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The Nicaraguan Constitutional Experience

Process, Conflict, Contradictions, and Change*

Lee Demetrius Walker and Philip J. Williams

The early literature on democratic transitions in Latin America paid scant attention to institutions; later, as scholars began to focus on the issue of democratic consolidation, emphasis shifted from process to institutions including parties and party systems, electoral systems, and parliamentary versus presidential forms of government. However, although scholars of democratization in Latin America have studied the institutions and institutional frameworks that constitutions have created, they generally have neglected constitution-making environments and processes and their relation to democratic consolidation.¹ Scholars of democratic transitions in Eastern Europe have paid more attention to constitutions and democracy, but generally empha-

size institutional choice and the substance of the constitutions themselves.²

In their comparative discussion of different constitution-making contexts and formulas, Linz and Stepan lay out six different scenarios ranging from the most to least confining conditions for democratic consolidation. Two of the scenarios include cases from Latin America. Chile is an example of the most confining case, characterized by the “retention of a constitution created by a non-democratic regime with reserve domains and difficult amendment procedures.”³ Argentina and Uruguay, on the other hand, provide more favorable contexts, in which the previous democratic constitution was restored “for reasons of speed, conflict avoidance, and the desire to call upon some legacies of historical legitimacy.”⁴ Linz and Stepan argue that the most favorable formula for democratic consolidation (Spain fits this pattern) includes a democratically elected constituent assembly that freely deliberates and drafts a new constitution appropriate for democratic

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consolidation. Ideally, the constituent assembly “should avoid a partisan constitution approved only by a ‘temporary majority’ that leads a large minority to put constitutional revisions on the agenda, thereby making consolidation of democratic institutions more difficult.”⁵ Potentially divisive issues should be resolved through consensus, and the constitution should be approved by popular referendum to enhance its legitimacy.

Linz and Stepan’s emphasis on consensus recalls Przeworski’s argument that the crucial step in any transition to democracy is to establish an institutional compromise among the country’s principal political forces: Democracy “cannot be a result of a substantive compromise, but it can be a result of institutional compromise.”⁶ Groups enter into an institutional compromise as the most promising framework to achieve their interests. But institutional compromise is not always possible; in some cases of transition, not all the major political forces feel protected under democratic institutions. Groups on the right—either allied or opposed to the former authoritarian rulers—may be incapable of mobilizing support within civil society to defend their ideas and interests. Such historical conditions make institutional compromise difficult at best.

The Nicaraguan case does not fit neatly into any of the scenarios sketched out by Linz and Stepan. Moreover, the revolutionary nature of the Nicaraguan transition complicated the possibility of a Przeworskian institutional compromise. Unlike other transitions from authoritarian rule in Latin America, Nicaragua is the only recent example of a transition through armed struggle and the only case in which accommodating elite interests did not supercede the goals of social and economic democracy. Allies of the Anastasio Somoza Debayle dictatorship fled the country following the revolutionary takeover, while others on the right that participated in the antidictatorial movement were

in no position to challenge the Sandinistas’ leadership of the revolutionary government.

The constitutional process that followed the 1979 Nicaraguan revolution requires a somewhat different theoretical lens than the transition literature provides. McWhinney argues that “within an existing nation-state, a fundamental change in the existing social and economic base, effected by popular revolution or similar cataclysmic political event, usually means a corresponding change in the basic constitutional system and the postulation of a new legal starting point, or *Grundnorm*, as the basic premise of the new constitutional system.”⁷ In Nicaragua, the new legal starting point was the construction of a popular revolutionary democracy. For the Frente Sandinista de Liberación Nacional (FSLN) leadership, democracy consisted of more than simply contesting power through competitive elections; it meant transforming society, including fundamentally restructuring power and property relations as well as increasing popular participation in the country’s political, economic, social, and cultural affairs.⁸

Hyden refers to constitution making that starts with the defeat or collapse of the previous regime as the “replacement model.” The sponsors of the transition—in this case, the FSLN—“drawing on their rejection of past legacies, set very specific parameters for the direction of the constitution-making process.”⁹ The constitutional agenda is very much influenced by the precommitments that the victorious sponsors of the process have made. In Nicaragua, the FSLN rejected the historical legacy of pact making associated with previous constitutions. Any future constitution-making process would have to incorporate public input and produce a document that was relevant to ordinary citizens.

According to McWhinney, after the new legal starting point has been identified, “the primary and secondary principles of the resulting new legal order can be developed by a

process of logical deduction and application as the basic norm progressively unfolds or concretizes itself.¹⁰ That is to say, the basic norms become self-enforcing. McWhinney's logic is grounded in the notion that conflict has been resolved and the victorious group has the ability to search for consensus. In Nicaragua, conflict continued after the overthrow of the Somoza dictatorship, and the constitutional process was very much shaped by the context of an ongoing armed conflict. These conditions led to a more contradictory approach to constitution making than the replacement model suggests.¹¹

The difficulty in assigning the 1987 Nicaraguan constitutional process to any one constitution-making typology¹² makes it important to understand its uniqueness, for it is in this uniqueness that the origins of the 1995 and 2000 reforms can be understood. McWhinney argues that the post-World War II wave of constitution making brought several tendencies to the forefront, notably the idea of popular democracy. The leadership of the revolutionary government in Nicaragua was clearly influenced by the popular democracy model. Jules Lobel terms the FSLN version of popular democracy "participatory democracy" and argues that it required "three interrelated efforts":

First, it required developing structures and institutions such as the mass organizations, town hall meetings, and a broad-based militia which would encourage and permit popular participation in governmental affairs. Second, it involved dramatic social and economic restructuring of society and the guaranteeing of social, economic and cultural rights which would establish a socioeconomic base for popular democracy. Finally, the Nicaraguan government reconstituted key institutions such as the army and education system based explicitly on defending and extending the gains of the revolution.¹³

Even though the FSLN emerged as the dominant political force after the revolution and could have imposed a constitution

based on the popular democracy model, the nation's ongoing conflict required consideration of other views.¹⁴ External pressure from the United States and growing domestic opposition convinced the FSLN to make concessions during critical junctures. Between 1982 and 1984, the FSLN and other parties engaged in a series of negotiations to establish the ground rules for the 1984 elections. This process included both debate in the Council of State and bilateral talks between the FSLN and opposition parties. At several important points in the negotiations, the right-wing opposition alliance, *Coordinadora Democrática Nicaragüense* (CDN), withdrew from the council to force greater concessions from the FSLN. Although the FSLN did not incorporate all the CDN's demands, the resulting political parties law and electoral law contained responses to many of the opposition's key concerns.¹⁵

A second tendency in post-World War II constitution making is "revived" or 'modernized' classical Western constitutionalism.¹⁶ Concessions from advocates of the popular democracy approach primarily reflect this modernization tendency. Wilson argues that changes in revolutionary Nicaragua reflected modernization under the civil law model rather than "a wholesale conversion to the socialist model [McWhinney's popular democracy model]."¹⁷ The 1984 elections for a national constituent assembly represented a shift away from corporatist structures and toward formally adopting liberal democratic political institutions. The Council of State, the previous legislature, was composed of representatives from various mass organizations, in addition to political parties. These mass organizations received twelve of the council's forty-seven seats. In the new National Assembly, mass organizations no longer enjoyed official representation.¹⁸ Moreover, including the institutional structure of separation of powers tended to favor a liberal rather than a popular approach to democracy.¹⁹

The competing versions of democracy—one based on the concept of popular democracy and the other on the concept of Western liberal democracy—became a principal concern to the key actors in the Nicaraguan constitutional process. Shelley McConnell argues that “given the acute social polarization in Nicaragua, a remarkable high level of consensus was reached within the National Assembly.”²⁰ On the other hand, the Nicaraguan constitution’s unique nature and drafting during an ongoing conflict conform to the idea that the Nicaraguan constituent assembly understood that part of its job was to build consensus. At the same time, McConnell argues that “by combining principles of representative and participatory democracy, socialism and capitalism, and of international law and nationalism, the constitution appealed to a broad audience.”²¹ McConnell stresses that the conflicting principles of the constitution were left to be “worked out later through ordinary law.”²² The consensus that emerged thus was somewhat superficial: Instead of resolving key differences, the constitution contained much ambiguity, combining contradictory elements to provide something for everyone. While the Sandinistas were the dominant party in the revolutionary coalition, they refrained from resolving the most divisive issues in a majoritarian manner. These conditions suggest that previous examinations of the Nicaraguan constitution-writing process may have underemphasized the loyal opposition’s role in the process.

While the new constitution was debated around the concept of democracy, the armed conflict was the driving force behind constitutional consensus. Chambliss argues that “every society, nation, economic system, and historical period contains contradictory elements which are the moving force of change.”²³ These contradictions lead to conflicts and dilemmas that must be resolved

through creating laws or changing institutional structures. In turn, such changes are temporary as new laws and institutional structures inevitably lead to new contradictions. Following Chambliss, the 1987 constitution and the constitution-making process contributed partially to resolving conflict in Nicaragua. Nevertheless, the end of the armed conflict in 1990 led to important constitutional contradictions that had been left unresolved in 1987. The chief dilemma facing the new government in 1990 was which version of democracy—popular or Western liberal—to institutionalize. The tools that the competing democracy proponents used were the formal institutions of government; in utilizing these tools, both sides eventually opted for the liberal model of democracy.²⁴

The 1987 Constitution

The Sandinista-led revolution in 1979 succeeded in forging a broad-based coalition that overwhelmed the increasingly corrupt and repressive Somoza dictatorship. Given the widespread antipathy toward Somoza’s regime, the 1974 Nicaraguan constitution—the product of a pact between Somoza and some opposition parties, intended to perpetuate his political control—was discredited beyond repair. As in other revolutionary contexts, constitutional continuity was out of the question. Following the replacement model, one of the first official acts of the new revolutionary government was to abolish the 1974 constitution through the *Estatuto Fundamental* (the Fundamental Statute) of July 20, 1979. This statute was quickly followed on August 21, 1979, by the *Estatuto sobre Derechos y Garantías de los Nicaragüenses* (Statute of Rights and Guarantees of the Nicaraguan People), which provided a basic bill of rights. These two documents were designed to provide a temporary framework for Nicaragua’s government.

While the FSLN was the dominant party of the revolution, the Junta de Gobierno de Reconstrucción Nacional that formed after the overthrow was not strictly an FSLN government. Initially only three of the junta's seven members were affiliated with the FSLN.²⁵ The junta's composition represented the four main political blocs: the Sandinista bloc, the right opposition bloc, the moderate opposition bloc, and the left opposition bloc.²⁶

The national unity that followed the 1979 revolution quickly evaporated.²⁷ Tension grew between the Sandinistas, who sought to create a state centered on the ideas of mass organization and popular participation, and others in the coalition, who desired a state centered on the ideas of private property and representative government.²⁸ By 1982, the FSLN fully controlled the government and was continuing to advance its ideas of popular democracy. Two members of the seven-member junta left the government to join the armed opposition; a third left the junta due to disagreements with its direction.²⁹ Also in 1982, the government reinstated a state of emergency, which had been lifted in April 1980. The state of emergency allowed the government to suspend a number of personal and political rights, including freedom of expression, the right of association and peaceful assembly, freedom of travel, and the right of habeas corpus.³⁰ The Sandinistas' 1982 decision to forcibly relocate thousands of Miskito Indians along the Atlantic coast exacerbated the conflict with indigenous groups who had taken up arms against the government.

Against the backdrop of armed conflict and governmental suspension of civil and political rights, the Council of the State approved a political parties law in 1983 that was an important step in initiating national elections. The law defined the rights, qualifications, and functions of parties and established the National Council on Parties to

supervise party activities.³¹ In addition, the council approved a new electoral law to prepare for the 1984 elections. Given that the old electoral law was created to preserve Somoza's political power, the council opted to draft a completely new law. A special commission visited the United States and several countries in Europe and Latin America to study their electoral laws and procedures. The new law instituted an electoral procedure that used proportional representation to elect the legislature and a plurality system to elect the president.³² The country was divided into nine districts with ten assembly seats per district. The seats were allocated based on the percentage of votes each party received in each district.³³ Parties only needed to garner 1 percent of the vote nationally to receive representation in the assembly. The losing candidates from among the seven parties that ran for the presidency received the six remaining seats of the ninety-six-seat assembly. Finally, electoral law provided for the creation of an electoral commission, the Supreme Electoral Council (CSE), modeled after electoral tribunals in Costa Rica and Venezuela.³⁴ The CSE was charged with administering all aspects of the elections, including voter education and registration, receiving and verifying complaints, and ensuring a fair and transparent process.³⁵

The elections for the national constituent assembly were held on November 4, 1984; 75 percent of eligible voters participated.³⁶ The election was declared valid by several international organizations, including Americas Watch, the Latin American Studies Association (LASA), and several foreign governmental delegations including Great Britain, Ireland, and Costa Rica.³⁷ The FSLN Party received 66.8 percent of the votes for the assembly and sixty-one of the ninety-six (63.5 percent) seats.³⁸ The opposition parties divided the other thirty-five seats. The assembly was inaugurated on January 9, 1985, and

mandated to produce a constitution within two years.³⁹

Structure of the Process

The Nicaraguan constitution-writing process employed the constituent assembly model as the chief structural mechanism to create the nation's new constitution. Nevertheless, the overall structure of the process was far more complex and in keeping with competing versions of democracy. Thus, while much of the work of drafting the constitution was entrusted to the representatives elected to the National Assembly, a number of mechanisms were designed to ensure public input at various stages of the process.

Following the elections, the national constituent assembly selected a twenty-two-member constitutional commission to prepare an initial draft constitution.⁴⁰ The commission solicited initial public input from groups in civil society by inviting these groups to appear before the commission.⁴¹ The commission completed and presented the first draft of the constitution to the assembly in February 1986. The assembly then distributed approximately 150,000 copies of the first draft throughout the country.⁴² Seventy-three *cabildos abiertos*, or town hall meetings, were held around the country to solicit further public input concerning the draft.⁴³ Following the *cabildos abiertos*, the assembly appointed a twenty-member *Comisión Dictaminadora* to review the public comments, prepare an advisory report, and write a second draft of the constitution. The *Comisión Dictaminadora* consisted primarily of the members of the constitutional commission, but there were a few replacements.⁴⁴ The *Comisión* then delivered the second draft to the full assembly for discussion and debate. Eighty-nine of the ninety-six assembly members approved the final draft of the constitution on November 19, 1986, and the constitution became effective on January 9,

1987. Electoral ratification was not used as a final mechanism of popular consultation.⁴⁵

Public Participation

A major concession regarding public participation occurred in the elections for the national constituent assembly, the first instance of public participation in the constitution-making process. While the FSLN stressed a major role for mass organizations, the Council of the State's electoral law created an assembly constructed strictly on geographical zones with no provisions for mass organizations.⁴⁶ To compensate for this concession to the opposition, the FSLN allowed its mass organization supporters, who were not officially party members, to run on FSLN party ballots.⁴⁷ In addition, the government spent approximately \$40 million to advertise the election and educate citizens concerning electoral procedures. At the same time, each political party was given free television and radio time to articulate their campaigns.⁴⁸

However, other problems developed to undermine participation. First, former junta member Arturo Cruz and the *Coordinadora* decided to boycott the elections.⁴⁹ Because the *Coordinadora* represented the influential business sector of the country, an important voice was thus absent from the constitution-making process.⁵⁰ Next, the administration of U.S. President Ronald Reagan sought to dissuade opposition parties from participating in the election process and convince citizens that the electoral process was invalid.⁵¹ U.S. pressure exacerbated divisions within the *Partido Conservador Demócrata* (PCD) and the *Partido Liberal Independiente* (PLI); some leaders urged a boycott on the eve of the elections. Despite these obstacles, voters were presented with a wide range of political options and opposition parties had ample opportunities to communicate their programs to the electorate. Even though voting was not obligatory, approximately

75 percent of registered voters cast ballots on election day.⁵²

The second avenue of public participation in the constitution-writing process was through the special constitutional commission. This twenty-two-member commission was divided into three subcommittees, for which it established a two-stage process.⁵³ First, the leaders of civil-society organizations were invited to address the commission with the concerns of their respective groups. Morgan argues that women's groups were particularly active in this process and raised a large number of concerns of particular interest to women and children.⁵⁴ Second, between May and June 1986, seventy-three *cabildos abiertos* were held throughout the country after the first draft of the constitution had been circulated. Prior to the *cabildos*, the government distributed 150,000 copies of the draft, supplemented by twelve televised debates among representatives of opposing parties. Civil-society groups within each community assisted in organizing the *cabildos*. The meetings were broadcast live on radio, and highlights were published in newspapers and covered on television. Approximately 100,000 people attended the meetings; 2,500 citizens made presentations and 1,800 more submitted written comments.⁵⁵ The meetings took several different forms. Several of the *cabildos* allowed open discussion of any section of the draft constitution. Seven of the forums were specifically designed to address issues of particular importance to women.⁵⁶ These meetings were not only forums for FSLN-affiliated groups; *cabildos* also were held specifically for business and professional groups, which yielded serious concerns about private property protection and the rights of accused persons.⁵⁷

Some opposition parties boycotted the *cabildos*, and critics of the government generally viewed them as well-controlled forums to permit only perfunctory modifications to

the original draft constitution. Without a doubt, that citizens were presented with a draft potentially circumscribed the scope of debate and discussion at the *cabildos*. Most independent observers of the public forums agree, however, that the discussions were generally quite dynamic and freewheeling. Citizens often raised issues in the *cabildos* that did not appear in the draft constitution. Finally, the constitutional commission subsequently incorporated a number of changes to the second draft in response to issues and concerns raised in the *cabildos*. These changes included significantly strengthening women's rights, recognizing indigenous rights for the peoples of the Atlantic coast, protecting minors and the elderly, and recognizing the rights of prisoners.⁵⁸

Democratic Representation

McWhinney argues that directly electing a constituent assembly gives it a direct political mandate and constitutional legitimacy, an idea that he grounds in the constitutional heritage of the 1789 French Revolution.⁵⁹ Certainly the FSLN-led government desired a strong mandate given the ongoing armed conflict, but the constituent assembly ultimately fulfilled the needs of both the FSLN and the loyal opposition groups, who wanted a more representative form of democratic governance. The revolutionary origins and populist nature of the constituent assembly made it appealing to FSLN supporters who wanted to include the poor and working classes in the constitution-writing process. On the other hand, the representative nature of the constituent assembly appealed to opposition party leaders, who desired to create a system that respected individual interests and property rights.⁶⁰ Meanwhile, the middle-class opposition clearly favored the constituent assembly over the popular initiative mechanism, which many perceived as overly favoring the FSLN because of the

mass organizations that it mobilized in the first years after the revolution.⁶¹

The adoption of the proportional representation electoral format was a major decision in the structure of the constitution-writing process. This format tends to accentuate minority over majority interests and is generally the electoral system of choice in new democracies that emerge out of conditions of pronounced social and political divisions.⁶² For the FSLN, the decision to employ proportional representation was a major concession. Unlike the Council of the State, which was based on a corporatist model and ensured representation for mass organizations, the new assembly was based on the principle of geographical representation, a key demand of opposition parties, the Catholic hierarchy, and indigenous groups on the Atlantic coast. Moreover, including defeated presidential candidates in the Assembly granted each minority party an additional representative.⁶³ These three FSLN concessions acknowledged the value of opposition voices in the process.⁶⁴ At the same time, the willingness of opposition parties to continue in the process while the FSLN advanced some elements of popular democracy indicated that the opposition parties were equally willing to compromise.

The national constituent assembly also appointed the special constitutional commission, which was even more favorable to the opposition parties than the assembly was itself: Ten of the twenty-two members were from parties other than the FSLN.⁶⁵ Nevertheless, tensions did develop within the commission between the Sandinistas and opposition parties. For the FSLN, a number of key issues were not negotiable: the revolutionary nature of the armed forces; presidential reelection; and the "popular orientation of the economy."⁶⁶ Whereas the opposition demanded that the armed forces be depoliticized, the FSLN insisted that it was legitimate for the armed forces to de-

fend the revolution. Second, the FSLN was unwilling to accept the opposition's demand for a ban on presidential reelection. Finally, whereas the conservative opposition demanded guarantees for private property and a market economy, the FSLN insisted on a significant role for the state in guaranteeing an economy that served the needs of poor Nicaraguans. Despite the FSLN's unwillingness to compromise on these issues, the second draft of the constitution accommodated a number of opposition concerns, including changes in the greater balance of power between the executive and legislative branches, additional provisions for autonomy of the judicial and electoral branches of government, and the easing of restrictions on reforming the constitution.⁶⁷

Conflict over popular and representative versions of democracy also emerged. The PCD and PLI refused to participate in the *cabildos* and argued that because the national constituent assembly was elected, there was no need for further public input.⁶⁸ Nevertheless, both parties were involved in the discussion and debate processes of the second draft of the constitution, and at least one member from both parties voted for the final document.⁶⁹ More problematic from a representation standpoint was the boycott of the process by the *Coordinadora* members and the counterrevolutionary organizations that had taken up arms against the government. Consequently, a significant sector of society was not represented in the process and did not accept the new constitution as legitimate.

Finally, while women participated in the process at a high level, they were nonetheless underrepresented. Only fourteen of the ninety-six members of the national constituent assembly were women,⁷⁰ though the percentage of women elected to the assembly (14.6 percent) was slightly higher than the percentage of female candidates for office (13.2 percent).⁷¹ While all seven parties had women among their candidates, the list

system, which allowed parties to assign the order in which their candidates would receive seats in each of the nine districts, was not favorable to women, as they tended to be listed lower on the parties' lists.⁷² Given the percentage of votes that parties other than the FSLN received in each district, female candidates from other parties were not high enough on the lists to receive assembly seats. When the assembly selected the special constitutional commission, only two women were appointed as members.⁷³ A third woman was added later to serve in place of her primary representative.⁷⁴

Timing of the Process

The national constituent assembly was granted two years to complete the constitution-writing process. While the assembly used its time effectively, time was a factor in successfully completing the document. McWhinney argues that there are several requirements for an effective constituent assembly:

A constituent assembly would seem to require to be elected against a background of an already existing, and continuing, societal consensus as to the nature and desired direction of fundamental political, social and economic—and hence constitutional—change. Either that, or the constituent assembly must itself be conceded enough time, within the definition of its mandate, to wait for such a societal consensus to develop or to get out itself and try to build it.⁷⁵

McWhinney's points are relevant to the Nicaraguan case. At the beginning of the two-year period, the FSLN was well placed with its constituency and could count on a great deal of support in the process, whereas opposition parties had to convince their members and supporters that a FSLN-led process could produce a consensual document. This factor was particularly important given the existence of the armed counterrevolutionary forces. The national constituent assembly appointed the special constitutional com-

mission in April 1985. From August until October 1985, the commission held public hearings to gather public opinion about the constitution-making process.

On January 22, 1986, a month before the special constitutional commission released the first draft of the constitution, the armed opposition released a document entitled *United Nicaraguan Opposition Principles and Objectives for Provisional Government of National Reconciliation*.⁷⁶ Although this document did not greatly affect the constitution-writing process of the government, it was a reminder that alternatives existed to the current process. On February 21, 1986, the commission presented its first draft constitution to the assembly. Between May 18 and June 30, 1986, the commission gathered public opinion concerning the first draft document.⁷⁷ The Comisión Dictaminadora completed the second draft of the constitution by the end of August 1986 and presented it to the full assembly in early September. After ten weeks of debate, the constitution was approved on November 19, 1986.

International Community

While the constitution-writing process in Nicaragua was primarily domestically driven, the international community was important to completing the process. Officials in the Reagan administration and others argued that the FSLN agreed to the 1984 elections partly to gain international legitimacy.⁷⁸ There may be some truth to this argument. The revolutionary government badly damaged its international credibility during the resettlement of the indigenous groups on the Atlantic coast.⁷⁹ While the FSLN government attempted to correct the error, the successful elections did add to the legitimacy of the government and the constitution-writing process. International organizations (e.g., LASA and Americas Watch) and delegations from other nations validated the

1984 elections, which also facilitated the legitimacy of the constitutional process.⁸⁰ Nicaragua's signing of the Esquipulas Agreement on Regional Peace with four other Central American governments in 1987 exemplified the international community's positive influence. Although the agreement recognized existing constitutions and did not require any specific constitutional reforms, it did provide a framework for achieving national reconciliation, an end to hostilities, and advancement toward democratization.⁸¹

Several nations assisted in the Nicaraguan constitution-making process. First, in summer 1985, members of the Nicaraguan special constitutional commission traveled to several countries to study their respective constitutions.⁸² The United States, however, refused to grant commission members visas to the United States.⁸³ Also during 1985, constitutional experts were invited to Nicaragua to consult with the commission on specific aspects of the constitution. Arthur Kinoy of Rutgers Law School was asked to address the National Assembly on the lessons of U.S. constitutional history. Other academics, such as Sylvia Law of New York University (NYU) Law School, visited Nicaragua to study the process. In October 1985, the Nicaraguan Supreme Court invited jurists from the United States, Cuba, Italy, France, the Soviet Union, and Spain to participate in a seminar focusing on the judiciary's function under the new constitution. In April 1986, Kinoy and Law organized a three-day workshop in New York at NYU Law School. The meeting was composed of small working groups that addressed specific issues, including the scope of judicial review, separation of powers, church and state relations, freedom of expression, private property, equality, prisons and the rights of the accused, and ethnic autonomy. Each of these working meetings included several members of the Nicaraguan constitutional commission,⁸⁴ constitutional scholars, and Latin American experts.

The U.S. consultation was one of several international consultations that the special constitutional commission conducted.⁸⁵ These consultations came after the release of the first draft of the constitution in February 1986 but before the *cabildos abiertos* in May and June 1986. Consequently, the input from international experts was helpful in highlighting problem areas in the draft and topics of discussion for the *cabildos*. In short, although domestically driven, the consultation process may have influenced the structure of the elicitation process of the open forums and possibly contributed to some of FSLN concessions.

The generally positive relations that the Nicaraguan government sustained with other nations somewhat mitigated its adversarial relationship with the United States. Nevertheless, the U.S. government's attempts to destabilize the Sandinista government complicated the constitution-making process. The Reagan administration persuaded several members of the opposition to boycott the 1984 elections in hopes of delegitimizing the process⁸⁶ and provided significant military assistance and training to the armed counterrevolutionary forces.⁸⁷ These U.S. attempts to subvert the process may have backfired; the historical pattern of U.S. interference in Nicaraguan domestic affairs may have unintentionally contributed to the successful completion of the constitution in that it strengthened the loyal opposition's resolve to see the process succeed. McDonald and Zatz identify two ideological orientations among the FSLN leadership—socialism and nationalism—that manifested themselves in opposition to U.S. intervention.⁸⁸ Similarly, Lobel argues that the Sandinista revolution, "is a nationalist revolution, in that it seeks to unite various sectors of the Nicaraguan society, including the anti-Somocista segments of the middle-class."⁸⁹ Valenta and Duran argue that many Nicaraguans, not just FSLN members, equated the United States' imperi-

alist political and economic domination with control of the country by Somoza and the capitalist elite.⁹⁰ This may have encouraged the anti-Somocista middle class to give the constitution-making process and the transformation of society (within limits) a real chance to succeed.

International Law

The national constituent assembly adopted constitutional provisions that explicitly acknowledged the importance of international law in protecting human rights. In Article 46 of the 1987 constitution, the assembly incorporated the Universal Declaration of Human Rights; the American Declaration of the Rights and Duties of Man; the International Covenant on Economic, Social, and Cultural Rights; the International Covenant on Civil and Political Rights; and the American Convention on Human Rights as part of the Nicaraguan constitution.⁹¹ The assembly approved this article by a single vote, which was not strictly along party lines. A coalition of PCD, Partido Popular Social Cristiano, and FSLN members supported incorporating the article.⁹² Moreover, the assembly affirmed Nicaragua's existence as a multiethnic and secular state in articles 8 and 14.⁹³ This multiethnic stance is most vividly demonstrated in the articles that concern the indigenous people of the Atlantic coast.

The Autonomy Law

The government's efforts to draft an autonomy law for the Atlantic coast paralleled the 1985–87 constitution-making process. Similar to the 1987 constitution, the autonomy process was shaped by the context of the armed conflict on the Atlantic coast. Beginning in 1981, MISURA (Miskitos, Sumus, and Ramas), an organization representing indigenous communities on the Atlantic coast, launched armed attacks against

the Sandinista army from its bases in Honduras. Another indigenous organization, MISURASATA (Miskitos, Sumus, Ramas, and Sandinistas Working Together), staged attacks in the south from its base in Costa Rica. The Sandinista government combined a military strategy with negotiations to persuade the different armed groups to disarm. An important condition of the indigenous organizations was that the government recognize indigenous rights and the principle of self-determination. The government wanted to negotiate a ceasefire before discussing indigenous rights.⁹⁴ Despite these differences, in December 1984, the government named a national commission to draft an autonomy law. The commission produced a draft document that served as a basis for a series of workshops, educational sessions, and *consultas populares* similar to those organized for the constitution. Over six hundred local volunteers carried out the workshops and consultations throughout the Atlantic coastal region. The process in the south, where the armed conflict was winding down, was more successful, and the autonomy commission there produced a draft law in June 1986. In the north, the continuing armed conflict complicated the process.⁹⁵

Despite the significant political and military tensions exacerbated by renewed U.S. assistance to the *contras* in April 1986, the Sandinistas' determined commitment to the autonomy process prevented these tensions from derailing it.⁹⁶ In April 1987, a joint draft was debated in Puerto Cabezas with 250 elected delegates from the north and south along with 2,000 observers. One of the most contentious issues had to do with the state's earnings from resource exploitation. Some delegates pushed for fixed percentages to be spelled out in the law, but the director of the national autonomy commission successfully argued that the law should be more flexible, allowing the percentages to be negotiated on a yearly basis. There was also disagreement

over whether to divide the region permanently into two separate political entities, which would have reinforced geographical separation and weakened the future potential for regional autonomy. One autonomous region would create a single unified indigenous population, while two autonomous regions would dilute indigenous interests. In the end, the statute provided for the creation of the North and South Atlantic Autonomous Regions with directly elected assemblies.⁹⁷

The National Assembly approved the autonomy law almost unanimously in September 1987. Key provisions of the law were incorporated into thirteen Atlantic coast-related articles in the new constitution. Especially important was Article 8, which defined the Nicaraguan state as multiethnic. Although the autonomy law provided for more than just cultural autonomy, it did not extend to the political autonomy that the armed indigenous groups demanded. The statute clearly recognized the principle of national unity and territorial sovereignty, and the central government reserved full control over foreign relations, national defense, and economic planning. Moreover, the powers of the regional assemblies were not very great: As Ortiz notes, "Other than the power to resolve differences among community land claims, the assemblies would mainly be adapting national laws to the particularities of regions."⁹⁸ Finally, natural resources not located on traditional communal lands were to be jointly administered by the central and regional governments.

While the autonomy process facilitated the pacification of the Atlantic coast and went a long way toward accommodating indigenous demands, it was less successful in creating widespread consensus. As Charles Hale argues, indigenous groups on the coast, especially the Miskitu, distinguished clearly between autonomy and the right of self-determination.⁹⁹ Autonomy was identified with the Sandinistas, while self-determination

was identified with the armed indigenous organizations. Since autonomy included many things that people wanted—bilingual education, rights to traditional communal lands, limited self-government, and resources for economic development—many Miskitu were inclined to test the waters: "Once Miskitu townspeople endorsed the distinction between *autonomía* and Miskitu rights, it made perfect sense to participate fully in the former, while viewing the latter as a desirable but presently unattainable ideal."¹⁰⁰

The 1995 Constitutional Reforms¹⁰¹

The limited nature of the consensus underpinning the constitution was reflected in how quickly the opposition embraced constitutional reforms as central to its political platform.¹⁰² As early as November 1987, fourteen opposition parties, including the loyal opposition, circulated a document calling for seventeen constitutional reforms.¹⁰³ Chief among the proposed reforms were prohibiting the reelection of the president, limiting presidential power, prohibiting family members of the president from succeeding him or her in office, and suppressing the preamble to the constitution.¹⁰⁴ Many of the reforms were aimed at the executive because it was through this branch that the FSLN had been able to advance its policies. The opposition parties conditioned their continuing participation in the National Dialogue—the talks initiated between the FSLN government and opposition under the auspices of the 1987 Central American peace accords—on the government's agreement to these reforms. Pressure by President Oscar Arias of Costa Rica and President Carlos Andrés Pérez of Venezuela, however, convinced opposition leaders to drop this key condition.

In August 1989, the government and opposition agreed on a series of changes to the electoral law in anticipation of the upcoming 1990 elections, leaving the issue of constitu-

tional reforms for later. The Unión Nacional Opositora (UNO) coalition, comprising thirteen opposition parties and led by presidential candidate Violeta Chamorro and vice presidential candidate Virgilio Godoy, won a surprising victory in the February 1990 elections. The coalition won fifty-one of the ninety-two seats available in the assembly. The FSLN party won thirty-nine seats, sufficient to block constitutional reform, which required the approval of 60 percent of the legislature in two consecutive legislative sessions.

The UNO coalition, which ranged from the far left (Partido Comunista de Nicaragua) to the far right (Partido Conservador Nacional), had significant tensions stemming from fundamental ideological differences. These differences, which played out in conflicts between the executive and legislative branches, undermined the efforts to push through constitutional reforms. The growing rift between UNO's right wing and the executive developed into a full-blown constitutional crisis in September 1992, when assembly president Alfredo César attempted to elect new assembly officials without a legislative quorum. President Chamorro refused to recognize the new leadership; she was backed by the Supreme Court, which nullified the election. When César refused to accept the court's decision, the Chamorro government ordered the police to shut down the assembly and seize its assets until new elections could be held in January 1993.¹⁰⁵

The constitutional crisis took place amid growing political violence and instability. Increasingly, many of the key political actors refused to accept the institutional framework established by the 1987 constitution, resorting to extraconstitutional means to address their demands. Demobilized *contras* and former Sandinista military took up arms to pressure the Chamorro government to implement the compensatory reinsertion programs promised to them after the war.¹⁰⁶ Sandinista base organizations and trade

unions resorted to violent street demonstrations and strikes to challenge the government's neoliberal economic policies. Right-wing members of UNO appealed to allies in the U.S. administration to pressure the Chamorro government to return land taken from former property holders during the Sandinista land reform. And the Chamorro government turned to executive decrees to force through economic policies that the legislature rejected.¹⁰⁷

The increasing intensity of the conflict convinced some political leaders to look to constitutional reforms to defuse the crisis. Ironically, a growing split between Sandinista legislators and the FSLN national directorate paved the way toward constitutional reforms.¹⁰⁸ Former vice president Sergio Ramírez and the majority of FSLN legislators supported constitutional reforms to empower the legislature, while ex-president Daniel Ortega sided with the Chamorro government in its efforts to block the reforms. The Ramírez faction was instrumental in forging a new legislative majority with moderate elements of the UNO coalition. The FSLN-Center Group coalition, as it was known, succeeded in electing centrist Gustavo Tablada as assembly president.¹⁰⁹

During 1993, two opposing positions on constitutional reform emerged. One group supported amending the 1987 constitution; another demanded the establishment of a constituent assembly to produce a new constitution. In December 1993, FSLN assembly members signed accords with primarily centrist parties in favor of amendment.¹¹⁰ The assembly appointed a special commission to study the proposed changes and present an opinion. Although some public forums were held to generate public discussion, the process was much less participatory than that of the 1987 constitution.¹¹¹ The special commission presented a revised reform bill to the assembly for approval by the required 60 percent in November 1994.

As the 1987 constitution required, the National Assembly voted a second time to approve the constitutional reforms in early 1995, and the reform package was sent to the president in February 1995 for promulgation. President Chamorro refused to sign off on the package, however, because she disagreed with amendments that weakened the executive's power.¹¹² On February 24, 1995, the new president of the National Assembly, Luis Guzmán, published the reforms in several newspapers. Because this action did not comply with constitutional provisions—the reforms could not take effect without the president's signature—another constitutional crisis ensued that lasted five months.

During the period of the “two national constitutions,” international actors, including donor governments and multilateral lending agencies, were significant in breaking the impasse. They insisted that before initiating talks, the two sides come to an agreement on renegotiating Nicaragua's foreign debt.¹¹³ After painstaking negotiations mediated by Cardinal Obando y Bravo, the two branches finally reached a compromise on the reforms in June 1995. In exchange for Chamorro's agreement to promulgate the reforms, the assembly agreed to pass the Framework Law, which modified important aspects of the reforms and delayed their implementation. For example, the assembly agreed to co-legislate taxes with the executive and committed itself not to alter the budget ceilings presented by the executive. In both cases, the assembly gave up power granted to it under the constitutional reforms. Consequently, as McConnell notes, “Chamorro managed to regain some of the lawmaking power that she was losing in the constitutional reform via the back door of the Framework Law.”¹¹⁴

The reforms as a whole succeeded in reducing the intensity of political conflict, advancing the rules of liberal democracy, and shifting power from the executive to the legislative branch. Thirty-five of the sixty-five

amendments concerned the organization of the national government and the nation's defense apparatus. Some important amendments included establishing two rounds of voting if no presidential candidate won at least 45 percent of the vote in the first round; prohibiting presidential succession in office (presidents had to wait out a term before running again and could only serve a total of two terms); reducing the presidential term from six years to five; expanding the Supreme Court from nine to twelve magistrates; and eliminating the military draft.¹¹⁵ The reforms also spelled out more clearly the right to private property and limited the scope of future land expropriations, which helped lay the constitutional foundation for resolving the controversial property issue as a consequence of the Sandinista land reform. Nevertheless, it was somewhat surprising that the assembly did not go further in seeking to extract popular democracy elements from the constitution. It eschewed the opportunity to change or eliminate articles 98 and 101, which call, respectively, to abolish economic dependency and create “a more just distribution of wealth” and allow workers to participate in “the elaboration, execution, and control of economic plans.” Clarifying the contradictory nature of the concept of democracy in the 1987 constitution would have to await subsequent reforms.

The 2000 Constitutional Reforms

Compared to the 1995 reforms, the process leading to the 2000 constitutional reforms lacked any mechanism for public input. During his successful campaign for president, Liberal Party (PLC) candidate Arnaldo Alemán called for a constituent assembly that would draft additional reforms subject to a referendum. Nevertheless, the 2000 reforms were the product of negotiations between the leadership of the two dominant parties, the PLC and FSLN. Conversations

between the Alemán government and FSLN leaders began in 1998, but were put on hold in the wake of Hurricane Mitch. In June 1999, both parties named negotiating committees, although the most important agreements emerged out of closed-door meetings between Alemán and FSLN leader Daniel Ortega. In August 1999, the two sides announced a thirty-three-point agreement that covered a number of changes to the electoral law and a series of constitutional reforms. The National Assembly approved the constitutional reforms in January 2000.¹¹⁶

The reforms were yet another example of conflict resolution without widespread societal consensus. The Alemán government realized that it needed to reduce tensions with the FSLN to govern effectively. The Sandinistas, while no longer the dominant electoral force in the country, still could mobilize significant opposition to controversial government policies. The FSLN leadership, looking toward the 2001 elections, needed to reach some accommodation with the government if it was to have any chance of winning the elections. In a sense, both parties needed each other for survival.

Not surprisingly, the constitutional and electoral reforms represented an attempt to create a two-party monopoly of the political system and to share quotas of power between the PLC and FSLN. The number of Supreme Court justices was raised from twelve to sixteen (nine PLC and seven FSLN) and the Supreme Electoral Council magistrates from five to seven (four PLC and three FSLN). Also, the Office of Comptroller General was made into a collegial body with five members elected by the National Assembly. This was a blatant attempt by Alemán to remove from office the sitting comptroller general, Agustín Jarquín, who had been investigating the president's involvement in several corruption scandals.

Another reform, which required that any party participating in an alliance lose its of-

ficial standing if the alliance failed to win a minimum percentage of votes, also made it difficult to form electoral alliances that could challenge two-party dominance. An additional reform removed restrictions on presidential candidates who had renounced their Nicaraguan citizenship, which allowed the PLC to put forward as candidates some of their most important leaders who had become U.S. citizens during the 1980s. Particularly controversial was an agreement that the president, upon leaving office, would automatically assume a seat in the assembly. This guaranteed Alemán parliamentary immunity and would apply to Ortega if he should win in future elections.¹¹⁷ Because both Alemán and Ortega feared being taken to court without immunity, another reform required a two-thirds assembly vote to suspend a legislator's immunity.

The latest constitutional reforms were the product of a pact in which an overriding concern with mutual elite accommodation trumped any effort to achieve broad societal consensus. The package of reforms sought to reduce the level of uncertainty and conflict between the PLC and FSLN, thereby freezing in place the political status quo. While the pact may have been a successful short-term mechanism for conflict resolution, it complicated the possibility for greater democratization by excluding other important social forces. Moreover, as Karl notes, elite pacts can deeply corrode state efficiency and productivity, since they are "based upon agreements that carve up the state through a complicated spoils system."¹¹⁸

Lessons from the Nicaraguan Case

The constitution-making process in Nicaragua resembles Hyden's replacement model, in that the process started with the defeat and collapse of the Somoza regime. Similarly, the process was shaped by the historical legacy of pact making and the absence

of public input in political processes, as well as the FSLN's precommitments emphasizing the social and economic dimensions of democracy. Breaking with the past, the FSLN was committed to creating opportunities for public participation in crafting a constitution that was relevant to ordinary citizens. As the dominant political force in the country, the FSLN could have imposed a constitution that was completely unacceptable to the opposition. Instead, it reached out to diverse sectors and accommodated a number of key opposition concerns to defuse conflict. The result was that the loyal opposition was important in shaping a constitution that included both popular and liberal notions of democracy, but in an ambiguous and sometimes contradictory fashion. Unlike the replacement model, this creative ambiguity gave the process an open-ended dimension, meaning that some of the contradictions would have to be worked out subsequently through constitutional reforms.

Despite the significant level of inclusiveness, in the context of an armed conflict and U.S.-sponsored destabilization efforts, it was inevitable that some important political and social actors would be excluded in the process. The *Coordinadora*—linked to the business sector and the conservative Catholic hierarchy—boycotted the 1984 elections and thus was not represented in the constituent assembly that drafted the constitution. Groups that had taken up arms against the government also did not have a voice in the process. It is not surprising that the intensification of the armed conflict before 1985 significantly shaped the dynamics of the constitution-making process. Although the process contributed to reducing tensions somewhat, this was not so much the result of a genuinely broad-based consensus as it was a channeling of important divisions and disagreements into a constitutional framework. Increasingly, arguments over the form and substance of Nicaraguan democracy

took place within the political institutions that the 1987 constitution established. Even though by the end of 1987, a coalition of opposition parties made fundamental constitutional reforms central to their political platform, the liberal democratic content of the constitution provided important guarantees and protections for opposition groups. Moreover, the constitution's institutional framework supplied the means by which to remove the FSLN from power.

Beyond the constitution, the series of negotiations between the FSLN and opposition groups, both inside and outside the country, were essential to ending the conflict peacefully. These negotiations, which took place under the auspices of the Central American peace process,¹¹⁹ succeeded in convincing the UNO coalition to participate in the 1990 elections and established the framework for demobilizing the armed opposition groups after the elections. Nevertheless, the peace accords that followed the opposition's victory in the 1990 elections could not prevent the violence that erupted in response to the Chamorro government's failure to deliver on its promises. Although the growing violence and instability threatened to undermine Nicaragua's fragile political institutions, the 1995 constitutional reforms helped defuse the conflict by convincing key political actors to recommit to the rules of the game. As with the 1987 constitution, the reforms did not resolve the social problems underlying the conflict, but they did help to structure a more effective political framework through which to address those problems.

While the 1985–87 constitution-writing process was primarily driven by domestic political concerns, the role of the international community was significant. At the same time, the Nicaraguan case offers few desirable lessons for other countries, in that the positive support from the international community was countered by U.S. destabilization efforts. On the one hand, various

nations helped to legitimize the process by observing and sanctioning the election of the national constituent assembly and offering technical support in writing the first draft of the constitution. On the other hand, the United States persuaded Coordinadora members to boycott the 1984 elections and increased its funding of armed opposition groups to try to undermine the process. During the subsequent constitutional reform effort in 1995, the international community was more coordinated in facilitating the implementation of reforms. Both international donor governments and multilateral lending agencies combined their financial leverage to pressure the legislative and executive branches to come to a negotiated settlement. These efforts resulted in the Framework Law that ended the constitutional crisis of 1995.

The emphasis on public participation and inclusiveness that characterized the 1987 constitution-making process was part of a larger revolutionary process that aimed to mobilize civil-society groups politically. Nevertheless, the FSLN's belief that popular mobilization and empowerment contributed to more effective institutions progressively disappeared in subsequent constitutional reforms. While the 1995 reforms included some limited opportunities for public input, the 2000 reforms were notable for their exclusionary nature. Not unlike the 1974 constitution—the product of a pact between Somoza and the opposition Conservative Party—the 2000 reforms resulted from a pact between Alemán and Ortega to perpetuate the dominance of their two principal political parties. This reversion to the historical pattern of pact making raises important questions about the relationship between public participation and consensus. To the extent that consensus relies on mutual elite accommodation, high levels of public participation and inclusiveness may be detrimental to forging consensus. Consensus based on elite accommodation depends on both the

willingness of leaders to abide by the terms of agreements and their ability to control the demands of their rank and file.¹²⁰ A subservient rank and file affords leaders sufficient leeway to strike bargains and reduce competition and conflict. Considering this relationship between consensus and public participation in the Nicaraguan case, one could argue that the constitution-making process during 1985–87 achieved significant levels of citizen involvement, but only minimal elite consensus. Subsequent constitutional reforms, on the other hand, included low levels of public participation but greater success in achieving mutual elite accommodation.

Does the Nicaraguan case suggest an inherent contradiction between public participation and consensus? Certainly consensus based on mutual elite accommodation that seeks to reduce conflict and uncertainty is not easily compatible with high levels of citizen involvement. On the other hand, interelite agreements that fail to incorporate citizen input may be unlikely to endure. According to Levine, “The whole package works only if elites and popular groups are linked in mutually valued and enduring ways.”¹²¹ In a post-conflict setting, the challenge is to craft a constitutional process that is sensitive to the vital interests of elites and provides channels for the effective representation of citizen concerns. The Nicaraguan case highlights the difficulties in achieving the correct balance between these often conflicting yet necessary dimensions of peacebuilding.

Notes

1. Jon Elster, “Ways of Constitution-Making,” in *Democracy's Victory and Crisis*, ed. Axel Hadenius (Cambridge: Cambridge University Press, 1997), p. 123.

2. A.E. Howard, ed., *Constitution Making in Eastern Europe* (Baltimore: John Hopkins University Press, 1993); and Andrew Arato, *Civil Society, Constitution, and Legitimacy* (Lanham, MD: Rowman and Littlefield Publishers, 2000).

3. Juan Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation* (Baltimore: John Hopkins University Press, 1996), p. 82.
4. *Ibid.*, p. 83.
5. *Ibid.*, p. 83.
6. Adam Przeworski, "Democracy as a Contingent Outcome of Conflicts," in *Constitutionalism and Democracy*, ed. Jon Elster and Runne Slagstad (Cambridge: Cambridge University Press, 1988), p. 64.
7. Edward McWhinney, *Constitution-Making Principles, Process, Practice* (Toronto: University of Toronto Press, 1981), p. 12. The term *Grundnorm*, which McWhinney defines as the "prior constitutional question," is found in Hans Kelsen, *General Theory of Law and State*, trans. Anders Wedberg (New York: Russell and Russell, 1961).
8. See Philip J. Williams, "Dual Transitions from Authoritarian Rule: Popular and Electoral Democracy in Nicaragua," *Comparative Politics*, vol. 26, no. 2 (1994), pp. 169–86.
9. Goran Hyden, *Constitution Making and Democratization in Africa* (Pretoria: Africa Century Publications, 1982), p. 204. Hyden contrasts the replacement model with the transformation model, which is a more open-ended process and characteristic of negotiated transitions that begin without the defeat or collapse of the previous regime.
10. McWhinney, *Constitution-Making Principles*, p. 13.
11. Hyden argues that given the new regime comes to power through a total rejection of the past, under the replacement model, the constitution-making process is likely to be more rigid and less inclusive than the transformation model. See Hyden, *Constitution Making*, pp. 204–05.
12. Gisbert H. Flanz, *Constitutions of the World: Republic of Nicaragua* (New York: Oceana Publications, 1996), p. 2.
13. Jules Lobel, "The Meaning of Democracy: Representative and Participatory Democracy in the New Nicaraguan Constitution," *University of Pittsburgh Law Review*, vol. 49 (1988), p. 858.
14. Indeed, the Marxist-Leninist Party believed that the FSLN approach to popular democracy did not go far enough and voted against the final version of the 1987 constitution.
15. Williams, "Dual Transitions," p. 172.
16. McWhinney, *Constitution-Making Principles*, p. 5.
17. Richard J. Wilson, "Criminal Justice in Revolutionary Nicaragua: Intimations of the Adversarial in Socialist and Civil Law Traditions," *University of Miami Inter-American Law Review*, vol. 23, no. 2 (1991), p. 280.
18. See Philip J. Williams, "Elections and Democratization in Nicaragua: The 1990 Elections in Perspective," *Journal of Interamerican Studies and World Affairs*, vol. 32, no. 4 (1990), pp. 13–34.
19. Wilson, "Criminal Justice in Revolutionary Nicaragua," p. 280; Lobel, "The Meaning of Democracy," p. 866.
20. Shelley McConnell, "Rules of the Game: Nicaragua's Contentious Constitutional Debate," *NACLA Report on the Americas*, vol. 27, no. 2 (1993), p. 21.
21. *Ibid.*
22. *Ibid.*
23. William J. Chambliss, "On Lawmaking," in *Making Law: The State, the Law, and Structural Contradictions*, ed. William J. Chambliss and Marjorie S. Zatz (Bloomington: Indiana University Press, 1993), p. 9.
24. McConnell, "Rules of the Game," p. 26.
25. Orlando Nuñez Soto, *Transición y lucha de clases en Nicaragua (1979–1986)* (Mexico: Siglo Veintiuno, 1987), p. 121. The three FSLN members were Daniel Ortega, Sergio Ramírez, and Moisés Hassan Morales. The other four members were Violeta Barrios Chamorro, widow of Pedro Joaquin Chamorro; Alfonso Robelo, president of the Democratic Movement of Nicaragua; Arturo Cruz; and Rafael Córdoba, director of the Partido Conservador Demócrata.
26. Nuñez Soto, *Transición y lucha*, p. 118.
27. For a more detailed discussion of the breakdown of the coalition and resulting conflict, see Thomas W. Walker, "Introduction," in *Reagan versus the Sandinistas: The Undeclared War in Nicaragua*, ed. Thomas W. Walker (Boulder, CO: Westview Press, 1987); and *Conflict in Nicaragua: A Multi-dimensional Perspective*, ed. Jiri Valenta and Esperanza Duran (Boston: Allen and Unwin, Inc., 1987).
28. Lobel, "The Meaning of Democracy," p. 841. For a further discussion of the FSLN's emphasis on popular participation, see C. Bendaña, "Reflexiones sobre la participación popular," *Revista Pensamiento Propio*, vol. 13 (1984), pp. 18–30; and Luis Serra, "Limitada por la guerra: pendiente del futuro: Participación y organización popular en Nicaragua," *Revista Nueva Sociedad*, vol. 104 (1989), pp. 134–43.

29. Alfonso Robelo left the government in 1980 when mass organizations were given seats on the Council of State. See J. Booth, "The National Governmental System," in *Nicaragua: The First Five Years*, ed. T. Walker (Westport, CT: Praeger Publishers, 1986), p. 32. He later joined the armed counterrevolutionary movement. Arturo Cruz left the process and joined the movement as well (Nuñez Soto, *Transición y lucha*, p. 121). Cruz considered running for president in the 1984 elections, but opted not to at the suggestion of some members of the Reagan administration (Lobel, "The Meaning of Democracy," p. 873). Chamorro left the junta but did not join the counterrevolutionary movement.
30. Williams, "Dual Transitions," p. 177.
31. Flanz, *Constitutions of the World*, p. 1.
32. The majority of democracies in Latin America combine the U.S. presidential system with the European system of proportional representation in the legislature.
33. See Latin American Studies Association, *Report of the Latin American Studies Association Delegation to Observe the Nicaraguan General Election of November 4, 1984*, LASA Forum, 1984.
34. Andrew Reding, "The Evolution of Governmental Institutions," in *Revolution and Counterrevolution in Nicaragua*, ed. Thomas Walker (Boulder, CO: Westview Press, 1991), p. 26.
35. The Swedish government provided technical assistance to the CSE.
36. David Close, *Nicaragua: Politics, Economics, and Society* (London: Pinter Publishers, 1988), p. 136.
37. Andrew Reding, "Nicaragua's New Constitution," *World Policy Journal*, vol. 4 (1987), p. 291.
38. Close, *Nicaragua*, p. 136.
39. Flanz, *Constitutions of the World*, p. 2.
40. Reding, "Nicaragua's New Constitution," p. 292.
41. See Asamblea Nacional de Nicaragua, *La Constitución: Nuestro compromiso con el futuro* (Managua: Biblioteca de la Asamblea Nacional, 1989).
42. Andrew Reding, "By the People: Constitution Making in Nicaragua," *Christianity and Crisis*, vol. 46 (December 8, 1986), p. 435.
43. Reding, "By the People," p. 435.
44. Martha I. Morgan, "Founding Mothers: Women's Voices and Stories in the 1987 Nicaraguan Constitution," *Boston University Law Review*, vol. 70, no. 1 (1990), p. 25.
45. For a discussion of the merits of the referendum in the constitution-writing process, see Edward McWhinney and Muna Ndulo, "Constitution-Making in Africa: Assessing Both the Process and the Content," *Public Administration and Development*, vol. 21 (2001), pp. 101–17.
46. Lobel, "The Meaning of Democracy," p. 868.
47. Ibid.
48. Latin American Studies Association, *Report*, p. 15.
49. Morgan, "Founding Mothers," p. 20. See note 27.
50. McConnell, "Rules of the Game," p. 22.
51. Lobel, "The Meaning of Democracy," p. 873.
52. Williams, "Elections and Democratization in Nicaragua," p. 178.
53. The two other subcommittees were the drafting committee—which was charged to prepare a first draft document of the constitution, and the traveling committee—which was charged to study the constitutions of various countries (Asamblea Nacional, *La Constitución*, p. 171).
54. Morgan, "Founding Mothers," p. 23. Morgan points out that the women's organization Asociación de Mujeres Nicaragüenses "Louisa Amanda Espinoza" (AMNLAE) raised the question of women's ability to control their own reproductive choices at these meetings and presented a ten-page document which outlined other issues of importance to Nicaraguan women. Nevertheless, the FSLN avoided the issue of abortion altogether given the certain opposition of Catholic Church officials.
55. Reding, "By the People," p. 435, and Morgan, "Founding Mothers," p. 24.
56. Morgan, "Founding Mothers," p. 24.
57. Lobel, "The Meaning of Democracy," p. 852. The State Department of the United States charged that the *cabildos* were only propaganda sessions for the Sandinistas. See Bureau of Inter-American Affairs, *The Sandinista Constitution*, publication no. 9523 (Washington, DC: United States Department of State, 1987).
58. Reding, "By the People," p. 437, and Morgan, "Founding Mothers," p. 26.
59. McWhinney, *Constitution-Making Principles*, p. 33.
60. Lobel, "The Meaning of Democracy," p. 873.

61. For a detailed discussion of mass organization development immediately after the 1979 Revolution, see Carlos Vilas, *The Sandinista Revolution: National Liberation and Social Transformation in Central America* (New York: Monthly Review Press, 1986) and G. Ruchwarger, *People in Power: Forging a Grassroots Democracy in Nicaragua* (South Hadley, MA: Bergin and Garvey Publishers, 1987).

62. For a discussion of the influence of proportional representation on party systems, see Giovanni Sartori, *Parties and Party Systems: A Framework for Analysis* (Cambridge: Cambridge University Press, 1976); Alan Ware, *Political Parties and Political Systems* (New York: Oxford University Press, 1996); and Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (New Haven, CT: Yale University Press, 1984).

63. Sixty-one of the ninety-six assembly members were FSLN. The party affiliation of other assembly members was fourteen for Partido Conservador Demócrata, nine for Partido Liberal Independiente, six for Partido Popular Social Cristiano, two for Partido Comunista de Nicaragua, two for Partido Socialista Nicaragüense, and two for Movimiento de Acción Popular (Morgan, "Founding Mothers," p. 20).

64. Indeed, Carlos Chamorro, at the time the editor of the pro-FSLN newspaper *Barricada*, argued that "we (the FSLN) want to institutionalize dissent and opposition." See B. Nichols, "The Issue of Censorship," in *Nicaragua Unfinished Revolution: The New Nicaraguan Reader*, ed. P. Rosset and J. Vandermeer (New York: Grove Press, 1986), p. 115.

65. The committee had twelve FSLN members, three Partido Conservador Demócrata members, two Partido Liberal Independiente members, two Partido Popular Social Cristiano members, one Partido Comunista de Nicaragua member, one Partido Socialista Nicaragüense member, and one Movimiento de Acción Popular member (Morgan, "Founding Mothers," p. 22, note 75).

66. Reding, "Nicaragua's New Constitution," p. 262.

67. Reding, "By the People," p. 440.

68. *Ibid.*, p. 435, note 150.

69. Reding, "Nicaragua's New Constitution," p. 260, note 67.

70. Morgan, "Founding Mothers," pp. 20–21. Thirteen of the women assembly members were FSLN members, and the other female member

served as a member of the Partido Conservador Demócrata.

71. *Ibid.*

72. *Ibid.*

73. Irela Prado and Benigna Mendiola, both FSLN party members, were the two woman members of the commission. See Morgan, "Founding Mothers," p. 22.

74. Angela Rosa Acevedo, also an FSLN member, was the woman added to the commission.

75. McWhinney, *Constitution-Making Principles*, p. 33.

76. Flanz, *Constitutions of the World*, p. 2.

77. See Asamblea Nacional, *La Constitución*.

78. See Bureau of National Affairs, *Democracy in Latin America and the Caribbean* (Washington, DC: United States Department of State, 1987).

79. Martin Diskin, Thomas Bossert, Salomon Nahmad S., and Stefano Varese, *Peace and Autonomy on the Atlantic Coast of Nicaragua: A Report of the LASA Task Force on Human Rights and Academic Freedom* (Pittsburgh: Latin American Studies Association, 1986), p. 12.

80. Reding, "Nicaragua's New Constitution," and Americas Watch, *Human Rights in Nicaragua: Reagan, Rhetoric, and Reality* (New York: Americas Watch Committee, 1985).

81. Flanz, *Constitutions of the World*, p. 6. The agreement contained a number of provisions regarding democratization. It called for the lifting of states of emergency and the reinstatement of constitutional guarantees; free elections of municipal, legislative, and executive authorities in accordance with current constitutions; and national dialogues with opposition groups.

82. Nations that hosted the Nicaraguan commission included Argentina, Bulgaria, Colombia, Costa Rica, Cuba, East Germany, France, Hungary, Panama, Peru, Poland, the Soviet Union, Spain, Sweden, the United Kingdom, Venezuela, and West Germany. According to Reding in "The Evolution of Governmental Institutions," the choice of countries reflected the heterodox qualities of the FSLN and the multiplicity of political perspectives represented on the constitutional commission.

83. McConnell, "Rules of the Game," p. 21.

84. The members of the constitutional committee could enter the United States to participate in the conference as independent scholars, not as government officials. See Reding, "The Evolution of Governmental Institutions."

85. Laura Schulkind, "Cover Paper: Nicaragua Creates a New Constitution," in *Government, Constitutions, Laws and Codes: Miscellaneous Publications and Reports: 1985–1987*, Nicaragua file no. 38 (Nicaragua: NACLA Archive of Latin America, 1986), p. 2.
86. Lobel, "The Meaning of Democracy," p. 873.
87. Walker, "Introduction."
88. James H. McDonald and Marjorie S. Zatz, "Popular Justice in Revolutionary Nicaragua," *Social and Legal Studies*, vol. 1 (1992), p. 285.
89. Lobel, "The Meaning of Democracy," p. 841.
90. Valenta and Duran, *Conflict in Nicaragua*, p. 304.
91. Title IV, chap. I, Nicaraguan Constitution in *The Nicaraguan Constitution of 1987: English Translation and Commentary*, ed. Kenneth Mijeski (Athens: Ohio University for International Studies, 1991).
92. Reding, "Nicaragua's New Constitution," p. 262, note 102.
93. Title II, chap. I, Nicaraguan Constitution, in *The Nicaraguan Constitution of 1987*.
94. Charles Hale, *Resistance and Contradiction: Miskito Indians and the Nicaraguan State, 1894–1987* (Stanford: Stanford University Press, 1994), p. 29.
95. Judy Butler, "The Peoples of the Atlantic Coast," in *Nicaragua without Illusions: Regime Transition and Structural Adjustment in the 1990s*, ed. Thomas Walker (Wilmington, DE: Scholarly Resources, 1997), p. 225.
96. Hale, *Resistance and Contradiction*, p. 186.
97. Butler, "The Peoples of the Atlantic Coast," p. 226.
98. Roxanne Dunbar Ortiz, *The Miskito Indians of Nicaragua* (London: The Minority Rights Group, 1988), p. 10.
99. Hale, *Resistance and Contradiction*, pp. 185–90.
100. *Ibid.*, p. 193.
101. Throughout the chapter, *reform* refers to amendment or remaking of the constitution. We use the term in a politically neutral sense, reserving judgment as to whether reforms improve or correct defects in the constitution.
102. Moreover, as Shelley McConnell has observed, the very day that the new constitution was inaugurated, many of its articles were suspended by the government's renewal of the state of emergency.
103. Shelley McConnell, "Institutional Development," in *Nicaragua Without Illusions*, p. 50.
104. Other proposed reforms included changes to the electoral process, separation of the FSLN from the state and army, autonomy for universities, reform of the military, and autonomy for municipalities. See Antonio Esgueva Gómez, *Las constituciones políticas y sus reformas en la historia de Nicaragua* (Managua: Editorial IHNCA, 2000), p. 963.
105. Williams, "Dual Transitions," p. 181.
106. As part of the peace agreement worked out between the Chamorro government and the *contras* in 1990, demobilized combatants were to receive land and emergency assistance benefits. See David Dye, Judy Butler, Deena Abu-Lughod, and Jack Spence, *Contesting Everything, Winning Nothing: The Search for Consensus in Nicaragua, 1990–1995* (Cambridge, MA: Hemisphere Initiatives, 1995), p. 33.
107. For an in-depth account of the growing conflict between 1990 and 1995, see Dye, Butler, Abu-Lughod, and Spence, *Contesting Everything, Winning Nothing*.
108. McConnell, "Institutional Development," p. 50.
109. The FSLN-Center coalition totaled forty-seven members to the UNO right coalition's forty-five members. See McConnell, "Rules of the Game," p. 25.
110. Gómez, *Las constituciones políticas*, p. 964.
111. In addition to the public forums, the commission invited comments from fifty-nine social and political organizations and government institutions. See McConnell, "Institutional Development," p. 51.
112. Gómez, *Las constituciones políticas*, p. 965. Also contributing to Chamorro's opposition was an amendment that would prohibit her son-in-law, minister of the presidency Antonio Lacayo, from succeeding her in office.
113. "Nicaragua: Proceso Electoral: ¿las élites o la sociedad? *Envío* vol. 162 (1995), pp. 3–6.
114. McConnell, "Institutional Development," pp. 53–54.
115. "Nicaragua: Proceso Electoral," and McConnell, "Institutional Development."
116. President Alemán continued to insist on a constituent assembly even after the approval

of the reforms. Many critics viewed Alemán's desire to convoke a constituent assembly as a blatant attempt to pave the way for his seeking a second consecutive term (prohibited under the existing constitution). Alemán's involvement in a huge corruption scandal and subsequent expulsion from the assembly and house arrest in December 2002 cast a pall over his political future and stalled further attempts to change the constitution. Nevertheless, in 2005, Ortega, with the support of the Alemán wing of the PLC, pushed through the assembly constitutional reforms aimed at reducing the powers of the presidency. The Bolaños administration's opposition to the reforms provoked a showdown between the executive and legislative branches. An agreement between Ortega and President Bolaños in October 2005 postponed implementation of the reforms until the end of Bolaños's term in January 2007. See Tim Rogers, "Nicaragua: Embattled President Negotiates Deal," *Miami Herald*, October 12, 2005.

117. "Nicaragua: ¿Juego cerrado? Preguntas y contradicciones," *Envío*, vol. 210 (1999)—, pp. 4–6.

118. Terry Lynn Karl, "Petroleum and Political Pacts: The Transition to Democracy in Venezuela," in *Transitions from Authoritarian Rule: Latin America*, ed. Guillermo O'Donnell, Philippe Schmitter, and Laurence Whitehead (Baltimore: Johns Hopkins University Press, 1986), p. 219.

119. For an in-depth treatment of the Central American peace process, see Jack Child, *The Central American Peace Process, 1983–1991: Sheathing Swords, Building Confidence* (Boulder, CO: Lynne Rienner Publishers, 1992).

120. Alfred Stepan, "Paths toward Redemocratization: Theoretical and Comparative Considerations," in *Transitions from Authoritarian Rule*, p. 80.

121. Daniel Levine, "Paradigm Lost: Dependence to Democracy," *World Politics*, vol. 40 (1988), p. 390.