FOREWORD: REVOLUTION, PARTICIPATORY DEMOCRACY
AND PROPERTY

The Nicaraguan Property Regime After
Sandinista Land Reform

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Following forty years of dictatorship, disagreement concerning the
legitimacy of Sandinista land reform occupies a central place in the
process of forging and consolidating Nicaraguan democracy. For much of
the 1980's, this disagreement fueled a highly divisive and destructive
civil war. The war finally ended in 1989, due more to the sheer
exhaustion of the population than to any lasting resolution of the
conflicts that gave rise to it. Since the signing of the peace accords,
conflict over land reform continues within both political and legal
discourse. The contributions to this symposium represent an attempt to
widen and deepen this discourse, and to help resolve the numerous
disputes over property entitlements that currently threaten the stability
of Nicaragua's fragile democratic order. The essays offer insight into the
relation between Nicaraguan land reform and property law, and more
generally between revolution and legality.

Political revolution consists of rebellion against an old legal regime
and the subsequent establishment of a new legal order. Revolution
represents a rejection of one legal system and the initiation of another; a
repudiation of legality as a prerequisite for its resurrection. The first two
essays in this issue illustrate this dualistic character of revolution.

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They both brought me a deeper appreciation of the 1988 Sandinista motto "Aquí
no se rinde nadie!" (Here, no one gives up!)
Dr. Oscar Herodocia Lácayo, former advisor to President Violeta Chamorro, criticizes several features of Sandinista agrarian policy, drawing extensively on legal norms that endure from the pre-revolutionary regime.\(^1\) He offers a careful analysis of several basic principles of traditional Nicaraguan property law and analyzes discrepancies between Sandinista policies and particular laws. He argues that Nicaraguan property law as developed prior to the revolution provides the flexibility necessary to accommodate social reforms without recourse to the extraordinary, and he contends, illegal measures taken by the Sandinista government. He concludes by offering a vision of agrarian reform within the bounds of pre-revolutionary property law.\(^2\)

Commandante Jaime Wheelock Román, former Minister for Agrarian Reform, discusses the legality of Sandinista efforts to construct a new property regime in Nicaragua.\(^3\) He reveals the legal foundations of Sandinista land reform policies, enumerating a wide variety of formal mechanisms used to carry them out, including widespread compensation for government confiscation and redistribution of large or uncultivated holdings. Wheelock offers a legal defense of Sandinista land reform grounded in the new revolutionary legal order.\(^4\)

Thus, the first two essays illustrate the uneasy coexistence of rebellion and law within a political revolution. Underlying these two elements of revolution, uniting them, is the search for a more just society. The next five essays explore the values which guide this search, examining the normative dimensions of private property rights which have been the cornerstone in the construction of a new legal order in Nicaragua.

Licenciado Roberto Gargarella, from the Centro de Estudios Institucionales in Buenos Aires, offers an analysis of what it means to have a right in property.\(^5\) His clarification of this concept, which plays a central role in all of the essays, provides a firm foundation necessary for defending any theory of property. Following this initial exploration, Gargarella canvasses a variety of justifications for property within liberal political theory. He proposes a defense of private property rights based on two arguments. The first concerns a claim that the value of property is derived from its contribution to human well-being, not from


\(^2\) Id. at 848.

\(^3\) Id. at 848.

\(^4\) Id. at 861.

\(^5\) Id. at 861.
any intrinsic feature of property as such.\(^6\) The second argument defends the contention that property and the well-being that it produces should be distributed fairly among all members of a society.\(^7\) Using this two-part account of private property, Gargarella argues that private property and political democracy reinforce each other. In conclusion, he applies this theory of property to the current state of affairs in Nicaragua.

Professor Jeffrey Riedinger of Michigan State University asserts that traditional liberal defenses of private property justify ownership of only that amount of land necessary for sustenance.\(^8\) Only land holdings of this size can be the object of morally defensible rights. According to Riedinger, this account of the limits on justifiable property holdings demands equitable distribution of land and supports the maintenance of political democracy. Moreover, he asserts that limitation on property ownership to that which is absolutely necessary enhances the efficiency of agricultural production.\(^9\) In conclusion, Riedinger evaluates Sandinista land reform according to the principles developed in his defense of private property.\(^10\)

Dr. Orlando Nuñez, Director of the Center for Rural Development in Managua, locates the Sandinista agrarian reform within an historic process of "democratization of property" and "self-determinism of the working class."\(^11\) According to Nuñez, Sandinista land policy represents a transition between old models of democratization of property by the state and new models of democratization of property by the workers themselves. This new model takes concrete form, he claims, in present-day agrarian cooperatives and worker-owned factories in Nicaragua. Although this historical process currently remains incomplete, Nuñez argues that Sandinista reforms have planted the seeds of a new relation between workers and productive resources.\(^12\)

Dr. Alberto Bustamante Belaunde, Research Fellow at the Instituto Libertad y Democracia in Lima, examines the construction of a new political and legal order within the Peruvian experience of urban land reform in Lima.\(^13\) He emphasizes the importance of local participation

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6. Id. at 877.
7. Id. at 883.
9. Id. at 910.
10. Id. at 913.
12. Id. at 919.
and central government support in the process of social, political and economic development in a new community. Stable property rights, he argues, are essential for promoting the personal security necessary for development and to prevent tendencies toward perpetual rebellion that can disrupt it.\(^{14}\)

These examinations of the normative dimensions of property serve to clarify the theoretical legitimacy of a private property regime. Constructing such a regime in practice requires the creation and application of legal mechanisms for planning, regulation, and enforcement. Land registration and titling provide essential tools to clarify ownership rights and consolidate any new property regime. The final essay in this collection addresses these practical features of constructing and consolidating a new property regime in Nicaragua.

Professor David Stanfield and Attorney Steven Hendrix of the University of Wisconsin Land Tenure Center examine the implications of widespread legal insecurity of land tenure in Nicaragua.\(^{15}\) They then describe several legal mechanisms for resolving a growing number of disputes arising out of multiple ownership claims on the same property. They discuss the modernization of land registration and government compensation for loss of land as two promising developments in the Chamorro government's efforts to stabilize property entitlements.

Disagreement over property entitlement, a largely academic discourse here in the United States, is a concrete feature of daily life for all Nicaraguans. After ten years of bloody civil war, Nicaraguans now struggle to ensure the survival of participatory democracy in their country. The establishment of a stable and equitable property regime is a central feature of this effort. Some argue that individual rights to acquire, own and transfer property are essential to political participation in which one is free from fear of government reprisals for dissent. Others maintain that only government regulations protecting an equitable distribution of property ownership can preserve broad-based political participation and guard against the resurgence of a dominant oligarchy of large landowners.

Over two hundred people participated in the three-day conference at the Universidad Nacional Autónoma de Nicaragua, including legal scholars, government ministers, judges, dispossessed landowners, and peasant farmers who benefited from land redistribution programs under the Sandinista government. Debate was spirited, yet respectful. Over the course of the conference, the well-worn rhetoric of each side concerning the sanctity of private property rights and the inalienable rights of workers to own the land they farm gave way to more measured

\(^{14}\) Id. at 936.

discourses on the competing values at the heart of the conflict. The conference was not the first such discussion of property in Nicaragua, nor did it resolve any disputes. However, it did serve to clarify the ethical and policy issues that Nicaraguans must address as they strive to consolidate the democratic gains of their revolution.