

Losing Their Way: Fifteen Years of Post-Revolutionary Democracy in Nicaragua

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Introduction

Nicaragua has been plagued by many of Latin America's worst ills, including a colonial legacy of high inequality and a marginalized underclass, frequent natural disasters, and leaders who have exploited political power in order to consolidate their rule and to enrich themselves at the expense of the impoverished majority. The *Sandinista* revolution succeeded in overthrowing the decades-old dictatorship of the Somoza family in 1979, leading to radical political change but also a costly civil war with the United States-backed *contra* resistance. Peace between the *Sandinistas* and the *contras* in 1987 and the subsequent handover of power from the *Sandinistas* to the opposition, led by Violeta Barrios de Chamorro, as the result of electoral defeat in 1990 marked the true beginning of the democratic transition in Nicaragua. Many observers celebrated this transition to democracy as a sign that Nicaragua would leave behind its authoritarian past and continue down the path to consolidated democracy. The case of Nicaragua, however, demonstrates that the road to consolidated democracy is filled with potholes. Presented with the opportunity to establish credible and lasting democratic institutions, Nicaragua's political elites have instead chosen to undermine these institutions in order to maintain their own hold on power and to reduce their accountability to the electorate.

This study examines the dynamics of post-Chamorro democracy in Nicaragua and reaches a pessimistic conclusion concerning the

current state of Nicaraguan democracy. Nicaragua's two most powerful political actors, former President Arnoldo Alemán and *Sandinista* leader Daniel Ortega, have rejected opportunities to deepen democracy and instead opted to maintain their personal *caudillo* strength. After discussing the ideal model of a democratic presidential system and how such a system can be manipulated to weaken democracy, this study analyzes Alemán's use of the presidency to consolidate his personal power and the subsequent political consequences for the current Bolaños presidency, which has been characterized by an institutional crisis between the legislature and the executive that has required intense international pressure to reconcile. Finally, after considering the institutional factors underlying Nicaraguan democracy's poor performance, this study proposes reforms that, if implemented, could begin to reverse the damage done during the Alemán years and help Nicaragua return to the path to consolidated democracy.

Ideal Presidentialism and Deviations from this Ideal

Nicaraguan government takes the form of a presidential system, meaning that the legislature and the president are elected separately and survive independently of each other. In a presidential system, the relations between the executive and the legislature are characterized by horizontal exchange, such that policy is the product of a transaction between the two branches and neither branch is

institutionally accountable to the other.¹ The third branch of government, the judiciary, adds another institutional check, as its authority of judicial review to overturn legislative acts adds another institutional actor to the process of horizontal exchange. While the composition of the courts is frequently the product of a transaction between the legislature and the executive, courts are independent as long as they are not accountable to these other institutions, meaning that the executive and legislature only have *ex ante* control over the composition of the courts but no *ex post* control over their decisions or the ability to sanction the courts for these decisions.²

In order for democracy to function, however, both the executive and legislature must be vertically accountable to the electorate; that is, the principal (the electorate) delegates authority to the executive and legislature via elections and is able to hold its agents (elected representatives) accountable during future elections. The nature of the political party system is crucial for the ability of the electorate to hold the legislature accountable and also to ensure that horizontal exchange within government functions as designed so that policy is indeed the product of a transaction between the legislature and the executive. In cases where political parties are highly centralized, internally undemocratic, and present the voters with closed party lists, vertical accountability between voters and elected representatives breaks down. In contrast, if excessively weak political parties give legislators little incentive to commit to a party and its policy priorities, individual legislators may show little interest in policy-making and delegate this responsibility to the executive in exchange for patronage, signifying

a failure of horizontal policy-based transactions.³

In cases where either vertical accountability or horizontal exchanges deviate from this ideal, a country's quality of democracy suffers. Thus, it is important to note that the mere presence of these institutions does not guarantee a functioning democracy. Indeed, a country may be able to maintain the presence of elections, opposition political parties, and an identifiable legislature and judiciary and yet still suffer a deficit of both vertical accountability and horizontal exchange if voters' electoral choices are limited, opposition parties find themselves disadvantaged by electoral rules, and one branch of government manages to consolidate its power over the other branches so as to ensure the adoption of its policy choices. Close calls the case of a country that experiences an erosion of its democratic institutions a "democratic decomposition."⁴ While the spread of constitutional democracy in Latin America is incompatible with traditional dictatorial rule, as free elections have been the only acceptable route to power, the advent of democracy does not necessarily signify the death of personal rule. Whereas a democratic consolidation institutionalizes democratic rules and procedures, a democratic decomposition returns them to the status of instruments to be kept or discarded depending on their usefulness to the powerful.

A traditional form of government in Latin America has been *caudillismo*, or government by a single leader, "driven by personal ambitions and with little interest in building institutions besides his own

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¹ Moreno, Erika, Brian F. Crisp, and Matthew S. Shugart. 2003. "The Accountability Deficit in Latin America." In Scott Mainwaring and Christopher Welna, eds., *Democratic Accountability in Latin America*. Oxford: Oxford University Press.

² Moreno, Crisp, and Shugart, 2003

³ Moreno, Crisp, and Shugart, 2003

⁴ Close, David. 2004a. "Undoing Democracy in Nicaragua." In David Close and Kalowatie Deonandan, eds., *Undoing Democracy: The Politics of Electoral Caudillismo*. Lanham, Maryland: Lexington Books.

perpetuation in power.”⁵ Indeed, in cultures in which citizens are attuned to clientelistic politics, in that a large part of a population is dependent upon government handouts and political parties are only concerned with winning office and its benefits, strongmen can adapt their strategies to an “electoral *caudillismo*,” which differs from traditional *caudillismo* in that elections are the only legitimate source of power yet is not fully democratic because citizen participation is limited to elections, elite interests dominate, and serious reform is excluded from the political agenda.⁶ When political elites are able to manipulate institutions to erode horizontal exchange and weaken the electorate’s ability to hold the government accountable, a *caudillo* is able to consolidate power and rule largely unchecked, even within the trappings of a democratic system of government.

Alemán’s Weakening of Democracy in Nicaragua

Arnoldo Alemán, born in 1946 to a family with traditional ties to Somoza politics, built a reputation as one of Nicaragua’s top lawyers while remaining loyal to the Somoza regime. Imprisoned by the *Sandinistas* for nine months in 1980 for conspiring with counter-revolutionaries, Alemán developed a rabid dislike for the *Sandinistas* and used his subsequent presidency of the national association of coffee producers to actively oppose government control of revenue generated by the coffee trade during the years of *Sandinista* government.⁷ Alemán won the mayoralty of Managua in 1990 as a member of the PLC (*Partido Liberal Constitucionalista*), a splinter group from Somoza’s old PLN (*Partido Liberal Nacional*). As mayor of Managua, Alemán used the resources of the mayor’s office, public works projects, and populist

gestures to expand the PLC as a national organization loyal to him. His national profile as mayor of Managua and strengthened grassroots organizations vaulted Alemán to the presidency in 1996 elections, in which he defeated Daniel Ortega 51% to 37.8%.⁸ Alemán’s PLC won a plurality in the unicameral legislature, winning 42 of 93 seats to the FSLN’s (*Frente Sandinista de Liberación Nacional*) 37 seats.⁹ Given his unquestioned position as the leader of the PLC party and its centralized control over nominations and lack of internal democratic processes, Alemán could count upon the legislative support of his party. With twelve reliable votes from other parties, Alemán was assured a majority and was only two votes short of the number required to amend the Constitution. Alemán used his strong control over the National Assembly to rule largely unchecked by the legislature, as he steamrolled legislation on “issues that would normally have involved some sort of national discussion.”¹⁰

In 1998, however, Alemán’s non-PLC allies began to waver, leaving him with an unreliable majority in the National Assembly. With his majority in the legislature threatened, Alemán found himself unable to push his agenda, since the FSLN remained recalcitrant and refused to negotiate compromises over Alemán’s legislation. Alemán had also become increasingly threatened by charges of corruption brought by Comptroller General Agustín Jarquín, whose authority had been increased by amendments to the Nicaraguan Constitution in 1995.¹¹ Jarquín released a report in 1999 detailing Alemán’s accumulation of wealth

⁵ Close, David. 2004a. p.4

⁶ Close, David. 2004a.

⁷ “Embattled former president fends off corruption charges.” 20 August 2002. Caribbean and Central America Report. <http://www.latinnews.com>

⁸ Anderson, Leslie and Lawrence C. Dodd. 2002. “Nicaragua Votes: The Elections of 2001.” *Journal of Democracy* 13: 80-94.

⁹ Adam Carr’s Election Archive. Nicaragua Section. 2002. Accessed 29 May 2005. <http://psephos.adam-carr.net/countries/n/nicaragua/>

¹⁰ Hoyt, Katherine. 2004. “Parties and Pacts in Contemporary Nicaragua.” In David Close and Kalowatie Deonandan, eds., *Undoing Democracy: The Politics of Electoral Caudillismo*. Lanham, Maryland: Lexington Books. p. 28.

¹¹ Hoyt. 2004.

during his public service from \$26,118 in 1990 to close to one million dollars in January 1997 and asserted that Alemán had acquired numerous properties and bank accounts while holding public office and continued to use public funds and workers to make improvements to his personal properties.¹² While Alemán managed to throw Jarquín in jail on trumped-up charges, he knew that he needed to devise a political solution to place himself beyond the reach of the law.

Alemán's eventual political solution to protect himself from prosecution involved an unlikely political pact with the FSLN designed to both maintain the PLC and FSLN's grip on power and place their leaders beyond possible legal recourse for their abuses of power (hereafter referred to as "the Pact"). The Pact politicized the Office of the Comptroller General by expanding its membership from one to five officials of equal rank, thus depriving Jarquín of his ability to single-handedly pursue corrupt officials. In order to further protect Alemán (and Ortega, who had faced accusations of sexual abuse from his stepdaughter), the Pact gave automatic lifetime seats in the National Assembly to outgoing presidents and vice presidents and required a two-thirds vote of the National Assembly to strip a sitting president of his immunity. The Pact also gave the PLC and FSLN increased leverage over the judiciary and the Supreme Electoral Council (CSE) by increasing the number of Supreme Court justices from twelve to sixteen and the number of magistrates on the CSE from five to seven. In addition, the Pact changed electoral laws in order to make the rise of a third party to challenge the PLC and FSLN extremely difficult. Parties that created an electoral alliance would lose their own legal status if the alliance did not win a certain percentage of votes, and legal standing would only be granted to a party that presented a list of signatures equivalent to at least three percent of the last electoral roll, while petition candidates would no

longer be allowed in local city government elections.¹³

Though Alemán and Ortega defended the Pact as essential in the search for "points of convergence" and the prevention of the proliferation of unrepresentative microparties and the possibility of civil war between the PLC and FSLN, it is obvious that the Pact was designed to preserve the hold that the two *caudillos*, Alemán and Ortega, have on power in Nicaragua through institutional and electoral manipulation meant to retain the PLC and FSLN's dominance. The incorporation of the necessity of a two-thirds majority to strip a president of his immunity can be interpreted as a device to protect the corrupt, while the changes made to the judiciary and electoral body were meant to politicize these bodies and weaken their independence. Indeed, the provisions implemented in the Pact were successful in forcing Jarquín's resignation from the comptroller general's office and terminating (at least temporarily) the drive to expose and prosecute Alemán's abuses of power. The newly-expanded and politicized CSE applied its rules selectively and managed to reduce the number of political parties competing in the municipal elections from twenty in 1996 to merely four in 2000.¹⁴

Alemán and Ortega's Pact represents a troubling political device. Political pacts are not a new phenomenon in Nicaragua, as the Somoza governments frequently used political pacts with the opposition to secure support for the existing regime in exchange for certain limited benefits.¹⁵ Of course, political parties in mature democracies frequently enter into alliances with other parties with the purpose of forming a coalition through which to negotiate and implement policy. The PLC-FSLN Pact, however, involved no such provisions to negotiate policy and was merely a vehicle for subverting horizontal exchange and reducing the ability of the electorate to hold its government accountable. By politicizing the judiciary, the

¹² Hoyt. 2004.

¹³ Hoyt. 2004.

¹⁴ Hoyt. 2004.

¹⁵ Hoyt. 2004.

Pact has limited the judiciary's ability to engage in horizontal exchange with the executive and legislature as an independent actor and, in erecting barriers to political entry for parties other than the PLC and FSLN, limits the electoral choices available to the electorate and thus reduces vertical accountability. While Alemán's presidency did not destroy democracy in Nicaragua, Alemán and Ortega clearly colluded to *weaken* democratic institutions.

Nicaragua under Bolaños

A 1995 amendment to the Nicaraguan Constitution mandates that presidents cannot be immediately re-elected and must cede the office for one interim term, and since Alemán could not get the FSLN to concede immediate presidential re-election as part of the Pact, he could not stand for re-election in 2001. He did not, however, intend to lose his grip on power. Indeed, Alemán intended to use his seat in the National Assembly provided by the Pact to continue to dominate Nicaraguan politics. In order to maintain his powerful national profile, Alemán needed to maintain his position as the PLC party leader, win a partisan majority in the National Assembly that he would head, and ensure the election of a loyal PLC president. Due to undemocratic internal party politics, Alemán was able to choose the PLC candidate to face Daniel Ortega in the 2001 elections. At the end of his term, Alemán's blatant corruption and lack of respect for governmental institutions had earned him much public scorn. Thus, he had to choose a successor who could credibly claim to be independent but who would also not question Alemán's position as party leader. The party finally decided upon Enrique Bolaños, Alemán's vice president and a conservative businessman with a reputation for personal probity yet lackluster political skills. Alemán evidently believed that Bolaños' lack of interest in internal party organization and patronage would allow

the former president to maintain control over the party and thus the workings of government.¹⁶

Alemán's PLC was indeed successful in the 2001 elections, winning a majority in the National Assembly for the first time, capturing 48 of 90 seats, while the FSLN won 41.¹⁷ Despite Daniel Ortega's effort to soften his hard-line image by speaking of "peace and love" and displaying colors such as pink instead of the traditional red and black of the FSLN, Nicaraguans again rejected Ortega, this time in favor of Bolaños, who won 56.3% of the vote compared to Ortega's 42.3%.¹⁸ With a legislative majority and his presidential candidate successful, Alemán planned to use his legislative seat to rule from the National Assembly. An electoral *caudillo* such as Alemán needed, of course, "a stage on which to perform," so Alemán used his power as head of the majority party to get himself elected as speaker of the Assembly.¹⁹ With his handpicked successor in the president's office and his party in control over the legislature, Alemán appeared to have succeeded in undermining horizontal exchange and retaining his grip on political power.

Bolaños, however, took his campaign promises to fight corruption in government seriously and proved to be beyond Alemán's control.²⁰ When Bolaños introduced probity legislation, Alemán used his influence as

¹⁶ Close, David. 2004b. "President Bolaños Runs a Reverse, or How Arnoldo Alemán Wound Up in Prison." In David Close and Kalowatie Deonandan, eds., *Undoing Democracy: The Politics of Electoral Caudillismo*. Lanham, Maryland: Lexington Books.

¹⁷ Carr. 2005. One part of amnesty legislation is based upon the bizarre argument that money laundering is only a prosecutable offense if associated with drug trafficking (see "Liberals make bid" 2004).

¹⁸ Dye, David R. and Shelley A. McConnell. 2002. "Observing the 2001 Nicaraguan Elections." Report Published by the Carter Center.

<http://www.cartercenter.org>

¹⁹ Close. 2004b, p. 170

²⁰ Alemán evidently underestimated the institutional independence of the presidency from the National Assembly that a presidential system affords.

speaker of the Assembly to delay consideration of the legislation and attempted to amend the measure to protect himself from corruption charges. To put Bolaños in a tight spot and strengthen his own populist appeal, Alemán attempted to block Bolaños' efforts to reign in spending on social programs. If Bolaños were to fight for the cuts, he would have lost popularity with the public, but if he were to let Alemán have his way, he would have risked much needed debt relief from the IMF.²¹

Once Bolaños' intentions to prosecute Alemán and his associates on corruption charges became clear early in 2002, the PLC, loyal to Alemán and not to Bolaños, essentially declared war on its own president. Even though a judge ruled in March of 2002 that sufficient evidence existed to prosecute Alemán on charges of fraud and criminal association, the PLC refused to strip Alemán of his parliamentary immunity.

Only in December of 2002 did Bolaños, aided by a deft political maneuver in which the pro-Bolaños president of the Assembly suspended an Alemán supporter for absenteeism and drafted a pro-Bolaños representative in his stead, gain the votes needed in the PLC to combine with the FSLN to strip Alemán of his immunity and place him under house arrest.²² As a result, the PLC threatened to throw Bolaños out of the party and formally declared itself to be in opposition to the President, leaving Bolaños with only the few votes from his *Azul y Blanco (Bolañista)* faction of the PLC and an ad hoc alliance with the FSLN against the PLC.

Despite questions as to the independence of the judiciary, in December of 2003, Judge Juana Méndez found Alemán guilty

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of money-laundering, fraud, diversion of public funds (between \$10 and \$100 million), embezzlement, criminal conspiracy, and breach of electoral legislation²³ and sentenced him to twenty years in prison and revoked his civic rights.²⁴ Alemán's supporters, however, by no means took this sentence to be final. Indeed, the *Arnoldista* faction of the PLC repeatedly attempted to secure FSLN support for amnesty legislation²⁵ that would have released Alemán from prison, presumably in exchange for a resolving the long-standing FSLN corruption scandal, in which the outgoing *Sandinista* government of 1990 distributed state-owned properties to party leaders, the so-called *piñata*.²⁶

In July of 2005, Judge Roxana Zapata lifted Alemán's house arrest and ruled that he should serve the rest of his sentence on probation due to health problems. Days later, however, an appeals court, stacked with FSLN judges, overruled this decision,

citing the judge's lack of qualification to make this ruling²⁷. On August 30, 2005, the Supreme Court of Justice (CSJ) upheld the earlier ruling, allowing Alemán to be released on health grounds and permitting his participation in politics. The CSJ, incidentally, is controlled by PLC justices. Bolaños responded to this ruling by ordering the prison service not to permit

²¹ Close. 2004b.

²² "Alemán finally stripped of his immunity." 21 January 2003. Caribbean and Central America Report. <http://www.latinnews.com>

²³ One part of amnesty legislation is based upon the bizarre argument that money laundering is only a prosecutable offense if associated with drug trafficking (see "Liberals make bid" 2004).

²⁴ "Confounding all, Alemán is convicted." 9 December 2003. Latin America Weekly Report. <http://www.latinnews.com>

²⁵ "Pro-Alemán Liberals seek sweeping amnesty." 17 February 2004. Latin America Weekly Report. <http://www.latinnews.com>

²⁷ "Party-appointed judges fight over Aleman." 2 August 2005. Latin American Weekly Report. <http://www.latinnews.com>

Alemán to leave his estate²⁸. While it remains to be seen how this battle will eventually end, the politicization of the judiciary practically ensures that the courts will continue to battle over Alemán's fate.

The subsequent result of Bolaños' campaign to hold Alemán accountable for his abuse of power was extreme legislative gridlock bordering on institutional instability. Only able to depend on the legislative support of his few *Bolañistas*, the president received the support of the FSLN only to prevent the PLC from approving legislation protecting Alemán. As a result, Bolaños' package of legislation, which includes measures to depoliticize the judiciary, ban presidential re-election, give the electoral authority more autonomy, and resolve conflicting past legislation regarding property expropriations and disbursements, has remained essentially dead-on-arrival in the National Assembly.

Because neither the FSLN nor the *Arnoldista* PLC faction (which no longer holds a majority due to the defection of the *Bolañistas*) controls the votes to override a presidential veto, the FSLN and PLC reacted to Bolaños' intransigence by pursuing various schemes to either force Bolaños out of office or to shift the balance of power in the favor of the legislature. In October of 2004, the politicized (as a result of the Pact) Comptroller General Office fined Bolaños and asked the legislature to remove him from office for refusing to answer questions about the origin of some campaign funds. Bolaños questioned the validity of these charges, stating that he had answered all questions but merely had perhaps "not said what they wanted to hear."²⁹ Since the PLC and the FSLN together commanded the two-thirds vote necessary to remove the President from office, the threat of a "constitutional coup" on trumped-

up charges seemed very real. When the Organization of American States (OAS) objected, however, Daniel Ortega agreed to shelve impeachment proceedings until after the November 2004 municipal elections. The National Assembly subsequently threatened to strip Bolaños of his immunity throughout the summer of 2005 and did eventually remove the immunity of several of his ministers.

The Assembly's next act in the war against Bolaños was a constitutional amendment backed by both the PLC and FSLN to shift the legislative balance of power in favor of the Assembly. This amendment includes provisions to check the power of the executive, specifically the transfer of certain appointment powers from the president to the Assembly.³⁰ The Assembly gave final approval to these reforms in January of 2005, but the Central American Court of Justice (CCJ) declared these reforms null and void in April of 2005, reasoning that the reforms could have been made only by a duly-elected constituent assembly. Nicaragua's Supreme Court (CSJ), however, issued its own ruling on the same day, validating the constitutional reforms.³¹

Since Bolaños of course preferred the CCJ ruling and the legislature favored the CSJ ruling, institutional chaos prevailed throughout the summer of 2005. When the National Assembly used its new authority, as granted by these constitutional reforms, to appoint new heads of the public utilities, Bolaños called on the police to block the entrances to these buildings to prevent the new appointees from assuming their posts. This confrontation between Bolaños and the National Assembly continued throughout 2005 until October, when Bolaños and Ortega unexpectedly reached an agreement to end the crisis. On October 19, 2005, the National Assembly approved a

²⁸ "Bolanos gets international shield against ouster but internal confrontation remains just as acute." 6 September 2005. Latin American Weekly Report. <http://www.latinnews.com>

²⁹ "Constitutional coup in the making?" 12 October 2004. Latin America Weekly Report. <http://www.latinnews.com>

³⁰ "Assembly now targets presidential powers." 16 November 2004. Latin America Weekly Report. <http://www.latinnews.com>

³¹ "Government splits over contrasting judicial rulings." April 2005. Caribbean and Central America Report. <http://www.latinnews.com>

“framework law” holding in abeyance the constitutional reforms that strip the presidency of some of its powers until after January 2007 (the end of Bolaños’ mandate).

While the OAS attempted to intervene in Nicaragua throughout the crisis, this resolution was reached only after United States Deputy Secretary of State Robert Zoellick traveled to Nicaragua and threatened to end foreign aid if the PLC and FSLN were to continue their political pact and continue to threaten the Bolaños presidency. Thus, the Pact between Ortega and Alemán appears to be dead for the time being. The United States government continues to monitor the situation closely and has threatened to cut Nicaragua out of the Millennium Challenge Account should there be any post-deal attempts to weaken or remove Bolaños³². Though the institutional crisis seems to have been averted for the moment, the problems underlying Nicaragua’s weak democracy remain and must be addressed.

Diagnosis of Nicaragua’s Democratic Deficit

While democracy has not been destroyed in Nicaragua, the consolidation of power in the hands of the *caudillos* Ortega and Alemán that occurred during the Alemán administration and the subsequent institutional crisis that resulted from Bolaños’ campaign to punish Alemán’s transgressions and enhance governmental accountability illustrate the dire state of Nicaraguan democracy. Voters presented with closed party lists that are not democratically determined and that are essentially limited to the two main parties are not easily able to translate their political will into a programmatic governmental mandate. A politicized judiciary cannot participate in horizontal exchange as an independent actor, and a politicized electoral council cannot credibly oversee the electoral process.

³² “Ortega blindsides the PLC--and the US.” 18 October 2005. Latin American Weekly Report. <http://www.latinnews.com>

Though the provisions of the pact between the PLC and the FSLN significantly weakened Nicaraguan democracy, Nicaraguan institutions were already flawed before this agreement. Moreno, Crisp, and Shugart cite a deficit in vertical accountability as one of the fundamental flaws of Latin American democracies in general, since a lack of vertical accountability results in legislators’ failure to advance the broad interests of the electorate.³³ The nomination process is the first stage at which the electoral system fails to promote vertical accountability in Nicaragua. Internal party politics remain undemocratic such that party bosses rather than the rank-and-file members of each political party choose candidates.

If constituents cannot choose their nominees, legislators will feel little need to serve a particular constituency and will instead remain loyal only to the party bosses. Navarro studies the dynamics of legislative representation in Nicaragua and finds that undemocratic internal party politics produces representatives that have little ties to their constituent departments, such that many candidates are largely unknown to their constituencies and once in office, legislators rarely, if ever, introduce their own legislation *at all*, much less introduce legislation specifically aimed to benefit their constituent departments and their policy needs.³⁴ As a result of the over-centralization of the party nomination process, legislators are responsive to party elites, such as Arnoldo Alemán and Daniel Ortega, rather than to the electorate.

This problem of an over-centralized party nomination process also extends to presidential candidates. Daniel Ortega continues to rule the FSLN with an iron fist, banishing from the party’s leadership anyone who does not support his agenda or his unquestioned role as the party leader. Indeed, though voters first rejected Ortega in 1990, he continued to monopolize the party’s nomination for the

³³ Moreno, Crisp and Shugart. 2003.

³⁴ Navarro, Karlos. 2004. ¿A quienes representan y para quienes legislan los diputados? Crisis de Representatividad en la Asamblea Nacional. Managua: Imprimatur.

presidency in the subsequent elections of 1996 and 2001, losing each time. A poll published in October of 2004 revealed that an overwhelming majority of Nicaraguans (79.9%) see Ortega as an obstacle to democracy and think that he should retire from active politics.³⁵ Former Managua mayor Herty Lewites has attempted to challenge Ortega's grip on the FSLN by seeking the *Sandinista* nomination for the 2006 presidential elections. Though Lewites is Nicaragua's most popular politician and a March 2005 poll revealed that 59% of respondents favored Lewites compared to 31% for Ortega, Ortega used a party convention on February 26, 2005 both to expel Lewites from the party for "abandoning anti-imperialist principles and jeopardizing party unity" and to secure his own nomination for the presidency.³⁶ While Lewites contends that the 400,000 members of the party should decide the nomination, he has been forced to explore a candidacy with a third party due to Ortega's opposition. Similarly, despite the fact that over 85% of Nicaraguans wish that Alemán would retire from politics, an imprisoned Alemán still controls the PLC machinery and opposes the nomination of Bolaños' chief of staff Eduardo Montealegre due to his allegiance to Bolaños.³⁷ Thus, the continued strength of the *caudillos* in internal party politics has continued to prevent the PLC and FSLN from fielding the presidential candidates that the public appears to prefer.

The general electoral system also places limits on vertical accountability. The provisions of the Pact that grant legal standing only to parties that present a list of signatures equivalent to at least three percent of the last electoral role, mandate that parties that create electoral alliances lose their own legal status if the alliance does not win a certain percentage of the

votes, and that limit the participation of petition candidates all contribute to the limitation of voter choice and the creation of an artificial political duopoly. While certain electoral systems such as first-past-the-post with single member districts naturally tend to create a two-party system, Nicaragua's political duopoly is more the result of the provisions in the Pact to erect barriers to electoral competition than the electoral system itself. Nicaragua's electoral system, with 70 deputies elected in individual departments, and 20 deputies elected in one national district, both by proportional representation, naturally tends to give representation to several smaller parties, as evidenced by the 1996 elections. The electoral reforms in the Pact, however, produced an artificial duopoly of political power in the National Assembly. The fact that each political party presents voters with a closed list of candidates, the composition of which the party leaders choose and rank order themselves, undermines vertical accountability. Faced with an inability to determine the identities of the party nominees and closed-list ballots that permit no rank ordering or substitution and an artificially manufactured political duopoly, Nicaraguan voters' ability to hold their elected representatives accountable is limited. As a result, elected representatives feel a need to legislate to please their party bosses rather than the citizens whom they were elected to represent.

Nicaraguan political institutions are also lacking in terms of horizontal exchange, especially as a result of the provisions of the Pact between the PLC and the FSLN. Increasing the number of Supreme Court justices from twelve to sixteen gave the PLC and FSLN the opportunity to appoint new justices loyal to the parties, thus decreasing the institution's independence. Instead of voting on each individual appointment, the PLC and FSLN fill judicial positions in a "logroll" style, appointing several justices in the same legislative act and making judicial appointments political "share-outs." According to constitutional experts, appointments should be voted on individually, not in block, yet seeking a ruling of unconstitutionality would be pointless, since the

³⁵ "Public wants Alemán and Ortega to retire." 5 October 2004. Latin America Weekly Report. <http://www.latinnews.com>

³⁶ "Lewites goes from strength to strength." March 2005. Latin America Weekly Report. <http://www.latinnews.com>

³⁷ "Caudillos face challenge to political leadership." January 2005. Caribbean and Central America Report. <http://www.latinnews.com>

case would be heard by the same court whose legitimacy were being questioned.³⁸ The legislature has also ignored a law stipulating that the nomination of Supreme Court justices should come from a special commission of magistrates. It is also important to note that judicial legal careers are not based on merit but are the product of political appointments. Since the judiciary in a presidential system is supposed to act as a check on the legislative power of the president and legislature by assuring adherence to the principles of the constitution, a politicized judiciary that lacks institutional independence will fail to act as an agent of horizontal exchange.

In addition, the politicization of the electoral council (CSE) has resulted in its failure to credibly oversee free and fair elections. Without a substantive degree of independence from political parties, the CSE has been accused of selectively applying the laws of the Pact in determining which political parties are legally able to present candidates for election. The partisan nature of the CSE tends to “inject political considerations into decisions that should be neutrally considered and leads to poor management and excess complexity.”³⁹ The resulting general lack of confidence in the electoral system to prevent fraud serves to undermine citizens’ faith in the ability of political institutions to channel the manifestation of the popular will.

Finally, the provisions of the Pact that strengthened Alemán’s ability to continue to exercise political power outside of the presidency are extremely disturbing. The automatic provision of a legislative seat and immunity for such an unpopular former president undermined Nicaraguan voters’ and the judiciary’s ability to hold Alemán accountable for his abuses of power. As the

If citizens are to truly participate in deciding their country’s policies, the electoral system must be reformed, beginning with the internal processes within each political party.

unquestioned leader of his political party, the automatic transfer of Alemán into the legislature, combined with the change in electoral law to allow presidents to be re-elected after one interim term, gave Alemán both the tools and the incentives with which to undermine Bolaños’ presidency with the intent of making an electoral comeback. Indeed, Carey claims that these perverse incentives generated by “punctuated eligibility suggest that if presidents are to be barred from reelection at all...they should be barred permanently.”⁴⁰ Alemán’s ambitions provide an excellent illustration of Carey’s reasoning.

Recommendations and Conclusions

Though politicized, Nicaragua remains a democracy, as elections are the only legitimate source of political power. Despite their limited political choices and their general lack of ability to truly hold their leaders accountable, Nicaraguans exercise their voting rights in high numbers, as evidenced by the 89% turnout rate for the 2001 presidential and legislative elections.⁴¹ Institutional reforms are necessary to reverse the undemocratic trend of the Alemán years, resolve the gridlock and frequent crises in executive-legislative relations, and return Nicaragua to the path to consolidated democracy.

The electoral system should provide the electorate with the ability to delegate political authority to its chosen agents and hold previous agents accountable for their policies, yet Nicaraguan electoral institutions are clearly lacking in this regard. If citizens are to truly participate in deciding their country’s policies, the electoral system must be

³⁸ “How they plan to spring Arnaldo Alemán.” 8 July 2003. Latin America Weekly Report. <http://www.latinnews.com>

³⁹ Dye and McConnell 2002, p. 29.

⁴⁰ Carey, John M. 2003. “The Reelection Debate in Latin America.” *Latin American Politics and Society* 45: 119-133. p. 129.

⁴¹ Anderson and Dodd. 2002.

reformed, beginning with the internal processes within each political party.

Party members must be allowed to play a larger role in deciding who will stand for electoral office. Without internally democratic processes, candidates have little incentive to respond to the programmatic goals of the grassroots organizations. The fact that the vast majority of the electorate has grown tired with Ortega and Alemán and desires new political leaders yet the FSLN and PLC refuse to respond to such strong public opinion clearly presents trouble for democracy. Unfortunately, given Ortega and Alemán's strong hold on internal party power, the rise of new political leaders looks unlikely in the near term and may not occur until the deaths (or other form of "political exit") of these leaders (though neither leader is advanced in age).

A closed-list electoral system only exacerbates the degree to which candidates remain loyal to party leaders rather than to the electorate. Though the introduction of a preference vote would increase the electorate's ability to hold representatives accountable, it would necessitate intra-party competition and increase the returns to clientelistic politics. An ideal electoral system would force candidates to remain responsive to both the party *and* constituents. The "mixed-member" system could achieve this balance, as some members would be elected in single-seat districts and some from party lists, and voters would be given both a list vote and a vote for a candidate in their district.⁴² This system generally gives political parties incentives to be responsive to local constituents but also to cultivate a party label with which to attract list votes. It would be crucial for this reform to occur in conjunction with internal party democratization. While electoral reform cannot transform an over-centralized party system into one that is responsive to voter preferences overnight, it can "shift the calculus of the candidates in the desired direction."⁴³ At the same time, the provisions of the Pact that increased the barriers

to electoral entry for political parties need to be repealed in order to give voters a wider variety of political options from which to choose and to give PLC and FSLN dissidents the ability to pursue elected office outside of these parties.

Political institutions such as the judiciary and the electoral council need to strengthen their independence from other governmental institutions and the political parties. Bolaños favors judicial reform that seeks to base judicial careers on professional competence rather than political affiliation. Appointments to the judiciary should be staggered and voted on individually to prevent political logrolling of nominations. Institutional independence is most afforded by allowing either a judicial council or group composed of civil society members to fill judicial posts.⁴⁴ Terms for members of the judiciary and the electoral council need to vastly exceed those of legislators in order to enhance institutional independence. Such reforms would constitute a worthy start in the transformation of the judicial system from one characterized by politicization to one characterized by professionalism.

Though the recent deal between Bolaños and Ortega means that the constitutional amendments that weaken the president's powers of political appointment will not apply until after Bolaños' term ends, these reforms still represent a blatant assault on the transactional nature of the policy-making process in a presidential system. Considering the institutional supports for a political duopoly and the continued strength of the *caudillos*, this development represents an attempt to marginalize the executive's ability to check the ambitions of the legislature. Presidentialism has frequently been criticized in Latin America due to frequent institutional imbalances in favor of the executive, but an imbalance in favor of the legislature instead of the executive would represent a different yet equally troubling phenomenon, since the *caudillos* are attempting to remake institutions to serve their short-term political goals.

⁴² Moreno, Crisp, and Shugart. 2003.

⁴³ Moreno, Crisp, and Shugart. 2003. p. 115.

⁴⁴ Moreno, Crisp, and Shugart. 2003.

While Bolaños' campaign against corruption and the politics of *caudillismo* should be applauded, it is unclear whether his efforts will successfully change Nicaragua's long-term political dynamics or whether he will face another institutional crisis before the end of his presidency. Bolaños scored an important victory by securing the imprisonment of Alemán yet has been unable to keep Ortega's FSLN and Alemán's PLC from manipulating political institutions for their own benefit. At the very least, Bolaños has shown that an independent presidency can prevent a non-elected *caudillo* such as Alemán from ruling the country from the legislature. While the recent political deal between Bolaños and Ortega has ended Nicaragua's near-term institutional crisis and possibly signals the end of the Pact between Alemán and Ortega, the long-run prospects for the quality of Nicaraguan democracy remain unclear. Only time will tell whether Bolaños has successfully restored Nicaragua's momentum on the road to consolidated democracy.