the Nicaraguan Bar Association, each offered critiques of the first constitutional draft in a series of articles that appeared in *La Prensa*.

The Catholic Church took part in various ways. Its leadership, represented by the Nicaraguan Conference of Bishops, issued a pastoral letter following publication of the first constitutional draft in which it stressed its opposition to military conscription and family planning. It made no effort to restrain either clergy or laity from participation in the *cabildos*, and indeed many priests and nuns—of both revolutionary and conservative persuasions—made significant contributions to the forums.

A further dimension of pluralism was provided by the Sandinistas themselves, since their participation in the debate hardly bespoke disciplined cadres toeing a party line. Five of the 12 FSLN delegates appointed to the constitutional commission identified with the revolutionary Christian current of the party while others were drawn from the more nationalist wing and the orthodox Marxist tendency. Just how real their differences were became apparent when, on certain crucial issues, the FSLN delegation split, with one or two of the currents joining the centrist parties while the more orthodox Marxist tendency voted with the ultraleft Marxist-Leninist party (PML).

What emerged from this process is a constitution that combines the Western emphasis on civil and political rights with the Marxist stress on social and economic rights. In its separation of powers among four branches of government, the constitution draws from

the progressive Latin American tradition of a presidential government with proportional representation and an independent judiciary, but breaks new ground by establishing the Supreme Electoral Council as a fourth branch of government to ensure the integrity of elections. Other articles of the constitution set forth fundamental principles—national independence and self-determination, and the preservation of a mixed economy, political pluralism, and nonalignment, among others—and address such matters as education and culture, national defense, and the transition from a government by revolutionary decree to one of constitutional rule.

Human Rights

A centerpiece of the constitution is its incorporation of international human rights treaties, a feature that divided the Sandinistas on the constitutional commission. Democratic Conservative delegate Eduardo Molina Palacios moved to incorporate into the constitution two international human rights declarations (the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man) and three human rights treaties (the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights). The orthodox Marxist current opposed the proposal, objecting to some of the specific rights recognized in the treaties that address freedom of conscience, thought, religion, and peaceable assembly. The nationalist Sandinista current, on the other hand, objected because it feared this provision might infringe on national sovereignty by facilitating foreign intervention in domestic affairs. But the revolutionary Christian current endorsed the idea. FSLN deputies Danilo Aguirre Solís, editor of the independent prorevolution *El Nuevo Diario*, Humberto Solís Barker, appeals court judge and representative of Christian Base Communities, and Sixto Ulloa Doña, a former director of the Nicaraguan Baptist Convention, voted with the Democratic Conservative and Popular Social Christian deputies and so ensured adoption of the motion by a one-vote margin.

By the time of the final vote in the National Assembly, the Sandinista current of the FSLN was endorsing the article and even the orthodox Marxist current had softened in its opposition. Although the language of the article was modified—in deference to nationalist sensibilities the phrase that “incorporated” the international documents into the constitution has been deleted—it still sets an international precedent by guaranteeing “full effectiveness” (*plena vigencia*) to the rights embodied in the documents. Moreover, the article has been given greater practical effect by relocating it within the section of the constitution entitled “Rights, Duties and Guarantees of the Nicaraguan People,” where it is made unsuspendable even in national emergencies, and where the Supreme Court of Justice is explicitly empowered to enforce it.

Judged by international standards, revolutionary Nicaragua had already distinguished itself by its respect for human life. The Sandinistas abolished the death penalty upon overthrowing the Somoza dictatorship in 1979, setting a precedent in the history of social revolutions. Despite the fact that Somoza’s National Guard murdered more than 50,000 civilians between 1977 and 1979, and although human rights treaties permit capital punishment where due process is observed, not a single guardsman was executed by the new government. The constitution represents continuity with this revolutionary

experience: Article 23 states that “the right to life is inviolable and inherent to human personhood,” and further declares “there is no death penalty in Nicaragua.”

Regardless of the crime, no Nicaraguan can be imprisoned for more than 30 years. This prohibition, enacted at the time of the revolutionary takeover, is institutionalized with Article 37, and cannot be suspended under any circumstances. It is matched, in spirit, by the provisions for treatment of the incarcerated: Article 39 establishes a penitentiary system whose “fundamental objective is the transformation of the intern in order to reintegrate him/her into society.” This article, added to the second constitutional draft at the request of officers of the penitentiary system, reflects the experiences of the last few years. Beginning in 1981, the Ministry of the Interior began experimenting with a system of open prison farms (*granjas abiertas*) that today hold about one-fifth of the prison population. Irrespective of crime or sentence, model prisoners are transferred to these farms where, free of guards and physical restraints, they elect their own leadership and learn agricultural and other skills in preparation for their release.

Torture is, likewise, abolished by Article 36 and that right made unsuspendable. This article even surpasses the international standard by mandating punishment for violators, which is often the test of a government’s seriousness in curbing the use of torture. That these are more than paper guarantees is suggested by recent human rights reports on Nicaragua. Americas Watch, though condemning “abusive” interrogation techniques, nonetheless states that “the Nicaraguan government does not engage in or tolerate the use of torture as punishment or for the extraction of confessions or information from prisoners.”⁶ Amnesty International goes further in welcoming a pattern of government investigation into allegations of torture, disappearances, and arbitrary killings by which “the police and military forces alleged to be responsible for such abuses have been brought to justice.”⁷

These constitutional guarantees against torture are also consistent with prior practice. On April 15, 1985, Nicaragua became the 30th country to sign the International Convention Against Torture sponsored by Raúl Alfonsín’s Argentina at the 39th General Assembly of the United Nations, thus opening its doors to inspections by a Committee of International Experts to verify compliance. (The verification provisions have proved unacceptable to such “friendly” states as El Salvador, Guatemala, Honduras, Chile, and Paraguay. The United States also has not signed.) Interior Minister Tomás Borge summarized what he calls the “revolutionary humanism” that underpins the Sandinistas’ approach to human rights generally when he explained, “There is not one human being on earth who is not worthy of respect, not even those who, like the ones who are in jail, were the murderers of our loved ones.”⁸

Despite these achievements with regard to respect for human life, the Sandinistas have not made comparable strides in procedural rights. The General Directorate of State Security, for instance, has frequently abused its powers by briefly detaining opposition figures suspected of ties to the contras, and then releasing them without charge. Although this harassment is minimal compared to the death squads and torture employed by other governments in the region, it obviously threatens to undermine the democratic process—a point made forcefully during the final constitutional deliberations.

The heated debate over detainment is revealing for a number of reasons. For one thing, all party discipline broke down—a rare occurrence in almost any parliamentary forum. Moreover, for all the suggestions that the Sandinistas are not fit guardians of personal liberty, it was a Democratic Conservative delegate, Vice President Clemente Guido, who proposed a maximum period of 10 days for detainment-without-charge, although he also favored penalties for false arrest. Fellow Democratic Conservative deputy Eduardo Molina had proposed 24 hours; Independent Liberal deputy Joaquín Mejía and FSLN deputy Gustavo Vega, two days; and FSLN deputies Danilo Aguirre and Humberto Solís three days—the proposal that ultimately won approval, along with Guido’s suggestion to amend the article so that it now warns that “every illegal detention entails responsibility on the part of the respective authority.”

For the Sandinistas, however, human rights entail more than procedural rights; they also extend to the spheres of social and economic activity. This was Tomás Borge’s point when he addressed a conference of Protestant ministers on March 5, 1981 in Managua. “There are some who think that human rights encompass no more than not mistreating a prisoner, not killing someone,” he said. “That is far too simplistic. We believe the defense of human rights is the defense of the rights of the people, of the right to life... There can hardly be human rights in a country where children suffer from hunger... where children don’t go to school... where children don’t receive love, and love in practical terms is also bread and education.”⁹

Understandably, then, the Sandinistas have placed a high priority on economic, social, and cultural rights. Shortly after coming to power, the FSLN launched a National Literacy Crusade, mobilizing tens of thousands of urban youths to bring literacy to the rural poor. By late 1980, illiteracy had been reduced from 50 percent, under Somoza, to 13 percent, earning Nicaragua the UNESCO Literacy Prize. A similar emphasis on primary health care reduced infant mortality from 121 per thousand births in 1977, to 75 in 1983, for which Nicaragua was designated a “Model Country in Health Care” by the World Health Organization. Further international acclaim has come from Nicaragua’s agrarian reform, which has redistributed more land (almost 5 million acres) to dispossessed *campesinos* in the past seven years than all other Central American countries together in the course of their entire history (3.5 million acres).¹⁰ This has both increased the economic security of the rural poor and contributed to a shift away from export cropping in favor of growing basic foods for domestic consumption. In recognition of this achievement, Nicaragua was elected a full member of the World Council of the Food and Agriculture Organization in November 1985.

It is in the realm of social and economic rights that the Sandinistas have sought to emulate the Cuban revolution. The Sandinistas’ initial constitutional draft included Cuban-style guarantees of free health care and free education at all levels. But in response to criticisms from centrist parties that such guarantees were undeliverable under current conditions of war and scarcity, the language was modified in the final draft to conform with the vaguer guarantees contained in the International Covenant on Economic, Social, and Cultural Rights. These include the right to be protected from hunger, to decent housing, social security, health, education, and culture. On a motion by Popular Social Christian deputy Mauricio Díaz, a further right “to live in a healthy

environment” was incorporated into the constitution, establishing the “obligation of the state to preserve, conserve, and restore the environment and natural resources.”

Although the Sandinistas have had to concede that material constraints prevent them from fully achieving some of their objectives in this area, they nonetheless insist that everyone has an equal right to these basic socioeconomic rights. Thus Article 59 establishes an “equal right to health” and requires the state to “establish basic conditions for the promotion, protection, recovery, and rehabilitation of health.” Article 63 mandates “an equitable distribution of food” to prevent hunger. Article 61 extends social security to all Nicaraguans, not just those fortunate enough to have regular employment. And Article 105 lays a legal basis for rationing scarce goods by obligating the state to procure “a rational and just distribution of basic articles of consumption, in the countryside as well as the city.”

All those provisions are grounded in a common political principle: that the basic needs of the poor have a prior claim on scarce resources in relation to the wants of those whose basic needs are already satisfied. The government is thus empowered to intervene against market forces on behalf of the economically weak. In the case of health care, for instance, it would mandate that funds be allocated for basic care (inoculations, sanitation, oral rehydration clinics, etc.), and that only as these needs are satisfied would funds be available for more expensive, high technology treatments such as organ transplants. Similarly, if normal market forces and patterns of income distribution restrict access to basic foods, the government is obligated to ration key items, such as rice, beans, and cooking oil.

This commitment to equal rights characterizes the Sandinista conception of human rights generally. Article 48 is among the most unequivocal and forceful statements of this principle to be found anywhere, establishing “the unconditional equality of all Nicaraguans in the enjoyment of their political rights.” This is backed by “the obligation of the state to remove obstacles that impede effective equality of Nicaraguans, and their effective participation in the political, economic, and social life of the country.” Nicaragua, in this regard, offers additional guarantees beyond those of other countries that bar discrimination on the basis of race, color, sex, religion, or national origin. Article 27 adds political creed, language, opinion, economic position, and social condition, thereby implicitly rejecting totalitarian notions of a “dictatorship of the vanguard of the proletariat,” which effectively confer greater political rights to those whose views are congruent with the ideology of the state, as has been the case with most ruling communist parties.

In response to an outpouring of criticism by Nicaraguan women of the first constitutional draft, the final draft also contains one of the strongest affirmations of equal rights for women to be found anywhere. The first draft had been written by a commission consisting of eighteen men and two women. Poorly represented on the commission, women were at a disadvantage, the effect of which would become palpable. Although the draft established the equality of all persons before the law, recognized family relations based “on absolute equality of rights and responsibilities between men and women” and provided for equal pay for equal work, paid pregnancy leaves, and day care for children, women discovered glaring inadequacies in the copies of the draft that appeared in the newspapers. In the open constitutional forums, they asked that equal rights of men and

women, until then specified only in the context of the family, be extended to the totality of human rights. Some also criticized the use of antiquated and sexist legal terminology: educated women in Managua opposed the use of the Latin term *patria potestad* (literally “power of the father”) to designate parental responsibilities, pointing out the origin of the term in the imperial conception of the family, in which men ruled over their wives and children as over slaves. Others objected to the use of such specialized legal terminology in a revolutionary constitution intended to be shaped by, and accessible to, the people.

These demands were accommodated in the second constitutional draft and reaffirmed in the final votes in the plenum. Article 27, which provides for equality before the law, now specifically bars discrimination on the basis of sex. Article 48 establishes “absolute equality between men and women in the fulfillment of their rights and responsibilities,” and obligates the state to remove obstacles that impede equality. The term *patria potestad* has been changed to the “duties of parents and children.” Article 74 prohibits firing or denial of employment because of pregnancy, and Article 82 guarantees equal opportunity for promotion. The new Nicaraguan constitution therefore satisfies all five criteria (general equal protection provisions, sexual equality provisions, equality in marriage and the family, equality in employment, and equality in civil, political, economic, and social affairs) selected by Columbia University’s Development Law and Policy Program to evaluate progress toward equality for women among the nations of the world.¹¹

In any multiethnic society, extraordinary measures are often required to effectively protect the equal cultural rights of minorities. Nicaragua is no exception. One of the most serious blemishes on the Sandinistas’ human rights record has been its early treatment of the Miskito Amerindians living in a remote region of the country, the Atlantic coast. The Miskitos’ geographic isolation has contributed to their distinct cultural identity: many of them speak Miskito and English as their primary languages—the result of early contact with the British and then North Americans. Moreover, most are Moravian Christians because of church missionaries active in the region in the 19th century. When the Sandinistas first came to power, they sought to extend revolutionary institutions to this traditionally marginalized community of about 100,000 and integrate it into the mainstream of Nicaraguan society. The FSLN attempted to organize local Committees for the Defense of Sandinism, to break up land holdings in conformity with the program of agrarian reform, and to teach literacy—Spanish, that is. The Miskitos resisted these efforts: they felt no compunction to defend a revolution in which they had not participated; the land distribution disrupted their customs of communal land holding; and they resented being educated in a foreign language.

The Sandinistas often interpreted this resistance to be counterrevolutionary activity, an impression reinforced by the contras’ limited success in recruiting among Miskitos. As a result, in the period between December 1981—when Sandinistas massacred over a dozen Miskitos in Leimus—and the end of 1982, close to a hundred Miskitos were murdered or “disappeared” after detention by FSLN forces.¹² Together with the forced removal of thousands of Miskitos from their villages along the Río Coco—a war zone along the Honduran border—these incidents became the basis for accusations that the Sandinistas were engaging in genocide, even though the killings do not seem to have been sanctioned by the Sandinista leadership and those responsible were punished.

There has, however, been a shift in recent years. The Sandinista leadership has openly acknowledged its mistakes and, accordingly, has made changes in its policy toward the Atlantic coast. Miskitos who had been relocated have been permitted to return to their homes, the killing of prisoners has abated as the army and security forces have tightened discipline, and the Sandinistas have backed away from the imposition of alien forms of social organization. Instead, in 1985, they initiated an autonomy process aimed at establishing regional self-rule. Two commissions were formed: one for the northeastern regions around Puerto Cabezas where most Miskitos live and one for the southeastern region around Bluefields where another minority, the black creole population, lives. Suspicion still runs high, however, and popular participation in Sandinista-initiated discussions has been limited among Miskitos in the northern region.

One outcome of these experiences has been the inclusion in the constitution of a section entitled “Rights of the Indigenous Populations and Communities of the Atlantic Coast.” Although this section makes clear that “the communities of the Atlantic coast are an indissoluble part of the Nicaraguan people”—language obviously aimed at thwarting any separatist tendencies—it also establishes “their right to preserve and develop their cultural identity within the framework of national unity, to choose their own forms of social organization, and to administer local affairs in conformity with their traditions.” In deference to the traditions of communal land-holding and autonomous rule, Article 180 states that “the State guarantees enjoyment by these communities of their natural resources, enforcement of their communal forms of property, and free election by the same of their authorities and representatives.” As currently envisioned, two regional governments would be set up in the northeast and southeast, with regional assemblies elected by inhabitants to legislate on regional issues and appoint regional administrators.

Representatives of MISURASATA, one of two principal Miskito armed groups fighting the Nicaraguan government, are entirely dissatisfied with those provisions. They view the recognition of traditional village landholding patterns as a ploy to evade their broader land claims resting on the 1860 Treaty of Managua between Great Britain and Nicaragua, that established a vast Miskito preserve in eastern Nicaragua (though it also recognized Nicaragua’s ultimate sovereignty over the region). The government responds that the treaty was an unequal treaty with an imperial power that fabricated a Miskito “kingdom” to further its interests in the region and that, in any event, this provision was abrogated by a later treaty. Moreover, the Sandinistas ask, by what right should the other minorities of the region—Sumus and mestizos, among others—be subjected to Miskito rule? Indeed, to prevent any one ethnic group from dominating the others, the Sandinista-organized autonomy commissions recommend recognizing land-holding rights at the village level rather than the regional level. As a further safeguard, Article 91 forbids discrimination by anyone on the basis of ethnic identity.

While these reforms do not have the endorsement of the entire Miskito community, they have impressed one important group of Amerindians: the International Indian Treaty Council, whose membership is drawn from 98 Amerindian nations throughout the western hemisphere. Executive Director Bill Means explains that, as a matter of principle, the IITC supports broader Miskito land claims, as it does the land claims of indigenous people throughout the hemisphere. At the same time the IITC acknowledges that, from the perspective of indigenous rights, the Nicaraguan constitution contains the

strongest guarantees in the Americas. And it sees promise in the autonomy process, which Means says could become a hemispheric model for self-governance by ethnic minorities.¹³

Property: A Social Responsibility

With such strong socioeconomic guarantees and commitments to equality, and in view of the fact that the unfettered right to property traditionally has produced societies marked by gross inequalities, the Nicaraguan constitution recognizes no intrinsic right to property. Property is treated instead as an instrument for the realization of the more fundamental right to life. Thus, the only mention of property as a right comes in Article 44, proposed by Democratic Conservative party deputy Edwin Illescas, which states that “Nicaraguans have a right to personal property that guarantees the goods necessary and essential to their complete development.”

Apart from the right to personal property, the constitution guarantees the broader existence of a mixed economy, founded, in the language of Article 103, on the “democratic coexistence” of multiple forms of property: public, private, cooperative, mixed, and communitarian (aboriginal). Article 104 then specifies that all forms of property “enjoy equality before the law and in the economic policies of the State.”

Yet, by another clause in Article 103, all forms of property are “subordinated to the higher interests of the nation and fulfill a social function.” Perhaps the clearest illustration of what this means in practice is provided by the Agrarian Reform Law, which stipulates that any lands that are idle, underused (for example, cattle grazing on prime soil), or rented out may be expropriated and redistributed to landless *campesinos* as family farms or voluntary cooperatives. Expropriated owners are compensated on the basis of values declared for tax purposes; new landholders receive their titles free of charge. Agrarian reform titles, however, are not what is commonly understood as property in the United States. Though titles are secure for as long as the land is productively used, and though they are inheritable, they cannot be sold, transferred, or subdivided. The purpose of these restrictions is both to maximize agricultural production and to secure a more equitable distribution of land than traditional land-holding patterns have allowed. Landowners may challenge expropriations in special agrarian reform courts and, in fact, many have regained their lands in this manner.

Such restrictions on property are of course anathema to the Nicaraguan right, as they are to the Reagan White House.¹⁴ Yet similar limitations are becoming increasingly common in the United States, where they are referred to as “easements,” and where large regions are now subject to stringent land-use controls (for example, all of Vermont under Act 250 and New York State’s Adirondack region under the Adirondack Park Agency). What’s more, this broader concept of stewardship, as applied both in Nicaragua and in portions of the United States, is in keeping with the right to property recognized in Article 21 of the American Convention on Human Rights, which states that the law may “subordinate” the “use and enjoyment” of property “to the interest of society.”

The same principle of stewardship extends to public property. On the initiative of the Democratic Conservative party, language prohibiting “the use of State resources for purposes other than the public functions” was incorporated into the initial constitutional

draft to prevent the misuse— for personal or political gain—of public property. This clause was replaced in the final draft by the much stronger structural safeguard of an independent Comptroller General—appointed by the legislature from a list of three nominees submitted by the president—responsible for monitoring and enforcing proper use of government funds and of all state property.

Nicaragua’s constitutional guarantees of a mixed economy hardly correspond to what Washington views as a Soviet-style centrally planned economy. Moreover, these guarantees are more than a clever turn of phrase; they are consistent with the evolution of Sandinista policy to date. The private sector continues to make up the larger portion—roughly 57 percent—of gross domestic product. Sixty-three percent of manufacturing and 76 percent of agricultural production remain in private hands.¹⁵ An important indicator of economic pluralism in a country as overwhelmingly agricultural as Nicaragua is the pattern of landholding (see Table 2) Just after the Sandinistas seized power, they confiscated Somoza’s estates, which accounted for more than 20 percent of arable land. These estates—for the most part large-scale agribusinesses producing cotton, coffee, and other export crops—were transferred to public ownership. The number of state farms, nonexistent in 1978, comprised 24 percent of all arable land by 1982. A significant development in recent years, however, has been a major realignment in favor of family farms and cooperatives. Thus the share of super-*latifundistas* has declined from 36 to less than 10 percent as the share of land held by small farmers and cooperatives has multiplied more than sevenfold to 16 percent. Significantly, over a third of this increase has come from the dissolution of unprofitable state farms, reflecting a policy of judging all forms of landholding by the common criteria of productivity.

Table 2: Changes in land-holding patterns under agrarian reform

type and size landholding	% cultivable land				
	1978	1982	1983	1985	1986
individual					
over 500 manzanas	36.2	15.9	14	10.9	9.8
200 to 500 mz	16.2	12.6	12.6	12.6	12.6
10 to 200 mz	45.5	42.6	44	44	44
less than 10 mz	2.1	3	4.2	4.2	4.5
production cooperatives	0	1.9	4.7	9.1	11.6
state farms	0	24	20.5	19.2	17.5

note: one *manzana* (mz) = 1.75 acres; 200 or more mz defined as *latifundia*.

The Church and the Press

Two of the most controversial aspects of current Sandinista policy have been its treatment of the church and the press. The Reagan administration has made these two issues the basis for some of its shrillest charges against the Nicaraguan government. It has sought to represent tensions between the Catholic Church and the Sandinistas as a conflict between religious freedom and atheistic communism. And it has depicted government restrictions on press activities as the triumph of totalitarianism over freedom.

Yet it is clear from the circumstances surrounding these issues, and from the provisions of the constitution that bear on them, that much of this criticism is misguided, if not malicious.

Charges of religious persecution would, at first glance, appear to be corroborated by Managua's cancellation of the visas of over a dozen foreign priests, followed by last year's dramatic expulsions of two Nicaraguan clerics: Father Bismarck Carballo, an aide to Managua's Cardinal Miguel Obando y Bravo, and Bishop Pablo Antonio Vega, vice president of the Nicaraguan Conference of Bishops. But a closer examination of the circumstances suggests that these incidents, ultimately, have little to do with religious freedom. Ten foreign priests were deported in 1984 for taking part in a political demonstration against the government, a right reserved for Nicaraguan nationals. Father Carballo and Bishop Vega, on the other hand, were expelled for their participation in lobbying efforts on behalf of the Reagan administration's request for \$100 million in military aid to the contras—an act perceived by Managua as tantamount to a declaration of war, support of which constitutes treason.¹⁶

What is important to observe here is that none of the expulsions were aimed at repressing religious expression in Nicaragua. The Catholic Church has been allowed to replace the deported foreign priests with others and it has appointed a new bishop to succeed Vega in the Diocese of Juigalpa and Río San Juan. More generally, the churches have grown considerably since the Sandinista takeover in 1979: the number of Catholic priests (as of 1986) has risen from 293 to 430; of bishops from 8 to 10; of seminaries from 2 to 8. Thus Virgilio Godoy, the staunchly anti-Sandinista president of the Independent Liberal party, conceded at the time of Vega's expulsion that "there is no religious persecution here" arguing instead that "there is political persecution of the church over political issues."¹⁷

Even if we accept Godoy's characterization of the situation as one of "political persecution," it is important to see it in perspective. Government-sanctioned death squads in Guatemala and El Salvador have each murdered over a dozen priests, nuns, and ministers since 1977; Nicaraguan contras last year killed a Canadian priest in Honduras, and contra officer Ricardo ("El chino") Lau was the contract killer of Archbishop Oscar Romero of San Salvador.¹⁸ The Reagan administration has been silent about those more serious abuses, choosing instead to target its criticism on Nicaragua, where not a single priest, nun, minister, or bishop has been killed since the revolutionary triumph.

Nor can the issue be described as a classic confrontation between church and state, as characterizes other revolutionary situations. The difference in Nicaragua is that large numbers of laity and clergy took part in the insurrection against Somoza and continue to play prominent roles charting the course of the revolution. Catholic priests today occupy three key government ministries: Miguel D'Escoto, minister of the exterior; Fernando Cardenal, minister of education; and Ernesto Cardenal, minister of culture. Nowhere else but in the Vatican do Catholic clergy play such an important role in government. Catholic lay persons also head the Ministries of Housing and Social Welfare and serve as ambassadors to the United States and the Organization of American States. When Nicaraguan bishops cry "religious persecution," it is important to realize that such charges are directed at a government run, in large measure, by their coreligionists.

Acknowledgment of religious participation in the revolutionary process is contained in the FSLN's "Official Statement on Religion," issued in 1980 "Our experience demonstrates that when Christians, drawing on their faith, are able to respond to the needs of the people, their very beliefs impel them to revolutionary militancy." More important, from the standpoint of religious tolerance, is the first point of the statement, which says that "the freedom to profess a religious faith is for the FSLN an inalienable personal right that the revolutionary government fully guarantees." This right to religious freedom is echoed in Articles 29 and 69 of the constitution, the latter stating that "all persons, whether individually or in community with others, have the right to manifest their religious beliefs in private or in public, by means of worship, practice, and teaching."

At bottom, then, the religious conflict in Nicaragua is not with atheism or anticlericalism; it is a conflict between fundamentally opposed concepts of religion. To one side stand most of the bishops, who seek to uphold the Constantinian Church modeled on the hierarchical institutions of the Roman Empire and to defend traditional Latin American social, economic and political institutions—institutions that, in the past, have served to enrich a few and oppress the many. Across this ecclesiastical divide stand half the priests and most of the laity, who, inspired by the theology of liberation and supported by large segments of the Catholic Church, favor democratic structures and commitment to the poor.

Significantly, both sides of the ecclesiastical divide were represented on the constitutional commission and in the ensuing debate over the constitutional draft in the National Assembly. Conservatives were represented by the Popular Social Christian and Democratic Conservative parties, progressives by the revolutionary Christian wing of the FSLN. Both left their mark on the final product. The Democratic Conservative party demanded the inclusion of an invocation of God in the preamble as one of several conditions for their continued participation in the deliberations. The FSLN was just as adamant in defending the secular state and the rights of nonbelievers. A motion by Christian FSLN representative Humberto Solís Barker broke the impasse in a manner that also paid tribute to the revolutionary Christians. The preamble dedicates the constitution to "the Christians who from their faith in God have committed themselves to, and involved themselves in, the struggle for the redemption of the oppressed..."

The constitutional right to religious freedom, however, does not permit the invocation of "religious beliefs or disciplines" in order "to avoid compliance with laws or impede others from exercising their rights." Because this provision would rule out conscientious objection to military service, it was vigorously opposed by the Catholic hierarchy. Christian Sandinistas countered that conscientious objection is morally valid in the case of military intervention abroad but not when defending national territory and revolutionary gains against foreign aggression or forces directed and supported by a foreign power—the only purposes for which citizens may be drafted (Article 96). Moreover, they explained, the clause in question is drawn verbatim from the Venezuelan constitution—an observation that stilled much of the criticism. The Popular Social Christians tried to establish an option for alternative service for those who do not wish to bear weapons, but its motion was defeated, with FSLN deputy Jacinto Chávez citing Vatican II to the effect that poor countries have a legitimate right to armed defense

pending creation of a supranational authority capable of protecting one people from aggression by another. The net effect was to preserve the status quo, under which only clergy and seminarians are exempt from military service.

Conservative religious forces, on the other hand, were able to leverage concern over the poor state of relations with the Catholic hierarchy into blocking new reforms. Thus the widespread popular consensus, expressed in dozens of *cabildos* in favor of a constitutional article establishing a right to family planning was thwarted. So was the demand made by women to redefine the family in terms of household, rather than marriage, in order to prevent discrimination against the large number of families headed by women. Conservatives, however, were unsuccessful in blocking the adoption of provisions separating church and state. One result is that religious instruction is now voluntary and confined to parochial schools.

Government relations with the press have been no less controversial than those with the church. Along with the expulsion of Bishop Vega, the suspension, in June 1986, of *La Prensa*'s right to publish subjected the Nicaraguan government to some of its harshest criticism. It is these two measures that prompted the *New York Times* to denounce the "Stalinization" of the Nicaraguan revolution. (The Times did not, however, reflect on the retrospective implication of its judgment, in particular as it bears on the U.S. government's own practice of censorship and newspaper closing during the Civil War, World War I, and World War II.¹⁹ Nor did it suggest what adjective it would apply to President Corazon Aquino's recent closure of a pro-Marcos newspaper,²⁰ or to the far more serious situations in Guatemala and El Salvador, where any semblance of an opposition press has been obliterated.)

If the Vega and *La Prensa* affairs are of a kind, as the *New York Times* suggests, it is for reasons the *Times* failed to note. Like Vega, *La Prensa* editor Jaime Chamorro went to unusual lengths to ensure continued U.S. support of the contras. In an April 3 guest editorial in the *Washington Post*, Chamorro urged military aid to the contras, arguing that the Nicaraguan government is an illegitimate one. As with Vega, this move was viewed by Managua as treasonous, so that with congressional approval in late June of \$100 million to the contras, President Daniel Ortega saw fit to respond by suspending *La Prensa*'s right to publish. (Contrary to impressions created by the U.S. media, the offices were neither seized nor closed.)

The Nicaraguan government, however, was reacting to more than just a single incident, which is why it did not choose to simply prosecute Chamorro. The decision to suspend *La Prensa* must be understood in the historical context of efforts by the U.S. government to provoke destabilization, as Ortega's remarks at New York's Riverside Church a year earlier would suggest. "We can't forget the experiences in Chile" Ortega emphasized at the time, referring to, among other things, Chile's most prominent newspaper, *El Mercurio*, which had accepted millions of dollars from the CIA in an effort to undermine the elected government of President Salvador Allende.²¹ Over a period of several years, *El Mercurio* printed CIA-written "news" columns, incorporating disinformation intended to foment economic chaos and thus discredit the government. Among other things, *El Mercurio* printed false reports of food shortages, which triggered panic buying and, in turn, rapidly exhausted supplies. Women took to the streets of Santiago as a result, banging pots in angry protest—a spectacle that seriously undercut confidence in the

Allende government.²² The Nicaraguan government is clearly determined to prevent a similar repetition of events in its country.

And, indeed, there is evidence that the U.S. government was using *La Prensa* as it had earlier used *El Mercurio*. A year after the revolutionary takeover, three of *La Prensa*'s four owners decided to recast the newspaper in an anti-Sandinista mold, prompting editor Xavier Chamorro and more than 80 percent of the staff to resign and establish their own paper, *El Nuevo Diario*. (U.S. official and press accounts conveniently ignore those details and prefer, instead, the simplistic notion that the same *La Prensa* that courageously defended liberty under Somoza later became disillusioned with the Sandinistas.) Soon afterward, *La Prensa* began publishing *El Mercurio*-style analysis, falsely reporting, in one case, that the 1984 elections were fraudulent.²³ More direct evidence of *La Prensa*'s role as an instrument of the Reagan administration's efforts to destabilize the Sandinistas was provided by the *Washington Post*. It revealed that *La Prensa* and an anti-Sandinista human rights group in Nicaragua had, between them, been paid as much as \$400,000 in grants from the U.S. government-funded National Endowment for Democracy that were channeled through PRODEMCA, a pro-contra lobbying group.²⁴ Jaime Chamorro's guest editorial, then, was only the immediate cause of the newspaper's suspension.

What remains of press freedom in Nicaragua? Radio reaches more Nicaraguans than any other communications medium. Of 44 stations, 25 are privately owned, and none are generally subjected to censorship. *Barricada*, the daily newspaper published by the FSLN, still has to compete with the independent but prorevolution *El Nuevo Diario*, which outsells it. Books are not censored at all, and a wide variety—many of them critical of Marxism—can be purchased at the Popular Social Christian party's Manolo Morales bookstore in Managua at prices subsidized by a West German foundation. And *La Prensa* has been informed that it may resume publication either when the war ends or when it repudiates any connection with the enemy.

What is rarely acknowledged in debates over press restrictions, however, is that freedom of the press, as we understand it, is not a universally shared convention. None of the international human rights treaties recognizes "freedom of the press" as such; instead they affirm a "right to information." The Nicaraguan constitution borrows from this tradition. The right to information, as guaranteed by Article 66, "includes freedom to seek, receive, and impart information and ideas, either orally, in writing, graphically, or through any other method of one's choice." By an amendment proposed by FSLN deputy Manuel Eugarríos, a columnist for *El Nuevo Diario*, the right to information cannot be subjected to prior censorship except in times of national emergency. (This conforms with Articles 13 and 27 of the American Convention on Human Rights.) Adoption of this amendment, by a vote of 69 to 2 with 8 abstentions, was a fitting rebuke to the government censor, Capt. Nelba Blandón, who advocated an entirely different course: the inclusion of censorship laws in the constitution.

In a further gain for free expression, the assembly voted overwhelmingly in favor of the proposal suggested by Minister of Culture Ernesto Cardenal to establish "complete freedom for artistic creation," in obvious counterposition to standards of "socialist realism" that constrict artistic expression in most socialist countries. Article 127, which is not suspendable, states that "artistic and cultural creation is free and unrestricted."

Article 13 of the American Convention on Human Rights, which is given constitutional force by Article 46, also forbids indirect restrictions on the right of expression, as by “the abuse of government or private controls over newsprint, radio broadcasting frequencies, [etc.]...” Alan Zambrana and Ariel Bravo, both of the Moscow-aligned Communist party of Nicaragua, denounced the FSLN for its use of precisely such techniques against party publications. They were backed in this by Luis Sánchez of the Moscow-aligned Socialist party and Mauricio Díaz of the Popular Social Christian party. FSLN representative Angela Rosa Acevedo responded that there were shortages of newsprint due to a wartime lack of foreign currency. If nothing else, this exchange illustrates the extent to which the safeguards in the American Convention are becoming accepted standards, forcing the FSLN to satisfactorily account for its noncompliance.

The right to information, then, is similar to the U.S. right to a free press in that both offer protections against government censorship. But there is an essential difference. The right to a free press primarily seeks to protect owners and purveyors of news and opinion with the idea, of course, that this in turn ensures a citizenry unimpeded access to information. There is nothing, however, to prevent self-censorship by those who own or manage the media. One finds, for instance, that the daily newspapers of Costa Rica, El Salvador, and Guatemala—all controlled by right-wing business elites—practice an ideological conformity, excluding or even fabricating news to serve their purposes.²⁵ The right to information addresses this deficiency because it is vested in the recipient and not the owner of the media. It thus seeks to preclude censorship by economic as well as political powers.

With this distinction in mind, Article 68 directs the state “to prevent subjection of the means of communication to foreign interests or to the monopoly power of any group.” The wording is ambiguous about the power of the state, in contrast with a comparable provision of the Peruvian constitution, which states that “the press, radio, television, and other means of expression and mass media... cannot be held exclusively or be the subject of monopoly or hoarding, directly or indirectly, by the State or private parties.” In practice, the only Nicaraguan monopoly is Sandinista Television (SSTV), which, according to FSLN deputy Danilo Aguirre, is certain to be examined in light of Article 68.²⁶

Despite the potential for abuse, SSTV and other Sandinista-controlled media have made increasing efforts to implement the citizen’s right to be informed. President Reagan’s dramatic speech on March 16, 1986, during which he denounced the Sandinista threat to hemispheric security, was rebroadcast in its entirety on SSTV and reprinted in *Barricada*. When Time published interviews with presidents Reagan and Ortega on March 31, they were reprinted side by side in *Barricada*. The same principle has been applied to internal debate. All seven parties competing in the 1984 elections received equal allotments of prime-time television and radio to present their electoral programs, and television debates were also held between vice-presidential candidates. Another series of debates between representatives of the FSLN and opposing parties was organized around constitutional issues with media amplification. On April 4, 1986, for instance, PPSC parliamentary leader Luis Humberto Guzmán called for separation of the armed forces from the governing party in a televised debate with FSLN representative Rafael Solís Cerda. Their views were reprinted in *El Nuevo Diario* on April 11. And as the National Assembly

hammered out the final constitutional draft in October and November 1986, the deliberations were again televised, opening up the process to popular inspection.

Another distinguishing characteristic of the right to information is that expression becomes a right of all citizens, not just those who can afford it. As such it encompasses a right to popular access to the media, enabling citizens to communicate ideas, perspectives, and information more directly among themselves, thereby helping to transform citizens from passive readers, listeners, and spectators into participants in public affairs. Article 68 accordingly directs the state to “promote access by the people and its organizations to the means of communications.” Every week, then, President Daniel Ortega, Vice President Sergio Ramírez, or other government officials appear in town meetings televised live on *De Cara al Pueblo* (“Facing the People”) to answer questions and criticisms made directly by citizens. And every morning the Voice of Nicaragua runs a four-hour live program, *Contacto 620*, in which citizens call in with questions, complaints, and criticisms about everything from food shortages to the performance of government ministries. And the 73 open forums in which the citizenry offered its views on the draft constitution were broadcast on prime-time television.

The Form of Government

A constitution’s principles, objectives, and guarantees may have little practical significance in the absence of a suitable form of government. In addressing the question of the form of government appropriate to Nicaragua, the nation’s legislators confronted a number of different requirements. For instance, it was felt that the government would have to have sufficient authority if it were to implement further socioeconomic measures needed to realize guarantees of equal rights and economic democracy. At the same time, effective checks would have to exist to prevent arbitrary or abusive uses of governmental power. And there would have to be provisions for popular participation and representation to ensure the democratic process.

In an attempt to satisfy these diverse criteria, Nicaragua opted for a quadripartite structure of government and a strict separation of powers. A strong, elected presidency is expected to effect the further structural transformations meant to fulfill social and economic guarantees. A representative legislature shares policy-making privileges with the executive, thus broadening the basis of participation. An independent judiciary, appointed by the legislature, is empowered to enforce human rights and guard against other abuses of authority. And an independent electoral magistracy, also appointed by the legislature, is given the authority to conduct all elections and referenda to ensure their integrity.

In deciding upon a representative system of government, Nicaragua’s legislators had two basic options. One was to follow the European parliamentary model, in which executive power is an outgrowth of legislative power. Such a system can produce an exceptionally powerful executive when, as in Great Britain, the electoral system is based on winner-take-all districts. But where systems based on proportional representation are used, as in Italy, there is a tendency for the executive to be hamstrung with coalition governments. Under the parliamentary option Nicaragua’s selection of proportional representation would have therefore predisposed it to a weak executive. Not surprisingly, all of the smaller parties, with the exception of the second-ranked Democratic Conservatives (who hope to win the presidency at some future date), advocated this option. For the

Sandinistas, committed to a revolutionary transformation of the country in the face of hostile superpower opposition, this possibility was clearly unacceptable.

Instead the Sandinistas opted for the presidential model, whose strong, independent executive is meant to be balanced by the legislature. More precisely, the Sandinistas settled on a form of the progressive Latin American variant of that model: like Venezuela, Peru, and Costa Rica, Nicaragua combines a popularly elected executive with a legislature elected on the basis of proportional representation, thereby maximizing representation in the legislative process and efficiency in the process of implementation.

The National Assembly will be composed of 90 or more representatives, as it has been since its inauguration in 1985: 90 elected for six-year terms in proportion to the vote received by participating parties, plus every losing presidential candidate. All enjoy parliamentary immunity. The National Assembly is entrusted with passage of legislation and with the power of “authentic interpretation of the law,” limited only by the Supreme Court’s power of constitutional review. It is also assigned the power of ratifying treaties, summoning government ministers, creating permanent, special, and investigative commissions, and decreeing amnesties, pardons, and commutations of sentences. To strike a balance more in conformity with Western norms, the constitution shifts some powers from the executive to the legislature. For instance, in a major departure from existing practice, the national budget will have to be submitted for legislative approval in time of peace. And henceforth it will be the legislature, not the executive, that appoints an independent comptroller general to supervise the budget and all state property.

The president is to be elected by a plurality every six years, serving coterminously with the National Assembly. He or she is empowered to enforce the constitution and the laws, conduct foreign relations, declare war, and appoint ambassadors, government ministers, and regional administrators. The power to appoint local authorities (such as the mayor of Managua) is removed in favor of municipal elections. As a check on legislative power, the president is given line-item veto authority over budgetary matters, but this can be overridden by an absolute majority of the National Assembly. The president also nominates the comptroller general and the magistrates of the Supreme Court and Supreme Electoral Council by submitting three names for each vacancy, with the National Assembly making the final selection (it has the option of rejecting all three).

It is worth noting the evolution of these institutions over time, in view of Reagan administration claims—echoed by the major U.S. media—that Nicaragua has become increasingly totalitarian under Sandinista rule. In actual fact, executive power was strongest in the period immediately following the revolutionary triumph, when the Junta of National Reconstruction ruled alone. A second phase began in 1981, with the creation of the Council of State, a 51-seat assembly organized on a corporatist model that was granted no more than “colegislative” authority with the junta. The 1984 elections brought the National Assembly into being, a freely elected, Western-style legislative authority composed of representatives from opposing political parties. The constitution now strengthens the assembly’s powers, bringing them into conformity with Western norms.

These developments raise the question about how a Leninist-inspired vanguard party can insert itself into a Western-style parliamentary system without losing its effectiveness, on the one hand, and still uphold pluralism on the other. Some observers, for instance,

suggest that real executive power is vested not in President Daniel Ortega, who is elected to office, but in the nine-member National Directorate of the FSLN, which is not. These observers therefore dismiss the constitutional arrangements as essentially meaningless. But such analyses overlook important recent developments in the evolution of the Sandinista party and government. As an ambassador with close ties to the Sandinista leadership explained to the New York Times, “In Latin America, the presidency carries with it a significant enhancement in political power, and that is what has happened here.” Similarly, Luis Humberto Guzmán, a Popular Social Christian delegate, told the same reporter, “In today’s Nicaragua there is no longer any doubt that Ortega is at the center of power.”²⁷ Moreover, major FSLN policy decisions are now centralized in a five-person executive committee that, with the exception of National Directorate member Bayardo Arce, consists of key members of Ortega’s cabinet. The committee also plays a vital role in institutionalizing the president’s new constitutional power as commander-in-chief of the armed forces, since both the ministers of defense and interior are represented.²⁸

Further objections were raised in the constitutional debates to what was described as a confusion between party and state, most particularly as concerns the Sandinista Armed Forces. Opposition delegates denounced the lack of pluralism in the armed forces, which are so thoroughly dominated by the FSLN that they fly the party flag alongside the national flag. The FSLN responded that the composition, and resulting political affiliation, of the armed forces is a historical reflection of those who have chosen to defend the revolution and national sovereignty at the risk of their lives—that while the opposition talks of pluralism, it has shown little interest in pluralizing sacrifice, either during the insurrection against the Somoza dictatorship or in the present hour of need.

Responding to calls to depoliticize the armed forces, the FSLN argued that recent Latin American history has demonstrated the fiction of “apolitical” military establishments. The “apolitical” armed forces of Chile, Argentina, Uruguay, and Brazil have all overthrown freely elected governments, trampling on the constitutions they were supposed to uphold; and the Guatemalan armed forces watched as a CIA-sponsored coup overthrew the elected government of Jacobo Arbenz in 1954. The only Latin American social revolution to have survived the counterrevolutionary intervention of the United States, the FSLN points out, is the Cuban one, and that has been accomplished only through the destruction of the oligarchical army and construction of a new army centered on the concept of a people in arms, and organized around a different set of political principles. As students of history, the Sandinistas have followed suit.

While conceding the validity of the FSLN’s argument, most opposition party delegates nonetheless suggested that the armed forces could maintain, and perhaps improve, their revolutionary vitality by becoming less partisan. The FSLN agreed in principle, but emphasized that there was no substitute for multipartisan participation in defense to give substance to such principle. In this spirit, the Democratic Conservatives, Popular Social Christians, Socialists, and Sandinistas negotiated a compromise acceptable to the plenum: Article 95 stipulates that the army “is national in character and as such must protect, respect, and obey this constitution.”

Another point of controversy, both in Nicaragua and the United States, has been the president’s authority to suspend certain constitutional guarantees by declaring a state of emergency. This authority, however, is in conformity with both the International

Covenant on Civil and Political Rights and the American Convention on Human Rights, provided that nonsuspendable rights to life, to humane treatment, etc., are respected, and that suspension is limited “to the extent and for the period of time strictly required by the exigencies of the situation” in the words of the ACHR. Although human rights organizations have generally credited Nicaragua with observing international law in its application of the state of emergency—in effect since March 1982—they have invoked this clause to question the necessity of particular measures, such as suspending publication of *La Prensa*. In responding to criticism of this and other actions taken under the state of emergency, President Ortega again pointed to the lessons of Latin American history:

[Chile’s President] Salvador Allende represented a government that had been democratically elected and that strictly upheld the constitution, a government that was widely respected abroad. And even though he had provisions for a state of emergency, he chose not to impose them. And although a lot was said about the economic deterioration as a result of Allende’s policies, the election of 1973 showed even greater support for Allende’s policies than had been shown in 1970... So Salvador Allende, having the legal power to invoke emergency measures, chose not to do it, even though the CIA was openly provoking destabilization through certain press organs, certain labor unions, and other interests. And you all know the tragic result. The plan for the destruction of the popular government succeeded, and the blood of the Chilean people practically flowed in the streets, including the blood of Salvador Allende. Oh sure, and then after that there was a lot of sympathy for Allende and the people of Chile. We don’t want post mortem sympathy.²⁹

Such considerations contributed to the consensus by which Articles 185 and 186, which establish and define the state of emergency, were approved by the plenum. Constitutional debate instead centered on narrowing the presidential prerogative in this area, with the result that the period in which the suspension must be ratified by the National Assembly was halved from 90 days to 45 days. This compares with two days in Costa Rica, 10 days in Venezuela, and 60 days in Peru. Unlike most Latin American countries, Nicaragua does not have a provision for a state of siege, a more extreme measure under which the armed forces are generally permitted to “restore” internal order without the constraints of unsuspendable rights.

Even with enhanced legislative checks on the executive, there remains the problem of preventing or countering violations of rights and abuses of authority that may occur when one party controls both the presidency and the National Assembly, as is now the case. To this end Article 129, which establishes the four branches of government, also establishes that they “are independent of each other and harmonically coordinate their activities, subordinating themselves only to the supreme interests of the nation and to what is established in this constitution.”

Atop the third branch, the judiciary, sits the Supreme Court of Justice, whose magistrates enjoy immunity in the exercise of their six-year terms. By Article 160 the Supreme Court is charged with guaranteeing the principle of legality and protecting human rights. It is empowered to name judges of lower courts and to hear appeals. And it has exclusive power to decide on the constitutionality of laws, decrees, and regulations. Most important, the Supreme Court is assigned the power of *amparo* in defense of the constitutional rights of individuals. *Amparo* is a uniquely Latin American legal

instrument that includes what we know as habeas corpus but extends such “protections” of the court—the literal meaning in Spanish—to all other rights. As such, it is an amplified form of the U.S. concept of “due process” with application to, among other things, political rights, economic rights, and “every action or omission of any functionary, authority, or agent of the same, that violates or attempts to violate the rights and guarantees consecrated in this constitution” (Article 188).

There is, however, a potentially serious loophole. The state of emergency, as promulgated by President Ortega, suspended recourse to *amparo*. This made it more difficult to guarantee rights that are unsuspendable in any circumstance, most critically the rights to life and to humane treatment. The Sandinista-appointed Supreme Court repeatedly challenged the government on this issue. In decisions announced in 1983 and 1984 it established that *amparo* could be suspended only in situations relevant to national security.³⁰ A later decision went even further by declaring that recourse to *amparo* for the purpose of guaranteeing unsuspendable rights (specifically those to life and to humane treatment) must be respected by the executive branch even in state security cases during a state of emergency.³¹

Although the government has not contested this most recent decision, an earlier decision appointing a *juez ejecutor* to examine the medical condition of a prisoner was officially rejected by the General Directorate of State Security, which chose instead to admit the designee in his other capacity as a member of the government human rights commission.³² It is with such conflicts in mind that Article 163 of the constitution makes clear that “decisions and resolutions of the judges and courts are of unavoidable compliance by the state authorities, organizations, and individual or juridical persons affected by them.” Moreover, Article 46, which incorporates international human rights treaties into the constitution, offers another potential defense of *amparo*: Article 27 of the American Convention on Human Rights explicitly forbids suspension of the legal guarantees essential for the protection of unsuspendable rights.

Concern has also been raised over the country’s two “special courts”: the Agrarian Reform tribunals and the People’s Anti-Somocista tribunals. It was before the latter that the U.S. mercenary Eugene Hasenfus was tried last year for supplying arms to the contras. These courts are accorded no permanent status by the constitution but are recognized as transitional structures pending establishment of the regular court system. They are presided over by three judges, two of whom are selected by Sandinista-associated “mass organizations,” and whose decisions are not appealable to the regular courts. The central issue here is not, as many members of the legal establishment would have us believe, that nonlawyers serve as judges. The state of Vermont, after all, has long had a system of side-judges, in which two ordinary citizens serve as judges alongside a lawyer. Indeed, the Sandinistas are planning to extend this arrangement throughout the regular court system, with the exception of the Supreme Court.

Problems arise, however, when a single party has effective control over the selection of judges, and when decisions are unappealable to the independent judiciary. Moreover, the special courts fail to meet international human rights standards. Article 8 of the American Covenant on Human Rights and Article 14 of the International Covenant on Civil and Political Rights require trial by a “competent, independent, and impartial tribunal,” which the special courts are not. The constitution resolves this problem, in part, by subjecting all

but military courts to the authority of the Supreme Court, although Article 199 delays implementation pending reconstruction of the judicial system.

In addition to the judiciary, and in keeping with the practice of the most progressive Latin American democracies (Venezuela, Peru, Costa Rica), the Nicaraguan constitution also establishes an independent electoral authority, the Supreme Electoral Council. What distinguishes Nicaragua, however, is that the council, the ultimate authority in electoral matters, is accorded formal status as the fourth branch of government. As in the case of the Supreme Court, the council's five magistrates are selected by the National Assembly from slates of three nominees submitted by the president, and all enjoy immunity in the exercise of their public functions during six-year terms. The council is specifically empowered to enforce all constitutional and legal provisions relating to the electoral process, to appoint all lower electoral officials, to dictate pertinent measures for the "full guarantee" of electoral processes, to direct the appropriate agencies to provide security for all political parties taking part in elections, to set the electoral calendar, to organize and direct referenda, and to carry out the definitive count and declaration of results.

To these four branches must be added a final element of the government structure: the provisions for popular participation. As suggested earlier by its communications policies and the *cabildos abiertos* ("open forums") organized around the constitution, Nicaragua is seeking to establish a form of democracy that maximizes participation, directly and through representative institutions. "All citizens have the right to participate under equal conditions in public affairs and in the management of the state," the constitution now reads, and "effective participation by the people, both nationally and locally, shall be guaranteed by law."

One important vehicle for participation are the "popular organizations." These are Sandinista-sponsored institutions intended to provide an organized political voice to sectors of the population traditionally excluded from the political process. Examples include the national teachers' union (ANDEN), the national women's organization (AMNLAE), and the national farmers' union (UNAG). While their origins have led many to believe that they are mere fronts for the FSLN, the record shows otherwise. MISURASATA, the mass organization of the Atlantic coast, split in three, with its two largest factions taking up arms against the Sandinistas. UNAG organized demonstrations by the landless poor that compelled the Sandinista leadership to radicalize the Law of Agrarian Reform, thereby subjecting unproductive estates of less than 500 *manzanas* (875 acres) to expropriation for the first time. And AMNLAE was the organizing force behind some of the stronger demands for reform made by women in the *cabildos*.

The constitution extends the participatory principle to the workplace, where Article 81 recognizes the right of workers to participate in management; to national defense, where Article 93 establishes the right of the Nicaraguan people to arm itself—in what our own constitutional tradition refers to as "well-regulated militias" in defense of the country's sovereignty, independence, and revolutionary accomplishments; and to the legal system, where Article 166 provides for the incorporation of citizen-judges in the courts.

Participation in political activity enjoys both implicit blessing—Article 5 upholds the principle of political pluralism—and the explicit guarantees of Article 55, which states that "citizens have the right to organize or join political parties with the end of

participating, exercising, and aspiring to power.” Indeed, Nicaragua has some of the world’s most liberal laws governing political parties, allowing parties to register and participate in elections without the cumbersome and expensive filing requirements that effectively restrict participation in many countries, including the United States. As a result an organized voice represents virtually every hue in a broad spectrum of political thought: seven parties, ranging from communist to conservative, participated in the last elections. The only major nonparticipant, the Social Christian party (representing right-wing Christian Democrats), has since reregistered, and two new parties have gained legal status (the Revolutionary Workers party and the Central American Unity party, Trotskyite and centrist respectively). A further guarantee of participation is Article 184, which ensures assembly representation to every party receiving at least one percent of the national vote.

The establishment of elected municipal governments under Article 177 creates additional opportunities for participation. Whereas municipal officials have served as appointees of Managua, the constitution now establishes the “autonomy” of municipal authorities and the election of municipal governments “through universal, free, direct, and secret suffrage.” By unanimous decision of the plenum, municipal elections will be held every six years in the interval between national elections. The first ones are tentatively scheduled for early 1988.

Nicaragua and the World

The Nicaraguan constitution’s affirmation of pluralism at home is echoed in its commitment to pluralism abroad. By Article 5, “Nicaragua bases its international relations in the principle of nonalignment,” in “respect for the sovereignty of all nations,” and in rejection of “all subordination of one state by another.” This formulation is at variance with the image of Nicaragua as a Soviet bloc country that has been promoted by the Reagan administration and widely accepted by the mainstream media. Yet it is consonant with experiences of the past few years.

One measure of Nicaragua’s nonalignment is its voting pattern at the United Nations. To be sure, Nicaragua’s 86.9 percent correspondence with the Soviet Union and 7.6 percent correspondence with the United States in the 40th General Assembly seems only to confirm Reagan administration claims. Yet by such a superficial measure Nicaragua is joined by countries like Sweden, Peru, and Mexico, each having voted far more frequently with the Soviet Union than with the United States. In fact, only 15 out of 159 countries voted more often than not with the United States. Even Guatemala, El Salvador, and Honduras showed greater voting correspondence with the Soviet Union than the United States.

A more accurate picture can be obtained by comparing Nicaragua’s performance with that of undisputed nonaligned nations such as Yugoslavia, Algeria, and India. These and other nonaligned countries exhibited a greater-than-90-percent correspondence with Nicaragua’s voting record. This suggests that Nicaragua is in the mainstream of the nonaligned movement, which has become increasingly alienated from the United States by the interventionist, anti-Third World policies of the Reagan presidency. Conversely, the relatively close correspondence between the U.S.S.R. and the nonaligned states is a reflection of the Soviet Union’s support for Third World initiatives.

Examination of specific votes reveals a surprising degree of independence in view of the considerable military assistance Nicaragua is receiving from the Soviet Union. Nicaragua abstained (along with India, Algeria, Cyprus, and Finland) on the Afghanistan vote and (with China, Guyana, and Zimbabwe) on the Korean Airlines 007 vote. In a related development, Nicaragua participated in the 1984 Los Angeles Olympics despite the Soviet boycott. For these reasons, among others, Nicaragua has been recognized by the international community as genuinely nonaligned. Thus it was elected to the Security Council in 1984, with the support of 104 countries, in marked contrast to Cuba's failed bid in 1980. That Nicaragua has relied so heavily on the Soviet Union for military support says more about U.S. opposition to the revolution and its determination to bar access to Western arms than it does about either Soviet or Nicaraguan designs on the region.³³

Perhaps even more significant than Nicaragua's nonaligned foreign policy has been its leadership role in the development of international laws governing human rights and nonintervention. We have already noted Nicaragua's unprecedented incorporation of international human rights treaties into the constitution. In addition, Nicaragua submitted its dispute with the United States to the peaceful adjudication of the International Court of Justice, whose jurisdiction over the matter the United States then abruptly ceased to recognize. And Nicaragua has ratified the Optional Protocol to the International Covenant on Civil and Political Rights. Under the protocol, any citizen of a signatory state who claims his or her rights have been violated, and who has exhausted domestic remedies, may apply to the U.N. Human Rights Committee to review the case. Since states do not like to air their dirty linen before the international community, less than half the signatories of the covenant have consented to the optional protocol. No country ruled by a communist party has ratified it; neither has El Salvador, Guatemala, Honduras, Chile, Paraguay, and the United States. The pattern, by now, is a familiar one.

A Tale of Two Constitutions

Nicaragua's new constitution represents a development of historic importance—not only for a nation long buffeted by despotic rule but for revolutionary change generally. Although the significance of the constitution may not be acknowledged by U.S. officials and commentators, it is unmistakable to Peru's President Alan García, who addressed the crowds gathered in Managua's *Plaza de la Revolución* on January 9 to mark the constitution's inauguration:

I am here to say that the people of this land, who have already proven themselves through the sacrifices made in their decades-long struggle, are today proving themselves once again, this time through law, through principles, through their new constitution. And I am issuing a Latin American call to all the peoples of the world to recognize the great step that begins here today so that they will be in solidarity with this democracy that has just been strengthened. We call on the people of good faith in the world not to doubt, not to prejudice, not to lose confidence as to what the future holds. We must stand behind this momentous act in which allegiance is being sworn to great principles, and offer friendly encouragement to assure that these vows are fulfilled.³⁴

As Alan García suggests, the real test of Nicaragua's constitution will be found not in the doubts and prejudices of world opinion but in the extent to which it is implemented at home. The National Assembly is presently proceeding with plans to draw up new legal

codes (including new family and labor codes), to change the electoral law in order to prepare the way for municipal elections in 1988, to amend the *amparo* law to give substance to the Supreme Court's enhanced powers to protect the constitution, and to revise the emergency law in order to bring it into full conformity with international standards. The outcome of these efforts will serve as an indication of the government's seriousness about its new constitution.

Any definitive evaluation of the constitution, however, may have to await the termination of external aggression, a point the Americas Watch Committee makes with regard to human rights in particular: "The fact that the government of Nicaragua faces a serious, violent challenge to its stability complicates the effort to make a balanced assessment of its performance in the realm of human rights, because, like any government, this government has the right, under international law, to suspend certain rights as a means to counter that challenge."³⁵ In the meantime, those who seek to sabotage Nicaraguan Democracy through support of the contras are least qualified to pass judgment. For there is a double standard being applied here, not only in relation to "friendly" states like El Salvador, but also in relation to our own past. Our leaders, it seems, have forgotten that a nascent United States also suspended civil liberties for the duration of its independence war and even beyond—until the War of 1812 put a definitive end to British counterrevolutionary designs.³⁶

With a constitution as revolutionary today as the constitution of 1787 was in a different era, Nicaraguans, as Alan García observed, are demonstrating that it is possible to combine socialism with freedom and democracy.³⁷ As we have seen, these achievements have earned Nicaragua international recognition—by UNESCO, WHO, FAO, and the U.N. General Assembly. Most recently, Nicaragua's progress in institutionalizing democracy has been honored by the Inter-Parliamentary Union, an organization of 103 parliaments from capitalist, socialist, and nonaligned states. Notwithstanding intensive lobbying by the United States, the IPU selected Nicaragua over Portugal and Costa Rica to host its 77th world conference in April 1987.

There is, of course, a certain irony in Nicaragua's achievements. The more Nicaragua becomes a model, even if an imperfect one, for revolutionary change, the more it is perceived to be a threat to its Central American neighbors. For it is not in the military dimension that the Nicaraguan revolution poses any serious threat to the oligarchies, armies, and death squads that still hold a tenuous grip on El Salvador, Guatemala, and, to a lesser extent, Honduras. Nicaragua has repeatedly indicated its willingness to sign a Contadora treaty that would preclude all military intervention, whether direct or indirect, in Central America. If that does not satisfy Nicaragua's aggressors, it is because the Nicaraguan threat is of a different nature. The Sandinistas have shown that they can overthrow a tyranny and establish a more just society on its ruins. It is this news, more than guns or soldiers, that threatens the existing order.

There is another irony. This year marks the bicentennial of the U.S. Constitution, a blueprint whose very reasonableness destabilized the monarchical systems of continental Europe by setting forth a more democratic example. It also marks year one of the Nicaraguan Constitution, whose democratic content similarly threatens the remaining oligarchical tyrannies of Central and South America. Shall we observe our anniversary by

assuming the imperial role once played by Britain, or shall we instead honor it by contributing to the birth of self-determination in Central America?

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Notes

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- ¹ Steven Donziger, "With New Constitution, Nicaragua Opposition Looks to Elections," *Christian Science Monitor*, January 12, 1987, p. 15.
 - ² The Reagan administration, of course, continues to maintain that Nicaragua's 1984 elections were a sham, despite the near-unanimous verdict of professional election watchers that there are "no doubts regarding the validity of the electoral results" (report of the Irish Inter-Party Parliamentary Delegation), that the National Assembly is "genuinely representative" (report of the British Parliamentary Delegation), and that "it is unfair to try to declare the elections invalid" (José Figueres Ferrer, three-time president of Costa Rica). If one accepts this verdict, the following conclusions are patent: a solid majority of Nicaragua's electorate voted in favor of the FSLN's revolutionary program; only 24.6 percent of the electorate stayed away from the polls (as opposed to 47 percent in Reagan's "landslide" two days later); and even if most of these abstentions can be attributed to sympathizers of the U.S.-supported Arturo Cruz, who ultimately did not run in the election, a substantially greater number of Nicaraguans expressed support for centrist and center-right parties that are not subservient to U.S. interests.
 - ³ This remained true even with the withdrawal of the two PLI delegates from the commission. The withdrawal, in effect negated by the PLI's later decision to participate in the constitutional debate in the plenum, reflects an ongoing struggle between centrist and rightist tendencies within the party. A faction led by party president Virgilio Godoy has, over the past two and a half years, consistently sought to disengage the PLI from the democratic process—through rather undemocratic devices. With his control of the party's governing body, Godoy was able to mandate the PLI's withdrawal from the constitutional commission. Centrists, however, hold the majority of the party's parliamentary seats and a revolt, led by National Assembly delegate (and commission member) Eduardo Coronado, resulted in full PLI participation in the final constitutional deliberations.
 - ⁴ After chairing one *cabildo* held with officials from the Ministry of the Interior, however, PPSC leader Mauricio Díaz expressed the view that the forums had contributed new ideas and "were not the stage-managed production we originally thought they would be." *El Nuevo Diario*, June 12, 1986, p. 7.
 - ⁵ According to senior administration officials quoted by the *New York Times*, the CIA cultivated ties with COSEP, the dominant organization in the *Coordinadora*, and used those ties to obstruct any possibility of *Coordinadora* participation in the 1984 national elections ("U.S. Role in Nicaragua Vote Disputed," October 21, 1984, p. 12). The *Wall Street Journal* later revealed that would-be *Coordinadora* presidential candidate Arturo Cruz had secretly received funds from the CIA ("Leading Anti-Sandinista Got CIA Cash, Sources Say," April 23, 1985). By the beginning of 1985, Cruz was publicly identifying himself with the contras. He then entered into a formal alliance with the contras that led to creation of the United Nicaraguan Opposition (UNO), an organization meant to lend political legitimacy to a military campaign. But UNO has never been anything more than a front for the Nicaraguan Democratic Force (FDN), the main contra force, as Cruz's recent resignation attests.
 - ⁶ The Americas Watch Committee, *Human Rights in Nicaragua 1986*, February 1987, p. 70.
 - ⁷ Amnesty International, *Nicaragua: The Human Rights Record*, March 1986, p. 24.

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- ⁸ Andrew Reding, *Christianity and Revolution: Tomás Borge's Theology of Life* (Maryknoll, NY: Orbis Books, 1987), pp. 47-48.
- ⁹ *Ibid.* pp. 46-47.
- ¹⁰ "Compitamos en el terreno de la paz," *Barricada*, July 20, 1986, p. 5.
- ¹¹ Gail S. Cairns and Nancy I. Heckel, "Women's Equality in the World's Constitutions," *Populi*, Vol. 12, No. 2 (1985), pp. 50-56 and wall chart.
- ¹² Aryeh Neier, "The U.S. and the Contras," *New York Review of Books*, April 10, 1986, p. 6.
- ¹³ Considerable media attention has been focused on Bill Means's brother, Russell, who charges that the Sandinistas are engaging in a pattern of "genocide" and "euthanasia" against the native populations of the Atlantic coast, and has promised to recruit 100 North American "warriors" to fight the Sandinistas. Although he claims to speak for the American Indian Movement (AIM), AIM has not had a formal leadership structure for a long time and every other informal leader of the movement (among them Clyde and Vernon Bellecourt and Dennis Banks) supports the IITC view. Russell Means's association with Causa International, which has sponsored many of his speaking tours, has been cause for suspicion. Causa International is the ultra-right-wing political arm of Sun Myung Moon's Unification Church and is reported to have shipped supplies to the Nicaraguan contras during the period of congressional moratorium.
- ¹⁴ The Nicaraguan concept of rights bears similarity to that of Thomas Jefferson's in our own tradition. Together with Benjamin Franklin, Jefferson argued that property rights were mere "rights of civil society," readily alterable by the people through their representatives whenever necessary to give substance to the "inherent and inalienable" rights to life and liberty. (See Jefferson's letters to Isaac McPherson, Aug. 13, 1813, and to James Madison, Sept. 6, 1789; Franklin's letters to Robert Morris, Dec. 25, 1783, and to Benjamin Vaughan, Mar. 14, 1785.) It is therefore no accident that property rights are nowhere mentioned in the Declaration of Independence, and that the U.S. Constitution says only that persons may not be deprived of property without due process.
- ¹⁵ Eduardo Baumeister, "Economia mixta: Sin definiciones previas," *Pensamiento Propio*, Vol. 4, No. 34 (July 1986), p. 8.
- ¹⁶ In early June 1986, just a couple of weeks before the House of Representatives approved the aid request, Bishop Vega travelled to Washington at the invitation of PRODEMCA, a neoconservative group that published advertisements in major U.S. newspapers in support of military aid to the contras. In New York, a few weeks before the vote, Vega denounced the "totalitarian, Marxist-Leninist regime in Managua," adding that "the Church has its specific function and cannot go beyond it, but armed struggle is a human right". However cautious Vega's wording, his meaning was clearly received in Washington and Managua.
- ¹⁷ "Church-state relations in Nicaragua hit new low," *Christian Science Monitor*, July 7, 1986, p. 11.
- ¹⁸ "Contra Leader Linked to Romero's Death," *National Catholic Reporter*, April 5, 1985, p. 21.
- ¹⁹ For more on this, see John Spicer Nichols, "The Media," in Thomas Walker, ed., *Nicaragua: The First Five Years* (New York: Praeger, 1985), pp. 190-192; and The Americas Watch Committee, *Human Rights in Nicaragua: Reagan, Rhetoric, and Reality*, July 1985, pp. 8-9, 51.
- ²⁰ "Aquino Press Ban," *Financial Times*, January 13, 1987, p. 1.
- ²¹ Daniel Ortega, speech at Riverside Church, New York, September 25, 1985.
- ²² Samuel Chavkin, *Storm Over Chile* (Westport, CT: Lawrence Hill, 1989), pp. 46, 48.
- ²³ Andrew Reding, "What Really Happened on November 4?" *Christianity and Crisis*, December 24, 1984, p. 490. Also "La Prensa: Post-mortem a un suicidio," in *Envío*, August 1986, pp. 9c-10c.

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- ²⁴ “Grantee of U.S. Endowment Funds Sandinista Opponents,” *Washington Post*, March 19, 1986, p. 1.
- ²⁵ For documented examples of manipulation by the Costa Rican media, see Andrew Reding, “Costa Rica: Democratic Model in Jeopardy,” *World Policy Journal*, Vol. 3, No. 2 (Spring 1986), pp. 303-304, 309, 312; see also Howard Frei and Michelle Joffroy, “Media Manipulation in Costa Rica,” *Covert Action Information Bulletin*, No. 26 (Summer 1986), pp. 39-41.
- ²⁶ In an interview I conducted with Aguirre immediately following adoption of the constitution, he stressed that the central problem “is not a matter of state or private control as such, but rather of deriving private profit from the management of information. If someone wants to establish a private television channel here on a for-profit basis, it is unarguable that it will fall into a pattern of sensationalized news reporting, of commitments to commercial sponsors, and all that we have seen follow from that... What, on the other hand, is the danger from state control of programming? That it should fall into a pattern of ponderousness and self-exaltation not dissimilar in its own way to the behavior of the businessman, and since there is in that case no opportunity for rejoinder, one is left with an effective monopoly.” Aguirre therefore advocates a greater emphasis on nongovernmental but not-for-profit management of the means of communication. “Information must not be commercialized,” he warns.
- ²⁷ Stephen Kinzer, “Top Sandinista: Ortega’s Grasp Becomes Firmer,” *New York Times*, March 2, 1987, p. 1.
- ²⁸ The executive committee is made up of President Daniel Ortega (chairman), Bayardo Arce (vice-chairman), Tomás Borge (minister of the interior), Humberto Ortega (minister of defense), and Jaime Wheelock (minister of agriculture and agrarian reform).
- ²⁹ Ortega (fn. 21).
- ³⁰ *Nicaragua: Revolutionary Justice—A Report on Human Rights and the Judicial System*, Lawyers’ Committee for International Human Rights, April 1985, pp. 108-110. The National Assembly amended the state of emergency in late 1985 to bring it into conformance with these rulings.
- ³¹ *Ibid.*
- ³² *Ibid.* pp. 112-113.
- ³³ George Black and Robert Matthews, “Arms from the U.S.S.R.—Or from Nobody,” *The Nation*, August 31, 1985.
- ³⁴ Alan García, “Peruvian President Expresses Solidarity with Nicaragua,” *Central America Information Bulletin*, Agencia Nueva Nicaragua, Vol. 4, No. 52 January 21, 1987), p. 4.
- ³⁵ See, for example, Alien and Sedition Acts and Leonard W. Levy, *Jefferson and Civil Liberties: The Darker Side* (New York: NYT Quadrangle, 1973).
- ³⁶ *Human Rights in Nicaragua 1986* (fn. 6), p. 6.
- ³⁷ Alan García, “America Latina no se rinde,” *El Nuevo Diario*, January 10, 1987, p. 12.