
THE POLITICAL CHRONICLE

The Journal of the Florida Political Science Association

Lasswell and McDougal's Map of Policy Sciences for Democracy

James A. Robinson,
(University of West Florida)

*A Note on Nonpublication of Opinions:
Is Misinformation Functional for the Legal System
Though Not for the One Shot Player?*

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(University of Central Florida and Harvard Law School)

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- RESEARCH NOTE -

*From Communism to Democracy:
Conciliation or Confrontation? The Case of Nicaragua*

Alfred G. Cuzán
(University of West Florida)

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Lasswell and McDougal's Map of Policy Sciences for Democracy

James A. Robinson

Harold D. Lasswell and Myres S. McDougal,¹ *Jurisprudence² for a Free Society³ Studies in Law,⁴ Science⁵ and Policy⁶*. New Haven: New Haven Press⁷ and Dordrecht: Martinus Nijhoff Publishers, 1992, 2 vol. xl, 1588 pp., with charts, appendices, index. Sold and distributed by Kluwer Academic Publishers, Norwell, MA 02061, USA and Dordrecht, The Netherlands, \$580.00.

Abstract*

This is the summa opus of two who created, introduced, and diffused "the Policy Sciences orientation."⁸ The aim is to bring Sciences to the service of Policy, that is, Human Dignity, "respect for the autonomy and freedom of choice of the individual human being" (p. xxxi), more conventionally, democracy. Sciences embrace more than the breadth of quantification associated with modern "hard" science. Sciences, for Lasswell and McDougal, equate with Enlightenment. Their first objective is to furnish a "Map" to guide inquiry. "Map" and "mapping" are undefined terms, metaphors for an outline to direct the focus of an observer's attention to the total context as well as the particular part that he proposes to study and in turn to shape. Hence, the first stop on the Map is "the Standpoint of the Observer," (see Part I, ch. 2). Problem-Solving (similar to John Dewey's conception of closing the difference between aspiration and achievement) includes five Intellectual Tasks (Goal Clarification; Past Trend Description; Conditional or Causal Analysis; Projection; Invention of Alternatives). The authors' commitments, by virtue of

personal Interest, were to bring knowledge to bear on Policy, Policy defined as the distribution of Values among members of any human Community (defined, p. 404), local, national, transnational, global, planetary. Values, the preferences of or aspirations among members of a Community, are many and varied, and the shaping and sharing of cherished Values expressed in Expectations, Demands, Outcomes, or Effects may be broad or narrow. That Past Trends among human communities reveal varying levels of unequal shares is not assumed to bar changes in future, changes that depend on improved analysis of Factors or Conditions that account for Past Trends and on inventing policy Alternatives to be converted into Decisions and/or Policies by Community Legal Processes. Decisions are choices among Alternatives, Outcomes of which are expected to be accompanied by severe positive (indulgent) or negative (deprivational) Sanctions to achieve Effects. (Other choices in form of Policy involve mild or no Sanctions to effect compliance.) Processes of decision-making or choice-making reveal functions more refined than legislative, executive, and judicial. Lasswell and McDougal identify seven recurring Functions in reaching Decision or choice (Intelligence or Planning; Recommendation or Promotion; Prescription; Invocation; Application; Appraisal; and Termination). Community Legal Processes express Decisions through Law. Law is a process of authoritative Decision by which a Community Continually Clarifies, Implements, and Secures its Common Interests (p. xxx), that is, its preferred distribution of shared Values. Given the plethora of human value-demands, discourses in intellectual inquiry and policy-making depend on use of convenient categories for classifying Values. Lasswell and McDougal employ eight: Power, Wealth, Enlightenment, Skill, Well-being, Affection, Respect, and Rectitude. Having

located themselves among those who Identify with Enlightenment, their overriding objective has been to use their and others knowledge to promote their doctrine, Human Dignity. This embodies their postulated, as distinguished from derived, goal, "reciprocal tolerance and honoring of freedom of choice about participation in the shaping and sharing of all values" (p. xxxi). In the Miranda (or lore) of world communication, the term democracy symbolizes the objective.

Review

Harold Lasswell and Myres McDougal collaborated in research, teaching, and advising at the Yale Law School throughout nearly four decades, from the mid-1930s until the late 1970s. Early on they shared a mutual commitment to dedicating their scholarship to understanding and creating conditions for social relations that maximize possibilities for human dignity. They defined human dignity, their fundamental personal and professional goal, as broad in contrast to narrow participation in the shaping and sharing of all values in any community of persons. To this fundamental objective, they promoted their work among elites, especially members and prospective members of national and transnational legal communities. Elites have more valued outcomes than mid-elites or non-elites, hence through education and training of selected skill-elites they expected to realize their preferred objectives for the devolution of cherished values as broadly as possible throughout humankind, presently and in the future.

When Lasswell and McDougal began to collaborate, both had received respect as inventive and wide-ranging scholars. Lasswell had been a familiar and iconoclastic figure among political scientists for a decade or more. As a scholarly prodigy and disciplined protege of the influential Charles E. Merriam at the University of Chicago, Lasswell skilled himself in economics and then in the increasingly systematic field of

* In the abstract, I have capitalized key words, or concepts, of the authors. This may seem awkward or confusing to the reader on first appearance, but subsequent reference may confirm its usefulness in highlighting terms whose assigned or functional, not always familiar or conventional, definitions are to be kept in mind.

political science. He was the first political scientist to master the prolonged insight interview of psychoanalysis and his early and extraordinary fecundity in research produced streams of articles, books, memoranda, radio and film scripts, and reviews bringing to bear a wide range of social science theories and techniques to both old and new topics of politics. McDougal, meanwhile, also had begun an exceptional career, as Rhodes Scholar, classicist, sometime anthropologist, and innovative contributor to treatises on the subject of property law. Their paths crossed when McDougal visited Chicago on leave from Yale and looked up Lasswell. Subsequently, one arranged a visiting appointment for the other in New Haven. Denied tenure at Chicago by President Robert Maynard Hutchins, Lasswell held a variety of short-term appointments, some simultaneously, in and out of universities, governments, and other institutions until taking up a permanent position at the Yale Law School with an appointment also as a professor of political science in the Graduate School. Thereafter, the two worked together intimately but also continued their individual writing as well as active collaboration with many other scholars. Virtually all their thought, writing, lecturing, and advising, however, was directed toward perfecting theories and techniques to understand and promote human dignity. The center of their collaboration, from which their peripheral interests were rarely far removed, was a continuing seminar on Law, Science, and Policy. Here among elite students in an elite law school in one of the world's elite universities, they explored their subject, intensively and extensively, emphasizing problem-orientation, contextuality, and multiple techniques of inquiry. Dozens of books, chapters, and articles circulated from one generation of scholars to the next. Their broad objective extended beyond legal education conventionally conceived to its functional performance in practice, and to this day educated elites in many nations recognize their names with a familiarity similar to those of Sigmund Freud or John Dewey, two of the most influential contributors to their own perspectives.

Lasswell and McDougal formulated

a way of thinking about jurisprudence (theory of inquiry about law as distinguished from theory of law), that required them to begin by locating themselves in a comprehensive map or conception of the social process in past, present, and future. The place to begin in outlining this map, this way of thinking (some might say system of thought), therefore, is the observer and the standpoint from which one observes the interaction of social (i.e., inter-personal interaction) factors with resources. Observational standpoints depend on the observer's purposes, whether contemplative or manipulative, and on what the observer brings to his work, his culture, class, interests, personality, and level of crisis. Culture refers to stable patterns of values and institutions among members of a territorial or pluralistic community. Class designates relative standing or position among fellow community members with regard to the accumulation, enjoyment, and sharing of any value. Interests are identifications and demands that intersect class or culture. Personality consists of perspectives, including identification, demands, and expectations. Level of crisis represents the propensity of individuals to convert stress to violence. The authors subject themselves to observations according to these categories for analysis of any observer or participant. The result is explicit statement of their preferences for outcomes and effects of the social processes in which they observe and participate at every level, from subnational, to national, to transnational, to potentially global and cosmic. They postulate (pp. 193-96) personal commitments to human dignity, the broad rather than narrow shaping and sharing of all values, a minimum of sanctioning, especially negative, and a maximum of autonomous, individual choice. Values are aggregations of preferred outcomes and effects and are classified as power, wealth, enlightenment, skill, well-being, affection, respect, and rectitude. Lasswell and McDougal's location on this vast conceptual map is to specialize in scholarship (enlightenment) that will contribute to law (at any level) that promotes the enhancement and attainment of human dignity. Law consists of a community's continuing

clarification to secure its common interests. Law by their conception includes more than constitutions, statutes, common practice (common law, folkways, mores). It extends beyond reading intentions or meanings of authors of statutes and constitutions. Law is society's interaction that continually deliberates and reformulates its members aspirations and efforts toward the formulation of policy (directed at the sharing of values among members).

Value categories enumerated just above include decisions involving severe sanction or positive indulgence (power). Decision is central to the legal process, a subset of the social process. Authoritative decisions are outcomes of law (authority *plus* control; see many references in index, p. 1567). The process of deciding is more than the process of choosing or selecting among available alternatives. It ranges from recognition of a problem or occasion for decision to eventual implementation of an alternative. Western political thought after Montesquieu focussed on a three-part analysis of decision, legislative, executive, judicial. That this separation of functions was inadequate soon became apparent. By one criticism, it confused a function with an institution; the same institution could and did vary its participation in performing more than its primary or original function. By another, the empirical examination of particular decisions revealed functions performed by other participating institutions, by a fourth estate, the press, and later by another, bureaucrats. The roles of both media specialists and organization specialists likewise confused the distinction between functions and institutional practices. Lasswell and McDougal propose to analyze decisions in seven functional categories. Intelligence or planning provides information about problems for decision. Recommendation or promotion devises alternatives for responding to problems. Prescription selects among alternatives. Invocation makes a preliminary implementation of the prescription. Application considers the provisional implementation and completes the act of execution. Appraisal provides oversight of the effectiveness of the preferred prescription in light of original or revised goal-criteria. Termination designates the function of

reaffirmation, amendment, or repeal of the prescribed choice.

It is a matter for empirical research "who" performs "what" function with what "outcome" and "effect." The same institution, a legislature, may contribute substantially to recommendation, prescription, and oversight. Other legislatures may invest heavily in intelligence gathering or rely on other institutions, formal or informal, in or out of government. Executive branches, conventionally defined, may participate in any or all functions; variations are the object of comparative observation.

Decision (involving relatively severe sanctions) constitutes the conventionally familiar domain of law and government, institutions specialized to processes of participation in shaping and sharing power. Lasswell and McDougal emphasize the inter-relatedness (contextuality) of all factors in social process. Conventional observations may be inadequate functional accounts of the inter-dependence of power with other values and power-institutions with other value-institutions. In addition to power, they identify seven major values with corresponding illustrative institutions:

<u>Value</u>	<u>Institution</u>
Wealth	Economy
Enlightenment	Knowledge
Skill	Craft
Well-being	Health
Affection	Family
Respect	Group
Rectitude	Religion

The authors take pains to stress that values come in astronomical numbers, if they are not infinite. Wants, demands, preferences are variable and changing among individuals. Individuals also vary in the number and intensity of value demands. Not all pursue the same preferences with the same level of demand or expectation. Nor is the distribution of value demands constant through time, different periods and places expressing varying modal expressions of values preferred for accumulation, enjoyment, and sharing. Despite the enormous appetite of humankind, observers cannot conveniently handle each demand as a discrete datum. Hence, the authors recommend and employ their eight-fold classification, with enough

specificity to permit translating equivalent expressions to other observers' classificatory schemes.

Institutions also "vary endlessly in detail" (p. 339). Political scientists are familiar with the many practices associated with stable patterns of power (e.g., electoral systems, legal codes, degrees of centralization and concentration, to cite only a few). Economists are aware of extensive practices in producing and maintaining stable patterns of wealth distribution (e.g., barter, money, "free," "socialist"). Institutions specialized to knowledge show similar diversity (from shaman to scientist). Skill institutions take innumerable forms (guilds, unions, associations, crafts). Health-related institutions range from asylums to hospitals, from practices associated with individual to group or societal therapies. Affection takes form in institutions and practices of family, marriage, friendship, cliques, clubs, and loyalty organizations). Respect is shaped and shared by ethnic, tribal, geographic, and a plethora of other groupings. Rectitude standards provide occasion for persons to form churches, temples, synagogues, mosques, and non-place bound collectivities to recommend and explore standards of temporal or timeless conduct.

The emphasis on values and institutions combines into analysis of particular value-institution processes (see esp., Part II, ch. 2, pp. 375-590). Here is a vivid and extended exposition of the interpenetrating and interdependent relations among primary components of social process, the effects that each has on others. Here also the expansive scope of jurisprudence, both law and non-law, is shown to embrace the totality of particular value-institution processes, including power or effective control. Law in this sense becomes coterminous with policy and the processes by which a community of persons collaborates and communicates to clarify and achieve the terminal effects it demands and expects to share in common.

Thus, the legal process (by which, to repeat, a community continually clarifies, implements, and secures its shared or common interests, is a component of the decision process (eventuating in outcomes with sanctions), which is part of the larger, total social process. Each

process interacts with and is interdependent with other processes, each affecting and being affected by others. The social process is defined as "people seeking values through institutions using resources" (p. 337). Participants and their interactions are analyzed by culture, class, interest, and personality. Culture, class, and interest were defined earlier. Personality designates relatively stable patterns of individual practice, that emerge from and are the product of interaction between and among human beings. This use of the term person separates the purely biological organism from the human being changed through participation with others in social interaction (p. 349).

Personality organizes itself by reference to values and expresses itself through practices pertaining to the formation and distribution of each value. From this characterization follow personality types--the power-centered, wealth-oriented, enlightenment-dominant, skill-focussed, health-conscious, affection-seeking, respect-expectant, rectitude-occupied. Comparisons of types among cultures, or among periods within same cultures, reveal diversities in the range of institutional practices each value-centered type employs to realize its goals (p. 350).

Personality perspectives are analyzed further according to identifications, expectations, and demands. Identities include self-identity and identifications with others. Identification may be fixed on culture or sub-cultures, class, or institutions. Each person is likely to possess several identifications, hence "identities" are far more numerous than the 'bodies'" (p. 351).

Various components of the self express demands for values; demands may be on self by self or on others by self. Demands and identifications are intimately related to expectations, of self and of others. Expectations make assumptions about the outcomes and effects of events, favorable, unfavorable; probable, improbable; compatible, incompatible (pp. 352-53).

Stable patterns of personal and inter-personal (group or community) perspectives (i.e., identification, demands, and expectations) are embodied in myth (pp. 353-55). Myth consists of doctrine, formula, and miranda (or lore).

These elements of myth designate abstract propositions (e.g., human dignity), prescriptions (e.g., constitutions), and legends and other folk expressions.

We previously have introduced the idea of institutions, that is, stable patterns of practices specialized to each value. Participants use both values and institutions as both means (base) and ends (scope). In pursuit of values through institutions, strategies manipulate base values. Lasswell and McDougal classify strategies by objectives sought and instruments employed. Hence, their typology of Diplomacy (negotiation); Ideology (communication); Economic (resources); Military (weapons). In earlier publications they popularized this typology by four five-letter words, deals, ideas, money, force.

Here, then, is a map of a map, so to speak. It can be rendered in greater configurative detail, as in these two erudite and elegant volumes, or in lesser, sparser representation, as in this expository review. No summary can justly recapitulate the interdependence of salient factors, observer, values, institutions, participants with perspectives, and strategies, outcomes, and effects in processes of decision, law, and community.

Conclusion

Lasswell and McDougal circulated their perspective on law, science, and policy for more than half a century. This work, formidable as it is, probably is too inaccessible to institutionalize identifications, expectations, and demands for their approach to human dignity. The law school that was their home restricted their innovation by partial incorporation. Unified sciences prove as elusive in policy as in other sciences. Perhaps the revival of "policy" as a main pre-occupation among lawyers and social scientists will bring their work to a larger focus of attention. On the other hand, perhaps, it awaits "rediscovery" by a successor generation. Its sheer formidability requires sustained study, and it inevitably invites revision in light of new theories, techniques, and empirical researches. However formidable, however revised, its underlying postulates conform with modern, and expected future,

perspectives (pp. 803-33). These were aptly phrased in a memorial tribute by a younger colleague, son of one of Lasswell's friends and fellow-scholars:

Harold Lasswell was a practical man. He was not a scholar for the fun of it, although he obviously got great fun out of it. He was concerned with the application of knowledge to useful ends.

His approach was, at its core, so simple. He looked at the basic things that make people happy and analyzed how more of these things could be made available to more people. He took the mundane observation that there is more to life than material well-being and made a science of it.⁹

Indulgent appraisal, to be sure; grounded projection, less sure. These two volumes and the processes that produced them leave a monumental outcome of shared enlightenment and skill. The effect, however, is modest policy diffusion on the map toward shared power. Dry well or hidden treasure, the map constitutes a legacy, a tour of the horizon, if not of force. Few of us fortunate to have been introduced to the map-makers and their map expect to be similarly rewarded again, in what remains of the present or awaits invention in the future.

Notes

1. Harold Lasswell, at his death in 1978, was professor emeritus of law and the social sciences, Yale University. Myres McDougal, at this writing, is professor emeritus of law in the same university. This book results from their joint instruction and research collaboration in the Yale Law School throughout approximately four decades. Some chapters appeared previously in journals or other books, and McDougal with assistance of colleagues, notably Andrew Willard, has revised these and incorporated much unpublished individual and collaborative writing. The result by no means collects the complete works of either Lasswell or McDougal. The corpus of their writing and the costs of publication (note that the publisher priced this pair of volumes at \$580.00) probably defy this. There is a definitive bibliography of Lasswell's papers. See, Rodney Muth, Mary M. Finley, and Marcia F. Muth, *Harold D. Lasswell: An Annotated Bibliography*. New Haven: New Haven Press and Kluwer Academic Publishers: Dordrecht, Netherlands, 1990; and Frederick S. Tipson's bibliography in W. Michael Reisman and Burns H. Weston, *Toward World Order and Human Dignity: Essays in Honor of Myres Smith McDougal*. New York: Free Press, 1976.

For bibliographical sketches by contemporaries who were also collaborators, see Daniel Lerner, "Laswell, Harold D.," *International Encyclopedia of the Social Sciences*, New York: Macmillan, 1979, v. 18, pp. 405-10; and W. Michael Reisman, "McDougal, Myres S.," *ibid.* pp. 479-86.

2. Jurisprudence is theory of inquiry about law (p. xxx); see especially Part I, ch. 1.
3. Free Society is a stable relationship among members of large territorial or pluralistic entities in which participants broadly rather than narrowly shape and share, that is, produce, accumulate and enjoy their most cherished demands and preferred outcomes. Democracy is the conventional term for such a terminal event.
4. Law is a process by which members of a community, local, regional, national, transnational, global, or planetary, continually clarify and secure their common interests in the creation and distribution of values through institutions using available or invented resources.
5. Science refers to empirical rather than transemprirical inquiry, but is broader than contemporary images of experimental science. It embraces intellectual tasks associated with clarifying values through postulation and experience, not by derivation or divination; describing past trends; discovering conditioning factors underlying trends in goal fulfillment or unfulfillment; projecting likely states of affairs; and inventing alternative policies to increase the correspondence between preferences and effects.
6. Policy refers to a pattern of future actions by which an individual or a group formulate "interests" in events that harmonize with "value demands" (p. 360).
7. Associates of Lasswell and McDougal founded New Haven Press to publish, republish, and keep in print studies with the Policy Science orientation exhibited in this book and others by the authors and their students and colleagues.
8. Meritt B. Fox in *Harold Dwight Lasswell, 1902-1978: In Commemoration and Continuing Commitment*. New Haven: Yale Law School, Policy Sciences Center, Ogden Foundation, 1979, p. 66.

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A Note On Nonpublication of Opinions: Is Misinformation Functional For The Legal System Though Not For The One Shot Player?

Roger Handberg and Roger Handberg, III

Abstract

In this note, we consider the question whether the publication or, more accurately, the nonpublication of court opinions advantages one group of litigants; that is: repeat players, as opposed to another group, one shot players. The evidence is that non-publication does disproportionately assist one group compared to the other, the question then becomes what broader social function does this behavior pattern serve? In examining that question, we move to consider the issue within two distinct but historically related legal cultures, the English and the American. We argue that the underlying reality is explainable in terms of differences in where each legal system finds itself today. Apparent surface inconsistencies become understandable when one shifts the perspective from the individual litigant (either one shot or repeat) to the legal system generally.

We first will discuss the general issue of opinion publication then shift to consideration of the respective legal systems and their policies. This paper builds on earlier empirical work and provides an alternative explanation for their findings beyond the mere fact that one shot players appear disadvantaged. The relationship in England is apparently more complicated at first blush since published opinions on the surface favor one shot players. In fact, the reality there is that repeat players win disproportionately when all court cases (published and unpublished) are reported in full. Conversely, in the United States, evidence exists that unpublished opinions favor one shot players as opposed to repeat players while published opinions report repeat player victories. Given the common historical roots of the two legal systems, the difference is intriguing. Why this anomaly occurs is the subject of our analysis.

The Existing Publication or Nonpublication System

The nonpublication of court decisions in the United States especially at the appellate court level has grown in scope over the past several decades. The core component of such rules is that court opinions not officially published can not be cited as relevant precedents within the courts including the very court rendering the decision [for example, seven federal courts of appeals have such rules (Reynolds and Richman, 1979: 1207)]. Such a rule creates a *de facto* subterranean area of law in which litigants win and lose but their outcomes do not affect the law's future development except, an important exception, that the judges become accustomed to favoring one side or the other (Robel, 1989: 945-46; Reynolds and Richman, 1981: 581-582).

The arguments advanced in favor of such nonpublication of selected opinions have generally taken a utilitarian approach emphasizing the potential reduction in court workload (e.g. time spent in the opinion writing phase) and by extension that of the bar (less irrelevant material to scan or research). The courts still produce opinions but the assumption is that such efforts will be less intense and more cursory in their treatment of the issues, essentially a bald statement of the facts and law and a summary conclusion. Whether that occurs consistently or not is unclear since some unpublished opinions represent in appearance at least significant commitments of judicial time and energy (although the opinions may have in fact been initially drafted by the judge's law clerks or staff). Regardless, cases in which nonpublication of the resulting opinions has occurred have been generally characterized as involving the least significant and the nonprecedential in nature. Or, at least, that is the intention (Songer, 1988).

Some disagreement has arisen over the substantive aspect of nonprecedential opinions since in the resulting "slush

pile," different authors have found various cases in which the arguments presented are evaluated as in fact clearly meriting precedent status. In fact, cases are moved to precedent or published status upon the petition of an interested party. This option is not difficult to exercise and is available in theory to any litigant with sufficient resources and motivation.

Judge Richard A. Posner has expressed his concern that this selective after the fact publication option unduly biases the aggregate litigation process:

One aspect of the current non-publication practice deserves more critical attention than it has received: the practice of routinely granting requests to publish unpublished opinions. It is questionable not only because it can lead to publication of substandard opinions but also because it can lead to bias in the creation of precedents. Institutions with recurrent litigation in particular areas - government agencies, insurance companies, railroads, and so forth - sometimes find it worth their while to review unpublished opinions systematically and request publication of those that favor their litigation interests. Unless their opponents are also repeat litigators with an interest in precedent, an unrepresentative sample of unpublished opinions will be given precedential status through publication, and the weight of precedent in particular areas will be distorted. (Posner, 1985:126)

Clearly, the effects are in favor of the already dominant but such after the fact publication only moves already existing victories or precedents into the public domain. Regardless, the general direction of the nonpublication pressure is to severely reduce the quantity of opinions being published with the concomitant expectation that the quality of those remaining opinions which are actually published will improve or at least not decline further under the pressure of growing court and individual judge caseloads (Leflar, 1961). Whether the

rules have in fact truly saved judicial time and effort is unclear, several studies have reported no judicial time or effort savings (Hoffman, 1981: 419-20; Reynolds and Richman, 1981: 594-97).

In terms of substantive evaluation, an additional difficulty arises in that the nonpublication decisional criteria vary dramatically across the various courts. For example, each of the twelve federal appeals courts have formulated differing rules as to how nonpublication decisions are determined, rules which are applied differentially even when apparently similar in wording and intent (Reynolds and Richman, 1979: 1208). Therefore, direct comparability as to different opinions' relative triviality is difficult, further complicating assessment of the policy's ultimate effect upon the litigation process. What is unclear is whether the mere existence of such a policy in a subtle way degrades the general quality of all opinions, published and unpublished. This may occur when the criterion for nonpublication is nebulous or ambiguous. Judges may assume that poorly reasoned or written opinions will be routinely suppressed but in fact the decisional rule in the end may act to negate that expectation. Some cases are published almost despite the opinion's quality because the case's subject matter is seen as too important (Robel, 1989: 941).

In the English situation, according to Atkins (1990; 1991), nonpublication or, more accurately, selective publication has long been an important part of the process. Selection of cases for publication in England is a function of private publishers without formal control by the judges. As we indicated above, in United States Courts, the judges formally decide what is to be published although there is some leakage where unpublished opinions are in fact reprinted by a reporting service. Similar to the United States, cases not published are generally unavailable for citation in future legal proceedings as precedent. Like the American courts, cases which "contain little or no discussion or consideration of the law and thus hold no value as precedent are not to be published (1990: 1175)." Atkins developed a cue model for assessing which opinions will be published, several components of which correlate directly to the above referenced

American appeals courts criteria for publication or nonpublication. Both legal systems have clearly diverged from their earlier common historical roots in terms of court procedures but in both systems, nonpublication of court opinions has become a mechanism by which each copes with information overload. As we will discuss, the nonpublication rules have on the surface divergent results but the central core argument here remains that one shot players are further disadvantaged by these on their face neutral policies.

Other Systematic Effects Of Nonpublication

As mentioned above, concomitant with these utilitarian arguments for nonpublication is a growing concern that the nonpublication rules tend to benefit the already dominant participants within the litigation process; that is: corporate and governmental repeat players. One shot players often individuals and their advocates generally in Galanter's terminology are further disadvantaged by this nonpublication rule (1974). Lacking both the resources and close attention to legal system rules (e.g. court precedents) held by the repeat players, these litigants are forced to rely upon the printed (now usually computerized) precedent record which may severely underestimate the advantages or disadvantages actually held by the repeat players.

Studies looking at differences between reported and unreported cases in both contexts have found that unreported cases differ in terms of overall outcomes. For example, cases in the United States involving social security disability claims and the Immigration and Naturalization Service have been found to misstate the direction and content of the Ninth Court of Appeals' work (Robel, 1989: 947-949). There, in both areas of substantive law, the government (the repeat player in those cases) was found to win at a higher rate in the published opinions than in the unpublished. When one combines this distorted information with the consistently low publication rates in areas largely involving one shot players litigating against the government ["immigration 24%; social security 31% (disability review only 26%); Federal Tort Claims Act 37%; criminal appeals 37%; state prisoner habeas corpus 34%;

civil rights 29%; employment discrimination against federal government 25%"], the relative position of the government is enhanced (Robel, 1989: 953, fn. 64). Quite similar low publication rates were reported by Reynolds and Richman (1981: 622) in their evaluation of all the decisional output of federal courts of appeals in 1979. By contrast, in his analysis of English cases (published and unpublished), Atkins found that published cases consistently overestimated the one shot player's chances of litigation success (Atkins, 1991: Table 5; Atkins, 1990: 1183).

Recurringly, unreported or at least unpublished cases have proven to be disproportionately advantageous for one side compared to the other. The result is that the one shot players in this scenario consistently over or underestimate their likely probability of litigation success due to incomplete or misleading information. As Robel (1989) reported in some detail, repeat players are often fully aware of the actual decisional outcomes and make these an integral part of their strategic calculations through the brief writing process and in future decisions whether to appeal a case or not.¹ One shot players routinely lack access to such information meaning that their strategic vision is severely limited, leading to miscalculations in terms of appeal decisions. In the British context, one shot players and (more truly) their counsel overestimate the probability of success if reliance is solely upon the published record while in the United States the probability is reverse to that of severely underestimating probable success. In either case, the weaker player is further disadvantaged by these actions of the legal system. In one instance, scarce legal resources are squandered in unsuccessful appeals while in the other, likely successful appeals are excessively discouraged.

Why The Deception?

From the perspective of an individual litigant, such an outcome may be unfair and irrational. For the legal system conceptualized as a bundle of rules and precedents coping with a complex world, such *de facto* deceptions may be construed as productive for long term legal system maintenance and survival. Imposing the costs of such survival upon

one shot players is possible because of their narrowly focused and sporadic involvement in the legal system. They are simply likely to be unaware of what is occurring since their sources of information are inadequate and selective. Continuing participants such as repeat players are fully cognizant of the costs and are willing and able to make efforts at avoiding their imposition.

Considering the English and American situations as counterpoints to each other, the central theme in both situations is legal system maintenance through concerted efforts at controlling the litigation environment of the one shot player (the most naive participant). There is not a deliberate conscious effort at such social control but rather a generalized response to perceived legal system problems. As judicial policies evolve, the resulting outcomes reflect the concerns of the most interested and those willing to commit the necessary resources, that generally means corporate and governmental participants.

Taking each in turn, first, in the English courts, the under reporting of one shot player losses has the consequence of encouraging litigation that otherwise would likely not have occurred. Assuming attorneys are generally motivated by a desire to be successful in their litigation efforts, calculations are made concerning potential success and failure before pursuing further appeals from an adverse lower court ruling. If the publicly reported evidence is that such appeals are relatively successful then a further appeal is more likely to be pursued. The fact that such appeals are generally in truth unsuccessful is unknown so the appeal so pursued is one that will be diligently prosecuted in expectation of success. Much like salmon battling upstream, hope of possible litigation success motivates continued action.

Attorneys have a professional need for certainty which is reflected by the organized bar's almost obsessive regard for judges who are judicial restraintist in approach. Judicial restraint referring largely to judge adherence to precedent and existing law. The law can be radical or conservative in direction, the attorney's concern is with predictability. If predictability is the attorney's stock in trade then experienced attorneys should

be better equipped at that task. Unfortunately, this pressure for judicial predictability and certainty can be detrimental to society's long term interests. The English have several times confronted the problem of gridlock in the common law. Therefore, flexibility in the English context is forced into the system through those litigants who objectively have no or a very low possibility of ultimate success. By suppressing adverse opinions, that group is falsely encouraged to persevere in litigation otherwise unlikely to occur.

Basically, the argument posed here is that perfect information concerning legal precedents and court decisional patterns in the English case can lead to a fossilization of the law. By concealing the true probability of winning (actually losing), some litigants are attracted into the appellate arena who otherwise would decline the opportunity. Through their litigation activity, additional opportunities are presented to the judges who can modify and even radically change the law in order to accommodate societal change. Judges may decline this opportunity, the essence of the judicial restraint argument, but that ultimately leaves the legal system vulnerable to becoming unduly rigid.

An unchanging and unbending law usually becomes irrelevant for a changing society or so bound up in logical inconsistencies as to be technically muscle bound. For example, English common law because of its narrow approach to overturning precedent has often struggled with the dangers of becoming socially harmful or irrelevant. In fact, in the nineteenth century, the common law became so complex and arcane that little could be done without drastic interventions and elaborate judicial subterfuges (e.g. "legal fictions"). By here inadvertently rather than deliberately concealing the true probabilities existing in court decisions and opinions, the English legal system is able to maintain both some cohesion and flexibility.

When one shifts to the second and reverse situation where the published opinions drastically underestimate the probability of one shot player success, the context both nationally and conceptually shifts. Within American courts, the greater concern is with what

one might term the "litigation explosion" of the post World War Two era (Posner, 1985; Reynolds and Richman, 1981). State and federal courts especially the latter are confronted by a wide array of litigation efforts aimed at using the courts to resolve important social and economic problems which previously were consigned to the political branches or, more realistically, went unconsidered. Disputes over the extent of the litigation explosion surface especially when drastic remedies are proposed for curbing its growth since such proposals usually mean drastic curtailment of certain litigants' access to the courts. For example, former Vice President Dan Quayle publicly supported the Council on Competitiveness's proposals to severely limit access to civil courts. In reply, Deborah Hensler argued that the proposed reforms drastically disadvantage one shot players (Hensler, 1992: 250).

Against this background, the under reporting of one shot player success becomes understandable. Since many of the unsuccessful and successful proposals for curtailing use of the courts involve restricting the access of such players, under reporting their success can have the same practical effect. For example, individuals unsuccessful in Social Security disability cases are discouraged from pursuing further litigation since the odds seem so clearly stacked against such efforts. Thus, many potentially successful appeals are made more marginal in appearance than they are in fact. In the aggregate, the effect should be to reduce at least nominally the amount of litigation moving through the court system. In addition, the litigation pursued by one shot players is further hampered by lack of accurate fore knowledge that the system provides *sub rosa* to those with sufficient resources to dig out such information. Appeals are still pursued by the relatively disadvantaged but their numbers are depressed against the potential demand for legal redress. Reducing demand becomes the linchpin of the argument.

Manipulated Outcomes

Basically, the argument posed here as others have postulated earlier is that nonpublication rules unduly advantage one set of litigants (repeat players) as

opposed to another set, one shot players. Using the English context compared to the American is instructive in that different immediate consequences of the nonpublication rules can be identified. In one case, the English, we argue the existing rules foster litigation in a legal system whose historical past features a judicial process once so hidebound as to be socially irrelevant and in fact damaging to the social order through its patently unjust results. While in the American context, the rules are manipulated to reduce the incentives for one shot players to be active litigators on appeal despite their objective higher probability of success than in the reported decisions.

In either case, the dominant thread is that one shot players' probability of appealing further is being manipulated as it were in the interest of perceived larger legal and social system needs. In one situation, the goal is to maintain flexibility; while in the other, to reduce future litigation flow. Overall social consequences are only indirectly assessed in such situations since the dominant player concerns are not as readily manipulated due to their routine access to more accurate information and resources to resist such efforts.² Repeat players become more advantaged under both systems since they can adjust their behavior in order to maximize their winning probabilities or else minimize losing situations. Either way, such litigants come out ahead as Galanter predicted they would several decades ago (1974).

Conclusions

Much of the literature on the "imperial judiciary" appears motivated by an animus toward court interventions in favor of the disadvantaged relative to state and corporate player activities (Berger, 1977; Bork, 1989). Severe questions do exist as to the particular suitability of the courts for involvement in some situations but the response is often an automatic deference to rules favoring repeat players without much concern for their effects on the legally disadvantaged (Cooper, 1988). Such analyses are comparatively easy to justify when the commentators' social position makes them relatively advantaged within the society. In fact, the relative proportion

of cases unpublished as reported by Robel illustrates this bias since many relatively innocuous corporate cases were routinely published on the assumption that their importance was self evident unlike that of small individual litigants.

Efforts by the courts to discourage one shot players compared to repeat players can be seen in the United States Supreme Court's recent efforts to limit prisoner petitions as a means by which to streamline their docket. Such a decision narrows the Court's perspective on the development of criminal law as regards the Bill of Rights, a limited short term political view in some respects but one consistent with the Court's desire to reduce its potential involvement in some areas of its potential docket.

By so reducing its exposure to the law in action, the Court encourages efforts at change from outside such as legislative interventions which are much less controllable than litigants who operate within the system's parameters. Judges have been increasingly unhappy with recent congressional actions expanding or potentially expanding their jurisdiction. By closing off litigation possibilities, they may become even more unhappy than they ever thought. In one sense, the justices are attempting to reverse the past and return to an era of court deference to the law as an abstract concept that has died on the altar of both liberal and conservative justices' desires to make a difference in American politics. The present Court despite its rhetoric is no less activist than those courts that have existed over the past fifty years. The direction of decisions may differ but the reality is the same relative to the larger political system.

As the courts become more difficult to access except for repeat players due to heightened cost and technical requirements, the dangers of their irrelevance to society as a whole become larger. Through such inadvertent devices, flexibility and responsiveness are maintained at a cost to the individual litigant whose decisions are made on faulty information. Socially, the result may be beneficial but for the individual the costs may be high and the disillusionment intense. Courts operate on the outer boundaries of legitimacy. Without such public perceptions of deference and support, their tasks become impossible.

Notes

- ¹ Robel (1989: 956-959) surveyed federal government litigators and found that unpublished opinions were routinely circulated and used in litigation decisions. Since many cases in the federal courts obviously involved the government, it routinely received those opinions automatically whether published or not, another advantage for a major repeat player.
- ² One argument contrary to this position of one shot player weakness is that one shot players are represented by attorneys who are in effect repeat players operating on behalf of one shot players. This argument is most plausible when the one shot player has the resources to put into the litigation the equivalent to that expended by repeat players. Most such cases are comparatively low fee or fixed fee so the attorneys maximize their income by case volume rather than intensive time and resource investment in any one case. More critically, the repeat players especially institutions have an easier time transmitting relevant hidden information among its litigators while one shot players' attorneys are more isolated due to their competition for clients. Sharing such information would be counterproductive for the individual lawyer relative to other attorneys in the same specialty especially if paying clients are scarce or limited in resources.

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Providing Services in an Era of Declining Fiscal Fortunes: The Dilemma Confronting Local Governments During the 1990s

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Abstract*

This article addresses a situation of growing concern to local public officials—"how to do more with less". It breaks new ground by simultaneously analyzing the reasons for the rise in the public's service expectations as well as those factors that have led to a decline in the fiscal fortunes of local governments. Moreover, it suggests four strategies to deal with this "new reality" of managing local government affairs.

Introduction

According to one recent article (Beck, et. al., 1987), local public officials in the United States increasingly are under substantial pressure to do more with less. Simply put, the public's appetite for an expanded menu of services continues to grow at the same time that the local government revenue picture is the bleakest it has been in several decades. Consequently, local officials constantly are being asked to strike a balance between the fiscal capabilities of their communities, on the one hand, and the service expectations of their residents, on the other hand. This observation led Benton and Daly (1992: 271) to conclude that "officials at the local level are frequently finding themselves in a virtual 'no win' situation."

A number of recent studies (see Benton and Daly, 1992; Beck et. al., 1987; Sears and Citrin, 1982; Lowery and Sigelman, 1981; Courant et. al., 1980; Fitzgerald and Durant, 1980; Hanson, 1980; Citrin, 1979; Fowler, 1974) have documented the increasing frequency with which the public holds inconsistent views with regard to service expectations and taxing policies. Stated differently, individuals value government services and oppose cutting current levels of spending for most programs, while they simultaneously tend to oppose tax and fee increases and often support efforts to

reduce tax burdens. This situation has been responsible for a sharp rise in the level of frustration for both the local consuming public and its local government officials.

To date, most scholarly treatments of this evolving local government "crisis" have been limited to documenting that a dilemma exists. Few studies, however, have endeavored to explain how the current "dilemma" developed or have attempted to recommend how it should be addressed. This paper intends to pursue these two topics. To that end, it has both a diagnostic and a prescriptive purpose. First, it will attempt to chronicle those circumstances and events that have led to (1) a rise in the public's expectations of local government and (2) a decline in the fiscal fortunes of these governments. Secondly, it will suggest several strategies that may become necessary if local governments are to deal successfully with this "dilemma" in the 1990s.

The Expansion of the Local Government Service Role

A review of the academic literature with regard to this evolving local government "crisis" would seem to suggest that the situation can be characterized simply as a case of fiscal stress. Such a perspective necessarily approaches the study of this current dilemma with an exclusive focus on economic factors or considerations. Simply put, the situation has been depicted as one in which local government officials must wrestle with the nagging problems of shrinking revenues and rising costs in their quest to provide services. Only scant attention has been given to the subject of service expectations of local government citizens and how this factor fits into the overall "crisis" picture. In other words, this myopic approach fails to recognize that fiscal stress is only *one* part of the complicated, overall problem confronting local government officials. A balanced perspective therefore should examine *both* the rise in service expectations and

the decline in the fiscal fortunes of local governments.

Local governments (that is, cities, towns, counties, school and special districts) historically have been expected to respond to needs or problems that have been defined as either "local" or "community" in nature. For cities, this has meant the provision of such services as fire and police protection, garbage and solid waste collection and disposal, sidewalks, street construction and maintenance, street lights, water and sewer services, parks and recreational facilities, low-income housing, drainage and storm water management, and libraries. As administrative arms of state government, counties have been expected to assume responsibility for managing health and welfare programs, conducting preventive inspections, constructing and maintaining roads and bridges, providing hospitals, operating a judicial system and providing legal services (including courts, jails, and sheriff department), keeping vital statistics (for example, recording deeds, titles, birth and death certificates), property tax assessment and collection, and conducting elections. In addition, urban and rapid-growth counties have been expected to provide a variety of services traditionally associated with cities. In some sections of the country, townships are responsible for services usually provided by either cities or counties. Special districts usually provide a limited number of services (for example, water and sewer, fire protection, libraries, parks and recreation, airports) to unincorporated areas of a county. Finally, separate (that is, separate from cities or counties) school districts have been created in many parts of the country to provide for a variety of educational services.

This traditional or historical expectation that local governments should respond to "local" or "community" needs and problems was given further encouragement by both the Roosevelt New Deal and the Johnson Great Society. It should be noted, however, that the effects of the New Deal

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and the New Society on citizen expectations of their local governments were indirect. The various programs which comprised the New Deal basically were initiatives of the national government to stimulate the economy during the Great Depression. Moreover, it generally is agreed that state and local governments did not have the capacity to plan and finance programs such as the AAA, WPA, PWA, CCC, Social Security, Unemployment Insurance, and the FDIC. Nevertheless, local governments were integrally involved in the implementation of many of these programs (particularly, income maintenance, welfare, health, housing, and public works), and this involvement of local governments served to heighten citizen expectations after the Depression ended.

The massive growth in the federal grant-in-aid system which is associated with the New Society initiatives of the Johnson administration gave further impetus to rising citizen service expectations of local governments. Federal aid (sometimes referred to as "outside money" by some observers) permitted local officials to do things or pursue grandiose ideas that their jurisdiction's own limited resources would not allow. For instance, they were able to provide entirely new services, expand or augment existing programs or services, and assume greater implementation responsibility for joint federal-local and federal-state-local programs. In short, this seemingly endless expansion of the service role of local governments was stimulated in large measure by what appeared to be an infinite flow of funds from Washington. The early 1960s marks the beginning of an unmistakable trend whereby federal aid increasingly constituted a larger and larger share of local government direct expenditures. In fact, this trend clearly was evident throughout the remainder of the 1960s, during the entire decade of the 1970s, and into the early 1980s.

The expansion of the local government service provision role, which was both permitted and encouraged by the ready availability of federal fiscal assistance, reinforced long-standing expectations and preferences of citizens for their local governments to be the primary or front-line deliverers of as many public services as possible. This perspective was given added impetus as a result of developments during the late 1960s and early 1970s. Fueled by the election of Richard Nixon in 1968,

many federal, state, and local officials as well as a growing majority of Americans were beginning to acknowledge that many of the federally funded programs that were either launched or expanded during the 1960s had not reached their potential under current arrangements and frequently were administered in an inefficient and ineffective manner. The term "boondoggle" was increasingly used to describe these projects or programs. As a means of promoting greater efficiency and effectiveness in the implementation of these programs, the Nixon administration and a more conservative Congress resorted to a decentralization approach (that is, allowing more "hands-on" implementation on the part of local officials and reducing the amount of federal "red tape"). At the same time, federal funding actually increased with a greater emphasis placed on channeling more money through block grants and general and special revenue sharing. In the end, this approach served to sharpen the public's focus on local governments as the responsible party for providing an expanding menu of services.

In 1982, federal aid to both state and local governments was reduced in actual dollars, although it had been declining in constant dollars since 1978. Citizen expectations that local governments continue to provide an increasing array of services, however, did not decline. These expectations are confirmed by annual surveys conducted by the U. S. Advisory Commission on Inter-governmental Relations in which the public is asked to register its views toward service delivery of the federal, state, and local governments. These survey results consistently show that the public believes local governments and their officials (in comparison to the federal and state governments and their officials) are more apt to spend taxpayers' money efficiently and effectively, are more trustworthy, are more accessible, are more likely to take a genuine interest in the problems and conditions affecting local government citizens, and are more responsive to the public. These views therefore suggest that the public is *more* likely rather than *less* likely to expect their local governments to provide a long list of services. In sum, the public may be expecting less from the federal government, somewhat more from their state government, and much more from their local governments.

It is conceivable that citizen

expectations may vary from one part of the country to another. In no-growth or slow-growth areas, expectations may remain constant. Citizen expectations, however, are likely to increase in rapid-growth areas. There are two reasons for this prediction. First, people who migrate from the Northeast and Midwest to the such Sunbelt states as Florida, Texas, California, and Arizona usually are accustomed to being provided with a larger menu of local government services. In short, these migrants come with greater expectations of the service role of their new local governments. Secondly, rapid growth typically dictates the need for a variety of services that were neither necessary nor feasible before the population began to increase at a faster pace. For instance, fast-growth areas suddenly are confronted with a shortage of safe water supplies, huge amounts of garbage and solid waste which must be disposed of, snarled traffic, wastewater runoff problems, inadequate equipment, facilities, and staff to handle increased fire protection needs, rising crime rate, increased school enrollments, insufficient parks and recreational facilities, swelling senior citizens population in need of expanded and expensive health care, a critical need to protect the environmental and implement well-reasoned land-use plans. In sum, service expectations of local governments are likely to increase in rapid-growth areas and, at a minimum, will remain the same in no-growth and slow-growth areas.

To gain a greater appreciation for and understanding of the evolving local government "crisis" or "dilemma"--indeed, challenge--confronting these governments during the 1990s, it is imperative that we turn to a review of the declining fiscal fortunes experienced by local governments during the last two decades.

The Decline in the Fiscal Fortunes of Local Governments

Since the mid-1970s, local governments in the United States have been experiencing fiscal stress or as some would call it "fiscal distress". That is, projected expenditures consistently have been exceeding projected revenues. Two sets of factors seem to have contributed to this situation: (1) declining or stagnant revenues and (2) escalating expenditures.

Declining or Stagnant Revenues

Since the mid-1970s, the U. S. economy has suffered a number of major set-backs. For instance, growth in the Gross National Product (GNP) has slowed considerably, the federal trade deficit has soared, business expansion and investment have declined, the American work force has become less skilled, productive, and dedicated than their Japanese and German counterparts, American factories and industries are not equipped with state-of-the-art machinery, and general confidence in the American economy (as measured by consumer demand) has waned. During this period of time, there have been at least three documented recessions. These symptoms of an ailing economy inevitably have had an adverse effect on both the sufficiency and stability of local government revenues. The effect has been both indirect and direct. First, a number of revenues that state governments historically share with their local governments (general and selective sales, individual and corporate income, gasoline taxes, and taxes on alcohol and tobacco products) have been negatively impacted by recessionary forces. Consequently, local governments (indirectly) have experienced a decline in this source of revenue. In addition, local governments have seen a (direct) decline in the growth rate of receipts from local option sales, income, and gasoline taxes, developmental or impact fees, and, building permits.

State constitutions also pose a serious problem to the revenue-raising capabilities of local governments. Most states have been reluctant to grant home rule powers to their local governments, thereby continuing to treat them as "creatures of the state". As a result, many local governments do not have the ability to raise sufficient revenues to satisfy the service demands of their citizens. For instance, state constitutions typically place a limit on property tax rates and frequently either prohibit or severely restrict the imposition of local sales and income taxes. Moreover, state constitutions historically have limited the ability of their local governments to borrow money on a long-term basis.

The most noticeable decline in local government revenues, however, has resulted from cut-backs in federal grants-in-aid and the phasing out of federal

general revenue sharing during the 1980s. In the 1980s, federal aid to state governments was reduced by the Omnibus Budget Reconciliation Act of 1981 (OBRA) but resumed thereafter, whereas local government revenues from the federal government continued a decline that began in the late 1970s. The diverging patterns of federal funding to state and local governments since the early 1980s partly reflects the growth of entitlement programs, such as Medicaid and AFDC, for which federal aid has been granted directly to the states. In addition, OBRA increased federal funding to states at the expense of federal aid going directly to local governments by eliminating many federal-local programs (for example, urban renewal and local public works) while creating several new state-administered block grants.

The local government revenue situation has further deteriorated as a result of declining receipts from property taxes. At one time, property taxes were the most reliable source of revenue for local governments. The growth of property tax revenues was halted in 1972 and continued a general decline through 1980 due to taxpayer revolts, such as Proposition 13 in California. Although property taxes have begun to increase again since 1980, property taxes as a proportion of total own-source local revenues decreased substantially between 1961 and 1990.

Escalating Expenditures

Local government fiscal woes have been exacerbated as a result of constantly increasing expenditures. A number of factors have contributed to this situation. Three factors, however, have been primarily responsible for rising costs--growth in citizen demands, inflationary forces, and federal and state mandates.

As noted earlier in this paper, local governments which have experienced major increases in their population tend to be under pressure to expand existing services and/or to initiate new services. Population growth usually dictates the need to expand the work force and make capital improvements in such traditional services as fire and police protection, public works, recreation, sanitation, general government administration, health care, planning, libraries, and code enforcement. Rapid growth also may

require local governments to spend money for such new services as solid waste disposal, judicial arbitration and mediation, E-911 service, affordable housing and housing for the homeless, spouse and children abuse, subdivision regulations, hazardous material collection and disposal, natural resource conservation, and capital improvement and long-range planning.

The period of double-digit inflation which plagued the U. S. economy during the late 1970s and early 1980s also added to the cost of local governments doing business. In some instances, inflationary forces drove up revenues at the same pace as expenditures, thus creating a situation whereby the virtues of inflation canceled out its potential adverse affects. In other instances, inflationary induced revenues exceeded the increased costs to government brought on by inflation, thereby creating a positive situation (that is, a revenue windfall). In most instances, however, this period of double-digit inflation left a lasting, negative imprint on the finances of local governments. Rising expenditures fueled by inflation frequently exceeded "new" revenues resulting from inflation. Local governments, many times, painfully absorbed the added costs associated with inflation. More importantly, these inflationary forces created a degree of skepticism and uncertainty that continues to shroud the budgetary process over a decade later.

Unfunded federal and state mandates also have contributed substantially to the fiscal stress that local governments have experienced over the past two decades. During the 1970s, local officials often complained about the costs associated with implementing federal mandates. In the wake of the devolution of many governmental responsibilities under Reagan's New Federalism, local officials increasingly have been saddled with costly state mandates. In fact, one major newspaper in Florida, the *St. Petersburg Times* (11/7/89), reported that unfunded state mandates cost cities and counties in Florida an estimated \$600 million to \$1 billion annually between 1980 and 1988. In short, compliance with unfunded federal and state mandates have presented a significant budgetary challenge to local government officials.

Available data from the U. S. Advisory Commission on Inter-

governmental Relations for 1991 and 1992 show that local government fiscal conditions continuing to deteriorate. The current recession has increased fiscal pressures as revenue growth slowed and expenditure demands continue to increase. These fiscal pressures have necessitated tax increases, budget cuts, and drawing down on available reserves. The following information drawn from surveys conducted by the National League of Cities and the National Association of Counties illustrate the fiscal woes of local governments during fiscal year 1991:

--85 percent of all cities and 40 percent of all counties raised or imposed new taxes or fees

--59 percent of cities reduced their growth in operating spending, and 43 percent cut capital spending; about three-fourths of counties reduced services and/or employees and many postponed capital projects

--59 percent of cities expected to draw down their fund balances, and 39 percent of the nation's most populous counties and 34 percent of counties under 100,000 population experienced a budget shortfall, thus reducing available local resources

In sum, local government officials frequently have found themselves in a "no win" situation in recent years. That is, they have been expected to provide more and more services at a time when a number of outside forces such as mandates and inflation have increased the costs of government operation and revenues either have remained constant or have even declined.

The New Reality for Local Government Officials

As the foregoing discussion has amply illustrated, the environment within which local government officials must function has changed radically over the past two decades. Indeed, these changes have confronted local officials with the "new reality" of managing local government affairs. Ohio Governor George Voinovich, in his 1991 inaugural address, best articulated the "new reality" for public officials when he said:

Gone are the days when public officials are measured by how much they spend on a problem. The new realities dictate that public officials are now judged by whether they can work harder and

smarter, and do more with less.

Unfortunately, hard work and smart management may not be enough. The application of "good management" wisdom and techniques, coupled with a concomitant emphasis on planning, organizing, and controlling, will be necessary but may not prove to be sufficient to improve productivity, effectiveness, and efficiency in local governments (Duncan, Ginter and Capper, 1991). Alternative modes of service production and delivery may become necessary. Most importantly, perhaps, it is becoming increasingly apparent that local officials and their consuming public must either initiate or continue to develop an informed dialogue in regard to the strains posed by citizen service expectations, on the one hand, and the reality of local finances, on the other hand.

Four strategies which may assist local government officials in successfully dealing with this evolving "crisis" or the "new reality" are explored below.

Strategy 1: Employing Internal Tactics

Traditional approaches to management often look internally (that is, inside the current organization) to determine if improvements in productivity and efficiency can be obtained as a result of changing the organizational structure and increasing employee commitment and empowerment.

Both the private and public sector frequently have resorted to schemes to reorganize as a means of improving productivity and efficiency and reducing the costs of operation. Historically, government reorganization has concentrated on strengthening the ability of the chief executive to oversee and manage subordinate agencies. Throughout this century reformers—in an effort to limit the power of government—have advocated the necessity of discontinuing many of the devices and arrangements prompted by Jacksonian democracy. According to Fox (1979: 50) most modern administrative reform efforts tend to follow four basic "principles:"

- (1) authority should be concentrated in the chief executive and in the top appointed department heads;
- (2) similar functions (e. g., water and

sewer maintenance) should be integrated in the same department;

(3) multi-member boards and commissions should be replaced with single administrators; and

(4) staff services in central staff agencies (e.g., personnel and budget) should report directly to the chief executive.

Other approaches to improving productivity and efficiency have focused on the organization's employees. Programs involving nonmonetary incentives are designed to meet employees needs for growth and development on the job or for more leisure time. There are three important nonmonetary incentive programs: job enrichment, quality circles, and performance targeting.

Job enrichment encompasses a number of techniques to make work more interesting and workers more responsible. Included in this program are:

- (1) team participation, to encourage cooperation and provide a more comprehensive view of the work process;
- (2) job redesign, to give the employee greater control over how a task is done or responsibility for completing an entire piece of work rather than one part of a task; and
- (3) job rotation, to give the worker the broad background that can enhance his/her comprehension of the inter-relatedness of various parts of the organization.¹

The quality circle (QC) is a relatively new approach to increasing productivity that emphasizes employee involvement (see Blair, Cohen, and Hurwitz, 1982; Mercer, 1982). It assumes that individuals will contribute valuable recommendations for improving work techniques and be more concerned about the quality of their work if they directly participate in decisions affecting their jobs. The QC concept, initially practiced in Japanese companies, has spread at a rapid rate in American private sector over the past decade.

Performance targeting essentially involves making explicit to workers, either individually or collectively, the type and level of performance expected from them over a specific time period.² Performance targeting is typically assimilated into more comprehensive processes for directing and evaluating employee performance, among them

management by objectives. Suffice it to say that performance targeting serves to motivate employees to perform more efficiently or effectively by giving them specific targets, objectives, or quotas to meet.

In order for these programs to succeed, however, top managers and local officials must be willing to allow these initiatives sufficient time to take effect.³

The implementation of internal control and order tactics is a necessary first step towards effectively dealing with the "new reality" confronting local government officials. It serves to strengthen the internal resolve of the organization and its leadership. Moreover, it communicates to the consuming public that appropriate steps are being taken to produce and deliver local government services efficiently and effectively.

Strategy 2: Utilizing Alternative Means of Service Delivery

Critics of big government frequently argue that government is unresponsive, unaccountable, and most importantly, an inefficient and ineffective producer of goods and services. These undesirable qualities of government, critics claim, stem from the fact that government typically holds a monopoly over the production and provision of most services. Competition, however, allegedly forces producers to operate as efficiently as possible to stay in business. The basic idea behind alternative service arrangements, therefore, is to stimulate greater productivity (and hence produce cost savings) by introducing competition into the local public sector.

Although Savas (1987) has identified as many as nine alternative delivery arrangements (including grants, vouchers, subsidies, voluntary service, self-service, and regulatory and taxing authority incentives), only three options have drawn much attention--awarding contracts and franchises to the private sector and entering into intergovernmental agreements.

Contracting or franchising out, although similar and frequently referred to collectively as privatizing, are different forms of alternative service delivery (see Benton and Menzel, 1992). In its purest form, contracting occurs when a local

government contracts with private firms to produce all or a portion of a service. Franchising occurs when a local government gives a private firm the exclusive right to provide a service within a certain geographical area. It implies, therefore, that local government removes itself completely from service delivery while continuing to guarantee that

- (1) the service is available,
- (2) minimum performance standards are met, and
- (3) rates/prices are set at a reasonable level.

These two alternative means of service delivery have a number of advantages according to its proponents. First, services cost less because competition and the profit motive presumably bring operating efficiencies. Contracting and franchising also allow local governments to procure specialized services not otherwise available, to avoid large start-up costs, and to have greater flexibility in adjusting program size (without worrying about negotiating with recalcitrant public employees).

Some services, however, do lend themselves more readily to contracting and franchising than do others. According to Morgan (1989: 189), the services that generally appear to be the best suited for contracts and franchises are those that:

- are *new*, which avoids problems with local government employees;
- have *easy-to-specify outputs* (for example, solid-waste collection), which makes contract and franchise preparation and monitoring easier;
- require *specialized skills* (for example, engineering or law) or *specialized equipment*, which smaller local governments in particular cannot afford on a regular or permanent basis;
- involve *large numbers of low-skill workers* (for example, solid-waste collection and janitorial services), since these areas appear to hold the most promise of cost savings because of pay and benefit differentials between the public and private sector.

Another basic alternative to local government monopoly (that is, in-house provision of services) is the intergovernmental agreement or contract. There is certainly nothing new about agreements or contracts between units of governments; they have long been used

as important mechanisms to provide necessary services. Some of the motivations for privatizing--potential cost savings, obtaining services needed only on a periodic basis, avoiding large initial cost outlays, and acquiring specialized services not otherwise available--also prompt an interest in intergovernmental agreements. Although legal and geographical factors clearly restrict the utilization of intergovernmental service agreements, they are viable options for local governments that encounter mounting pressure to provide services but whose fiscal situation is deteriorating.

Intergovernmental agreements might be especially suitable for relatively new services (for example, E-911, employee training, solid-waste disposal, and hazardous material disposal). A multitude of support services, among them data processing, purchasing, building, equipment, and vehicle maintenance, emergency dispatching, and billing and record keeping, also lend themselves readily to interlocal contracting.

Strategy 3: Educating the Consuming Public

It is paradoxical--indeed, bewildering to local government officials--that local government policies and services usually receive far less attention from the public than do the policies enacted by and services provided by the federal and state governments. This occurs in spite of the fact that local government policies and services frequently have a far greater impact on individual quality of life than does the actions of the national and state governments. Moreover, services typically provided by local governments often go unnoticed and are invisible unless a work stoppage occurs (e.g., striking teachers, sanitation workers, fire fighters, police officers) or when funding cuts result in service curtailments. In many instances, the best value received by the taxpaying citizen comes from the services provided by their local government.

Prudent local government officials are cognizant of the tendency for a substantial proportion of their citizens to undervalue the level of services that are provided given the amount of taxes levied and fees charged. As a means of "correcting" this inaccurate perception, local government officials increasingly

are acquainting their citizens with what they are getting for their taxes and fees. More specifically, some local governments are publicizing some of the more notable service accomplishments of the government's employees. In Clearwater, Florida, for example, city administrators inform their citizens through a monthly newsletter about such accomplishments as miles of grass cut, amount of flora planted, number of gallons of sewage reprocessed, tons of refuse collected and disposed of, number of fires suppressed, number of police arrest resulting in court convictions, number of adults and children participating in various recreational programs, and miles of streets cleaned.

Communicating information about what the consuming public is getting for its money, even when considered mundane statistics, is important for at least two reasons. First, it suggests to the public that its local government(s) is/are performing vital tasks. This information can serve as an important first line of defense against citizen complaints that there is waste in their local governments. Second, the publication of these facts subtly signals to local government employees that their work is important and valued. Moreover, the publication of these results may serve to instill a sense of pride and promote the empowerment of the individual responsible for the task.

It is also important for local government officials to educate the public about the evolving local government "crisis" which they are confronting. That is, local officials should seize the initiative to inform the public of those factors that have necessitated program and service reductions, postponed capital improvements, and tax and fee increases. The public also should be provided with information on the rising costs of service delivery due to economic forces, federal and state mandates, and growth pressures. In addition, the public should be made aware of reductions of federal funds and the decline in local own-source revenues. This educational mission could be accomplished with the use of public hearings, newsletters, news releases to the local media, and community or public affairs television programs. In short, local officials must educate the public about the "new reality" of managing local

government affairs as a means of securing the public's trust, understanding, and assistance in dealing with this situation.

Strategy 4: Soliciting Input From Citizens

Those local governments that will be the most successful at meeting the challenges posed by the "new reality" of managing local government affairs, of necessity, will find that there is a valuable lesson to be learned from the private sector. That lesson will be that it is imperative for the providers of services to constantly seek feedback from their customers. Businesses have always been cognizant of the need to listen to their customers. Indeed, it is a *must* if they are to survive in a competitive environment. If this approach works for private sector providers, shouldn't it work for local governments that provide services to their customers who are also their citizens? In other words, local governments would be wise to adopt a mentality that "citizens are our customers".

There are other reasons for adopting this mentality besides the fact that it makes good business sense. One of the basic tenets of democratic political theory is that government should serve those who created it--its citizens. This high expectation was underscored in a recent communication from the city manager of Temple Terrace, Florida to his residents in which he asked them to evaluate city services. He says:

"The City Council and City Administration are committed to providing quality public services. You are our valued customer and your opinion is important...Thanks for taking the time to tell me how we are doing! Service is our job!"

In order to serve, however, local government officials should encourage their citizens (that is, their customers) to communicate regularly their service demands as well as their evaluations of services to them. Moreover, local officials should incorporate this information into the policy making process. In fact, Lineberry (1977: 270) reminds us of this obligation when he says: "being responsive to citizen demands and views is the touchstone of democratic governance."

Soliciting citizen feedback also will serve to foster a sense of trust and

confidence in local governments. Needless to say, local governments vitally need the public's trust and confidence in order to experiment with new managerial schemes, alternative modes of service delivery, and efforts to reorganize. In other words, local officials must be able to convince the public to be patient with the government's efforts to pursue untested programs and go in different policy directions, since patience only will be forthcoming if the public has trust and confidence in their local government and its officials. In addition, the public needs to feel that their views and opinions are taken seriously and that local government leaders and administrators genuinely care about their problems.

What mechanisms can local public officials employ to solicit information about services? The time-honored way has been to hold town meetings or to conduct public hearings. Another way of gathering citizen opinions and views on services has been through the establishment of advisory commissions. Complaints filed with local government represent another way of getting input from the public. Many citizens, however, cannot or do not take advantage of meetings, hearings, commissions, or exercise the right to register a formal complaint. Therefore, local officials have no assurance that information secured from these methods represent a reliable cross section of the community's feelings. This means that some other tool must be used to insure that a representative cross section of opinions and views are assembled.

One such tool is the citizen survey. Conducting citizen surveys can be a useful method to obtain direct information about the public's perceptions, preferences, and needs for a variety of local government services. Responses to questions regarding service delivery, service priorities, program effectiveness, and tax and fee preferences can be particularly valuable for local government decision makers. Another basic reason for using surveys comes from Thomas Dunne (1980), city manager of Walnut Creek, California. He argues that the public increasingly wants local government to do *less* for them and more *with* them. Citizens therefore must be given opportunities to be heard beyond the customary public hearings,

town meetings, advisory commissions, and formal complaint processes. In fact, citizen surveys could be tailored so as to make them useful in the preparation of a local government's budget. For example, respondents could be asked a series of questions about their preferences for different levels of expenditures and services. In sum, the ability of local officials and administrators to deal successfully with the constraints imposed by the "new reality" of managing local government affairs may depend in large measure on their commitment to making citizens (that is, their customers) an integral part of the management team.

Conclusion

The local government "crisis" that began to surface during the 1980s is not likely to disappear any time soon. Although local governments may shed some of their responsibilities for the actual production of services (that is, they may opt for some form of privatization or intergovernmental agreements as opposed to in-house production), citizens are likely to continue to hold local governments responsible for making sure that an expanding menu of services are made available. Moreover, federal, and particularly state, mandates are expected to add to the spiraling cost of providing services, while reductions in federal aid and a staggering economy are likely to produce revenue shortfalls.

From a defeatist's perspective, the picture painted here is one of gloom and doom for elected and appointed local government officials. Buying into this viewpoint, however, does nothing to relieve pressures for action from the public. Instead, local officials and administrators should view this situation with a positive outlook and take advantage of the opportunity to accomplish two primary tasks. First, local elected officials and appointed administrators should use the current "crisis" situation to embark on policies and programs which have the potential to enable local governments to provide services more economically and efficiently while simultaneously assisting them to improve the effectiveness of local government outputs. Secondly, local officials and administrators should seize the occasion to restore an important characteristic of any healthy democratic

society--the vital link between the local government and its citizens. Indeed, prospects for making local governments more responsive and for holding them accountable is dependent on reestablishing this crucial link.

Coming to grips with the "new reality" of managing local government affairs will require a special kind of leadership. Stated differently, the situation dictates the need for leaders with well-honed skills, a willingness to take chances and explore innovative ideas, a capacity to utilize constructively criticism, a passion for improving the quality of life in their community, and, above all, a resolve to resurrect and restore the goals and ideals implicit in democratic political theory. The ultimate success of a community in adapting to the "new reality" therefore will be directly related to its resolve to elect officials and to hire administrators who embody these vital qualities and attributes.

Notes

1. For a thorough discussion of these tactics, see **Employee Incentives to Improve State and Local Government Productivity** (Washington, D.C.: National Commission on Productivity and Work Quality), 1975
2. This discussion is drawn from John M. Greiner, Harry Hatry, Margo Koss, Annie Miller and Jane Woodard, **Productivity and Motivation: A Review of State and Local Government Initiatives** (Washington, D.C.: Urban Institute, 1981), p. 113.
3. This may be particularly problematic for elected officials as employee motivation programs require longer spans of time to attain program success, generally in terms of years rather than months. In many cases, elected officials may lose patience waiting for positive results.

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From Communism to Democracy: Conciliation or Confrontation? The Case of Nicaragua

Alfred G. Cuzán

Two Hypotheses About Post-Communist Politics

The transition from communism to democracy now underway in several former Soviet satellites or dependencies poses a practical problem with theoretical implications, namely, what to do with the remnants of the communist regime. Everywhere Marxist-Leninists once ruled supreme, resurgent society wrestles with the question, what is to be done with the persons and structures that were once part and parcel of totalitarianism?

One approach is to let bygones be bygones. This policy uses institutions and personnel inherited from the dictatorship as a bridge to a democratic polity, treating communists or former communists as just another party or pressure group competing for influence in a pluralistic society. The other is decommunization. That is, an attempt to extirpate communism root and branch, outlawing the party as a criminal organization, putting its leaders on trial for theft, murder, and other "crimes against humanity," in short, to lustrate society in a manner equivalent to post-World War II denazification.

Post-communist societies intent on exchanging totalitarianism for democracy, then, can try conciliation or confrontation with what remains of their former dictators. Which strategy should they choose? In "The Hour of the Demagogue," Stephen Sestanovich argues unequivocally for confrontation.¹ In his view, the establishment and consolidation of democracy in nations formerly under Soviet subjugation depend on "one angry man's ability to raise the masses in a rage against their oppressors," i.e., the rabble-rousing of a Boris Yeltsin.² Populist demagoguery is the only strategy that will work "in societies that are trying to break down totalitarian institutions and make democracy work for the first time."³

Unless the post-communist leadership whips up popular anger in a confrontation with the old guard, democratic reforms will be sabotaged from within, in the

bureaucracy, military, and police. Unable to clear roadblocks thrown up by the remnants of the old regime, moderate reformers end up discrediting not only themselves, but democracy as well, as authoritarian opportunists, striking a stridently nationalistic note, rush to fill the anti-communist vacuum, declaiming against communism and liberalism alike. Under those conditions, the consolidation of democracy is doubtful at best.

In support of his thesis, Sestanovich, director of Soviet and East European Studies at the Center for Strategic and International Studies in Washington, D.C., cites several cases from the former Soviet bloc. In each instance, he argues, the moderates were unable to satisfy the masses' yearnings for a radical break with the communist past or to defend themselves from anti-democratic demagogues.

For example, in the 1991 Polish presidential election, moderate intellectual Tadeusz Mazowiecki, the first Solidarity Prime Minister, had "so jeopardized support for the democratic transition that he actually received fewer votes than the mysterious Stanislaw Tyminski, an almost unknown Peruvian-Canadian spiritualist-businessman who was widely thought to be working for the secret police." Fortunately, the democrats had their own demagogue, Lech Walesa, who was "swept into office" on the promise that he would combat what remained of the communist partocracy "with an ax."⁴

Sestanovich's thesis consists of two related but distinct hypotheses about post-communist politics. The first is that during the transition from communism to democracy, a policy of conciliation loses its appeal with the public in very short order. More radical, demagogic rivals, some democrats, others not, then make a bid for popular support. Failing to satisfy the majority's desire for radical decommunization, the moderates soon fall from favor, if not office as well.

The second hypothesis is that under moderate leadership a post-communist

democracy is unable to consolidate itself. Like Kerenski in 1917, the Mazowieckis of today are too weak to defend themselves from a communist reaction or, what is more likely, a throwback to pre-communist authoritarianism. Frustrated with the pusillanimity of the moderates, public opinion falls for anti-communist firebrands contemptuous of democracy. The new republic is strangled in the cradle.

The first hypothesis, that of the unpopularity of the moderates, can be, if not tested, at least evaluated in light of three-to-four years of post-communist experience in several countries. Sestanovich does just that with Eastern Europe. This paper will also attempt it in the case of Nicaragua.

The second hypothesis is impossible to assess empirically at this time. It will take at least a generation before any of the new democracies can confidently be said to have consolidated. Furthermore, failure to consolidate would, in any case, be the result of not just weak leadership, but other factors as well, not least a political culture where democracy has to compete with historic authoritarianism. The jury being out on consolidation, the second hypothesis will have to remain in the realm of theory for some time. Nevertheless, it can still serve as a basis for making predictions about whether democracy is likely to be the outcome of current political trends in any given country, even if the accuracy of the forecast can be established only at some future date.

The primary purpose of this paper, then, is to examine Sestanovich's thesis in the Nicaraguan case. We wish to know how well his hypotheses, developed in a European context, hold up in a Latin American country.

A secondary goal of the paper is to stimulate discussion of Nicaraguan politics. This is desirable in and of itself because the true nature of the Sandinista regime is not something about which external observers are in agreement. There are those who think that the

Sandinistas' goal all along was "to move the economy toward socialism in order to improve the lot of the lower classes, to build [sic] a participatory democracy under their own leadership, and to integrate all Nicaraguans into the national social and political system."⁵ Berman, though noting the totalitarian rhetoric and policies of the Sandinistas, nevertheless thought that they "never had a Stalinist vocation."⁶ Still others viewed the *comandantes* as Marxists or Leninists, but not of the orthodox communist type.⁷

Even as external observers disagreed on the correct diagnosis of the regime, the Sandinistas' Nicaraguan opposition was convinced that the *comandantes* were communists intent on turning the country into another Soviet satellite. Jaime Chamorro, editor of the legendary *La Prensa*, complained that "the Sandinistas are transforming the Nicaraguan revolution, fought for by all Nicaraguans, into a revolution that serves the purposes of Marxism-Leninism. That is to say, they are taking a national movement and turning it into a beachhead for Communist expansion. And they have sacrificed the national interest for the benefit of this cause."⁸

Reflecting on what the Sandinistas' "transformation" of the revolution was doing to the country's demography and culture, Nicaragua's eminent essayist and poet Pablo Antonio Cuadra mused:

The strangest spectacle of all is the wave of improbable foreigners--Vietnamese, Cambodians, North Koreans, Bulgarians, East Germans--flooding our landscape, while a contrary current of thousands of Nicaraguans, young people above all, flee into exile. We have emptied Nicaragua of human resources and replaced them with people at once strange and totally alien to our history, our customs, our culture. The Russians and the PLO kiss us on the lips. We are addressed with endless bows by the servants of Kim Il Sung; we are advised by Cuban neo-imperialists; flocks of blond students help us, badly, to pick coffee.⁹

With the Nicaraguan opposition, the present author is persuaded that, its idiosyncracies and other influences notwithstanding, the Sandinista regime was Marxist-Leninist, i.e., communist, in its essentials. In an article published in 1989, he concluded that "the Sandinista regime has fused a revolutionary

ideology, an elite party, and a secret police in a totalitarian system which has not, however, completed the developmental process toward mature totalitarianism."¹⁰

The premise of this paper, then, is that the Sandinistas were Marxist-Leninists who set out to sovietize Nicaragua on the Cuban model.¹¹ For reasons beyond the scope of this paper to discuss, the *comandantes* were unable to complete their project: the regime miscarried before the combined forces of ideology, party, police, and military had reached their logical conclusion, i.e., communist totalitarianism. This is a premise, though, about which reasonable people can agreeably disagree. To the extent that they do, readers may take issue with the author's analysis and conclusions. If the paper at least stimulates discussion from those with alternative perspectives on Nicaragua, it will have fulfilled its secondary purpose.

Sestanovich's Case for Confrontation

Stephen Sestanovich discerns two general strategies for making the transition from communism to democracy: moderate reformism and populist demagogy. Drawing on the experience of Czechoslovakia, Poland, and Russia in 1989-91, Sestanovich defies conventional wisdom with the conclusion that moderation, a hallmark of established democracies, is misplaced in the revolutionary situations brought about by the collapse of communism. It is the anti-communist rabble-rouser, not the sober reformer, who is most likely to help the democratic revolution "succeed and endure."¹²

The contrast between moderate reformism and populist demagogy is most vividly drawn in the case of Poland. Following the fall of the communists, the Solidarity movement was split in a struggle between two leaders who had been allies in the resistance against the dictatorship, Tadeusz Mazowiecki and Lech Walesa. When Walesa emerged the victor, it seemed to many observers as if "a good democrat had been laid low by a bad demagogue." The conventional view, says Sestanovich, goes something like this:

After taking office in the summer of 1989, good-democrat Mazowiecki had clearly done all the right things,

prescribing the harsh medicine necessary to cure Poland's economic disease. It had even begun to work, but with dreadful social side-effects: unemployment, the wiping-out of people's savings, steep price increases for necessities like food and fuel. As popular anxiety rose, the bad demagogue sought to take personal advantage of it, demanding early presidential elections and using irresponsible rhetoric to whip up popular anger. Walesa alleged that Mazowiecki had allowed too much of the old Communist partocracy to stay in place and was letting its members grow rich in the process of privatization. . . . Feeding on popular unhappiness and promising that he alone could set things right--"with an ax," as he put it--he was swept into office."¹³

Even some of Walesa's previous admirers criticized him for his demagogy, alleging that "a Polish leader who cannot deliver a higher standard of living any time soon has to pander to popular blood lusts instead." But Sestanovich sees it differently.

The real issue is not how to distract people from hardship, but rather how to make sense of it for them. Hardship can be adequately rationalized only if it is part of a program that realizes the goals of the revolution. Leaders who seek to sustain popular support during the transition to democracy have to prove that a real revolution, not a halfway one, is taking place; that the country won't wake up at the end of the process to discover that the same people are still in charge. This is why anticommunist rhetoric has been a crucial source of legitimacy. Middle-class intellectuals who disdain it are unlikely to convince people that the revolution will be carried through to the end. They may even produce disenchantment with popular government itself. If this is what their vaunted 'moderation' leads to, then who are the real gravediggers of democracy?¹⁴

The contrast between the two Solidarity leaders is paradigmatic. It holds lessons for every post-communist government:

The choice between Mazowiecki and Walesa has, in a variety of forms, been posed in almost every country of Eastern Europe since 1989: it is the choice between relying on old

institutions as a bridge to the new, and pushing forward hard to overturn the communist order as quickly as possible. Should the old guard be treated as potential coalition partners or as criminals? And, the crucial question, which approach does more to strengthen new democratic institutions? The answer to at least the first of these questions is quite clear. Throughout Eastern Europe, governments that tried to follow strategies of institutional continuity and national consensus lost ground; they were either obliged to pursue more radical policies or were replaced.¹⁵

The choice was also faced in the former Soviet Union. As the revolutionary movements unleashed by Gorbachev's glasnost and perestroika gathered momentum, newly-elected anticommunist demagogues in the cities and republics were drawn into a confrontation with the party apparatus, including its most threatening institutions, the military and police. Liberals reasoned that unless this conglomerate of power was brought to heel, it would sabotage democratic reforms, and the new leaders "would become mere figurehead rulers--enjoying 'popularity without power,' in the words of one Soviet commentator."¹⁶

As it became increasingly clear that reactionary forces in the military and police were preparing to overthrow him, Gorbachev did nothing. He proceeded on the assumption that he had to appease them into standing by his side, mistakenly believing that "what really counts is force, not popularity. This strategy was doomed. When the chieftains of the old order turned against him at last, he had only the popularity of someone else [i.e., Boris Yeltsin] to rely on."¹⁷ His populist rival did not make the same mistake: "By rallying the people, Yeltsin and his allies showed that a Soviet liberal regime might--like its Eastern European counterparts--be strong enough to enforce its policies. It was a reminder that, in a revolution, force is not the only form of power."¹⁸

By way of conclusion, Sestanovich sums up what the liberal demagogue can do for post-communist democracies everywhere:

[I]n societies that are trying to break down totalitarian institutions and make democracy work for the first time . . . liberal anticommunist demagogy helps

to solve three separate problems with which moderate reformism has usually been unable to cope. It sustains popular support, by giving the people, who are asked to endure severe economic hardship, reason to believe that the changes underway will not be so heavily compromised that they cannot succeed. It also intimidates the guardians of the old order, who may otherwise think that the revolution can be undone by some combination of bureaucratic sabotage, strong-arm methods and stalling. Finally, it gives new democratic leaders the enduring legitimacy that enables them to thwart rival demagogues who seek power for illiberal ends.¹⁹

Post-Communist Politics: The Case of Nicaragua

On February 25, 1990, under pressure from a U.S.-supported guerrilla insurgency (the *Contras*), a broad-based civilian coalition ranging from the Catholic Church to old-line socialist and communist parties, their Central American neighbors, the European community, and even the Soviet Union, the Sandinista National Liberation Front (FSLN or *Frente*) held internationally-supervised elections. This was only the second time in nearly eleven years of revolution that Nicaraguans had gone to the polls.

The results stunned the world: the Sandinistas lost in a landslide. Violeta Barrios de Chamorro, widow of *La Prensa* editor and publisher Pedro Joaquin Chamorro, whose assassination in 1978 set Nicaragua on fire, sealing Somoza's fate, outpolled FSLN president Daniel Ortega 55 percent to 41 percent. Candidates affiliated with the National Opposition Union (UNO), a 14-party coalition which nominated Chamorro for president, swept congressional and local races across the country, including the capital city, Managua. UNO's largest margin of victory was in the central region of the country east of Managua, the capital, where the *Contras* had a strong base of peasant support. UNO also did well in the Atlantic region, home of the Miskito Indians, the first to rise up against the Sandinistas.

Ironically, shortly before Somoza's flight from Nicaragua in July 1979, Dona Violeta, as she is affectionately known by her countrymen, agreed to join Daniel

Ortega and three others in a Government of National Reconstruction. In so doing, she lent legitimacy to the Sandinista regime during its first months of power, as the scaffolding of totalitarianism, from the political police to the *turbas*, was being erected with help from Cuba, Bulgaria, and East Germany.²⁰ Before the first anniversary of the revolution, however, Chamorro had resigned from the junta. Assuming an active role in *La Prensa*, she became an international symbol of resistance to the Sandinistas' attempt to silence the opposition. While hundreds of thousands of her compatriots fled the country, including one of her sons, and tens of thousands took up arms in the mountains and lowlands of Nicaragua, Chamorro opted to resist the FSLN with the power of the word. Now she had humbled the mighty *Frente* in an election that most pollsters and many professional Latin Americanists thought it could not lose.

As a result of the election, the Sandinistas were left with only 38 of 90 seats in the National Assembly, and control over only a handful of important city councils, as in the provincial capital of Leon. Unlike their East European analogues, however, the *comandantes* were not about to vacate the government just because they had lost what amounted to a plebiscite on their decade in power. No sooner had the ballots been counted and most international observers flown home that *turba* attacks, a favorite weapon of the regime, resumed. Weapons were distributed to Sandinista militants. *Comandante* Luis Carrion Cruz warned of "chaos" if the new administration attempted to wrest away control of the military from the FSLN.²¹ In a revealing preview of what was to come, Daniel Ortega promised his supporters that the *Frente* would continue to "rule from below."²²

Between the February election and the April inauguration of the new president, the Sandinista-dominated National Assembly passed a series of laws designed to limit their losses. An amnesty law granted immunity for any unprosecuted crimes committed since 1979. A civil service law protected Sandinista managers and employees in state enterprises from dismissal.

A property law gave them a blank check with which to appropriate untold

millions of dollars of what had been public property.²³ Another law and associated executive decree, not made public until more than six months into Chamorro's administration, practically guaranteed an autonomous military beyond civilian control.²⁴

The property law enabled top Sandinistas to acquire title to valuable assets, some seized from the Somozas, others accumulated during a decade in power.²⁵ These included mansions, buildings and industrial plants, large agricultural estates, beachfront properties, vehicles, art collections, cultural artifacts, bank accounts, and much more. The property law also opened the door for the wholesale looting of government offices and warehouses. In these giveaways, which critics labeled *La Pinata*, a reference to the papier-mache dolls full of candy which children break at birthday parties, many low-level Sandinistas acquired title to humble dwellings, and to a share of farm cooperatives. But this was small change by comparison with what top Sandinistas managed to appropriate, individually and for the *Frente*.²⁶ Ironically, then, one of the outcomes of the revolution was simply to transfer ill-gotten wealth from Somocistas to Sandinistas.

In the meantime, Gen. Humberto Ortega, Daniel's brother and chief FSLN strategist, huddled with Antonio Lacayo, Chamorro's son-in-law, a businessman who had done well under the Sandinistas, to negotiate a transition protocol for the transfer of power. Lacayo would subsequently be appointed Minister of the Presidency in Chamorro's government, an office that may be described as something of a hybrid between the U.S. president's chief of staff and a prime minister. Lacayo is believed to be "the dominant figure in the new government."²⁷

Before long, word leaked out that a pact was in the works that would leave key Sandinistas in possession of *Pinata* properties and state power. The mere rumor that Gen. Ortega would continue to run the military set off a storm of protests: "During the pre-inaugural period, Nicaraguan radio talk shows featured indignant voters complaining that they had not risked everything to find out the Sandinistas were still in power."²⁸

By inauguration day, Violeta Chamorro shocked the UNO coalition by confirming the rumors: Gen. Ortega would stay on as head of the military, which to this day bears the name Popular Sandinista Army (EPS). Some high-ranking officers would shift positions, but none was retired. As a result, the command structure of the Sandinista military remains virtually intact.²⁹ This is in marked contrast with the purges and subjective control methods introduced into East European militaries after the fall of the communists.³⁰ Also staying was Rene Vivas, chief of police, who would keep his post for almost three more years.³¹ Sandinistas have also been retained or appointed as Minister of Electrical Energy and Chief of Immigration, dominate the judiciary, and staff the bureaucracy below the ministerial level. In short, the Sandinistas kept a share of power that was way out of proportion relative to their dismal showing in the February 1990 election.

No sooner had Chamorro announced that Gen. Ortega would remain as the head of the military that UNO's political council voted to censor the new President. The Vice-President, Virgilio Godoy, leader of the largest party within UNO, loudly criticized Chamorro's decision. So did Miriam Arguello, the newly-elected president of the National Assembly. (In time, Alfredo Cesar, a former Sandinista turned *Contra* turned Chamorro political advisor, would assume a similarly critical stance upon replacing Arguello as Assembly president.) Two cabinet appointees refused to take their posts. Before the year was out, a movement spearheaded by *ex-Contras* and 16 UNO mayors in central Nicaragua blocked the road to the Atlantic, demanding that Gen. Ortega and Tony Lacayo be dismissed from their posts. Clashes with Sandinistas left over two dozen dead.³²

After her inauguration in April 1990, criticism of Chamorro continued to mount with every act, or lack of it, which in UNO eyes confirmed widely held suspicions that the transition protocol embodied a pact to share power with the Sandinistas. UNO leaders vented their frustrations with what they claimed was the government's weak-kneed response to an interminable series of intermittent Sandinista strikes and acts of violence

that began only a month into the new administration. In May and then again in July 1990, the government quickly folded in the face of "general strikes" (actually, lock-outs by barricaded militants) staged by Sandinista unions demanding job security and higher wages.³³ Ever since, hardly a month has gone by without some sector of the economy feeling the effects of a Sandinista lock-out or violent disruption.

The largest outburst of Sandinista violence to date occurred in November 1991, following the passing of a bill in the National Assembly that sought to recover payment for *Pinata* properties. *Turbas* took to the streets in a "daylong Sandinista rampage of burning, looting, stoning and shooting," allegedly to protest the damaging of a mausoleum in memory of *Frente* founder Carlos Fonseca Amador. Police stood by while dozens of trucks and cars belonging to government agencies were torched, the Managua City Hall was sacked and burned, opposition radio stations blown up, and other violence was visited on the capital. At the end of the day, Daniel Ortega gave a speech to his followers in which he warned the government not to try to take back *Pinata* properties.³⁴

Chamorro vetoed the property law, as well as a measure to cut the military budget. Her vetoes were upheld when enough UNO legislators, calling themselves "the center group," crossed the aisle to vote with the Sandinistas. Subsequently, the Comptroller General charged that one of Tony Lacayo's deputies, Antonio Ybarra, diverted foreign aid meant for charitable purposes to bribe UNO defectors. Ybarra fled the country. From Bolivia, he confirmed the charges, saying he was acting on Lacayo's orders.³⁵

In September 1992, "the center group" walked out of parliament with the Sandinistas, making it impossible to have a quorum. When Cesar continued to carry on, the holdouts won a court injunction invalidating all legislative acts since the walkout. In December, Chamorro sent the police to take control of the National Assembly, and put a provisional directorate in place. In January 1993, it was the rump UNO coalition's turn to boycott legislative sessions as a majority composed of Sandinista and "center group" deputies elected a new

Directorate. The Comptroller General was summarily fired, the first step in purging the agency of Chamorro critics.

The upshot of all these unseemly goings-on is that, with the UNO coalition split beyond repair, the fate of Chamorro's government now rests, for all practical purposes, on Sandinista sufferance, if not outright support. Her former allies charge her with betraying the UNO platform in favor of "co-governing" with the Sandinistas.³⁶

Another key constituency alienated from Chamorro are the *Contras*. They have been viewed from opposite perspectives as a mere creation of the United States or as an indigenous rebellion.³⁷ Wherever the true characterization lies, according to Stephen Kinzer, *New York Times* bureau chief in Nicaragua for most of the Sandinista decade, what drove Daniel Ortega into the arms of Costa Rican President Oscar Arias' Central America peace plan was "a single end: destroying the *contras*. Ortega had finally come to understand that he could not destroy them with guns and bombs."³⁸ The *Contras* themselves take credit for forcing the Sandinistas to hold elections.³⁹

Following her inauguration and the abolition of the Sandinista military draft so detested by Nicaraguans, what had grown into "the largest *campesino* insurrection in Latin America since the Mexican revolution of 1910"⁴⁰ agreed to disarm. Despite their misgivings about Gen. Ortega's continuing control of the military, some 20,000 fighters turned in their weapons. They were promised land and other resources to return to civilian life. But as early as October 1990, many *Contras* were charging betrayal.⁴¹ After the assassination of Enrique Bermudez, the *Contras*' commander during most of the war, and of dozens others, hundreds of *Contras* took up arms again. Known as *Re-Contras*, an American journalist noted "the obvious sympathy they enjoy in the northwest of Nicaragua."⁴²

Over 200 demobilized *Contras*, including many former commanders, have been murdered. According to Mateo Guerrero, executive director of the Nicaraguan Association for Human Rights, "The Sandinistas are simply cutting off the head of the resistance. No one is being punished. The law does not exist. . . . There seems to be no interest

on the part of the police to solve these crimes."⁴³ Guerrero also charges Chamorro with taking no interest in investigating the many mass graves from the Sandinista period that have been unearthed by human rights groups since her inauguration.⁴⁴ Another group of murder victims are landholders and claimants to properties confiscated by the Sandinistas. Arges Sequeira, a rancher and leader of an organization representing thousands of *confiscados*, was gunned down in November 1992.⁴⁵

Ironically, *La Prensa*, has grown increasingly critical of the government. Editorials, including some signed by her son Pedro Joaquin Jr., have criticized Chamorro for turning her back on the coalition that helped elevate her to the presidency. The Roman Catholic Church has also chimed in, with a pastoral letter that criticizes the government for failing to resolve the property question, maintain public safety, or administer justice.⁴⁶ The Bush administration, too, which had backed the UNO coalition in the 1990 election, and given Mrs. Chamorro its blessing, grew so disenchanted with her government that, egged on by congressional Republicans, it froze the disbursement of appropriated U.S. aid in the summer of 1992.

The spectacle of Chamorro presiding, not over the consolidation of the forces that elevated her to office, but their arraying against her as they once did against the Sandinistas, cannot but delegitimize the new democracy, if that's what it is. If present trends continue, the prospects that Chamorro will complete her six-year term and hand over the presidency to a freely elected successor in 1996 or 1997 are not bright.

Conclusion:

The Failure of Conciliation?

Right from the start, President Chamorro opted not to make a clean break with Sandinista institutions and personnel, but to use them as bridges to a democratic regime. Eschewing the anti-communist demagoguery recommended by Sestanovich, Chamorro's victory statement proclaimed a program of "national reconciliation" that would result in "neither victors nor vanquished."⁴⁷ More recently, her son-in-law Lacayo is said to have remarked that her government is a continuation of the

previous one.⁴⁸

In practice, Chamorro's policy has boiled down to conciliating those everyone believed were her enemies while confronting those who were thought to be her friends. On the one hand, she left the military, police, bureaucracy, and judiciary in the hands of Sandinistas, did not follow through with campaign promises to try to amend the Sandinista constitution, made concession after concession in response to their violent demands, and took care not to disturb the *comandantes*' enjoyment of the spoils of a decade in power. On the other hand, she treated Vice-President Virgilio Godoy as a virtual non-person, showed no interest in investigating Sandinista crimes, old or new, refused repeated calls from her erstwhile supporters to hold a plebiscite that would allow Nicaraguans to say whether they approved of her "co-governing" with the Sandinistas, and -- by fair means or foul -- pried enough deputies away from the UNO coalition to deny them the legislative majority they had won in 1990.

The results of President Chamorro's "conciliation" policies are consistent with Sestanovich's first hypothesis. Frustrated at realizing that the Sandinistas are still in charge, one by one the forces that directly or indirectly helped put her in office, from the UNO coalition to the Roman Catholic Church to *La Prensa* to the *Contras* to the United States, have, if not turned against her, become disenchanted. Ironically, to the extent that it is one, UNO is again in opposition, this time to Chamorro.

Although as a person Chamorro is still liked by the public, her government has fallen in public approval.⁴⁹ Some of the loss of support can certainly be attributed to "the country's moribund economy,"⁵⁰ there can be little doubt that Chamorro's implicit or explicit "pact" with the Sandinistas has taken its toll. Unlike Eastern European countries, however, Nicaragua has not held another election since 1990. If a legislative election were held today, half-way through Chamorro's term, it is all too probable that the electorate would repudiate Tony Lacayo's "pact" with Humberto Ortega, voting into the National Assembly a majority of deputies opposed to "co-governing" with the Sandinistas.

Some of Chamorro's erstwhile allies, like Vice-President Virgilio Godoy, former National Assembly president Alfredo Cesar, and Managua Mayor Arnoldo Aleman, who call themselves "the group of the three," have attempted to assume the role of anti-communist demagogue advocated by Sestanovich. In public meetings and demonstrations, on the streets and in the halls of the Managua City Council and the National Assembly, they have taken up themes equivalent to those Walesa and Yeltsin used to their advantage: Sandinista enrichment from privatization, the sabotage of reforms by a combination of bureaucratic stalling and strong-arm methods, and the continuing control of the military and police by Sandinistas who, in their eyes, should be behind bars.

There can be little doubt that Chamorro has allowed a political vacuum to develop, one waiting to be filled by an anti-communist, charismatic personality who strikes the right rhetorical notes in the Nicaragua of today. Although Aleman has made some headway in public approval, he has yet to reach the stature of a Yeltsin or Walesa. If he does, he would become a prime assassination target, as happened to former *Contras* and other would be demagogues with a strong following. Already, Aleman, along with Cesar and Godoy, have been publicly threatened with death by a group calling itself the "Leftist Punitive Forces" (FPI), which claims to have carried out Arges Sequeira's assassination (see above).⁵¹

As for Sestanovich's second hypothesis, if democracy fails to consolidate in Nicaragua, as it appears increasingly likely, some of the responsibility should be assigned to Chamorro's "misplaced moderation." By frustrating the will for change that was expressed in the February 20 election, and echoed repeatedly by UNO deputies and mayors, Chamorro has no doubt contributed to public cynicism regarding the effectiveness of elections in bringing about popularly desired changes of regime.

This assessment, however, is subject to caveats. In contrast to Poland and Hungary, where the communists scarcely won 10 percent of the vote, the FSLN received 41 percent. Although it has been claimed that recent polls show that

support for the Sandinistas is down by almost half since the election,⁵² they still constitute the largest single political party in the country, and the largest single bloc in the National Assembly. In this respect, Nicaragua is more like Romania, where unrepentant ex-communists still rule. What is said about Romania applies with equal force to Nicaragua: "By numerous standards, including the health of civil society, the robustness of the rule of law, the depth and extent of due respect for property rights, and the degree of social trust, the last several years of Romania's history reveal themselves as a time when the democratic revolution was derailed. The country's post-totalitarian political framework has become a front behind which the *nomenklatura* and its allies are working to prolong their grip on power."⁵³

Be it noted, also, that in Russia, President Boris Yeltsin finds himself locked in a political struggle with the head of the Supreme Soviet, Ruslan Khasbulatov, whose power base is rooted in the old guard. So even Sestanovich's prime exhibit of the virtues of democratic demagoguery has been frustrated by communist or neo-communist holdovers. Freeing state, society, and culture from the clutches of communism is turning out to be a drawn-out process.⁵⁴ A rabble-rouser like Yeltsin or Walesa can quicken the pace of decommunization in short outbursts of feverish popular participation, but only temporarily, after which the demagogue, too, bogs down in the trenches of day-to-day political infighting. There is only so much that can be accomplished by charisma which, "by its very nature, tends to be ephemeral."⁵⁵

Also to be taken into account is the fact that Nicaragua was the only country where communists were voted out in the tail end of a bitter and bloody conflict, one of the last hot spots of the cold war, with the U.S. supporting one side and what was the USSR the other. In the immediate aftermath of the election, there was frightful uncertainty as to whether the *comandantes* would accept the people's verdict.⁵⁶ If Chamorro had confronted the Sandinistas at the outset, her government could easily have been stillborn.

Finally, it should be kept in mind that in the last century of Nicaraguan history

there has been only dictatorship, foreign intervention, and civil war. *Zanquidismo*, an infamous tradition inherited from the Somocista regime, whereby a "loyal" opposition plays ball with the dictator in exchange for certain privileges, is alive and well, with the Sandinistas replacing the Somozas as the grantors of favors to a self-limiting "opposition." With such historical baggage weighing it down, any attempt at democratization can make very little progress in the short run. The best one can hope for is an improvement over the previous dictatorship. Judged by this modest standard, Chamorro's government does represent an improvement: the specter of assassinations notwithstanding, there is greater freedom of speech, press, and assembly, more entrepreneurial initiative, less discontent over what is taught in public schools, and better relations between Church and State in Nicaragua today than at any time during the Sandinista decade. Keeping those caveats in mind, it is true nevertheless that the high hopes many Nicaraguans had for the new government have been dashed in the bitter argument between Chamorro and her son-in-law, on the one hand, and her erstwhile UNO allies on the other, over her tender treatment of the Sandinistas. This falling out among the democratic ranks has done nothing to promote confidence in elections as a means of regime change. Tragically, there has been a recurrence of guerrilla warfare, as *Recontras* and *Recompas* (armed Sandinistas) take to the hills.⁵⁷ But whether Chamorro or anyone else could have done better with the demagogic approach Sestanovich recommends must perforce remain in the realm of speculation. Yeltsin's current predicament, however, suggests skepticism.

In conclusion, Sestanovich's findings, that Soviet-bloc "governments that tried to follow strategies of institutional continuity and national consensus lost ground," and were "either obliged to pursue more radical policies or were replaced," are partially replicated in the Nicaraguan case. There is no question that Chamorro's government has "lost ground" and that, while not "obliged," has been repeatedly urged by the forces that elevated her to the presidency to "pursue more radical" anti-Sandinista

policies. It has not, however, been "replaced," if nothing else because there has not been another election since 1990. The next one is scheduled for 1996 or 1997. Were a referendum to be held today on Chamorro's conciliation policy, however, as UNO has demanded for some time, it is highly probable that a majority would vote against it.

Notes

- ¹ Stephen Sestanovich, "The Hour of the Demagogue," *The National Interest*, 25 (Fall 1991), pp. 3-15.
- ² *Ibid.*, p. 3.
- ³ *Ibid.*, p. 15.
- ⁴ *Ibid.*, p. 7.
- ⁵ John Booth and Thomas Walker, *Understanding Central America* (Boulder: Westview Press, 1989), pp. 61-62.
- ⁶ Paul Berman, "Why the Sandinistas Lost," *Dissent*, Vol. 37, No. 3 (1990), p. 312.
- ⁷ See, respectively, Donald C. Hodges, *Intellectual Foundations of the Nicaraguan Revolution* (Austin: University of Texas Press, 1986), and Dennis Gilbert, *Sandinistas. The Party and the Revolution* (Cambridge, MA: Basil Blackwell, 1988). A recent book accepts Eden Pastora's characterization of the Sandinista Directorate as "scientific Somocistas." See Roger Miranda and William Ratliff, *The Civil War in Nicaragua. Inside the Sandinistas* (New Brunswick: Transaction Publishers, 1992), p. x. From 1982 until his defection in 1987, Miranda was chief of the Sandinista Defense Ministry Secretariat and top aide to *comandante* (now General of the Army) Humberto Ortega.
- ⁸ Jaime Chamorro, "Don't Abandon the Nicaraguan People," in Marc Falcoff and Robert Royal (eds.), *The Continuing Crisis. U.S. Policy in Central America and the Caribbean* (Lanham: University Press of America, 1987), p. 467.
- ⁹ Pablo Antonio Cuadra, "The Sandinistas and the U.S. Press," *Hemisphere*, Winter 1989, p. 19.
- ¹⁰ Alfred G. Cuzan, "The Nicaraguan Revolution: From Autocracy to Totalitarian Dictatorship?," *Journal of Interdisciplinary Studies*, Vol. I, No. 1/2, 1989, p. 202. See also, by the same author, "The Rise and Fall of Communism in Nicaragua," *Journal of Interdisciplinary Studies*, Vol. IV, No. 1/2, 1992, pp. 164-183.
- ¹¹ See Miranda and Ratliff, *op.cit.*, pp. 110-113.
- ¹² Sestanovich, *op. cit.*, p. 3.
- ¹³ *Ibid.*, p. 5.
- ¹⁴ *Ibid.*, p. 6.
- ¹⁵ *Ibid.*, p. 7.
- ¹⁶ *Ibid.*, p. 12.
- ¹⁷ *Ibid.*
- ¹⁸ *Ibid.*, p. 13.
- ¹⁹ *Ibid.*, p. 15.
- ²⁰ See Jack Child, "National Security," in James Rudolph, (ed.), *Nicaragua: A Country Study* (Washington, D.C.: American University, 1982), pp. 185-228; Miranda and Ratliff, *op. cit.*, pp. 189-201; and Cuzan, *op. cit.*
- ²¹ *New York Times*, 28 February 1990, A8; 2 March 1990, A5; 6 March 1990, A9.
- ²² Mark A. Uhlig, "Nicaragua's Permanent Crisis: Ruling from Above and Below," *Survival*, Vol. XXXIII, No. 5 (1991), p. 406.
- ²³ *Ibid.*, pp. 407-408.
- ²⁴ Douglas W. Payne, *Democracy vs. Dynasty. The Battle for Post-Election Nicaragua* (New York: Freedom House Special Report, 1990), pp. 3-4.
- ²⁵ Miranda and Ratliff, *op. cit.*, pp. 58-61.
- ²⁶ *Ibid.* Also, see Joaquin Ibarz, "Pinata Theology," *Crisis* (September 1991), pp. 31-34; *Latin American Weekly Report*, 4 July 1991, 2; *New York Times*, 25 June 1991, A1.
- ²⁷ Miranda and Ratliff, *op. cit.*, p. 276.
- ²⁸ Robert S. Leiken, "Old and New Politics in Managua," *Journal of Democracy*, Vol. 1, No. 3 (1990), p. 37.
- ²⁹ United States Senate, 102 Congress, 2d Session, *Nicaragua Today. A Republican Staff Report to the Committee on Foreign Relations* (Washington, D.C.: U. S. Government Printing Office, 1992), p. 52.
- ³⁰ See Dale R. Herspring, "Civil-Military Relations in Post-Communist Eastern Europe: The Potential for Praetorianism," *Studies in Comparative Communism*, Vol. XXV, No. 2 (1992), pp. 99-122.
- ³¹ In September 1992, apparently in response to U.S. pressures, he was retired, only to be replaced by another Sandinista, Fernando Caldera. Far from placating UNO, the appointment set off a storm of criticism.
- ³² *New York Times*, 12 November 1990, A3; 18 November 1990, A3.
- ³³ Uhlig, *op.cit.*, 416-417.
- ³⁴ *New York Times*, 11 November 1991, A6.
- ³⁵ *El Nuevo Herald*, 28 January 1993, A4.
- ³⁶ *La Prensa* (Miami weekly edition), 12 February 1993, A10, B1; 19 February 1993, A10.
- ³⁷ See, respectively, "Peace and Autonomy on the Atlantic Coast of Nicaragua: A Report of the LASA Task Force on Human Rights and Academic Freedom," *LASA Forum*, Summer 1986, p. 15; and Michael Radu, "Nicaragua," in Michael Radu (ed.), *The New Insurgencies. Anticomunist Guerrillas in the Third World* (New Brunswick, NJ: Transaction Publishers, 1990), pp. 268-269. Another student of the *Contras* also sees them as an indigenous force that came to rely too much on the U.S. See Glenn Garvin, *Everybody Had His Own Gringo. The CIA & the Contras* (Washington, D.C.: Brassey's Inc., 1992).
- ³⁸ Stephen Kinzer, *Blood of Brothers. Life and War in Nicaragua* (New York: G. P. Putnam's Sons, 1991), p. 360.
- ³⁹ Garvin, *op. cit.*, p. 260.
- ⁴⁰ R. Pardo Mauerer, *The Contras: A Special Kind of Politics* (New York: Praeger, 1990), p. 24.
- ⁴¹ *New York Times*, 29 October 1990, A3.
- ⁴² *New York Times*, 12 September 1991, A4. For recent accounts of the Recontra insurgency, see *The Washington Times*, 3 February 1993, A1, and *The Los Angeles Times*, 14 February 1993, A1.
- ⁴³ *The Washington Times*, 28 August 1992, A9.
- ⁴⁴ Puebla Institute, "Nicaraguan Rights Groups Cite Problems Plaguing Chamorro Government," *The First Freedom*, January/February (1992), p. 4.
- ⁴⁵ *Los Angeles Times*, 14 February 1993, A17.
- ⁴⁶ Miranda and Ratliff, *op. cit.*, p. 277.
- ⁴⁷ *New York Times*, 27 February 1990, A4.
- ⁴⁸ *La Prensa* (Miami weekly edition), 19 February 1993, A10.
- ⁴⁹ Telephone interview with Charles Denton, October 19, 1992. Dr. Denton is head of C.I.D., a Central America Gallup affiliate.
- ⁵⁰ Shirley Christian, "This Land Is Your Land ... This Land Is My Land," *New York Times Magazine*, November 29, 1992, p. 38.
- ⁵¹ *La Prensa* (Miami weekly edition), 26 February 1993, A1.
- ⁵² Christian, *op.cit.*, p. 38; *La Prensa* (Miami weekly edition), 26 February 1993, A8.
- ⁵³ Vladimir Tismaneanu & Dorin Tudoran, "The Bucharest Syndrome," *The Journal of Democracy*, Vol. 4, No. 1 (January 1993), p. 45.
- ⁵⁴ See George Schopflin, "Post-Communism: Constructing New Democracies in Central Europe," *International Affairs*, Vol. 67, No. 2 (1991), pp. 235-250; Piotr Sztompka, "The Intangibles and Imponderables of the Transition to Democracy," *Studies in Comparative Communism*, Vol. XXIV, No. 3 (1991), pp. 295-311.
- ⁵⁵ Robert H. Dix, letter to the author, January 7, 1993. The author hereby expresses his appreciation to Prof. Dix for these and other comments on the paper.
- ⁵⁶ See comments by Luis Sanchez Sancho, a signer of the transition protocol, now one of Chamorro's most thoughtful critics, in Miranda and Ratliff, *op. cit.*, p. 275.
- ⁵⁷ Although usually hostile to each other, on occasion *Recontras* and *Recompas* have come together to pressure the government to live up to its promises of land and other compensation for veterans of both sides of the war. When joining forces, they become *Revueltos*, a Spanish pun meaning both mutineers and scrambled.

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Saint Leo College



The College

A Catholic, co-educational, liberal arts college, Saint Leo College was founded by the Benedictine Order and chartered by the State of Florida in 1889. In January 1969, the Order of Saint Benedict transferred title and control to an independent board of trustees.

The Campus

The main campus consists of 170 rolling acres in East Pasco County, 5 miles west of Dade City and 30 miles north of Tampa.

The Students

Approximately 1,000 students are enrolled on the main campus of Saint Leo. Fifty percent of the students are from Florida. The rest come from 34 states, the District of Columbia, Puerto Rico, the Virgin Islands and 27 foreign countries.

The Faculty

The student/teacher ratio is 17/1.

Accreditation

Saint Leo College is accredited by the Commission on College of the Southern Association of Colleges and Schools, the Council on Social Work Education and the State of Florida Department of Education.

Degrees Awarded

Saint Leo awards Bachelor of Arts, Bachelor of Science, and Bachelor of Social Work degrees. Also, the Center for Continuing Education program offers weekend and evening college, directed study classes and a Pastoral Institute. A well-received extension degree program extends from Key West to Virginia with courses offered at 15 military bases.

Academic Divisions

- ◆ Business Administration
- ◆ Education
- ◆ Humanities
- ◆ Natural Science & Mathematics
- ◆ Physical Education
- ◆ Social Science

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Saint Leo College is committed to policies and practices that assure that there shall be no discrimination on the basis of age, sex, race, color, creed, religion, national origin, or handicap.

Directions to Campus

Take Exit 59 off Interstate 75. Go four miles east on Highway 52 and Saint Leo College will be on your left. Call (904) 588-8432 for general information.





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