

THE NICARAGUAN CONSTITUTION OF 1987

English Translation and Commentary

Edited by
Kenneth J. Mijeski



Ohio University
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FOREWORD

The volume of research and writing on revolutionary Nicaragua has mushroomed. The number of Latin Americanists and other scholars who have participated in this growth also has increased dramatically, adding substantially to the intellectual resources brought to bear in the shared effort to understand the successes, failures, complexities, and contradictions of revolutionary life with the Sandinistas. While this intense scrutiny has resulted in significant improvements in our comprehension of a variety of dimensions of the political, social and economic life of the country, there has been a relative paucity of research which focuses specifically on the development and promulgation of the new constitution from 1985 to 1987. This monograph attempts to rectify that situation by bringing together some of the most current work on the 1987 constitution.

The editor himself is a "johnny-come-lately" in his focus on Nicaraguan politics. He was fortunate to be selected as a participant in a recent Nicaraguan Field Research Seminar sponsored by the Latin American Studies Association and co-directed by Tom Walker, a political scientist at Ohio University, and Harvey Wheeler, a sociologist at the University of the Pacific. Both of these scholars have deep interests in, and profound knowledge of, Nicaragua. Tom Walker is clearly the dean of Nicaraguanists in the United States, with field research in Nicaragua spanning more than two decades. In fact, it is Tom Walker who was responsible for the genesis of this monograph on the Nicaraguan constitution; and his support and encouragement during the project's development has been selflessly unflagging.

I also owe much to the following colleagues, both at East Tennessee State University and elsewhere, who have generously given of their time in reading and commenting on previous related work, as well as my present effort: Andy Battista, Fred Weaver,

John Ostheimer, and Jim Odom. They have helped me to clarify both what I was thinking and what I wound up writing, even though they are not responsible for my claims and conclusions. Alice Terrell, with her expertise in word processing, ultimately made the manuscript a reality. Thanks are also due the contributors to this monograph, not only for the excellence of their work but for the timeliness with which they provided me their essays. Finally, I thank the Research Development Committee of East Tennessee State University for providing me with a small grant to cover the costs of word processing and related tasks.

Since the chapters for this volume were written, Nicaragua has experienced significant political changes, the most important of which—and for most observers, the most surprising—came in the February 1990 elections. Violeta Barrios de Chamorro, with the backing of a motley alliance of parties and interest groups known as the National Opposition Union (UNO), defeated Daniel Ortega of the FSLN in his bid for another term as Nicaragua's president. The Sandinistas now find themselves in the opposition for the first time since their triumphant revolutionary victory more than a decade ago.

The reasons for the Sandinistas' electoral defeat will be a source of argument for some time to come. This is not the place to engage that issue. But the election itself and the ensuing peaceful transition of legitimate power from the FSLN to the Chamorro regime were made possible by both sides' adherence to procedures specified in the 1987 constitution. The successful implementation of those electoral procedures provides some hope that the remainder of the constitution will be successfully and peacefully implemented in the future.

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Chapter 1

INTRODUCTION

Kenneth J. Mijeski

In January of 1987 the revolutionary government of Nicaragua, under the signatures of members of the National Assembly and the president of the republic, officially promulgated a new national constitution. That constitution was forged in the midst of a long and costly counter-revolutionary war, increasingly acerbic relations between the government and its opponents, and acute and chronic economic problems. Within that seemingly inhospitable context the proposed constitution was subjected to argument and debate for two years in a variety of public forums, both in Nicaragua and abroad. During that public scrutiny the draft constitution underwent a number of revisions before it was returned to the National (Constituent) Assembly for more debate, additional revisions, and (ultimately) ratification.

The new constitution has been touted by the Sandinistas and their supporters as further evidence of their commitment to popular democracy. It has also been excoriated by Sandinista critics and largely unrecognized by much of their domestic opposition, who claim that it is either irrelevant or nothing more than a facade which masks the true intent of the Sandinistas: to dominate the country and shape its future according to their own ideologically anti-democratic vision.

It is this issue of the 1987 Nicaraguan constitution and the creation of that document with which this volume is concerned most centrally. Among the questions explored herein are the following:

- (1) What was the nature of constitutionalism before the 1979 revolution?
- (2) Within what kind of political context did the process of developing the constitution take place?
- (3) Were the public debates regarding the draft constitution serious ones with real impact on the document's contents, or were they simply Sandinista-staged "dog-and-pony shows"?
- (4) Was the constitution designed and executed by the Sandinista National Liberation Front (FSLN) to guarantee its hegemony in Nicaragua's politics?
- (5) Does the Nicaraguan constitution owe its heritage to the Western tradition of Lockean liberalism or to the Marxist-Leninist "centralized democracy" which characterizes the socialist constitutions of the Soviet Union and Cuba?
- (6) Are civil and political rights given clear protection under the new constitution, or are these rights expendable if the goals of the revolution are perceived to be threatened?
- (7) In light of the fact that the new regime established its initial legitimacy through mass mobilization and participation in the insurrection and in the health and literacy campaigns, how does the constitution approach the question of governing through mass participation versus governing through representation?

Before examining the constitution and the various reactions to it, one should first trace the early accomplishments of the revolutionary government and the setbacks created by domestic and international opposition to the regime's policies and actions. In addition, it also would be useful to describe and discuss the political and legal structures which developed during the years between the insurrectionary victory and the drafting of the new constitution.

Background: Euphoria and Destruction

"Nicaragua may be swept away and destroyed, its fields turned to salt and ashes, but it will never be conquered."¹ The

preceding words spoken by Agriculture Minister Jaime Wheelock in 1981 were indeed prophetic. While Nicaragua thus far has remained unconquered, much has been "swept away and destroyed," not the least of which are the lives of tens of thousands of Nicaraguans who were either killed, wounded, maimed, crippled, or orphaned during nine years of counter-revolutionary war. Despite the efforts of the government of the United States in this regard, the Sandinistas have remained steadfast in their refusal to give in.

In contrast, a scant three years after the triumph of the Sandinista-led insurrection of 1979, the new Nicaraguan government was internationally recognized for its accomplishments in health care and education. During the five decades preceding the FSLN-led insurrection, the ruling Somoza family assigned a very low priority to public health, sanitation, and education. Pre-revolutionary Nicaragua suffered one of the highest illiteracy rates in the hemisphere.² The revolutionary government's Literacy Crusade radically transformed an illiteracy rate of more than 50 percent to 13 percent in five months time.³ Before the revolution, Nicaraguans had the lowest life expectancy and one of the highest infant mortality rates in Central America.⁴ After the 1979 revolution, 80,000 volunteers were trained in preventive medicine. One result was a 50 percent drop in malaria. The incidence of measles, a prime killer of children during the Somoza regime decreased from 3,784 cases in 1981 to 219 in 1982.⁵

In a few short years, Nicaragua's advances in health care merited awards from the World Health Organization and the United Nations Children's Fund (UNICEF) for the best health improvement among the poor countries of the entire world. In addition, in 1981 UNICEF chose Nicaragua as a demonstration site for primary and preventive approaches to health care.⁶ By 1982, Nicaraguans were eating from 30 to 40 percent more rice, beans, and corn—their primary staples—than before 1979.⁷ Also in 1982, a Nicaraguan was elected as president of the Pan American Health Organization.

Those early successes were short-lived. By 1982 the "contra" war sponsored by the U.S. was in full swing, with the decision to

make health care facilities, health care workers, and educational workers key targets of contra attacks. By the end of 1985, forty-two Nicaraguan health care workers had been killed by the contras, twenty kidnapped, and eleven wounded. By 1986 these figures came to include six foreign health care workers killed.⁸ Contra attacks also destroyed sixty-two health facilities, including four large clinics and one hospital. The reappearance of polio in 1984, eliminated previously through vaccination campaigns, and the outbreak of dengue fever in 1985 were evidence of the war-induced decline in public health advances.⁹

Educational successes also had been blunted at the hands of the contras. By mid 1985, 800 schools were closed because of the war. Twenty-seven schools were totally destroyed, 170 teachers had been killed and another 133 kidnapped.¹⁰ Added to this destruction was the general U.S. embargo which has denied to Nicaraguans both health care and educational equipment, from complex items such as X-ray machines to simple things such as pencils and paper.¹¹

Agrarian reform was another foundation in the policy plans of the new government. To be sure, much needed land distribution—and redistribution—has been undertaken. The early years even showed an increase in the production of basic food crops for domestic consumption.¹² The war, the recalcitrance of the agroexporting bourgeoisie, mismanagement by the government, a general decline in the agroeconomies of all of Central America, and hurricane Joan combined forces to deal a severe blow to agricultural production. As Orlando Nuñez Soto, the director of Nicaragua's Agrarian Reform Research Center (CIERA) under the Sandinista administration, painfully noted, land distribution and entitlement did not "in all cases, signify an improvement in the living conditions [of the campesinos]."¹³

Nicaraguan Political Structures: 1979-1985

If a constitution indicates a constitutional government, then before 1979 Nicaragua had such a government. Like its neighbors throughout Latin America, Nicaragua had many constitutions after

its independence from Spain: ten constitutions by 1979, four of them during the Somoza period (1934-1979). If there is consensus on any point among observers of Nicaraguan politics, it would be the recognition that constitutionalism under the Somozas was bogus. Amendments to the constitutions "were made to accommodate the interests of the Somoza family every time they were needed."¹⁴ Or, as another observer put it more generally, "[g]overnment and politics, under the Somozas, were 'of, by, and for' the privileged few."¹⁵ There is even evidence that officials of the government of the United States also participated in doctoring up Nicaraguan constitutions in order to keep the Somozas in power.¹⁶

So while there was officially a constitutional system under the final Somocista constitution of 1974, the revolutionary government essentially assumed power in a legitimacy vacuum. Following the victory, the Junta of National Reconstruction (JGRN), created shortly before the victory, officially annulled the former Somocista constitution. The JGRN also abolished all Somocista state machinery on August 22, 1979 with the promulgation of the Fundamental Statute of Rights and Guarantees of the Nicaraguan People. This document created a provisional government which consisted of a plural executive (the JGRN), an interim legislative body (Council of State), and courts.

Beneath these formal institutions lay the substantial informal power of the Sandinista National Directorate (DN), consisting of nine members, three from each of the former factions of the FSLN.¹⁷ Thomas Walker suggests that while the three branches of the provisional government were not powerless, they nonetheless "existed at the pleasure of the DN, which had created [them] in the first place."¹⁸ While the 1984 elections and the 1987 constitution have formalized political structures and officially separated the party from the state, one observer claims that "key government policy decisions [continue to be] made by the full National Directorate."¹⁹

The Fundamental Statute also abolished Somoza's hated National Guard, replacing it with a new national army with Sandinistas at its core. But Article 24 of the Fundamental Statute

states clearly that the army was not to be a private preserve of the FSLN. It was to include former National Guardsmen and officers who had not committed "crimes against the people" as well as other volunteers and draftees (those fulfilling their "obligatory military service").²⁰

The JGRN was originally composed of five members: two conservatives (Alfonso Robelo and Violeta Barrios de Chamorro, wife of the slain publisher of *La Prensa*, Pedro Joaquín Chamorro), one pro-Sandinista leftist (Moises Hassan), and two Sandinistas (Daniel Ortega and Sergio Ramírez). Through disputes and resignations, the JGRN became a three-person body in 1981 composed of the same two Sandinistas and Córdova Rivas, a lawyer with connections with the Democratic Conservative party. This Junta remained intact until it was replaced by an elected president (Ortega) and vice-president (Ramírez) in 1985.

The JGRN ceased ruling by decree in May 1980 when the Council of State began to function. At that time, the JGRN was granted co-legislative powers with the Council. The Council of State comprised forty-seven members when inaugurated and was eventually expanded to fifty-one members before being replaced by the elected National (Constituent) Assembly in January 1985.

Membership on the Council of State was by appointment by various groups within Nicaraguan society, including virtually all political parties, the army, the Church, private sector groups, and mass or popular organizations. The expansion from its originally intended size of thirty-three seats to forty-seven was done at the wishes of the FSLN's National Directorate which saw a serious overrepresentation of private sector interests at the expense of Sandinista mass organizations.²¹ As was the case with the JGRN, the Council of State was plagued with disputes, resignations, and, on occasion, boycotts of its meetings by opposition party members. Upset with the Sandinista National Directorate's "suggestion" that fourteen popular sector delegates be added to the Council, the five private sector organizations holding seats eventually walked out and did not return.²² The final expansion of the Council took place in 1981 when four members were added: two from the right, one from the center, and another supporter of the FSLN.

The Council of State was originally intended to play an entirely passive legislative role vis-a-vis the JGRN, being limited to the approval or disapproval of Junta decisions without modifications.²³ In practice, however, the Council could both initiate and modify legislation. Although the JGRN initiated most bills in 1980-1981, the Council of State was the primary initiator (forty-four out of sixty) during the 1982-1983 session.²⁴ In its final make-up, the Council contained between twenty-seven and thirty-eight secure votes for the FSLN.

The Council of State was not terribly powerful vis-a-vis the executive branch. The Council had no budgetary powers and its actions could be vetoed by the JGRN, effectively killing Council initiatives until the next session.²⁵ Yet it would be inappropriate to characterize the FSLN as the puppeteer and the Council of State as its puppet. A good case to illustrate this point is the passage of the important Political Parties Law.²⁶

The FSLN-sponsored draft of this measure was introduced into the Council of State in November 1981. The draft allowed for parties that were not counterrevolutionary to participate with the FSLN in governing but prohibited any other party from governing on its own. Objections by the nine other parties then in existence were immediate. The amended response by the FSLN was still objected to strongly since it only allowed for other parties to participate in public administration.

Responding further to this criticism, the FSLN announced that it was willing to accept significant amendments and it even organized a three-day seminar on political parties in January 1983. The seminar, though boycotted by the four most conservative parties, showed a consensus in favor of allowing parties to contest elections for the right to govern. The FSLN accepted the principle of competition for the right to govern, insisting only that parties proposing a return to Somocismo or something similar be barred from participating. A new draft reflecting these amendments was reported out to the floor by a special committee of the Council of State.

Once it was on the floor of the Council, the bill endured more than thirty hours of debate and proposed amendments. It is