# FREE TRADE IN WEAK STATES

## THE CASE OF DR-CAFTA IN NICARAGUA

Master of Arts in Law and Diplomacy Thesis

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Introduction

The neoliberal economic changes sweeping the world have not missed Central America. The region stands to gain considerably from deeper integration into the US economy and the world economy, but integration may not be a smooth and easy process. DR-CAFTA, (Dominican Republic-Central America Free Trade Agreement) promises to stabilize access for Central American markets to the US market; it will also allow more duty-free exchange of products between the participating states. The world waits to see if all the changes brought about by DR-CAFTA will be positive: will there be a "race to the bottom?" Will growth, development, and equality improve rapidly, ameliorating the lives of millions in the region?

Observations of Mexico since the launch of NAFTA in 1994 show that a strong government must play a key role in smoothing the transition from one style of economy to another. A series of complementary policies, largely focused on improving education and vocational training and providing transfers to the very poor, has been extensively studied by the international development community, and several have shown promising signs. The recently released World Bank study, *Poverty Reduction and Growth: Virtuous and Vicious Cycle*, claims that countries have different problems, and therefore, need different kinds of supporting policies to improve the lives of the citizens. This study should shape the policies implemented in Central America to help states take full advantage of the promises of DR-CAFTA.

A successful set of complementary policies, however, requires a body to design, fund, and implement them. The state of Nicaragua has experienced political and economic turmoil for the last 25 years, and thus presents an interesting case study for this question. The branches of government that should normally facilitate and oversee the process are badly corrupted and damaged, and the normal channels of power are only borderline democratic. How well prepared is Nicaragua to implement DR-CAFTA?

## I. Terms of DR-CAFTA

DR-CAFTA calls for the liberalization of markets in five Central American states and the Dominican Republic with the US. It is a step along the way to the Free Trade Agreement of the Americas (FTAA) proposed by the US to increase trade and market access throughout thirty-four states of the western hemisphere. The DR-CAFTA states' combined GDP equals approximately 0.5 percent of the US GDP, making this among the most asymmetrical agreements of its kind to date. DR-CAFTA will liberalize agriculture, manufacturing, public services, and government procurement in Central America; in exchange, the US will allow "increased market access for certain sectors" like textiles and sugar.[1] DR-CAFTA is hotly contested both in Central America and in some sectors in the US; unfortunately, vitriolic rhetoric from both sides complicates discussion of some of the most urgent issues.

Most of the changes to trade proposed by DR-CAFTA will not be dramatic because the Caribbean Basin Initiative (CBI) already covers them. The CBI, signed in 1983, allows the region preferential access to US markets "for a substantial number of products." The US expanded the terms of the CBI in 1986 and again in 2000, allowing "trade concessions similar to those enjoyed by Mexico under NAFTA."[2] The key difference under DR-CAFTA is that free trade will become bilateral: the US will begin to export products duty-free to Central America as well as importing products duty-free from the region.

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[1] Washington Office on Latin America. "US-Central America Free Trade Agreement: What Is CAFTA?" Washington Office on Latin America. Accessed 17 December 2005. Available at http://www.wola.org/economic/cafta.htm.

[2] World Bank. "Is DR-CAFTA the End of the Road?: Trade and Development in Central America Since 1990." World Bank. Accessed 17 December 2005. Available at siteresources.worldbank.org/LACEXT/Resources/ 258553-1119648763980/DR_CAFTA_Challenges_Opport_Chap2.pdf.

In addition to increasing trade under the CBI, Central American states have revived and modernized the Central American Common Market (CACM). In 1991 in Tegucigalpa and in 1993 in Guatemala City, Central American leaders agreed to remove trade and non-trade barriers and to work toward economic integration. Since the implementation of the changes, trade within the Central American region has grown at about twice the rate of trade between Central America and other regions. The CACM seeks to further integrate states on other levels: macroeconomic, political, legal, social, territorial, and environmental issues are all considered by CACM, but trade is by far the most successful as "other regional institutions" are "weak" at best.[3]

Both the CBI and the CACM have helped Central America boost its trade within the region and with the US. The CBI, however, is unilateral and therefore somewhat unstable, while the CACM is necessarily geographically limited. Under DR-CAFTA, existing trade in the region will be stabilized and institutionalized and it will become bilateral. Furthermore, consolidating regional agreements under the DR-CAFTA framework and, ultimately the FTAA, will lower administration costs and reduce the spaghetti bowl problem of different rules for different countries.[4]

Between the US and Central America, most trade is complementary: the US cannot produce tropical fruits, and Central America cannot produce enough wheat to feed itself. Pro-DR-CAFTA experts predict that US exports will grow by about $1.5 billion per year under DR-CAFTA but are not weighing in yet on whether increased imports from the US will damage local production. Further complicating this issue is the high level of subsidies that lower production costs for US farmers. Lower production costs should translate into lower

[3] World Bank. "Is DR-CAFTA the End of the Road?"
[4] World Bank. "Is DR-CAFTA the End of the Road?"

consumption costs, but it is unlikely that consumers will benefit from lower-cost goods. Urban consumers may see some drop in prices, but rural consumers will face a drop in commodity prices and no corresponding reduction in input prices or in prices for goods they consume. Central American agricultural producers note that about 1.5 million Mexican farmers have "lost their livelihoods" since NAFTA was implemented and that DR-CAFTA's agricultural terms are modeled on NAFTA's.[5] Central America's farmers worry that they too will lose their land, their traditions, and their income when their governments implement DR-CAFTA.

A central feature of DR-CAFTA is its encouragement of export-led growth. In many bilateral agreements this emphasis has prompted significant growth in Export Processing Zones (EPZ). Though export-led growth has grown in popularity as a development model, the World Bank points out that the "composition of exports" remains tremendously important. If a country simply shifts its exports from raw materials to textiles, it gains very little. Central American governments have promoted increased exports in manufacturing but are only beginning to support other sectors in the process of diversifying overall exports.[6] In El Salvador traditional exports fell from 50 percent in 1990 to 15 percent in 2002; meanwhile non-traditional exports and maquila[7] exports rose from 48 to 58 percent and 3 to 28 percent, respectively. These data show the important growth in the maquiladora sector that is significantly greater than other non-traditional exports. Central America has begun to show a strong move towards diversification of exports.[8]

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[5] Benjamin Goldstein. "The Meaning of DR-CAFTA." *Peace and Conflict Monitor*. University for Peace: San José, Costa Rica. Accessed 17 December 2005. Available at http://www.monitor.upeace.org/innerpg.cfm?id_article=323.

[6] World Bank. "Is DR-CAFTA the End of the Road?"

[7] Maquilas are companies that assemble products-for-export, usually but not always in textiles and apparel.

[8] World Bank. *DR-CAFTA: Challenges and Opportunities for Central America*. Washington, DC: World Bank; 2005. 24.

In addition to changing the economic scene in Central America, DR-CAFTA will likely have other effects on the region. Nicaragua, Honduras, El Salvador, and Guatemala all began the process of democratic reforms at more or less the same time that they launched their economic reforms, and the international community hopes that DR-CAFTA will help reinforce domestic democratic reforms as well as economic liberalization. One of the most real benefits of the free trade agreement is the "'credibility effect'" that comes with the locking in of policies and reforms in areas like contract enforcement, property rights, and regulatory systems.[9] Furthermore, as mentioned above, because some of the problems are regional in nature, some Central American leaders hope to build a platform of much deeper cooperation than merely trade in the region.[10]

Despite the claims of proponents of DR-CAFTA, the World Bank study, *Is DR-CAFTA the End of the Road?*, shows that trade alone is not "a significant engine of growth." The growth that could have occurred in Mexico under NAFTA has not been fully realized because of "lagging complementary policies," and the Central American states, with their low-skilled workforces and institutional deficiencies, are not likely to do much better. In the 1990s, growing trade helped all the Central American states (except Honduras) grow economically; this growth, however, was less than it should have been given the boom in trade. In Nicaragua, business cycle factors were the main blockers of growth. Other states had problems ranging from limited financial systems to a lack of sound education programs.[11]

As with its mixed record as an engine of growth, trade shows mixed results as a means of reducing poverty and inequality. In the long run, trade does contribute to growth and therefore also contributes to reducing poverty. The same World Bank study shows that a 1

[9] World Bank. *Challenges and Opportunities*. 86.
[10] World Bank. *Challenges and Opportunities*. 18.
[11] World Bank. "Is DR-CAFTA the End of the Road?"

percent increase in a country's mean income brings a 2.5 percent drop in the proportion of people in absolute poverty. Moreover, growth rates and poverty reduction have tracked nearly "one-for-one" in Central America since the 1990s.[12] Increased economic growth, likely under the terms of DR-CAFTA, may therefore have positive effects on poverty and inequality in Central America.

Trade's record on reducing inequality is much "more mixed." Some studies find that openness initially increases measures of inequality; others find no connection. Yet a third set claims that increased trade reduces inequality when policies favoring small- and medium-scale farmers and businesses exist. The Gini co-efficient for Latin America and the Caribbean does not help in resolving this question: the weighted average shows a minor drop in inequality while the unweighted average shows a minor increase in inequality since the 1990s.[13]

DR-CAFTA will not guarantee improved economic conditions for the countries of Central America. It will certainly bring benefits, but it will also have its costs. Perhaps most unsettling are the unknown or unconsidered effects that low-cost imports will have on domestic production. DR-CAFTA will also impact the quality of life of Central Americans in terms of labor rights and quality of jobs.

According to former US Trade Representative Rob Portman, DR-CAFTA is the "strongest agreement we have ever negotiated on labor rights."[14] DR-CAFTA will require Central American states to enforce the labor laws they already have; it will also provide resources to strengthen enforcement mechanisms and levy heavy fines for countries found in violation of their own laws. DR-CAFTA does not, however, review the quality of labor laws in

[12] World Bank. "Is DR-CAFTA the End of the Road?"
[13] World Bank. "Is DR-CAFTA the End of the Road?"
[14] "Ask the White House: Rob Portman." 15 July 2005. Available at http://www.whitehouse.gov/ask/20050715.html. Accessed 21 April 2006.

Central American states.[15] Chapter 16 of the agreement expands on NAFTA's NAALC side agreement but still fails to satisfy critics.[16]

Human Rights Watch and other opponents of the agreement signal the obvious difference between internationally recognized standards for labor rights and labor laws in Central America. They also claim that protective clauses are inconsistent within DR-CAFTA: in no other section of the agreement is "'enforce your own laws'" the tone of the document.[17] Furthermore, opponents worry that cheap labor in Central America will prompt employers to establish plants outside of the US and that Ross Perot's "giant sucking sound" will truly happen this time.[18] In Nicaragua the minimum wage falls between $0.44 and $0.67 per hour for agricultural labor and manufacturing, respectively, and the workweek is 48 hours.[19] Businesses consider much more than the cost of labor in deciding where to install plants, but the dramatic difference in labor costs between Central America and the US increases the low-cost possibilities for highly mobile capital while simultaneously reducing the power of labor in the process of production.

The AFL-CIO has responded to several points that the US Trade Representative has made and elaborates on its concerns about the quality of jobs in Central America as well as the danger of a race to the bottom. Moreover, the AFL-CIO worries that the leverage of the General

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[15] Donna Borak. "Portman Addresses CAFTA Labor Issues." *Washington Times.* Washington, DC; 9 July 2005. Accessed 18 December 2005. Available at http://washingtontimes.com/upi-breaking/20050609-034548-3357r.htm.
[16] Gary Clyde Hufbauer. "Assessing NAFTA, CAFTA and the FTAA." Presented at the Giannini Foundation Conference: North American Agriculture: Assessing NAFTA at 12. Sacramento, CA; 13 January 2006. 14, 15.
[17] Donna Borak. "Portman Addresses CAFTA Labor Issues."
[18] Ross Perot. *Save Your Jobs, Save Our Country*. Accessed 18 December 2005. Available at http://www.issues2000.org/Save_Your_Job.htm.
[19] ProNicaragua. "Basic Facts." Accessed 18 December 2005. Available at http://www.pronicaragua.org/country_facts1.html.

System of Preferences (GSP) that allows the US to pressure Central American governments to make changes will be lost under DR-CAFTA when trade sanctions are no longer possible.[20]

In addition to economic growth and quality of jobs, opponents of DR-CAFTA are also concerned about food security and food sovereignty in Central America. Oxfam International estimates that US corn exports to Central America could increase by 10,000 percent in the first year of DR-CAFTA, increasing food insecurity by reducing the perceived need for domestic production and deprioritizing responsible food policies. Small farmers rely on corn, rice, and beans for subsistence as well as for income; these farmers usually have minimal access to technical assistance, credit, and irrigation, and they cannot hope to compete with US-produced imports.[21] Central America-produced palm cooking oil has already lost market share to imported soybean oil.[22] All the states in Central America were able to obtain exemptions for a small number of crops considered too important for domestic production to expose it to competition from imports. In Nicaragua, for example, white maize is protected from international competition.[23]

Despite these objections to DR-CAFTA, proponents are enthusiastic about the positive economic effects the agreement will have. According to Costa Rican Ambassador Tomás Dueñas, Central American states will gain market access to the US "in exchange for institutional reform that is going to be the backbone of the DR-CAFTA effort." He believes that the

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[20] Public Citizen. "The Facts on CAFTA and Labor Issues." *Global Trade Watch*; 2004. Accessed 17 December 2005. Available at http://www.citizen.org/trade/cafta/labor/index.cfm.
[21] Alliance for Responsible Trade. Central Americans Speak Out Against DR-CAFTA: Major Issues and Mobilizations." Accessed 17 December 2005. Available at www.cispes.org/english/Campaign_Against_CAFTA_FTAA/DR_CAFTA_0503.pdf.
[22] Benjamin Goldstein. "The Meaning of DR-CAFTA."
[23] World Bank. *Challenges and Opportunities*. 33.

frameworks for transparency, investment, intellectual property, and consumers' rights will all improve significantly under the agreement.[24]

Thus DR-CAFTA will bring both costs and benefits to Central America. Although it has hardly begun, the process of further integrating the states of Central America on more than economic issues will contribute to the changes, again in both positive and negative ways. The region stands to gain considerably from these profound changes, but its history of strong, authoritarian governments makes the role of the state in smoothing the transition complicated. There is growing consensus in the development community that the government must play a strong role in easing the transition for the poorest to ensure that inequality does not deepen. An equitable approach to the opportunities presented by DR-CAFTA will help states and citizens integrate more fully with the globalized world.

[24] The Heritage Foundation. "The US Free Trade Agreement with Central America and the Dominican Republic: How Everyone Benefits." The Heritage Foundation; 18 April 2005. Accessed 17 December 2005. Available at http://www.heritage.org/Research/TradeandForeignAid/hl872.cfm.

## II. Complementary Policies

As described above, DR-CAFTA could bring wonderful changes to the economies of Central America, provided the states make the appropriate reforms to allow their economies to adjust to the new circumstances. The complementary policies discussed here will assume that the goals of DR-CAFTA are two-fold: sparking economic growth and helping reduce poverty in the region. The importance of labor standards and education, along with vocational training, play a central role in the government's responsibility towards the public when implementing a policy as deep as DR-CAFTA will be. The experience of Mexico under NAFTA will provide some points of comparison and some interesting possibilities for Central Americans to consider during the implementation phase.

Central American states need to implement policies to complement the expected changes in their economies. These complementary policies should allow the states to focus on "growth-enhancing and inequality-reducing policies simultaneously."[25] These policies, in areas ranging from education to infrastructure, should "be considered win-win policies" as the positive effects on growth reinforce the positive effects on inequality.[26] Reforms in some areas, such as the financial sector, international trade, and the size of the government have more ambiguous impacts on the reduction of income inequality. Particularly in the short-run, governments may find themselves choosing between growth and poverty reduction, and short-term "may mean several years" in some cases.[27]

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[25] World Bank. *Poverty Reduction and Growth: Virtuous and Vicious Circles*. Washington, DC: The World Bank; 2006. 63.
[26] World Bank. *Virtuous and Vicious Circles*. 78.
[27] World Bank. *Virtuous and Vicious Circles*. 85.

A new World Bank study, described in detail in *Poverty Reduction and Growth: Virtuous and Vicious Circles*, looks closely at the structure of poverty in the different Latin American states and finds that inequality is so intense that growth alone will not help reduce poverty to the same extent that it will in the rest of the world. World Bank economists find that the depth of the problem changes with different measurements of poverty, which leads them to believe that different policies will be appropriate for different "segments of the population." For example, a very inclusive poverty line, e.g. the $2-per-day line, includes much more of the poor who are effectively lowest-middle class, while measuring by the $1-per-day line only identifies the extreme poor. These groups clearly have different needs and thus require distinct policies. Policies implemented to buffer the poor in times of integration need to be made with these differences in mind.[28] The study recommends that extremely poor people receive targeted interventions, while programs for the middle poor should focus on "raising incomes for all individuals in society." This model extends from groups within countries to countries themselves: relatively rich but highly unequal states need redistributive interventions before widespread growth can happen, while very poor countries with "relatively equal distribution" will benefit more from broad growth than from redistributive policies. The central dilemma for states, however, is to acknowledge that both growth and equality are important.[29]

**Education**

The importance of good education shows itself in many aspects of growth and development. An educational foundation not only increases a person's propensity to live well, but it also increases a worker's ability to adapt to and apply technological changes to her or his

[28] World Bank. *Virtuous and Vicious Circles*. 62, 63.
[29] World Bank. *Virtuous and Vicious Circles*. 70, 71.

task.[30] Furthermore, according to the World Bank, it is a "well-known fact" that families with low levels of formal education "tend to be poor;" uneducated parents often have uneducated children. Poverty and the inability to borrow keep parents from sending their children to school,[31] and negative shocks change family circumstances such that "human capital investments" in children become impossible.[32] The relationship between high educational attainment and high-income level is "probably the most documented finding in empirical economics," according to the World Bank, and thus the extent of the problem becomes clear. Children whose parents cannot afford to send them to school will likely not be able to afford to send their own children to school, thus completing the vicious cycle.[33]

In addition to explicit costs such as school fees, supplies, and uniforms, governments must allow for the opportunity costs parents face when sending their children to school and plan for policies that will address distortions in the economy that prevent parents from investing in their children's future. Children of poor parents often work to supplement their parents' salaries or to supplement their parents' labor, as sometimes happens on plantations. Many parents keep their children from school because of the high value of the work they could be doing, the highly unobvious payoffs of education, and the inaccessibility of schools and training in general.[34]

Both supply-side factors and demand-side factors contribute to the schooling dilemma. On the supply side, poor people often have difficulty accessing schools where they can attend the "required grades." In addition to limited access to schools, the poor often face problems of "deficiencies" in the public education system as a whole. On the demand side, in addition to problems affording schools, the poor must also overcome "unequal access to higher-paying

[30] World Bank. *Virtuous and Vicious Circles*. 87.
[31] World Bank. *Virtuous and Vicious Circles*. 165.
[32] World Bank. *Virtuous and Vicious Circles*. 80.
[33] World Bank. *Virtuous and Vicious Circles*. 167.
[34] World Bank. *Virtuous and Vicious Circles*. 178.

jobs." A good education is not a good investment if jobs that will use the acquired skills are not available.[35]

Central American states should see the problems in their education systems as surmountable and should work at augmenting the existing system with programs teaching the skills young people need to survive in a fast-paced and integrated context. Schools should balance educational foci between scholastic and vocational learning to prepare their students to face their reality. The government, the private sector, and the international community should all recognize the benefits of education for increased productivity and technical ability.

The private sector, both domestic and international, has a clear interest in working in places with an educated workforce.[36] Latin American states did "reasonably adequately" well at preparing young people for jobs during the import substitution industrialization years, and there has been a "more or less continuous advance" in attaining higher average education since the late 1970s. While the government must play an important role in the process of expanding educational opportunities, the states often have little ability to enforce the laws they make, so private sector interests must make good education a high priority for government officials.

On the government's side, human capital theory states that "employees who have already shown an aptitude to learn new skills by having completed more years of schooling are more likely to receive additional human capital investments" from their employers.[37] The World Bank, in its study, *DR-CAFTA: Challenges and Opportunities*, recommends that "selective investments" in areas promoting basic education and other services to the rural poor

[35] World Bank. *Virtuous and Vicious Circles*. 169.
[36] ILO. *World Employment Report 1998-99: Employability in the Global Economy: How Training Matters*. Geneva: International Labour Office; 1999. 116, 117.
[37] Lisa Lynch. "Reorienting Training Policies to Meet the Challenges of Information and Communications Technologies." June 2000. 7, 8.

will facilitate the launch of DR-CAFTA and minimize its impact on the "losers."[38] Latin American states need to adapt to the current global economy and create a workforce ready to learn to work with modern technology.[39] Basic primary education, as the foundation for lifelong learning, is central to increasing the employability of workers in a country and thus should normally attract private investors.[40]

Governments must weigh the evidence on whether a good, basic education and the resulting educated workforce will help their countries climb from labor-intensive production to high-value, high-skilled production. In general, the process of education, employment, productivity, and advancement is self-perpetuating: workers learn more by doing a job and thus raise their productivity.[41] Furthermore, skilled and productive workers will help move the country as a whole into a higher ring of comparative advantage.[42]

**Labor Conditions**

In addition to preparing the workforce better, governments in Central America should also consider policies to revamp their labor laws and standards. In the Americas, employment is the "primary source" of household income; thus the costs and benefits of a new free trade agreement must be measured against the jobs created or the jobs lost as well as considering the FTA's impact on wages paid for labor.[43] The Conference of Catholic Bishops states that agreements based on a "proper moral perspective" will better "promote human development….

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[38] World Bank. *Challenges and Opportunities*. 2.
[39] ILO. *World Employment Report*. 130, 131.
[40] ILO. *World Employment Report*. 115
[41] ILO. *World Employment Report*. 118.
[42] World Bank. *Virtuous and Vicious Circles*. 80.
[43] Sandra Polaski. "Jobs, Wages, and Household Income." In *NAFTA's Promise and Reality*. Washington, DC: Carnegie Endowment for International Peace; 2003. 11.

Human solidarity must accompany economic integration so as to preserve community life, protect families and livelihoods, and defend local cultures."[44]

Several activist groups are concerned about the quality of the jobs that DR-CAFTA will bring to the region. The Conference of Catholic Bishops notes that maquilas typically employ only women and that the work is "unstable" in terms of its duration.[45] A maquila solidarity group in El Salvador develops the bishops' concerns further, pointing out that the "creation of new jobs does not necessarily mean the creation of better jobs;" new jobs also do not guarantee the "continuation of preexisting jobs." Maquila jobs have serious ramifications for the society in which they are created: women typically have to migrate internally to be near the maquila. In addition to the migration of women, maquilas change the balance of income earning between women and men in that men remain unemployed and unproductive in their own countries until they make the difficult decision to migrate to find work. The maquila solidarity group believes strongly that maquila jobs are not the answer to generating employment and wealth in Central America, and they fear that Central Americans will respond to lack of opportunity by continuing to leave their home countries.[46] On the other hand, as shown above, in El Salvador, the maquila sector is growing considerably faster than other non-traditional exports, and the National Association of Private Enterprises considers maquilas "pure investment."[47] The yawning disconnect between these perspectives shows the distance between workers and capitalists as

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[44] Bishops' Secretariat of Central America and the Chairmen of the Domestic and International Policy Committees of the United States Conference of Catholic Bishops. "Joint Statement on United States-Central American Free Trade Agreement (US-CAFTA). Accessed 22 February 2006. Available at http://www.usccb.org/sdwp/international/jointtradestatement.htm.

[45] Bishops' Secretariat and United States Conference of Catholic Bishops. "Joint Statement."

[46] Share Foundation: Share El Salvador. "The Fallacy of CAFTA and Maquilas as Cure-Alls for Salvadoran Migration." Available at http://www.share-elsalvador.org/news/020206.htm. Accessed 22 April 2006.

[47] Asociación Nacional de la Empresa Privada (ANEP). San Salvador. May 2004. San Salvador, El Salvador. 29 April 2004.

well as the workers' perceived need for more support from the government in the transition to an export-processing economy.

While maquilas may not provide the best work for Central American women, they do provide employment and income. The different growth needs of different states in Central America make maquila employment not universally unsavory. Nicaragua, for example, will likely improve its economic situation best by growing first and then redistributing wealth. El Salvador on the other hand has high inequality and needs more distributive policies before it needs growth policies.[48]

In other private sector activities, a group of Nicaraguan investors has begun a campaign to expand the services sector in Nicaragua. ProNicaragua, a public-private "investment promotion company" is working on several projects ranging from textiles and apparel to agribusiness and forestry.[49] One of its main projects to date is the creation of a call center for "nearshoring." Nicaragua would like to capitalize on its proximity to the US and its native language abilities (Spanish and English) to provide time zone and English-language services that Indian call centers cannot. The Nicaraguan government has invested in limited physical infrastructure and an English-language training program to help the project along. The initial round of training hopes to reach 7500 Nicaraguans.[50] It is unlikely that call center jobs will reduce income inequality in Nicaragua, but they will expand employment opportunities and increase the country's overall wealth which, after all, may be the best path for growth in Nicaragua.

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[48] World Bank. *Virtuous and Vicious Circles*. 71.
[49] ProNicaragua. Accessed 18 April 2006. Available at http://www.pronicaragua.org/country_facts1.html.
[50] "Can Latin America Challenge India?" Accessed 28 March 2006. Available at http://www.businessweek.com/magazine/content/06_05/b3969427.htm.

As labor conditions and labor security improve, job training becomes more important for workers. On-the-job training has been demonstrated to improve growth in firms, growth of their exports, and growth in their internal technological innovation. Employers who provide such training usually consider the development of their workforce an asset to the company because of the employees' ability to "increase productivity and competitiveness."[51] Employers, however, do run a risk of employee turnover: investing in education is costly for employers because of the high perceived risk that other firms will tempt well-trained and therefore valuable employees away from the firm that trained them.[52] Rather than letting this risk deter progress in vocational training investment, all the parties should work together to create a plan agreeable to all: the employees know what they need from their employers to be happier and more productive and thus stay longer; employers know their own bottom lines and the direction the markets will likely take; and governments can facilitate with appropriate policies and incentives.[53]

As mentioned above, multinational corporations will most likely invest in places that have strong existing workforces. Latin America has not yet fully developed its workforce, and inequality is part of the problem. The vocational training systems that do exist tend to favor those who have already had access to a decent primary education, further marginalizing those who have not.[54] The government, in conjunction with the private sector, needs to work on expanding vocational and skills-based workshops to an increasingly wide group of people. A variety of means for reaching various groups exists: apprenticeships; vocational schools or programs; or vocational classes in a standard school.[55] Furthermore, the government can

[51] ILO. *World Employment Report*. 116.
[52] ILO. *World Employment Report*. 66, 67.
[53] Lynch. "Reorienting Training Policies." 14-16.
[54] ILO. *World Employment Report*. 131.
[55] ILO. *World Employment Report*. 66, 67.

support technical assistance programs, providing practical knowledge through extension and community programs.

Despite the promise of public-private partnerships in providing necessary skills for workers, governments and corporations must monitor programs to protect children from abuses while ensuring that their contributions to their trainer or employer are sufficient. The ILO suggests four two-part core labor standards, and most Central American states have ratified all of them. Among the core standards is the call for the eradication of "the worst forms of child labor," [56] but governments often have trouble preventing some abuses. As noted above, child labor is often perceived as necessary for family survival, and in agricultural and other non-traded sectors, even good laws are often overlooked. The laws that do exist are not well enforced, and child labor, to an extent, depresses wages and swells the workforce, giving local businesses very little cause to push for better enforcement.[57] Formalizing child labor in recognized training programs would increase the value of the children's time and allow a higher skilled workforce to emerge in a very short time.

Implementing complementary policies in these two spheres would help Central America's governments take better advantage of the possibilities presented by DR-CAFTA. Improvements in education and labor standards will create a more knowledgeable and technology-ready workforce that will be more ready to work with employers on maximizing productivity. The governments must be prepared, however, to meet resistance from parents who need their children's labor and from employers who have a short-sighted vision of profits: the

[56] ILO. Accessed 20 April 2006. Available at http://www.ilo.org/. El Salvador has ratified 6 of the 8; Nicaragua, Costa Rica, Honduras, and Guatemala have ratified all 8.
[57] Emer Mullins. "Face to face with child labour in Nicaragua." Available at http://www.laois-nationalist.ie/news/story.asp?j=22479. Accessed 28 March 2006.

incentives for getting an education must be made obvious to all income brackets, and the benefits of reducing inequality for the wealth of all must be made clear.

**Mexico and NAFTA: Successes and Failures**

Although comparing Mexico's experience with NAFTA to the expected changes under DR-CAFTA has obvious shortcomings, there are some policy failures and successes in Mexico that the Central Americans should recognize. The main goals for free trade agreements, besides increasing profits and general wealth all around, are productivity, job creation, wages, and as a result of the others, income distribution; this section will provide a brief look at how Mexico has changed in those areas in the 10 years since the launch of NAFTA.

Productivity has increased in the US, Canada, and Mexico over the last ten years, but the growth in productivity may come at the expense of both job creation and wages. In Mexico's non-maquila manufacturing sector, job creation can hardly absorb the unemployed agricultural workers migrating to new sectors. Mexico has also seen a decline in domestic manufacturing and a lack of forward and backward linkages established between manufacturers and input suppliers. Furthermore, the much-touted Mexican maquiladora sector has experienced significant job loss to cheaper labor in Asia. Mexican agriculture has also lost to competition from the United States: US subsidies on US exports drop the price in the Mexican market, and local growers cannot compete with the cheap imports.

Wage changes in Mexico under NAFTA are extremely difficult to track because of the *tequilazo* in 1994-95. Wages are lower now than when NAFTA was launched; more significantly, wage growth has not kept pace with productivity growth.[58] Like wages, Mexican income distribution has changed unfavorably in the years since NAFTA was launched. The top

[58] Polaski. "Jobs, Wages, and Household Income." 12.

10 percent of the population has increased its income while the bottom 90 percent have experienced no change or a drop in income. Interestingly, both the US and Canada have also experienced negative changes in equality since the launch of NAFTA, although in none of the three countries is NAFTA completely to blame.[59]

Not all of the effects of NAFTA have been negative. Its impact differs "widely among different types of workers, firms, and regions in Mexico."[60] Those workers with high skills and advanced education have taken more full advantage of the opportunities offered by NAFTA. Likewise, large firms that have easier access to formal systems of credit have fared better than small and medium firms. Farms have had similar experiences: large, commercial farms with access to irrigation and tools have profited under NAFTA, while small and medium farms have struggled with the changes. The changes brought by NAFTA have heightened regional differences as well as intrasectoral differences. The northern states with relatively easy access to the US markets are leaving the southern states even further behind.[61] The Mexican government needs policies to redistribute the wealth generated by NAFTA to minimize rather than exacerbate the growing inequalities.

The rural poor, traditionally the least connected to the governmental decision-making and power-wielding structures, have been most hurt by the changes introduced under NAFTA.[62] Their distance from the political institutions means they have also had less official support than other sectors. Migration, far from waning with the changes brought by NAFTA, has maintained or even increased in intensity. While part of the migration phenomenon comes from other

[59] Polaski. "Jobs, Wages, and Household Income." 13.
[60] World Bank. *Virtuous and Vicious Circles*. 87.
[61] World Bank. *Virtuous and Vicious Circles*. 87.
[62] Polaski. "Jobs, Wages, and Household Income." 12.

economic problems like the 1994-95 *tequilazo*, a significant portion comes from changes to traditional working conditions that leave people increasingly exposed to poverty and insecurity.

The Mexican government, responding to the needs of the poor, instituted some national programs to target aid to its most needy citizens. Procampo, the organization designed to reach out to the agricultural sector, has the overall improvement of rural life as its mission. It focuses on improving the lot of farmers and growers through efficient and equitable policies. [63] Procampo provides income boosting cash transfers to small and subsistence farmers and also works on projects to solidify land tenure for poor farmers. Oportunidades is a social support institution that provides aid to Mexico's poorest. To participate, children must stay in school and families must attend health clinics regularly for vaccinations and check-ups. Oportunidades provides considerable security for Mexico's poor, and both programs are generally well received by Mexicans.[64]

In addition to changing the economic scene, many proponents of NAFTA hoped that the increased integration with other states and economies would lock in the democratic reforms begun earlier in the 1980s and 1990s; there was also hope that international trade laws would encourage legal reform. Although progress on the legal front has been mixed,[65] Mexico's internal deregulation process has improved under NAFTA, and this way Mexico can serve as an example for other states in the process of integrating and deregulating. Furthermore, the

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[63] Procampo. Accessed 10 April 2006. Available at http://www.procampo.gob.mx/aserca.html.
[64] Oportunidades. Accessed 10 April 2006. Available at http://www.progresa.gob.mx/htmls/quienes_somos.html.
[65] Stephen Clarkson. "Nafta and the WTO in the Transformation of Mexico's Economic System." In Joseph S Tulchin and Andrew D Selee, eds. *Mexico's Politics and Society in Transition*. Boulder, CO: Lynne Rienner Publishers, Inc; 2003. 230, 231.

peripheral effects of Mexico's increased openness to international trade have brought positive changes to other spheres of life.[66]

Although the details would have to be different, Central American states will very likely need programs similar to Procampo and Oportunidades to incorporate their poorest citizens. Funding the programs will also be difficult as Mexico is considerably wealthier than most Central American states.

The changes and complementary policies of DR-CAFTA will have a tremendous impact on the economies of Central America. That impact can be very positive, bringing stability and dynamism to the region, but it could also have serious negative side effects, depending on the success of the governments in implementing sound supporting policies. Central America has only recently achieved a relative level of stability after decades of insurgent wars, dictatorships, and military involvement in political affairs and is still in a period of reconstruction.

[66] Clarkson. "NAFTA and the WTO." 248.

III. Government Institutions

Having discussed the importance of complementary policies and some steps through which governments could proceed with implementing them, the role of government institutions must be considered. The majority of people will benefit from DR-CAFTA in the short- and long-term, but some people will suffer unnecessarily in the short-term. It is the role of the government to smooth the transition as much as possible.[67] Harvard economist Dani Rodrik finds a "surprisingly robust" association between a country's degree of openness and the importance of the government's role in the economy, but he worries that governments in many developing countries will fail to retain their "effectiveness" as their economies open further.[68] The government plays a central role in social insurance, and it must continue to play this role despite the pressures from the international economy in order for the voters to continue supporting policies that expand trade and integration with the world economy.[69]

Governments generally redistribute wealth at a time of expansion. Changes to the economy and the wealth and power structures must be made in a manner consistent with what the public expects and feels it can accept.[70] Therefore, Central American states, along with many other poor states, should focus their energies not only on the "*quantity of growth*" but also on the "*quality of growth*" in their states. Governments must also face the dilemma about sacrificing growth for equity or *vice versa*. The correct response, of course, depends on individual countries' characteristics and should not be generalized.[71]

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[67] World Bank. *Challenges and Opportunities*. 2.
[68] Dani Rodrik. *Has Globalization Gone Too Far?* Washington, DC: Institute for International Economics; 1997. 51-54.
[69] Rodrik. *Has Globalization Gone Too Far?* 6.
[70] Rodrik. *Has Globalization Gone Too Far?* 31.
[71] World Bank. *Virtuous and Vicious Circles*. 57-59. Italics in original.

Central to the structure of a government are its institutions: presidency, judiciary, legislature, and electoral processes. Institutions can provide the stability for investment, the policies that encourage certain activities and discourage others, and the complementary policies that protect the poor and marginalized in times of shocks to the economic system. Poor institutions tend to affect growth negatively: for example, a banking crisis due to lack of sufficient oversight can spark a financial crisis;[72] or a series of bad laws can distort checks and balances that allow a democratic government to function effectively. Powerful people have a "natural tendency" to wish to remain powerful, but they have damaging effects on the institutions they control and should be checked by the institutions they do not control. Closely related to the problem of powerful leaders is the problem of corruption. Corruption detracts from economic growth, and some countries "appear to be stuck in a bad equilibrium" with no possibility to break out of the cycle of corruption. Institutions can be corrupted to the point where average people cannot take it upon themselves to fight the problems.[73] Corrupt institutions need to be restored to a position of health and stability in order for the government to implement good policies with the best interests of the majority of the voters in mind.

The five Central American DR-CAFTA states are at different levels of political and economic development, and each would serve as a fascinating case study. Nicaragua, given its long struggle to become a democracy and its very high poverty, is a particularly interesting case for this paper. The Nicaraguan government has structural weaknesses that will prevent it from effectively implementing most of the policies outlined above. The four branches of government are discussed here, first as the ideal institutions to implement complementary policies and then with the current situation in Nicaragua to demonstrate the difference.

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[72] World Bank. *Virtuous and Vicious Circles*. 88.
[73] World Bank. *Virtuous and Vicious Circles*. 106.

Nicaragua is trying to integrate its economy with its neighbors and the US before it is ready. It lacks the most basic institutional stability, and this lack will negatively impact both the development of the state and the strengthening of the integrated economy. According to political scientist David Close, Nicaragua's lack of a public political consensus about how and why the government should govern hinders the process.[74] Politics remains overly politicized, and all major actors continue to act with a zero-sum approach to politics; the winner-takes-all attitude of the civil war still permeates the government in Nicaragua.

**The Ideal Presidency**

To construct a formula for the ideal president would be an exercise in futility. Using the ideas of various scholars, however, it should be possible to establish a set of characteristics for a good executive branch. The first president to lead a country after a deep social and economic crisis must have certain characteristics. In most countries emerging from an authoritarian crisis, political institutions are weakened or nonexistent, and those who kept politics alive through dissidence often hesitate to get involved too quickly. The initial peaceful transition must be followed by a second transition in which "a democratically elected *government* [becomes] an institutionalized, consolidated democratic *regime*." Thus a charismatic leader with a certain degree of *decretismo* can facilitate a return to normalcy.[75] This leader must, however, guard against autocracy and must respect the state's need to move beyond *caudillismo* to representative democracy. Guillermo O'Donnell's "delegative democracy," while it may aptly

[74] David Close. *Nicaragua: The Chamorro Years*. Boulder, CO: Lynne Rienner Publishers, Inc. 1999. 6, 7.
[75] Guillermo O'Donnell. "Delegative Democracy." *Journal of Democracy*, 5:55-69. 56. Italics in original.

describe reality in many states, should not necessarily be a goal for young democracies.[76] Good presidents in the transition process will use their powers of decree to establish good, democratic institutions, and then, through good leadership and example, oblige other government leaders to respect those institutions.

An important legacy for a first-round president to leave is the tradition of holding and then releasing power. The first presidents after a dictatorship must resist the urge to recreate the state in their own images: regular and regulated elections are very important. In addition to elections, the president, especially in countries with strong traditions of centralized, authoritarian governments, must work on decentralizing state power and strengthening the other branches of government. Equally importantly, the president should encourage the political education of the people to create a body of informed voters who understand the powers they hold over the government and will not accept a return to authoritarianism. As part of the education process, the presumably strong executive branch must use its powers to incorporate the people who were formerly marginalized to spread the benefits of democratizing to as many citizens as possible. Expanding a country's wealth to all sectors would not only encourage better economic and democratic reforms but would also help prevent a return to violence or unrest.

*Political Consensus*

The president must oversee the reconstruction of the state's *raison d'être*. Among the most damaging legacies of authoritarian government is the tendency of the state to exist as a personal enrichment machine for irresponsible leaders. The voice of the voters can help correct

[76] Erika Moreno, Brian Crisp, and Matthew Soberg Shugart. "The Accountability Deficit in Latin America." In Scott Mainwaring and Christopher Welna, eds. *Democratic Accountability in Latin America:* Oxford: Oxford University Press. 117,118.

this to an extent,[77] but the president must be part of the solution in contributing to a sense of connectedness and purpose. States should work towards nationhood, and at any rate there should be a clear idea of state responsibility for certain of the voters' most basic needs. States emerging from civil war have an especially hard time with this process as both sides of the war are deeply and intimately involved in a winner-takes-all situation.[78] As part of establishing consensus, transition presidents must help their constituents become comfortable with a level of "institutional uncertainty," as introduced by Adam Przeworksi. The idea behind this uncertainty is that the results of elections cannot be known until the votes are counted, but the institutional nature of elections makes the uncertain results of the elections more bearable.[79] Leaders and voters alike must make a profound change in their ideas about what "winning" an election really means.

Presidents, partly because of their prestige and partly because of their distance from the voters (somewhat further than legislators), should work closely with the financial community to direct and channel aid into the neediest areas in their countries. The ministries and the executive have considerable power in terms of creating incentives, and they usually also have the connection necessary to bring in pioneers in investment in their country. By working to create political consensus on the direction of the country, high-level government authorities can understand what the citizens have and what they need; with their governmental powers they can define the best policies to reduce the discrepancies.

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[77] Moreno, Crisp, and Shugart. "The Accountability Deficit in Latin America. 117.
[78] Close. *The Chamorro Years*. 110-112.
[79] Adam Przeworski, Michael Alvarez, José Antonio Cheibub, and Fernando Limongi. "What Makes Democracy Endure?" *Journal of Democracy*, 7.1; 1996. 50, 51.

*Political Institutions*

Related to the development of a public political consensus is the development of political institutions. The president must, without overstepping the bounds of her or his authority, participate in and support the development of lasting and independent government institutions. Institutions should be conceived and constructed with broad participation from other branches of government to prevent massive changes in their purpose after every presidential election. In some cases the constitution must be reformed before progress can be made on the more delicate questions; in these cases the president must use her or his powers of *decretismo* to encourage significant and meaningful participation[80] through referenda, or at least through thorough polling. In the process of reforming institutions, the president should participate in decentralizing power, both geographically from the capital to other regions, and institutionally from the national government to subnational governments. In this, the president must proceed somewhat cautiously: though results are often positive, strong subnational states can capture power and frustrate the process of reforms.[81]

Political institutions help stabilize a state and thus contribute to the state's reputation as creditworthy and a safe investment. The president should use her or his good offices to encourage international investment and to demonstrate the importance of good institutions and stability to leaders within the country. Countries should, for example, follow their own laws; they should honor the international treaties they have ratified; and they should provide the basic human services they claim to cover in their covenants with their citizens. Extrapolating from

[80] O'Donnell. "Delegative Democracy." 57.
[81] Catarina Smulovitz and Adriana Clemente. "Decentralization and Social Expenditure at the Local Level in Argentina." In Joseph S Tulchin and Andrew Selee, eds. *Decentralization and Democratic Governance in Latin America*. 132.

this, states in the process of integration should also keep their political institutions in line with their national mythology to avoid complaints of being parceled out to international investors.

*Military*

The military has always been a troublesome institution in Central America. The end of the Cold War, however, weakened fears of communist takeover in the region, and new presidents in the 1990s began the process of depoliticizing the militaries or, in some cases, demilitarizing the politics. The military should be firmly and constitutionally under civilian control; the president should control the process of promotions, and the legislature should control the budget.

*Economic Rebuilding*

Finally, the president must control the country sufficiently to attract international investors to participate in reconstruction efforts. If economic integration is on the agenda of this first-round strong president, then she or he can and should launch the process. The president will be responsible for forging or reforging relationships with donors and the international financial community, and thus must strive to create stability and credibility for the country in the eyes of the world. Domestically, the president must work against a return to active combat by including as many different groups as possible in the political and economic boom and by addressing the some of the initial roots of the conflict to ensure that overall conditions are changed.

When the economy has been badly damaged by war or simple, albeit colossal, mismanagement, presidents often import teams of technocrats. While technocrats bring tremendous knowledge to the construction of an economy, they are typically not accountable to

the population whose lives they impact. Presidents normally protect technocrats,[82] and while that serves a very useful purpose it can undermine the accountability culture the president is striving to construct. A president must balance her or his needs for a functioning economy with the long-term need to establish the idea of government responsiveness in the political culture of the state.

Responding to these components will help a president balance the citizens' needs with foreign investors' needs. Although the description above is a somewhat idealized description of a president, the following description of Nicaragua's transitional presidents will demonstrate that the country needs to further consolidate its own executive branch in order to provide for its people in the upcoming transition.

**The Presidency in Nicaragua**

Nicaragua is the poorest country to be included in the DR-CAFTA agreements. The country has not recovered from generations of mismanagement and abuse under the Somoza dynasty, and the Sandinistas' ill-advised Marxist/Leninist mixed-economy experiment in the 1980s and the civil war devastated the economy. Since 1990 the country has been nominally democratic with regular elections and recognized civil and political liberties.

The Sandinistas wrote a new constitution for Nicaragua in 1987 that, not surprisingly, guaranteed considerable powers to the executive branch. Daniel Ortega, a central author of the 1987 constitution, only regretted the very strong executive branch when he lost the 1990 election to Doña Violeta Barrios de Chamorro and found himself in the National Assembly with the short end of the power stick. By 1995, however, the National Assembly was strong enough

[82] Patricio Silva. "Neoliberalism, Democratization, and the Rise of Technocrats." In Menno Vellinga, ed. *The Changing Role of the State in Latin America*. Boulder, CO: Westview Press; 1998. 81.

to amend the constitution, and much of the power initially given to the president was transferred to the National Assembly.

Although there was certainly room to transfer power from the executive branch to the other branches of government, it is important to remember that Doña Violeta had lost the support of her governing coalition and that in Nicaragua in the 1990s most of the politicians were demobilized combatants. Some of the changes made, like the ban on relatives holding office in succession, helped stabilize the state; others, like the selection of the vice-president by the National Assembly when the original vice-president chooses to run for office, however, are power plays. Doña Violeta's administration did an admirable job holding on in office, but was unable to accomplish much beyond that. Arnoldo Alemán of the *Partido Liberal Constitucionalista* (PLC) and former mayor of Managua won the 1996 elections and took office in January 1997. Alemán soon proved himself only a slight improvement over the last Liberal president, Tachito Somoza: although he stabilized the economy and brought some macroeconomic stability, rampant corruption threatened the delicate institutions established in the transition.

In July 1998, Alemán was accused of pilfering the Hurricane Mitch relief funds. In response to corruption charges, Alemán made a showy attempt at cracking down on corruption in Nicaragua, assigning his vice-president, Enrique Bolaños Geyer, to head a special task force. The majority of Nicaraguans were not convinced of Alemán's good intentions, and as his popularity continued to fall, Alemán scrambled to find support from any corner. He fixed on Daniel Ortega and the *Frente Sandinista para la Liberación Nacional* (FSLN), and the two

made an "unholy alliance" between the two most historically and ideologically opposed political parties in Nicaragua.[83]

This *pacto* between the PLC and the FSLN currently dominates the political scene in Nicaragua. The *pacto* initially consolidated control over three of the four branches of government in Nicaragua, and with each political success, its authors aspire to gain control of the presidency, the fourth branch of government. The *pacto* derives its power from the very strong positions of the FSLN and the PLC in the National Assembly and the Supreme Court: Ortega and Alemán, through their control of the *pacto*, manipulate the courts, the legislature, elections, and several watchdog agencies like the Attorney General and the Comptroller General. The goal of the *pacto* appears to be to put Daniel Ortega back into the presidency, although it also works to enrich and empower the two *caudillos* who conceived of it.

In 2002, Enrique Bolaños won the presidency and immediately set out to prosecute Alemán for corruption and money laundering. Bolaños won his case and Alemán was initially sentenced to 20 years in jail for his crimes. Alemán's supposedly declining health and his power through the *pacto*, however, got the sentence reduced to 20 years of house arrest, and he continues to play a political role from his home in Managua.[84] Shortly after Alemán was sentenced, his faithful *pacto* partner Daniel Ortega set out to prosecute President Bolaños for campaign finance irregularities. Bolaños, as president, has parliamentary immunity, but the National Assembly stripped most of his cabinet of their immunity and sent the ministers fleeing

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[83] Sandra Dario. "Constitutional Crisis in Nicaragua Deepens amid Charges of a 'Rolling Coup d'Etat;' Special Commission of Nicaraguan Government Ministers Presents Claim of Human Rights Violations to Inter-American Commission of Human Rights (ICHR) in Washington, DC." *US Newswire*; 30 September 2005. Accessed 17 December 2005. Available at http://releases.usnewswire.com/GetRelease.asp?id=54373.

[84] David Close. "President Bolaños Runs a Reverse, or How Alrnoldo Alemán Would up in Prison." In David Close and Kalowatie Deonandan, eds. *Undoing Democracy*. Lanham, MD: The Rowman and Littlefield Publishing Group, Inc.; 2004. 167, 168.

to the US for asylum. Bolaños was forced to make a deal with Ortega to be able to finish his presidency as a lame duck but in relative peace.

After a tense stand-off between Nicaragua and the US from August to October 2005, Deputy Secretary of State Robert Zoellick visited Daniel Ortega; the details of the meeting are not yet public, but the results were quickly public. In October 2005, Ortega suddenly and surprisingly reversed his position on DR-CAFTA and instructed the FSLN deputies to ratify it for the country. Ortega also shortly thereafter publicly broke the *pacto*,[85] although as will be described below, the impact of the *pacto* on government institutions seems permanent, and it will require more than Ortega's change of mind to correct the damages.

*Political consensus*

The Sandinistas had considerable legitimacy in the eyes of their supporters because of their successful revolution. In Nicaragua's first ever fair and legitimate election in1990, Daniel Ortega won 41 percent of the votes and entered the post-Sandinista political arena a very strong player. His successor, Violeta Barrios de Chamorro, on the other hand, came from a very traditional conservative political family in Nicaragua. Her only real attraction to voters was that she was not a Sandinista, and no one really knew anything else about her. She unified all anti-Sandinista parties under the *Unión Nacional Opositoria* (UNO) coalition and won the presidency on an anti-Sandinista platform. Shortly after taking power, the UNO coalition – which ranged from Communists to Conservatives – began to splinter; each of the parties had

[85] Léster Juárez and Francisco López. "Ortega: 'Se acabó el pacto.'" Accessed 24 April 2006. Available at http://www.elnuevodiario.com.ni/2005/10/14/politica/3308.

strong feelings about the new path Nicaragua should take, but nobody agreed on what that path should look like.[86]

In 1996 Arnoldo Alemán won the presidency after having formed the *Partido Liberal Constitucionalista* as his vehicle. He was generally popular until Hurricane Mitch destroyed parts of the country and he failed to act to relieve those who had lost the most. His inability to resist the corruption temptation alienated international donors, the international financial community, and even the NGOs active in the country.

In addition to harming the country's international reputation at a critical time, Alemán played politics with his ministers. He jealously guarded his leadership of the PLC and so did not feel he could afford to have any other Liberal gain in voter popularity. Thus every time a minister conceived a good, workable plan for the country, Alemán would remove her or him from office and the plan would be scrapped. This happened when the minister of education devised a "master plan for educational reform" in collaboration with civil society that threatened Alemán too much. In 1999, Alemán relieved the minister of his duties, and the plan lost momentum.[87] The losses to Nicaragua from Alemán's drive to retain power go well beyond the education plans. Like Ortega in the FSLN, Alemán has prevented renovation within the PLC, and the ultimate price will be paid by the voters who do not have good candidates to select. Joel Migdal calls this behavior the "big shuffle" and explains that it "prevent[s] loyalties in potentially strong agencies from developing" to threaten the leader. The "politics of survival" keeps states weak and centralized while fruitlessly strengthening a doomed strongman.[88]

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[86] Close. *The Chamorro Years*. 6, 7.
[87] David R Dye and David Close. "Patrimonialism and Economic Policy in the Alemán Administration." In David Close and Kalowatie Deonandan, eds. *Undoing Democracy*. Lanham, MD: The Rowman and Littlefield Publishing Group, Inc.; 2004. 126.
[88] Joel S Migdal. *Strong Societies and Weak States: State-Society Relations and State Capabilities in the Third World*. Princeton, NJ: Princeton University Press; 1988. 214, 215.

The scrambles for the presidency in the 1996 and 2001 elections and the predicted battle for the presidency in November 2006 keep parties from agreeing on common ground. Moreover, to date there is a lack of political continuity from president to president, and usually only the sensational issues receive any public discussion at all. The *pacto*, which unites traditionally opposing parties and forces the remaining parties into strange alliances, does not help in the process of consolidating national consensus. Each party spends more time and energy fighting the other parties for power and favors, and the voters are the big losers.

*Political Institutions*

President Alemán's antics also did very little to advance the institutional strength of the presidency; in fact, given his subsequent conviction for corruption, Alemán's main contribution may be that of an example that even former presidents are not above the law. President Bolaños, on the other hand, has attempted to improve the functioning of the presidency, but his prosecution of Alemán has cost him popularity within his own party and in the country. Moreover, nearly every step Bolaños has taken has met with enormous resistance from the rest of the *pacto*-controlled government. After the FSLN-dominated court stripped immunity from Bolaños' cabinet in October 2005, Bolaños had to negotiate with Ortega to be allowed to finish his presidency as a lame duck president. According to *Latin America Weekly*, Ortega "doesn't want to see [Bolaños] removed from power, but he wants to make his life very awkward" until the next elections. Ortega needs the stability of scheduled elections to make his next bid for the presidency legitimate.[89]

[89] Michael Jarvis. "Time to Talk: The Sandinistas and Nicaragua's President Bolaños." Radio Netherlands. Accessed 19 December 2005. Available at http://www2.rnw.nl/rnw/en/currentaffairs/region/centralamerica/nic050914?view=Standard.

President Bolaños' anti-corruption activities have brought back some of the international donors that Alemán had alienated, and the US government is working hard to improve life in Nicaragua to demonstrate that Liberal presidents can be good for the country and that neoliberal policies are not all bad. Under the Alemán administration, procedures had begun to get debt relief for Nicaragua under the Heavily Indebted Poor Countries initiative (HIPC), and after several false starts, the IMF and the World Bank overlooked the country's "flagging performance" to launch the process. However, changes in the IMF's poverty reduction plans derailed the project and put HIPC debt relief on hold until 2002 when Bolaños renegotiated the situation and got the project back on track.[90] The HIPC initiative calls for a structural adjustment of a country's economy, and Bolaños' acceptance of these often harsh terms cost him even more popularity among voters.[91] Bolaños' good reputation has also helped Nicaragua qualify for US$175 million under the Millennium Challenge Account, a US program designed to "reduce poverty and spur economic growth"[92] in countries implementing market-friendly policies.

Unfortunately, Bolaños' concentration on bringing foreign money into the country and his difficult-at-best relations with the rest of the government mean that, once again, the voters' needs are often overlooked. Bolaños has unflinchingly supported DR-CAFTA despite the nervousness of many Nicaraguans. The compliance with international agencies that brings Bolaños his credibility outside of Nicaragua has cost him dearly within his country. More

[90] David R Dye and David Close. "Alemán Administration." 131-133.
[91] Salvador Marti Puig. "The External Debt of Nicaragua and the Alemán Liberal Administration: Images and Realities." In David Close and Kalowatie Deonandan, eds. *Undoing Democracy*. Lanham, MD: The Rowman and Littlefield Publishing Group, Inc.; 2004. 149, 150.
[92] Millennium Challenge Corporation. Accessed 21 April 2006. Available at http://www.mca.gov/public_affairs/press_releases/pr_071405_Nica_signing.shtml.

concretely, a recent survey in Nicaragua showed that 46 percent of Nicaraguans believe themselves in "worsened" economic conditions since Bolaños came to power.[93]

Furthermore, despite Bolaños' initial success at getting Alemán prosecuted and convicted, the *pacto*-controlled courts have reduced his sentence from 20 years in jail to 20 years of house arrest, further undermining the president's authority. With these domestic problems to distract him paired with a sense of urgency about attracting international investments, President Bolaños has not managed to dedicate time, energy, and resources to creating self-perpetuating political institutions for Nicaragua.

*Military*

One of the few positive legacies of the Somoza regime is the position of the Nicaraguan military relative to the government. Unlike in El Salvador, Guatemala, and Honduras, where the military controlled the government, the Nicaraguan military has been dominated by the civilian government since the 1930s. Although the military was enormous, powerful, and pro-Sandinista in 1990 when Doña Violeta won the election, the tradition of military submission to central government and the compliance of General Humberto Ortega allowed her to reform the military with minimal struggle. Although the military is not as civilian-dominated as it would be in a perfect world, the chain of command nonetheless acknowledges the leadership of the civilian president and works as a Nicaraguan institution rather than as a partisan body.[94] It is unclear why Ortega has not attempted to gain control of the military with the *pacto*, but it is probably related to the negative repercussions such a move would spark.

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[93] Kalowatie Deonandan. "Long Live the Caudillo." In David Close and Kalowatie Deonandan, eds. *Undoing Democracy*. Lanham, MD: The Rowman and Littlefield Publishing Group, Inc.; 2004. 196, 197.

[94] Conversation with Luis Humberto Guzmán Areas. Managua, Nicaragua. July 2005.

*Economic Rebuilding*

Nicaragua's economic reconstruction has not been smooth since 1990. Doña Violeta's administration, run largely by insulated, US-educated, neoliberal technocrats, made necessary changes to the public sector and in the process offended workers and union members. Furthermore, to regain control of the budget and reverse the economic free-fall, the administration had to cut most of the social programs put in place by the Sandinistas. Poor people lost the access to education, health care, and property that Ortega had provided and received little or no support to make the transition. The highly organized and overwhelmingly pro-FSLN unions led paralyzing strikes throughout the 1990s and slowed the reforms considerably. Through the 1990s, however, unions lost enough power that crippling strikes are much less common now than they were before.

In 1998 Hurricane Mitch struck Central America and wrought considerable damage in Nicaragua. International relief and aid poured into Nicaragua until donors realized that Alemán was siphoning off a healthy percentage for himself. Aid to Nicaragua all but stopped; even NGOs decreased their activities in such a damaging political climate.[95] Since President Bolaños took office in 2002, however, he has dedicated significant energy and resources to making a more favorable investment climate in Nicaragua. In the political crisis of October 2005 in which Bolaños was nearly impeached, US Deputy Secretary of State Robert Zoellick made the US stance on the matter very clear to Nicaragua: the US supports President Bolaños and his attempts to improve conditions in Nicaragua.[96] But US support is not what Bolaños needs to

[95] US Department of State. "Background Note: Nicaragua." Accessed 14 December 2005. Available at http://www.state.gov/r/pa/ei/bgn/1850.htm.
[96] Associated Press. "US Envoy Warns Nicaragua on 'Creeping Coup.'" Accessed 19 December 2005. Available at http://msnbc.msn.com/id/9594243/from/RL.1/.

reestablish his power, and he will finish his presidency greatly weakened by the relative strength of Ortega and the *pacto*.

The continued shenanigans of Ortega and Alemán undermine the process of rebuilding and reestablishing Nicaragua as a destination for capital. Some groups are making efforts, but the uncertainty surrounding each election and the turmoil caused by the power struggles of the two *caudillos* make it hard for investors to take Nicaragua seriously. Moreover, needed policies in education and law enforcement cannot be addressed without being highly politicized. The lack of institutional clarity is hurting Nicaragua badly.

**The Legislature**

The legislative branch is somewhat harder to define in great detail than the presidency, but the legislative branch of a healthy democracy plays an important role in many ways. Legislators and the decisions they make should reflect the needs of the whole country, broken down by each representative's regional interests. Legislators must "feel both the need to serve a particular district / constituency but to do so as members of a partisan delegation."[97] The five central functions of the legislature are lawmaking, oversight, publicizing issues, representing the voters, and conflict resolution.[98]

A "'serious legislature'" must focus on making laws from "bills duly debated and approved by a legislative body" as opposed to giving rubber stamp approval to executive decrees.[99] Martin Needler expands on the lawmaking activities cited above: legislatures need not write the laws they pass, but they do give legitimacy to bills conceived of in other bodies

[97] Moreno, Crisp, and Shugart. "The Accountability Deficit in Latin America." 111.
[98] David Close. "Introduction: Consolidating Democracy in Latin America – What Role for Legislatures?" In David Close, ed. *Legislatures and the New Democracies in Latin America*. Boulder, CO: Lynne Rienner Pulishers, Inc.; 1995. 2.
[99] Close. "What Role for Legislatures?" 2.

like the parties, the president, or the cabinet. In this function, the legislature brings legitimacy to "not only individual laws, but also the political system as a whole." Law- and decision-making legitimacy are guaranteed in the legislature by the elections that brought legislators to office. The caveat to this, of course, is that "elections [must be] believed generally fair and the electoral system acceptably representative."[100] Fairly and democratically elected legislators respond to the voiced needs of their constituents and implement the policies most important to their well-being.

The second function of legislatures widely agreed upon is their accountability function. The legislative branch has a tremendously important role in overseeing the president in non-election years; it usually exercises this authority through controlling the budget, questioning the cabinet in committee audiences, and publicizing the results of its investigations.[101] Legislators must also be held accountable to the voters who put them in office because an unaccountable legislature can lose interest in checking the executive.[102] Again, the closer relationship between legislators and voters means that the legislature keeps the president honest and responsive about implementing laws and making deals that will provide the greatest benefits for the citizens.

Furthermore, legislatures publicize elected officials' views and voting records on the issues at the center of the state's political debate.[103] They can also help prepare the next generation of politicians in a controlled and institutionalized way. Aspiring politicians learn the structure of "serious, well-informed, and well reported" debates and discussions and come of

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[100] Martin C Needler. "Conclusion: The Legislature in a Democratic Latin America." In David Close, ed. *Legislatures and the New Democracies in Latin America*. Boulder, CO: Lynne Rienner Pulishers, Inc.; 1995. 154.
[101] Close. "What Role for Legislatures?" 3.
[102] Moreno, Crisp, and Shugart. "The Accountability Deficit in Latin America." 92; Charles L Stansifer. "Elections and Democracy in Central America: The Cases of Costa Rica and Nicaragua." In Philip Kelly, ed. *Assessing Democracy in Latin America*. Boulder, CO: Westview Press; 1998. 94.
[103] Close. "What Role for Legislatures?" 3; Needler. "Legislature in a Democratic Latin America." 155.

age in a system that respects the process as well as the result.[104] A good legislature can lead the country down a path of regenerating good policy creation as young politicians learn the benefits of working within the system and the costs of shady deals. The public, as it grows increasingly aware of its politicians and its control over those politicians, begins to claim the political spaces theoretically created in a democracy and get the reforms and guarantees it deems necessary from the government.

A fourth important function of the legislative branch is to represent the citizens of the state. Electoral districts play a central role in representation and make this an issue that cuts across the electoral and legislative lines in a healthy democratic government.[105] Legislators must balance the needs of the government and party elite with the masses of voters they represent, bringing the economic sphere into considerations of policy and laws. According to David Close, part of the success of legislative consolidation in North America and Western Europe came from the "fortunate combination" of good leadership and economic growth. Elites felt their wealth and power were less threatened since the pie was growing for everybody, and the "able leadership" managed to convince the elites that it would be "easier to accommodate the majority than prepare… for an endless political siege" against the masses.[106] Voters are connected to their governments through their representatives, and the representatives, by nature of their positions, take it upon themselves to ensure that "mistakes [get] rectified" and that actions are taken "on behalf of the petitions of wronged individuals."[107]

The implementation of a free trade agreement and the changes it will bring naturally increase the voters' uneasiness about their situation. The legislators, in their capacity as elected

[104] Needler. "Legislature in a Democratic Latin America." 155.
[105] Close. "What Role for Legislatures?" 3, 4.
[106] Close. "What Role for Legislatures?" 6.
[107] Needler. "Legislature in a Democratic Latin America." 155.

officials and public servants, must work to implement the policies that will allow the least threatening kinds of growth to both the poor and the rich; both groups, after all, are legitimate constituents of elected legislators. In times of great change, legislators must balance the needs of both the rich and the poor against the needs of the government and the country in general. The implementation of good laws and policies will facilitate both the economic transition and help with the political consolidation.

The final basic function of the legislative branch is conflict management and resolution. Legislatures, through contact with their constituents, are in touch with the people's concerns and central issues; these issues are generally the ones that are discussed in the national legislative body. Conflicts between groups are "reduce[d] to manageable levels" and discussed by legislators in "highly stylized forms of address." This less personal and politicized manner of debate allows lawmakers to cooperate on finding a solution acceptable to most and prevents political disagreements from spiraling into violence.[108] Again through their more direct contact with voters, legislators help "gauge the conflict that arises over public issues" and give the government feedback on how well conflicts are resolved.[109]

As mentioned above in the discussion of the formation of vocational training programs, the government must work with various groups in finding solutions not only acceptable to all but also as efficient as possible, given the scarce resources of most states in transition. While "highly stylized" language might hide certain sentiments or mask harsh realities in some cases, it can provide a safety zone in which to negotiate. Legislators can legitimately work with workers and businesspeople in their electoral districts to find what both need in terms of policy support and in terms of practical support.

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[108] Close. "What Role for Legislatures?" 4.
[109] Close. "What Role for Legislatures?" 1.

Through the functions listed above, good legislatures play a central role in social and democratic government. They bring legitimacy and a certain proof of separation of powers to a fledgling state, and through their actions and discussions can assist in stabilizing other political institutions. A consolidated legislature counts on "rule-bound" politicians who work within a framework established by the constitution. There are paths to power, but they are electoral, and only through political victories can politicians get their policies implemented. Threats to electoral victory are economic threats (International Monetary Fund, foreign direct investment) rather than military threats,[110] and politics is no longer a particularly dangerous profession. In terms of economic development, legislatures make policies and provide for their enforcement and funding. A good legislature will make laws that establish a business environment that attracts business, both domestic and international. Property titling and tenure laws, contract enforcement, and labor laws are all central to a healthy business environment, and it is within the power of the legislature to help create the conditions.

Given their important roles in economic and democratic development, legislatures will be central to the process of economic integration and the implementation of the complementary policies designed to protect the weakest and most vulnerable sectors of society. Morgenstern classifies most legislatures as either "proactive" or "reactive," and the changes imminent in Central America will require proactive legislatures to make the transition from protected economy to open economy as smooth as possible. A proactive assembly would "initiate legislation" and stand firm in negotiations on the subject. The legislators would participate more in design than in amendment processes, and theoretically the legislation would match

[110] Scott Morgenstern. "Towards a Model of Latin American Legislatures." In Scott Morgenstern and Benito Nacif, eds. *Legislative Politics in Latin America*. Cambridge: Cambridge University Press; 2002. 3.

voters' needs more closely than the result of the same debate in a reactive assembly.[111] Despite these possibilities and promises, legislatures are not a panacea for democracy. They are comprised of humans, and humans are notoriously fallible. A legislature can pass "abusive" legislation, block necessary reforms, and continue to exclude groups from the political process.[112] The case of Nicaragua, described below, will demonstrate some of the dangers of a strong-but-wrong legislature.

**Legislature in Nicaragua**

In Nicaragua, the National Assembly (*Asamblea Nacional*) has a long history of participation in the political sphere, but some periods saw more legitimate participation than others. The Somoza family ran the country "like its private firm" but made several pacts over the decades with the Conservative Party for representation in the Assembly. Initially Conservatives were guaranteed one-third of the seats in the Assembly; later the number was increased to 40 percent. When the FSLN arrived on the political scene in Managua, their idea of "democracy emphasized outcomes and social and economic equality, not institutions and procedures."[113] They developed a form of the National Assembly, however, whose foundations remain today.

Currently the National Assembly is comprised of 90 elected deputies (*diputados*) and 90 alternates, each voted in through proportional representation from the nine districts in

[111] Morgenstern. "Towards a Model." 7, 8.
[112] Close. "What Role for Legislatures?" 8.
[113] David Close. "Nicaragua: The Legislature as Seedbed of Conflict." In David Close, ed. *Legislatures and the New Democracies in Latin America*. Boulder, CO: Lynne Rienner Publishers, Inc.; 1995. 50.

Nicaragua. There are six seats reserved for the outgoing president, the runner-up in the previous election, and any party that won 1/90 (about 1.1%) of the vote in the last presidential election.[114]

The Sandinista Constitution of 1987 gave the National Assembly considerable powers, most notably the right to override a presidential veto with an absolute majority, the ability to "summon and question" officials from the executive branch, and a role in the creation of the budget. The Constitution does not grant the National Assembly powers to oversee the president. At the time of the drafting of the 1987 Constitution, the Sandinistas controlled both the National Assembly and the presidency;[115] furthermore, they believed themselves the vanguard of Nicaraguan civilization and thus firmly ensconced in political power for the long-run.

The FSLN had to reinvent itself in a very short period of time from the revolutionary vanguard party to the very strong opposition party in 1990. In the early years after Doña Violeta took office, the FSLN orchestrated strong "extraparliamentary activities" through its powerful unions and local mass organizations. The FSLN contributed to the instability in the legislature that prevented sensible policies and laws from being adopted and fully implemented. Despite their continuing strength, however, the Sandinistas had lost an election that cost them both the presidency and the legislative branches of the government.

As Nicaragua slipped closer to chaos in the early 1990s, Nicaraguans began looking away from their traditional source of power, the executive, and toward a new source, the strong leaders of the National Assembly. Unfortunately, the National Assembly "had limited policy-making capacity" because of lack of resources and infrastructure, and it was also weak in oversight operations.[116] Still, in 1995, the National Assembly presented a list of over 65

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[114] Close. "Seedbed of Conflict." 53.
[115] Close. "Seedbed of Conflict." 53.
[116] David Close. "Undoing Democracy in Nicaragua." In David Close and Kalowatie Deonandan, eds. *Undoing Democracy*. Lanham, MD: The Rowman and Littlefield Publishing Group, Inc.; 2004. 10.

amendments to make the Sandinista constitution more appropriate for a state with a new basis of legitimacy.[117] The National Assembly is the constitutionally correct institution for "amending, not rewriting" the constitution, but the extent of the changes and the weight they give the Assembly shows some "conflicts of institutional interest" that might have been unavoidable no matter the setting.[118] The National Assembly weakened the executive branch, bringing it closer to the "Latin American norm" through their 1995 changes but in the process provoked a heated battle with the executive.[119] Although it eventually achieved success in the 1995 constitutional amendments, the internal weaknesses of the governing UNO coalition during the Chamorro years weakened the Assembly and made it "more confrontational toward the executive."[120]

After the dust settled from the frenzy of amendments, the National Assembly found itself with three important powers: overriding vetoes, amending the Constitution, and interpreting the Constitution. With its veto power, the Assembly can override a presidential veto with an absolute majority. Though the absolute majority should be relatively easily attained, the Assembly has not yet used this power on "critical legislation." As the "sole source" of constitutional amendment in Nicaragua, the Assembly has used this power effectively, for better or for worse, frequently in the past ten years; most of its changes have been made to reinforce the *pacto*. Finally, the Assembly has the authority to pass an "official and binding interpretation" of the law. In the US and Canada, this power is reserved for the theoretically less politicized courts, but Nicaraguan deputies have not yet used this power.

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[117] Close. *The Chamorro Years*. 149.
[118] Close. *The Chamorro Years*. 151.
[119] Close. *The Chamorro Years*. 154.
[120] Close. "Seedbed of Conflict." 54.

According to David Close, this last power presents a "useful way to amend the Constitution by stealth;" so far it has not been needed.[121]

From 1997-2001, the *Partido Liberal Constitucionalista* (PLC) controlled both the executive branch and the National Assembly, and President Alemán began the process of reconstructing the power of the executive. He created discretionary funds (20 percent of the state budget) for the president and the central bank, and he eventually created the infamous *pacto* with Daniel Ortega to ensure his continuation in power. The National Assembly, however, was not gutted by Alemán. The *pacto* guarantees outgoing presidents of Nicaragua a lifetime seat in the National Assembly, so Alemán was careful not to destroy the Assembly completely. The Assembly retained some important powers: control over presidential decrees; power in committees to amend or delay bills; and considerable political might in the figure of the Speaker (president) of the National Assembly who ultimately controls the activities of the Assembly. Thus the National Assembly developed into a "useful opposition instrument" in the post-Sandinista years.[122]

The *pacto*, however, puts the quality of the institution in jeopardy. The outgoing president and the runner-up from the last election serve in guaranteed seats in the Assembly, and taxpayers continue to pay their salaries. More importantly to Alemán, service in public office guarantees immunity from prosecution.[123] Through the *pacto* Alemán and Ortega worked to reestablish the strength of the National Assembly in order to more effectively rule Nicaragua, regardless of the identity of the president. But the fate of the National Assembly hangs somewhat in the balance since Ortega is determined to retake the presidency eventually; until the political and power ambitions of Ortega and Alemán are satisfied (or until they finally

[121] Close. "Seedbed of Conflict." 58.
[122] David Close. "President Bolaños Runs a Reverse." 168.
[123] Close. "Undoing Democracy." 11, 12 .

become inactive in the political arena), the political institutions of Nicaragua will remain vulnerable to their machinations.

Despite the erratic and sometimes damaging behavior of the deputies, as an institution, the National Assembly in Nicaragua has gained considerable experience as a governing body. It has an "active and extensive committee system" that focuses on detail work and functions responsibly within its limits. Furthermore, the media, "though far from impartial[ly]," cover the activities of the Assembly and report regularly to an interested and involved public.[124] At some levels, the National Assembly functions like a legislative body should; it is, however, captive to the personalistic and power-hungry leaders of the FSLN and the PLC.

The Nicaraguan legislature will play a central role, be it supportive or preventive, in the process of democratic consolidation and economic integration. As listed above, the five main functions of a legislative body are lawmaking, executive accountability, representation, publicity and education, and conflict resolution. The National Assembly is currently very good in the field of criticizing the executive branch and publicizing its perceived shortcomings. It also has institutional room for pro- and anti-administration forces from both the left and the right, demonstrating that a good part of the country's political tendencies can feel represented. The Assembly "falls woefully short," however, on the question of conflict resolution. The country is highly politicized; the politicians and their parties are highly politicized;[125] and according to some, both ends of the political spectrum are fighting politics as if they were fighting a war. Both sides still approach politics as a zero-sum power game and seek to impose their solutions rather than building consensus on the most pressing political issues in Nicaragua today.

[124] Close. "Seedbed of Conflict." 54.
[125] Close. "Seedbed of Conflict." 65.

The *pacto* and the ongoing power struggles complicate the passage of laws that represent the needs of the voters. Furthermore, the National Assembly very often works against the president for political reasons rather than for valid power-checking reasons. The FSLN bloc of deputies initially claimed they were resisting ratification of DR-CAFTA until they could design and implement a series of policies to protect the poor and marginalized, but as soon as Ortega changed his mind, the party ratified the legislation with no further delays.[126] Although the Sandinista deputies doubtless care very much for the welfare of the voters, they are powerless against the party machine, and the voters continue to pay, both literally in terms of salaries and figuratively in terms of lost opportunities, for the power games of the elected leaders.

The legislature, therefore, is crucial to a good, functioning democracy, but it must be staffed with responsible and responsive legislators. Many of the changes made in Nicaragua's constitution about the relative powers of the executive and the legislative branches are changes that should be very welcome to a country in transition. Unfortunately, in Nicaragua they were implemented by very questionable leaders through very questionable means, tainting not only the policies but also the very institution that enacted them.

**Judiciary**

The judicial branch of a state plays an important role in both the consolidation of democracy and in the improvement of economic and investment conditions for domestic and foreign interests. Like the legislative branch, however, the judiciary is not easy to define in a positive manner. The simple definition, provided by legal scholars Buscaglia, Dakolias, and Ratliff, states that the "ideal judicial system is composed of institutions capable of applying and

[126] Associated Press. "Nicaragua ratifica el CAFTA." Accessed 24 April 2006. Available at http://www.miami.com/mld/elnuevo/business/12868542.htm.

enforcing laws equitably and efficiently."[127] Stotzky and Nino take this idea one step further when they add the element of inclusion and acceptance of rule of law into the government's "daily life;" they also note that the "role of the judiciary in the transitions process is … extremely complicated."[128]

Owen Fiss divides the judiciary into "three closely related concepts" that allow for a strong and independent judiciary: "'party detachment,'" "'individual autonomy,'" and "'partisan (or political) insularity.'" Party detachment implies that judges rule based on facts and not on who is pleading a case before them. Individual autonomy involves judges having no control over one another, within certain limitations. Appellate court review of appealed cases is one exception to this rule; the idea, however, holds, and judges should not try to influence their colleagues on cases and decisions. Finally, partisan insularity means that courts should be "free of 'influence or control' from other governmental institutions." Again there are exceptions to this rule, but the significance is that any interaction between government institutions should follow certain procedures and be carried out without intent to undermine the processes of the other institution.[129]

Courts in Latin America tend to lack autonomy and independence. The executive and legislative branches are often particularly active in the judiciary, and their involvement feeds doubts about the integrity and credibility of the judiciary. Buscaglia, Dakolias, and Ratliff, however, point out that full independence can be much worse for reform in the judicial system if

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[127] Edgardo Buscaglia, Jr, Maria Dakolias, William Ratliff. *Judicial Reform in Latin America: A Framework for National Development*. Stanford, CA: Hoover Institution, Stanford University; 1995. 1, 2.

[128] Irwin P Stotzky and Carlos S Nino. "The Difficulties of the Transition Process." In Irwin P Stotzky, ed. *Transition to Democracy in Latin America: The Role of the Judiciary*. Boulder, CO: Westview Press; 1993. 3, 4.

[129] J Michael Dodson and Donald W Jackson. "Judicial Independence and Instability in Central America." In Peter H Russell and David M O'Brien, eds. *Judicial Independence in the Age of Democracy*. Charlottesville, VA: University of Virginia Press; 2001. 256.

the judges are the main "source of institutional inertia." If there is a strong group of reformers in either the executive or legislative branch, the reformers' oversight can make a tremendous difference in breaking debilitating patterns in the judiciary.[130] This idea, however, relies on an incorruptible leader or group, and in times of transition that is not always the safest avenue.

A central function of the judicial branch is to guarantee access to the procedures of due process. Due process covers at least three aspects of the activities of the judicial system. Court activities, ranging from observance of *habeas corpus* to the proximity of courts to claimants, must be guaranteed for all citizens of a state. Due process also covers the manner in which the "judicial process" must be undertaken, including "the observance of the democratically enacted laws" and the impartiality of the judge. Courts also safeguard the limits and constraints of state coercion and aim to prevent "cruel or inhumane punishment" as well as the prosecution for crimes against "retroactive and vague legislation."[131] Recognition of due process also inspires confidence in the legal system, making a state more attractive to businesses. Both foreign and domestic companies value predictability in questions of the law, and a stable judicial system provides that predictability much better than a corrupt and politicized one.

In order to be able to provide these services to the public, the judiciary needs to be supported by government institutions and by the interest of the citizens of the state. There are some standard "formal mechanisms" for guaranteeing judicial independence and strength on which many legal scholars concur. Budget autonomy is key, as is reasonable and adequate compensation for services.[132] Additionally, calls for "secure tenure" and "working conditions that make the lives of judges no less insurable than those of others in the sedentary professions," mean that judges must be protected by the state against violence for unpopular or politically

[130] Buscaglia, Dakolias, and Ratliff. *Judicial Reform in Latin America*. 26.
[131] Stotzky and Nino. "The Difficulties of the Transition Process." 11.
[132] Buscaglia, Dakolias, and Ratliff. *Judicial Reform in Latin America*. 27.

complicated rulings.[133] Finally, judges need "'staffing and financial resources'" and a "'dense infrastructure of institutions that compose an effective legal system: prosecutors, public defenders, police, investigators, legal aid programs, bar associations, law schools, and so on.'"[134]

Having established the general role of the judiciary, it will be possible to refine a few points. The judiciary plays a "productive role" in "protecting civil and political rights" and in "providing the substantive and procedural structure to facilitate the exchange of rights to physical and intangible assets."[135] The judiciary is key in the process of political and economic integration, and its role in supporting the implementation of a series of policies designed to support that integration will be no less important than its role in creating an environment attractive to international investors.

To constructively contribute to the process of democratic consolidation, and using the independence and autonomy available to them, judges must work within the system in which they find themselves. According to Frankel, it is not appropriate for judges to "initiate great changes." Judges receive a mandate from the laws governing the state and must follow the path indicated by societal and cultural norms at the time when decisions are handed down. Frankel insists that judges have no role in designing democratic processes but must wait to "take up the baton" when those in power make a new direction clear.[136]

The courts' role in economic integration will also be key in Central America. Pressure for reforms is mounting as there is an "increasingly widespread belief that the judicial sector in

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[133] Marvin E Frankel. "Concerning the Role the Judiciary May Serve in the Proper Functioning of a Democracy." In Irwin P Stotzky, ed. *Transition to Democracy in Latin America: The Role of the Judiciary*. Boulder, CO: Westview Press; 1993. 29.
[134] Dodson and Jackson. "Judicial Independence and Instability in Central America." 253.
[135] Buscaglia, Dakolias, and Ratliff. *Judicial Reform in Latin America*. 16.
[136] Frankel. "The Role the Judiciary May Serve." 25-28.

Latin America is ill-prepared to foster private-sector development in a market system."[137] Both foreign and domestic investors and entrepreneurs expect their nominal rights, which are typically standard and strong, to be "ignored or violated" in the courts system;[138] the corrupt and blatantly rent-seeking behavior of judges drives people away from the court systems.[139] In a typical but unfortunate pattern, large businesses that can afford to develop or identify alternate solutions no longer participate in the courts, leaving the small and medium enterprises that can ill afford financial losses to fund the judges' and other officials' salary supplements.[140]

As integration pressures increase and legislation gets passed to bring laws nominally in step with treaties and investors' needs, tensions about how rights are or are not protected are rising. Part of the tension in Latin American legal systems comes from the inherent clash between civil law and common law traditions,[141] but a significant part of the problem is the lack of "an effective judicial system" that could enforce the new laws.[142]

**Judiciary in Nicaragua**

In Nicaragua the judicial branch of government is "one of the most discredited in Latin America." The US Embassy in Managua calls it "'a dead-end system suffocating the Nicaraguan people,'" and three of the seventeen judges sitting on the Supreme Court have had their US travel visas revoked under the 212 (f) anti-corruption program.[143]

Moreover, the FSLN controls the judicial system from Supreme Court on down and can oblige the justices to declare constitutional any proposed law passed up from the National

[137] Buscaglia, Dakolias, and Ratliff. *Judicial Reform in Latin America*. 6.
[138] Buscaglia, Dakolias, and Ratliff. *Judicial Reform in Latin America*. 1.
[139] Buscaglia, Dakolias, and Ratliff. *Judicial Reform in Latin America*. 5.
[140] Buscaglia, Dakolias, and Ratliff. *Judicial Reform in Latin America*. 1.
[141] Buscaglia, Dakolias, and Ratliff. *Judicial Reform in Latin America*. 18.
[142] Buscaglia, Dakolias, and Ratliff. *Judicial Reform in Latin America*. 1.
[143] Dario. "Constitutional Crisis in Nicaragua Deepens."

Assembly. According to former Sandinista intellectual Sergio Ramírez, the number of justices on the Supreme Court was increased from 7 to 17 in order to allow Ortega and Alemán to hand out appointments to curry favor and solidify their control. Of the ten new judges, five are Sandinistas and five are PLC loyalists; the previous seven are mostly FSLN sympathizers.[144]

This loaded Supreme Court has been instrumental in changing the constitution to institutionalize the power of the *pacto*. It was also closely involved in the process of stripping Bolaños' ministers' immunity from prosecution. A political protest group, the *Movimiento por Nicaragua,* called the attacks on Bolaños and his cabinet "'judicial terrorism'" in the fall of 2005. In September a poll conducted by *La Prensa*, the largest independent newspaper in Nicaragua, found that 70.7 percent of Nicaraguans polled considered "'the lifting of immunity … a political trap to pressure President Bolaños,'" while 18.9 percent consider it a "'legitimate application of the law.'"[145]

Ortega and Alemán also moved to gain control of supporting government institutions: through the *pacto* they control the offices of both the comptroller general (*Controlaría General*) and the attorney general (*Fiscalia General*). Recently they have created two new supporting bodies to further extend their reach. The Supervision of Services (*Superintendencia de Servicios*, SISEP) allows Ortega and Alemán to "assume control of the regulation of electricity services, communications, and drinking water," a power that until now has been reserved for the president. When this latest reform takes effect in January 2007, the *pacto* will have the power to award contracts to build energy plants, set tariffs for services, and award licenses to operate television and radio stations. Ramírez considers this to be "a political weapon of great power."

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[144] Sergio Ramírez. Nicaragua's Hijacked Democracy. *Open Democracy;* 18 November 2005. Accessed 18 December 2005. Available at www.opendemocracy.net/democracy-protest/nicaragua_3041.jsp..

[145] Dario. "Constitutional Crisis in Nicaragua Deepens."

Besides SISEP, Ortega and Alemán have created the Property Institute (*Instituto de Propiedad*) to handle the claims made by *confiscados* about land expropriated during the 1980s.[146] This issue is particularly touchy for Nicaragua because the bulk of land expropriation claims comes from US citizens, and the US has shown itself willing to cut off aid to Nicaragua when cases are not quickly and satisfactorily settled. The question of property rights is likely to continue disrupting the political process in Nicaragua until all the US property claims are settled. As an investor, the US does not smile on a history of expropriations.

Nicaragua's Supreme Court is currently at odds with the Central American Court of Justice over the implementation of the two new superintendent agencies, *Superintendencia de Servicios* and the *Instituto de Propiedad*: the Supreme Court claims that they are constitutionally acceptable while the Central American Court of Justice claims that they are not. The National Assembly supports the decision of the domestic court, while the president supports the decision of the regional court.[147] When Nicaragua overrides the decision of the regional court and implements the changes in January 2007 (immediately following the presidential inauguration), its declaration of the importance of Nicaraguan sovereignty over regional cooperation will be undeniable; what message besides extreme caution can investors and integrationists help but take from this example?

Nicaragua will not be able to take full advantage of the opportunities expected under DR-CAFTA until its courts are in order. Dodson and Jackson list five reform steps that states should take to move their judicial system from the nonliberal type to a liberal democratic type.

1. Methods of selection should seek to transcend, as much as possible, the intrusion of direct partisanship into judicial appointments. Merit selection based on nonpartisan,

[146] Sergio Ramírez. "Nicaragua's Hijacked Democracy."
[147] Nicanet. "Topic 6: State Institutions in Legal Limbo." Accessed 28 March 2006. Available at http://www.nicanet.org/hotline.php?id=158#topic3.

bipartisan, or multipartisan assessment of objective qualifications is probably the best available option.
2. Tenure of office should be relatively long, carry an adequate remuneration, and be protected by legal safeguards against retaliatory removal for unpopular decisions.
3. Removal for official misconduct (bribery, extreme professional incompetence, personal disability) should be well grounded in procedures that guarantee due process.
4. Courts must have adequate resources in the form of professional staff support, facilities, and finances to accomplish their duties.
5. Finally, it is essential that there exist a legal and political culture supportive of the rule of law. All the above elements may be inadequate if there is no broad cultural agreement that *all* individuals and groups are under the law and will abide by judicial decisions.[148]

To this list, Buscaglia, Dakolias, and Ratliff add concerns that accessibility be increased for people from all "income sectors," redesigned and expanded "legal education programs," and "increased availability of alternative dispute resolution mechanisms." They stress the importance of sequencing[149] but fail to prescribe the appropriate sequence.

The role of the judicial system, like the role of the legislature, is key to the establishment of a law-abiding culture. Judges should be educated, impartial, and in touch with the laws and systems of the country they serve. Economic integration, with its constant need for foreign investment, must emphasize the necessity of a predictable and internationally valid system of justice. The current situation in Nicaragua is unstable and unsustainable: Nicaragua has alienated the regional court and will probably soon commit a gaffe with the international community.

**Political Parties and Elections**

Democracies function on the principles of representation and participation by the people in the government. To effectively organize the people's will, states have political parties whose agendas more or less match the political will of the members of the parties. States also have an

[148] Dodson and Jackson. "Judicial Independence and Instability in Central America." 257.
[149] Buscaglia, Dakolias, and Ratliff. *Judicial Reform in Latin America*. 4.

electoral system in which the parties compete for the chance to represent people and make policy on their behalf at all levels of government.

*Electoral Systems*

Elections and electoral systems are crucial to the health of a democracy. Elections give voters an effective means of controlling their representatives and their parties; in response to an elected official's unresponsiveness during her or his elected term, voters can chastise the party in the next elections.[150] Different kinds of accountability help protect voters from unhealthy collusion between the executive and legislative branches.[151]

Like any good political institution, the electoral process must be protected by laws and customs defining the roles and acceptable behavior of all participants; this section assumes that those laws and customs are fair and good and represent the will of the voters. The election system must regulate participants and their activities; those would-be participants who cannot or will not adapt their behavior to the established and agreed upon format must be excluded out of deference to the law. The election system (and the voters) will punish those participants whose behavior is "counterproductive" and reward those who work within a more or less defined set of rules. Finally, institutionalized electoral systems give voters the possibility to change their leadership regularly and in a nonviolent manner. Both voters and their representatives know and understand the system and have less to fear from dramatic changes from one elected leader to the next.[152]

This kind of ongoing stability brings credibility to the electoral system and is especially helpful in a new or not-yet-stabilized democracy. As voters establish regular relations and

[150] Moreno, Crisp, and Shugart. "The Accountability Deficit in Latin America." 119.
[151] Moreno, Crisp, and Shugart. "The Accountability Deficit in Latin America." 91.
[152] O'Donnell. "Delegative Democracy." 57-59.

communications with their representatives and parties, they gain familiarity with the political system and learn to maneuver within it to realize the changes they need. Furthermore, the elected officials develop interest in staying in power through legitimate means, and the role of the representatives becomes less about personal power and enrichment and more about civic duty.

*Electoral System in Nicaragua*

The Sandinistas established the Supreme Electoral Council as one of the four branches of the Nicaraguan government in the early 1980s, but elections in Nicaragua did not begin in earnest until 1990 when Daniel Ortega and the FSLN ran against Doña Violeta de Chamorro and the *Unión Nacional Opositoria* (UNO) for the presidency. The Sandinistas had held a presidential election in 1984, which Ortega won, and the Somoza family had held periodic elections for most of its tenure, but the 1990 election was the first in which the outcome was actually uncertain. It is to the credit of the Sandinistas that they accepted electoral defeat and gave up power at the official transition date: they were the first government in the history of Nicaragua to do so. Furthermore, the "Western-style" electoral practices introduced by the Sandinistas also lasted into later administrations, and the 1990 elections showed Nicaraguans' acceptance of democratic voting.[153]

Under the troubled but able administration of Doña Violeta, elections happened regularly and on schedule, and in November of 1996, Arnoldo Alemán of the *Partido Liberal Constitucionalista* took over the presidency in the second regular and peaceful transfer of power. President Alemán, however, did not put his energies into institutionalizing the electoral

[153] Stansifer. "Elections and Democracy in Central America." 130, 131.

process that had brought him to power. By 1999, he had struck a deal with Daniel Ortega of the FSLN to make some dramatic changes to the national electoral law.

The *pacto* removed all the sitting members of the Supreme Electoral Council and replaced them with FSLN and PLC loyalists. The *caudillos* extended their reach into municipalities by creating Municipal Electoral Councils with presidents and vice-presidents chosen from among FSLN and PLC loyalists. The two parties alternate between the position of president and vice-president in the Municipal Electoral Councils. The electoral changes under the *pacto* assure that 90 percent of the members of the electoral councils at departmental and municipal levels are named by the FSLN and the PLC.[154]

The new electoral laws also restricted party formation and participation in elections: to achieve legal recognition, a group of hopefuls would have to present a petition bearing the names of 3 percent of the last voter registration list.[155] In the 1996 election, 26 parties had run presidential candidates, but by July 2000, the new CSE recognized only four: the FSLN, the PLC, the traditional *Partido Conservador* (PC), and the *Camino Cristiano Nicaragüense* (CCN). The 26 other would-be parties were prevented from running as individual parties and as alliances, partly for failing to get enough signatures and partly because of stipulations in the new electoral laws that losing alliances would also lose the individual parties' legal status if they failed to receive a certain percentage of the vote. In October 2000 the *pacto*-influenced CSE, at the behest of the FSLN and the PLC, refused legal standing to two new parties in formation and planning to run in the 2001 presidential election: former Sandinista General Joaquín Cuadra Lacayo and Alemán's Minister of Defense and Education José Alvarado and their parties were

[154] Katherine Hoyt. "Parties and Pacts in Contemporary Nicaragua." In David Close and Kalowatie Deonandan, eds. *Undoing Democracy*. Lanham, MD: The Rowman and Littlefield Publishing Group, Inc.; 2004. 29-31.
[155] Hoyt. "Parties and Pacts." 29-31.

barred from running for the presidency.[156] Changes in Nicaragua's political law were designed to facilitate the return to the presidency of Daniel Ortega as Alemán was constitutionally prevented from running for consecutive terms.[157]

In November 2000, Nicaragua had municipal elections separated from its presidential elections for the first time. The PLC, party of the president, won a majority of mayoral elections, but the FSLN won Managua and several other large cities. The politicized CSE took over a month to verify the election results despite a constitutional requirement to promptly divulge the information, and the FSLN likely had to apply political pressure to eventually get their more important victories recognized.[158]

Despite Ortega's campaigning and reworking of laws, the November 2001 presidential election was won by Enrique Bolaños, vice-president to Alemán, of the PLC. Although the election was fair and clean according to the international observers, the election was not free of external influence: the Bush family of the United States labeled Ortega a "'friend of the terrorists,'" and Bolaños received support from US democratization agencies. Bolaños won the election with 56 percent to Ortega's 42 percent.[159]

The changes to Nicaragua's electoral law were put into place without a popular referendum despite considerable interest in having a vote toward the end of the deal-making process.[160] David Close highlights the depth of the problem in Nicaragua's electoral system, stating that these changes were brought about as a "collaborative venture" between political parties that won 98 percent of the vote in the presidential elections of 2001. His central concern is the implied complicity and acceptance of this outrageous level of corruption by Nicaragua's

[156] Hoyt. "Parties and Pacts." 36.
[157] Close. "Undoing Democracy." 11.
[158] Hoyt. "Parties and Pacts." 36, 37.
[159] Hoyt. "Parties and Pacts." 37.
[160] Hoyt. "Parties and Pacts." 35.

political elite in the splitting of the "spoils" of power. These changes also deepen protection for the two leading parties and more importantly their leaders at a time when the parties and the state should be in the process of consolidating democratization rather than corruption.[161]

**Political Parties**

The central actors in elections are political parties and the candidates they run. Political parties must identify the candidate most likely to appeal to the greatest number of voters to increase their chances of electoral victory. The candidate should be known not only to the community she or he represents but also should have a good reputation for probity and good judgment.

In a time of upheaval or major changes, a constructive political party must work against the dangers of "electoral *caudillismo*" to effectively balance the needs of the voters and the needs of the government leaders. Much of the strength of a *caudillo* is weakened by the existence of a publicly recognized and supported constitution, but some wily *caudillos* survive the transition to nominal democracy and continue to wield their power inappropriately.[162]

To best serve the voters, political parties must balance themselves carefully between the often disparate needs and goals of government agencies and voters. When parties grow too strong, they usually have powerful national leaders who dominate the representatives they send to office and sometimes the voters as well. Very strong and centralized parties limit the independence of government institutions through their authoritative approach to politics. Powerful parties also dominate the legislative agenda by discussing issues of interest to the party rather than by responding to voters' needs on national or subnational levels. On the other

[161] Close. "Undoing Democracy." 11-13.
[162] Close. "Undoing Democracy." 4, 5.

hand, very weak political parties with more or less undisciplined members will fail to balance the other government institutions through their inability to build consensus and take coherent collective actions. In the former case, the legislature will be under the influence of the national party; in the latter it will be under the influence of the executive.[163]

Parties must be more or less democratic in their internal structure, and the greater the level of democracy, the greater the level of accountability and responsiveness. A sound candidate selection process helps the national party meet the local needs of its subnational partners. Latin American parties tend to be overly centralized in their candidate selection process, obliging local needs to fall into step with the national agenda rather than responding to individual districts' concerns.[164] Ideally a party would have a short period of public, internal debate followed by primary elections at all levels of government. The short period of internal discussion would help prevent schisms from developing and hopefully prevent unnecessary unpleasantness between the candidates themselves; the primary would then seal the issue on which candidate the voters favored, and the party would move forward stronger for having debated the issues and more unified for having let the voters decide.

Parties must also apply the right balance of discipline and independence to their members. Legislators should feel themselves caught between the pressures of the voters on one side and the party on the other, but they should not be pulled so strongly by one that they feel the need to forsake the other. Moreover, representatives of a party need to be able to dissent from the dominant line of their party without fearing reprisals or expulsion. As democratic institutions, representing the voters of a state, parties need to function as bastions of democracy internally, allowing debate and constructive disagreement.

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[163] Moreno, Crisp, and Shugart. "The Accountability Deficit in Latin America." 110.
[164] Moreno, Crisp, and Shugart. "The Accountability Deficit in Latin America." 111.

Political parties play a role in the deepening of the democratic reforms a state experiences in its transition to democracy. Parties can and should help motivate and educate people to participate in the formation of policies that will directly affect their lives; parties, through representatives, serve an important purpose in helping voters arrange themselves and their thoughts. They also help politicians represent voters on a national level. Furthermore, parties need to work to educate citizens on political issues: a central goal should be to demonstrate that democratic government is better than authoritarian government.[165] Through responsiveness political parties can help deepen voters' commitment to democracy.

Parties, like all human institutions, are not static and must adapt to changing political conditions in the country in which they operate. In the past, many parties only catered to business and government elites who were able to demand responsiveness and knew what they wanted. In this age of ever-increasing universal suffrage and high-profile protests, however, parties must reach out to heretofore disenfranchised groups like women, the poor, and the illiterate, and include them in policy considerations.[166] Although other organizations like churches, NGOs, and social movements, bring together otherwise excluded groups, they do not replace the function of a party.[167] Parties, in addition to playing the political game, must follow local and national trends to ensure timely and proactive responses to voters' concerns. Non-governmental agencies can help formulate concerns and bring like-minded people together, but parties must be responsible for provoking high-level debate and implementing policies to address the concerns.

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[165] Moreno, Crisp, and Shugart. "The Accountability Deficit in Latin America." 116.
[166] Frances Hagopian. "Democracy and Political Representation in Latin America in the 1990s: Pause, Reorganization, or Decline?" In Felipe Agüero and Jeffrey Stark, eds. *Fault Lines of Democracy in Post-Transition Latin America*. Coral Gables, FL: University of Miami / North-South Center Press; 1998. 112.
[167] Hagopian. "Democracy and Political Representation in Latin America in the 1990s." 102-104.

New economic patterns and social pressures, like those mentioned above, have drawn parties and voters away from traditional models of power and have forced a sort of modernization on parties. Leftist parties have felt the pressure more than rightists: during the 1980s and 1990s, many leftist parties experienced a "process of deradicalization" and have accepted many aspects of the neoliberal wave. Parties of the left are increasingly reluctant to live on the old myths and increasingly willing to engage in self-criticism as the world obliges them to reconsider some of their most radical stances.[168]

**Political Parties in Nicaragua**

Political parties in Nicaragua have not advanced much from the Somoza days when politics was "leader-centered and highly conflictive" and run as a zero-sum game. In the 1990 presidential election that ended the FSLN revolution, the FSLN ran against the UNO coalition, an alliance of 14 parties whose basic platform was "not Sandinista." Under the Chamorro administration, the UNO came undone and the very different parties began to shape or reclaim their identities. The *Partido Liberal Constitucionalista* (PLC) broke away from the old, traditional Liberal Party and gained power rapidly under the leadership of Arnoldo Alemán. By 1994, the PLC had taken over the UNO's role as "'anybody but the Sandinistas,'" and the framework for a biparty system with very powerful parties was established.[169]

The FSLN, unlike the other parties in Nicaragua in the early 1990s, had a very clear ideological identity. Its "three pillars" are Sandinismo, Marxism, and Liberation Theology; most of the Sandinistas' internal disagreements came in the interpretation of Marxism. The famous "three tendencies" were braided together by Fidel Castro in the late 1970s in preparation

[168] Patricio Silva. "Neoliberalism, Democratization, and the Rise of Technocrats." In Menno Vellinga, ed. *The Changing Role of the State in Latin America*. Boulder, CO: Westview Press; 1998. 85, 86.
[169] Close. "Undoing Democracy." 10, 11.

for the Sandinista Revolution, and a relatively solid movement resulted. During the 1980s, the single-person caudillismo of Somoza was replaced by a 9-person caudillismo of the *Junta Directiva*.[170]

Under the pressure of running the country, fighting the contra war, and losing the election, however, the Sandinista hierarchy lost some of its unity. Sergio Ramírez, a long-time Sandinista, formed the *Movimiento Renovador Sandinista* in 1995 as a protest over the lack of democratic processes within the FSLN. Even after Ramírez and his followers were expelled from the FSLN, it was still "the largest and best-organized" party in the country. Since the mid-1990s, concern over and knowledge about the depth of "Danielismo" have been growing. The FSLN has neglected to "'deal with charges of ethical failings'" brought against its leaders, and a culture of "'patriarchal attitudes and values'" remains strong in this revolutionary party.[171] The FSLN claimed to be so distracted by other problems in the 1990s that internal renovation was necessarily low on the agenda after issues like land reform, the sex abuse scandal with Ortega's step-daughter, and corruption charges.[172]

Daniel Ortega rules the FSLN with little room for dissent or debate: there are several issues that pull at the party, among them the lack of a sensible primary system to renew leadership and the *pacto* with the PLC. The FSLN is split over the role of Ortega. He has been the leader of the party and its only presidential candidate for over 20 years, but he has been "thrice rejected by voters."[173] The progressive elements within the FSLN are stifled under his leadership.

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[170] Hoyt. "Parties and Pacts." 24.
[171] Hoyt. "Parties and Pacts." 26, 27.
[172] Hoyt. "Parties and Pacts." 27, 28.
[173] Kalowatie Deonandan. "Long Live the Caudillo." In David Close and Kalowatie Deonandan, eds. *Undoing Democracy*. Lanham, MD: The Rowman and Littlefield Publishing Group, Inc.; 2004. 197.

An offshoot of the traditional *Partido Liberal*, the *Partido Liberal Constitucionalista* was cultivated by Alemán as a vehicle to carry him to power. The PLC is a member of the Liberal International and has strong, traditional Liberal values, but it also has strong ties to the Catholic Church and Cardinal Obando y Bravo. A confidential Liberal document written in 1997 states the following agenda for the party:

1. Undo the strength of the Sandinista Party and replace the FSLN with the Conservative Party as the main opposition.
2. Recover Liberals who have strayed from the party under pressure from the FSLN.
3. Recover the property of those Nicaraguans whose property was expropriated during the 1980s or during February, March, and April 1990.
4. Win the poor back to the Liberal side with programs that would duplicate and choke out the corresponding FSLN programs.[174]

From his inauguration in January 1997 through July 1998, Alemán and the PLC had no need for the FSLN except as an unpleasantly strong and capable opposition party. As President Alemán grew increasingly corrupt and abusive, however, the Liberal alliance weakened and Alemán lost his guaranteed control over the National Assembly. Alemán, fondly and not-so-fondly known as "Gordito" ("fatso"), was perceived to be getting richer while the rest of Nicaragua got poorer. Relief aid from Hurricane Mitch was badly handled, and several international aid donors backed out of projects when the extent of the corruption became clear. Alemán found himself increasingly wealthy but politically isolated.[175] Unsatisfied with the political situation in Nicaragua, Alemán and Ortega formed the *pacto*.

Alemán called the *pacto* a "'search for points of convergence'" with the main opposition party;[176] he masked his grasp of power as a simple, pro-democracy bipartisan effort to build consensus and get things done. Ortega, who faced tremendous inquietude within the FSLN for agreeing to the *pacto*, informed supporters and opponents alike that the FSLN was "reclaiming

[174] Hoyt. "Parties and Pacts." 21.
[175] Hoyt. "Parties and Pacts." 21.
[176] Hoyt. "Parties and Pacts." 32.

lost political space to which it had a right as the second largest party." The Junta Directiva soon announced that the *pacto* had been orchestrated to increase the FSLN's chances at electoral victory. They used the ensuing frustration of Sandinistas to clean up the party by expelling dissidents who challenged Ortega.[177]

The *pacto* was created entirely by party leadership with no input from voters or even party officials. It is among the most damaging steps Nicaraguan leaders could have taken against democracy and the double transition they had begun in 1990. The *pacto* is "constitutionally entrenched"[178] and unlikely to be broken by voters who still seem to vote along party lines. Unfortunately for Nicaraguan voters, the FSLN and the PLC are not alone in approving of the *pacto*: Cardinal Obando y Bravo has supported it directly, and even the international financial community has, albeit inadvertently and indirectly, supported the growth of corruption by encouraging liberalizing policies in an environment without the necessary regulatory framework and transparency.[179]

The voters in Nicaragua, meanwhile, sometimes appear to vote out of fear or to punish previous governments rather than for positive changes. The parties, instead of dealigning and realigning to match voters' interests and needs, have not changed substantially since the days of the civil war. According to Aldo Díaz Lacayo, president of Nicaragua's historical society and former FSLN Ambassador to Venezuela, the middle 20 percent of Nicaraguan voters are voting for rightist parties for fear of the war, the draft, the hyper inflation – in short, for fear of the bad

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[177] Hoyt. "Parties and Pacts." 28-33.
[178] Close. "President Bolaños Runs a Reverse." 179.
[179] Deonandan. "Long Live the Caudillo." 190. Deonandan refers to the wave of uncontrolled privatizations that released big corporations into the private sector and transferred the money they were theoretically worth to the government. Alemán, like several other leaders in poor states, did not sell the state-owned enterprises in a totally fair and correct manner, and he skimmed what he could off the top of the sales.

old days of the 1980s.[180] Other voters are punishing the current administration; neither set of voters is voting for positive political reasons, and they contribute to the overall instability by failing to keep their deputies in the National Assembly honest and responsive. The parties, meanwhile, continue to dominate the political scene with little fear of voter-driven repercussions.

Though the FSLN passed from governing party to opposition party, it retained considerable power in the functions of the state. Its ability to control "extraparliamentary" activities to pressure the UNO government nearly undid the country in the early 1990s. The Sandinistas and the Liberals, as should be expected, clashed repeatedly, and voters learned that "highly confrontational and conflictive protest politics got the government's attention." Sandinista voters were accustomed to rallying 'round the red and black flag to claim their rights, and despite the FSLN's loss to the UNO they continued to support their party.[181]

Parties in Nicaragua have contributed to changes in the process of governing in Nicaragua, though not always in a positive manner. Voters in Nicaragua are still highly politicized and know quite a lot about politics in their countries. Several, however, feel that democracy promised to bring more than the end of the war, and very few feel that "democracy" has arrived. Nicaragua risks voter disenchantment in the near future. Although there have been some superficial reforms in parties in Nicaragua, the voters are still quite distant from their elected representatives and have little voice in the process of the government. The chaos of the political parties in Nicaragua bodes ill for a smooth transition from a country "run like a private firm" to a country integrated successfully into the global economy.

[180] Conversation with Aldo Díaz Lacayo. Managua, Nicaragua. July 2005.
[181] Close. "Undoing Democracy." 11.

The Sandinistas, for all the terrible and costly mistakes they made, left Nicaragua better prepared for constitutional democracy than it had been before their time in power. The election of 1990 and the peaceful transfer of power demonstrate a respect for the state they had built, although the lame-duck activities, especially the *piñata*, show that the state was still fragile and that powerful leaders could and would abuse their power.[182] The *pacto* and the voters' reluctance to break with parties will not facilitate the implementation of necessary policies to complement DR-CAFTA.

[182] Close. "Undoing Democracy." 7, 8.

## IV. Conclusions

Nicaragua launched DR-CAFTA on 1 April 2006 along with Honduras. The current political conditions are such that the processes of economic integration will not be able to capitalize fully on the promises of DR-CAFTA, and Nicaragua's "losers" will probably see more desperate times coming. The gap between the ideal state that could implement policies to support this integration and the actual state of Nicaragua's political institutions is an important consideration and one that must not be overlooked or underestimated.

According to the new *Virtuous and Vicious Circles* study by the World Bank, Nicaragua needs programs that will spark economic growth more than it needs policies to redistribute income. The significance of this finding is tremendous: Nicaragua can grow its "pie" without reducing the size of the pieces of the elite. The study recommends unthreatening changes to move the country forward for those policymakers who are willing to take the first step. Policies responding to the opportunities presented by the changing economic situation should reflect this possibility to seize the opportunity, but unfortunately, until the political system improves, policies are likely to be overly politicized and short-sighted.

The international community has a role to play in moving Nicaragua forward. Nicaragua qualified for HIPC debt relief and will participate in the US Millennium Challenge Account initiative, but there is room for smaller scale investment projects within the country. The US Overseas Private Investment Corporation (OPIC) is working hard to promote the interest of US small and medium enterprises in Nicaragua; their local counterpart, ProNicaragua, is also working hard to develop industries in several sectors. These activities are very good for the country as a whole, but they will be even better if conditions are such that small and medium enterprises in Nicaragua are able to participate in the flurry of investment and

growth; the government should work diligently to reduce the size of the informal sector and bring successful informal businesses into the formal sector. The possibility to do this exists in the DR-CAFTA framework, but governments must support local entrepreneurial spirit to seize these kinds of benefits. An educated workforce with more than basic problem-solving skills will facilitate this; a good, dynamic, flexible financial system and non-distortionary entry-to-market regulations are also very important in this process. The international community has increasing interest in finance and small businesses, so the Nicaraguan government should increase its attention to these possibilities.

Another important step for Nicaragua in the short- and long-term is to weaken the *pacto* and to bring the government under the control of the Nicaraguan voters. Presumably for the wrong reasons, Ortega has broken the *pacto* but as yet little has been done to undo the damage done to the Constitution and to the structure of government agencies. Voters affiliated with the FSLN and the PLC need to awaken from their political slumber and vote for individual candidates, not parties, and especially not for party mythology. Since the *pacto* was created by the two *caudillos,* most members of the parties and even the lower leadership have no loyalty to the *pacto* itself. Modernizing the FSLN and the PLC through internal primaries and increased space for dissent and real debate will help free Nicaragua from the grasp of Ortega and Alemán. Nicaraguan voters are the best placed actors for this step: Nicaragua has survived generations of foreign meddling with its political and economic situation, and more external meddling with the *pacto* will only further entrench those who claim they are defending the country from Yankee imperialism. Ironically, the activities of the *pacto* work to decentralize the government of the country; the changes themselves may strengthen and consolidate democratic reforms in the country despite their inauspicious beginnings. Provided the *pacto* releases the government institutions that it currently holds captive, Nicaragua may actually gain from the reforms.

Nicaraguan voters are very politically aware, and many are very frustrated by the lack of good times under democracy since 1990. Their so-called democratic government, wrapped up in its own irresponsible behavior, fails to address some of their most urgent issues like poverty and violence. Voters have little or no say over the national discussion, and even though there was some consensus on the non-ratification of DR-CAFTA, the voters' voice was forgotten as soon as Ortega's motivations changed. Alemán, through his stranglehold on the PLC, controls the issues that come before the National Assembly. The *pacto* has split political leaders into two groups: those who appear willing to make concessions for the good of the country and those who remain determined to enrich themselves through the power of the government. These two camps have shown themselves unwilling to cooperate for the good of the country as a whole, and it is unlikely that Nicaragua's voters will get any support from their government until they can break through this divide. Voters need education; they need support in basic human services; and they need to expect better from their governing officials. The international community can play a small supporting role in this, but most of the initiative must come from within Nicaragua. Ortega and Alemán may do enough damage that voters tire of their behavior on their own accord, but an information campaign run by political dissenters like Sergio Ramírez, José Alvarado, and Joaquín Cuadra Lacayo, all of whom have suffered at the hands of their political parties, could help voters understand that Nicaragua is not a real democracy and that they should demand more.

For Nicaragua to capitalize on the opportunities presented by DR-CAFTA, these three points and several others as well must be considered. The country is very weak in the international system, and its bitter internal divisions further diminish its status. Unless the *pacto* is weakened and internal growth is supported by lasting and targeted investments, Nicaraguan voters will be further delayed in bringing their government under their control. As the situation

is now, Nicaragua's corrupt and weak political institutions will not attract long-term and good investment, and the country will fail to improve its human capital to make positive changes in the long-term. Economic integration will bring benefits to the country and to the region, but the transition would be smoother and more lucrative with a better state to support it for the people of Nicaragua.

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