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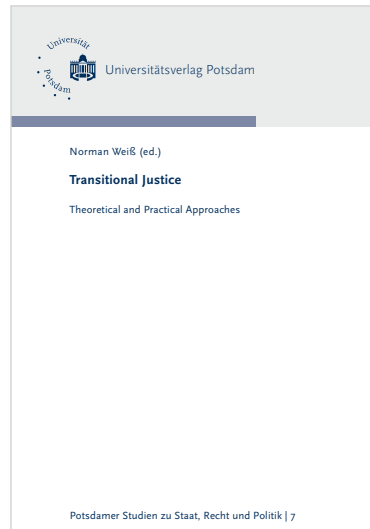
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Structural and Socioeconomic Approaches to Justice: Transformative Justice in Nicaragua's 'Dual Transition'

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Abstract Transitional justice is conventionally theorized as how a society deals with past injustices after regime change and alongside democratization. Nonetheless, scholars have not reached a consensus on what is to be included or excluded. Recent ideas of transformative justice seek to expand the understanding of transitional justice to include systemic restructuring and socioeconomic considerations. In the context of Nicaragua—where two transitions occurred within an 11-year span—very little transitional justice took place, in terms of the conventional concept of top-down legalistic mechanisms; however, distinct structural changes and socioeconomic policies can be found with each regime change. By analyzing the transformative justice elements of Nicaragua's dual transition, this chapter seeks to expand the understanding of transitional justice to include how these factors influence goals of transitions such as sustainable peace and reconciliation for past injustices. The results argue for increased attention to transformative justice theories and a more nuanced conception of justice.

1. Introduction

Until recently, most academic literature on transitional justice has focused on legal-political and top-down mechanisms, such as truth commissions, judicial prosecutions, reparations, lustration, and amnesty.[1] Nonetheless, the conceptual boundaries of the field have often been pushed by both scholars and practitioners. The result is that the definition and framework of transitional justice lacks a strict consensus, and instead has become con-

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[1]   Arthur, 'How "Transitions" Reshaped Human Rights: a Conceptual History of Transitional Justice', 31(2) Human Rights Quarterly 2009, 321–367.

text- and goal-dependent.[2] Among the recurring themes, however, are the ideas of transition from violent conflict to peace, democratization, and addressing past injustices.

Nicaragua, one of the lesser studied cases of transitional justice—following the Sandinista Revolution in the 1970s and again after the Contra War of the 1980s—is a notable example of how both conventional and unconventional conceptions of transitional justice overlap. In what can be referred to as a dual transition, Nicaragua underwent two dramatic and distinct attempts to transition from violent conflict to divergent perceptions of peace, democracy, and justice. Analyzing these transitions from a conventional perspective, however, reveals that there was minimal use of prescribed transitional justice tools; of the aforementioned approaches, only amnesty was actively and faithfully pursued.[3] While there is clear value to the analysis of Nicaragua's dual transition in this context, the approach overlooks some of the central issues that dominated national and local debate during this timeframe.

Several scholars have explored a theoretical shift from transitional to transformative justice, with the latter focusing on socioeconomic and grassroots approaches to justice following a transition. As Paul Gready and Simon Robins explain in their article, *From Transitional to Transformative Justice: a New Agenda for Practice,* transformative justice aims to create "conditions for sustainable peace" by "addressing root causes and adopting holistic responses…", borrowing from the conflict transformation model.[4] The central issue of the sustainability of peace is often referred to indirectly in transitional justice texts; for example, Terence Roehrig frames the realization of judicial prosecutions in Argentina as a balance between justice and maintaining peace between different factions in the country.[5] However, there are other conditions beyond the legal-political to consider in the generation of sustainable peace—namely, the social, structural, and economic conditions in a society.

Given the nature of Nicaragua's transitions—which unmistakably involve disparate models of political, social, and economic relations—it is

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[2]   Fletcher/Weinstein/Rowen, 'Context, Timing and the Dynamics of Transitional Justice: a Historical Perspective', 31(1) Human Rights Quarterly 2009, 163–220.

[3]   Bothmann, *Transitional Justice in Nicaragua 1990–2012: Drawing a Line Under the Past,* Springer, 2015, 157–176.

[4]   Gready/Robins, 'From Transitional to Transformative Justice: a New Agenda for Practice', 8(3) International Journal of Transitional Justice 2014, 352.

[5]   Roehrig, 'Executive Leadership and the Continuing Quest for Justice in Argentina' 31(3) Human Rights Quarterly 2009, 730.

necessary to analyze which unconventional approaches to transitional or transformative justice accompanied the general amnesty. By synthesizing ideas from different scholars, this chapter will use the categories of structural and socioeconomic justice as a basis for analysis. The goal of this method is to expand the current understanding of how transitional justice has been perceived and conducted in the past; in other words, it is vital to consider which unconventional methods of transitional or transformative justice have played an important role before, during, and after historical transitions. The interplay of causes, justifications, and results in Nicaragua's dual transition will provide insights on how these factors may influence other transitions.

In the following sections, this chapter will discuss: 1) an explanation and delineation of transitional and transformative justice approaches to be considered; 2) the history surrounding Nicaragua's dual transition and empirical data regarding conditions and outcomes; 3) the structural changes to institutions and participation for each transition 4) the socioeconomic policies developed and reformed in each transition; and 5) the insights these transformative justice mechanisms give into the character of Nicaragua's dual transition. This chapter will limit the historical analysis to the context of the dual transition and the administration of Violeta Chamorro in the 1990s. While it is important to note that some aspects of transitional justice, both socioeconomic and civil-political, occurred after this timeframe, this chapter will not address those matters.

2. Expanding on Conventional Transitional Justice Analysis

Transitional Justice as an academic concept began to take form with the end of World War II, as the Allied Powers attempted to deal with the atrocities and war crimes committed by the Axis Powers. The term has evolved significantly since then and has more recently been used to analyze cases of transition from one regime or situation of violence to a peaceful and often democratic regime—such cases include Argentina after the 'Dirty War,' Rwanda after the Genocide in the 1990s, and the Balkans region following the breakup of Yugoslavia.[6] Despite a level of standardization to the field (for both academic and practical purposes),

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[6]   Teitel, 'Transitional Justice Genealogy', 13 Harvard Human Rights Journal 2003, 89–92.

there remains no agreement on which mechanisms are to be included in the field, nor on how to effectively implement these tools in a transition.[7]

Nonetheless, the most prominent concepts of transitional justice include the use of truth commissions, prosecutions, reparations, lustration, and amnesty—all of which are implemented through a top-down, institutional approach.[8] Truth commissions deal with the collection of information regarding atrocities committed prior to a transition through the collection of primary documents and victim testimonies, with the goal of sharing the final reports publicly and clarifying otherwise ambiguous accounts of events. Prosecutions, on the other hand, seek to punish those responsible for human rights abuses and other misdeeds prior to the conflict. Reparations imply monetary payments to victims or the families of victims. Lustration punishes those who were associated with human rights violations by disqualifying them from certain roles in politics. Finally, amnesty refers to the pardoning of human rights violators in an attempt to limit punishments, emphasize forgiveness, and preserve a level of peace and order. Amnesties can be granted selectively or universally ('blanket amnesties'). Each case of transitional justice has been unique in its choices and implementation of these methods, something that often occurs over an extended period of time and may or may not involve the international community.[9]

While analyzing transitions through these mechanisms produces meaningful analysis on how transitions take place and the goals of the leaders of the transition, some scholars have sought to expand what may be considered as tools of transitional justice. Here, it is important to note a distinction between academic research regarding past transitions and practical discussion or involvement in current or future transitions. Some scholars approach new transitional justice concepts not as a theoretical analysis of past transitions, but rather as a practical approach to apply.[10] Nonetheless, the expansion of transitional justice terms and mechanisms for analyzing past transitions may provide new insights that have previously been ignored. There are numerous arguments for including or excluding certain concepts of transitional justice; below, the most relevant to the case of Nicaragua are presented and justified.

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[7]   Arthur, 357–364.
[8]   Bothmann, 33–47; Arthur, 347.
[9]   McCargo, 'Transitional Justice and Its Discontents', 26(2) Journal of Democracy 2015, 5–20.
[10] Arthur, 357–360.

Thomas Obel Hansen emphasizes the need to reimagine the theory of transitional justice as a differentiated theory, with various iterations and circumstances dependent on the characteristics of a society, rather than creating one generalized theory.[11] A distinction must be made between liberal and non-liberal states during a transition; in other words, the characteristics of the regime that replaces an old regime in a transition is not necessarily democratic or may limit civil and political rights. These transitions, Hansen contends, must be analyzed differently than liberal transitions; this does not, however, mean that the transition or justice is necessarily illegitimate. Rather, one must consider the strength of pre-existing institutions (or lack thereof) to serve the needs of society, the context of the transition, and the handling of past injustices.[12]

Hansen also develops three interconnected goals of transitional justice: preventing the recurrence of abuses, creating a more just society, and attending to the needs of victims.[13] While all three may be addressed in part by conventional transitional justice mechanisms, Hansen argues for a wider interpretation of these goals. Preventing the recurrence of abuses includes, for example, "demobilization of paramilitaries, a political settlement and reforms that allow for the restructuring of abusive institutions, and increased transparency and accountability…"[14] Attending to the needs of victims extends beyond top-down measures to active inclusion of all types of victims, whether from direct or structural violence. This is particularly important in the context of women and ethnic minorities. Lastly, the goal of creating a more just society connects directly to the other two goals:

> *If access to political, economic, and social resources is not made more equal, chances are that those victimized in the past will continue to feel victimized, or that new groups will be marginalized. If so, risks are high for a return to violent conflict.*[15]

This final concept directly relates to Gready and Robins' notion of transformative justice, which is defined as "transformative change that emphasizes local agency and resources, the prioritization of process rather than

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11 Hansen, 'Transitional Justice: Toward a Differentiated Theory', 13(1) Oregon Review of International Law 2011, 1–54.
12 Hansen, 41–46.
13 Ibid., 41–46.
14 Ibid., 42.
15 Hansen, 43.

preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level."[16] Rather than seeking to replace legalistic or top-down approaches, transformative justice is seen as a multi-disciplinary approach that encompasses the political, economic, and social elements of transition at all levels from institutions to communities and subcommunities. The process includes grassroots decision-making and extends the definition of violence from direct or immediate violence to structural and cultural violence as well.[17] Relating to Hansen's goals of transitional justice, Gready and Robins highlight a need to balance transitional justice mechanisms and the establishment of a sustainable peace. Additionally, the analysis of power relations and inclusion and exclusion of factions of society are essential within the context of transitions.[18]

Regarding socioeconomic rights, Lisa J. Laplante argues that often the root causes of pre-transition violence are structural violence—underprivileged segments of society experience poverty, exclusion, and inequality without recourse or government assistance.[19] On one hand, these concerns can be addressed through democratic mechanisms post-transition, allowing all citizens a voice; on the other hand, transformative justice must take into account factors like access to education, healthcare, infrastructure, and food and job security. By addressing these issues, Laplante argues, the risk for a return to conflict is greatly reduced, since the fundamental causes of the original conflict have been addressed.[20] Such issues are addressed in International Covenant on Economic, Social, and Cultural Rights (ICESCR), which may serve as a guideline for socioeconomic justice.[21] Laplante also suggests a hybridization of approaches, such as granting space and attention to socioeconomic rights within a truth commission and using the results to make recommendations for new social and economic policies.[22]

Equally important in the transformative justice approach is the quality of being *process-oriented,* rather than outcome-oriented. Gready and

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[16]   Gready/Robins, 340.
[17]   See Galtung, 'Cultural Violence', 27(3) Journal of Peace Research 1990, 291–305.
[18]   Gready/Robins, 350, 357.
[19]   Laplante, 'Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence Through a Human Rights Framework', 2 The International Journal of Transitional Justice 2008, 332–334.
[20]   Ibid., 346–354.
[21]   UN General Assembly, 'International Covenant on Economic, Social, and Cultural Rights', 993 United Nations Treaty Series 16 December 1966, 3–106.
[22]   Laplante, 333.

Robins emphasize that causes of violence that prevent sustainable peace do not only occur prior to a transition, but also *during* a transition.[23] There is a possibility for resistance to approaches that are top-down or that ignore the needs of certain segments of society. Thus, the participation of a wide range of communities and minority groups in all phases of the transition is essential to addressing root issues of a conflict in a sustainable and effective manner. Outcomes remain important, but dependent on the process.

While the concept of transformative justice is very new and continues to be developed and refined, its application in analyzing past instances of transitions may provide new insights. There are limited examples of research into unconventional transitional justice mechanisms, although Gready and Robins mention Rwanda's *gacaca* courts and Timor-Leste's Community Reconciliation Process as local, grassroots approaches to justice.[24] Likewise, some scholars have noted the socioeconomic efforts made by countries like South Africa, where the participation and inclusion of black communities was a central element of the transition, and Nicaragua, where the socialist ideology of the Sandinistas influenced transitional policies.[25] However, these studies tend to focus on specific elements of transformative justice, such as participation or representation.

This chapter seeks to address a wider range of characteristics associated with transformative justice and analyze them in the context of Hansen's differentiated approach to transitional justice. The first area of concern will be the structural nature of the transition, including the characteristics of institutions in the new regime, their inclusivity or exclusivity, and grassroots engagement. Second, a focus on the socioeconomic tools implemented during transitions is necessary, particularly with regards to poverty and inequality. Third, the relation of these mechanisms to the underlying causes of violence and to the creation of sustainable peace must be analyzed. The selected categories do not address all of the criteria related to transitional justice, but rather are used to expand the use of the concept in academic studies and draw conclusions on how the concept may further be applied in future research. While the third point seeks to relate the use of transformative justice mechanisms to the overarching

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[23]   Gready/Robinson, 340.

[24]   Ibid., 349–350.

[25]   Fletcher/Weinstein/Rowen, 184–186; Reed/Foran, 'Political Cultures of Opposition: Exploring Idioms, Ideologies, and Revolutionary Agency in the Case of Nicaragua', 28(3) Critical Sociology 2002, 354–356.

goals of transitional justice, this should not be perceived as an evaluation on effectiveness nor as assuming causal relationships. Rather, the analysis and findings regarding this question are meant to relate to the claims of transformative justice theorists regarding their reasonings for applying this new model.

Using Nicaragua's dual transition as a case, this chapter will outline these differentiated approaches to transitional justice and analyze how this expansion may extend our understanding of transitional justice in both academic literature and practical usage. The dual transition provides unique insights due to the divergent and ideologically-charged approaches of both the FSLN in the 1980s and the government of Violeta Chamorro in the 1990s.

3. Nicaragua's Dual Transition: Priorities and Conflicts Post-Somoza

Nicaragua has a long history of conflict and regime change dating back to its independence. Similar issues of governance, foreign influence, economic inequality, and social inequities dominate much of Nicaraguan history.[26] Nonetheless, the Sandinista Revolution and fall of the Somoza regime represented a unique ideological and economic shift as the *Frente Sandinista de Liberación Nacional* (Sandinista National Liberation Front, or FSLN) strove to address the ills they recognized in society. The Somoza regime, which held power from 1936 to 1979, was an illiberal and repressive government that kept wealth concentrated in the hands of a few elites and suppressed various movements for democratic reforms.

The FSLN began in the 1960s as an oppositional movement and evolved into a guerilla force until eventually forming a political party and playing a central role in Nicaragua's first transition. Their ideology centered not only on the expansion of civil and political rights (CPR), but also economic, social, and cultural rights (ESCR), integrating socialist and liberation theories.[27] Regarding the former, the FSLN's primary goal was to overthrow the Somoza regime, and establish a revolutionary government. Further CPR goals included the independence from intervention or influence from outside countries (most notably the United States), the

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[26]   See Kinzer, *Blood of Brothers: Life and War in Nicaragua,* Harvard University Press, 2007.
[27]   Bothmann, 72.

establishment of a participatory democratic system, an end to corruption, and the extension of human rights—including freedom of expression and the right to assemble—to all members of society. Social and economic demands of the FSLN included redistribution of land to address social inequality and reform of the welfare system to improve the standard of living for the large lower class.[28] It is important to note, however, that the FSLN was neither homogeneous nor the only voice of opposition to the status quo. Elizabeth Dore and John Weeks argue that:

> The movement that overthrew Somoza was led by a polyglot group of men and women with little clear plan for what would occur once the dictatorship had been defeated. In so far as there was a unifying ideology it involved the fervent conviction that the New Nicaragua would be free from the domination of the United States, and the economy of the country would be reorganised to provide more benefit to the lower classes.[29]

In the years leading up to the first transition, massive human rights abuses were rampant throughout the country, of which the majority were committed by the Somoza regime. Torture, arbitrary detention, and state terror were government responses to civil resistance. Further, corruption, press censorship, and election manipulation were common practice and limited Nicaraguan citizens' rights to express themselves and participate in political, social, and economic decision-making.[30] The result was a consolidation of both power and wealth among a small community of elites and a lack of attention to the needs of the Nicaraguan people, especially those suffering from poverty and inequality. Great inequalities existed in relation to gender rights, health services, and education, which have all been studied as causes for the rise of the FSLN and similar groups against Somoza.[31] What is clear from analyzing the growth of the anti-Somoza

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[28] Ibid., 71–76; Williams, 'Dual Transitions From Authoritarian Rule: Popular and Electoral Democracy in Nicaragua', 26(2) Comparative Politics 1994, 169–185.

[29] Dore/Weeks, *The Red and the Black: the Sandinistas and the Nicaraguan Revolution,* University of London Institute of Latin American Studies, 1992, 22.

[30] Kinzer, 19.

[31] See Arnove/Dewees, 'Education and Revolutionary Transformation in Nicaragua, 1979–1990', 35(1) Comparative Education Review 1991, 92–109; Garfield/Taboada, 'Health Services Reforms in Revolutionary Nicaragua', 74(10) American Journal of Public Health 1984, 1138–1144; and Molyneux, 'Mobilization Without Emancipation? Women's Interests, the State, and Revolution in Nicaragua', 11(2) Feminist Studies 1985, 227–254.

movement is that a deprivation of both civil-political and socioeconomic rights were direct causes for the uprising of the FSLN and other rebel factions.

The first transition came with the fall of the Somoza regime in 1979 and the formation of the *Junta de Gobierno de Reconstrucción Nacional,* consisting of members of the FSLN, smaller political movements like the Movimiento Democrático Nicaragüense (Nicaraguan Democratic Movement, or MDN), and other interested parties, like labor unions and business groups. As in most transitions, the decision-makers and their approaches changed and adapted over the following years. Initial actions to address civil and political injustice were the abolition of the constitution, dissolution of the National Congress and other state institutions, and the banning of images and symbols related to the Somoza regime.[32] Special expedited trials were set up against those involved in the dictatorial regime, and basic human rights—including the right to participate in political, social, and economic matters, the right to assembly, the prohibition of torture and legal rights to a trial and counsel—were guaranteed to all Nicaraguan citizens through the Statute on the Rights and Guarantees of Nicaraguans.[33] Regarding socioeconomic transitions, the Junta began campaigns for literacy and vaccinations, created a free education and healthcare system, redistributed plots of land including the seizure of land owned by Somoza supporters and wealthy landholders, and women were given a formal equality to men in politics and the economy.[34] In the years following the fall of the Somoza regime, the FSLN also consolidated power in the government and ruled in a unilateral manner, despite elections in 1984.[35]

Simultaneously, the start of a counterrevolution (or Contra War) prevented the formation of a stable peace in the country and undermined the transitional authorities. Notably, the support and organization of the United States for those discontent with Sandinista rule fueled the violence throughout the 1980s. Nonetheless, the concerns of certain groups in Nicaraguan society formed the basis for participation in the resistance to the FSLN: landowners and elites voiced concerns of property loss and

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[32]   Bothmann, 76–81, 115–121.
[33]   Envío Team, ' Human Rights: Nicaragua's Record', 76 Envío Digital, retrieved from: http://www.envio.org.ni/articulo/3174, accessed September 30th 2018.
[34]   See Austin/Fox/Kruger, 'The Role of the Revolutionary State in the Nicaraguan Food System', 13(1) World Development 1985, 15–40; Bothmann, 76–80; Molyneux, 238–251.
[35]   Williams, 178.

economic restructuring; indigenous tribes felt imposition on their auton-
omy; those who benefitted from the Somoza regime's time in power felt
unfairly persecuted; and many simply disagreed with the ideology and di-
rection in which the FSLN wanted to lead the country.[36] Further, the form
of democratic participation and representation was questioned by many
groups in society, which was amplified by the consolidation of power by
the FSLN in all four branches of government (executive, legislative, judi-
cial, and electoral) and the adoption of several laws that limited civil and
political rights.[37]

The FSLN was made to change its policies as a result of the resistance
and violence that accompanied the backlash. Its form of representative, or
'Popular Revolutionary Democracy' shifted toward a more traditionally
conceived liberal democracy; while at the same time, many of the rights
promised by the Statute on the Rights and Guarantees of Nicaraguans
were restricted. Nonetheless, many of the socioeconomic policies adopted
by the regime carried on despite the conflict.

Violence and human rights abuses, including kidnapping, torture,
and arbitrary detention, were perpetrated by both Sandinista and Con-
tra forces throughout the 1980s, leading to a second transition in 1990.
With the involvement of the international community—primarily other
Latin American countries such as the Lima Group, Costa Rica, Mexico,
Colombia, and Venezuela—the peace process began in the early 1980s.[38]
However, it was not until the 1990 elections and transfer of power to
Violeta Chamorro, a non-Sandinista politician, that the second tran-
sition took hold and the conflict began to settle. Various earlier peace
accords focused on democratization, amnesty, national reconciliation,
and a sustainable peace, and for the most part these were implement-
ed after the second transition.[39] The *Protocolo de Procedimiento de Trans-
ferencia del Mando Presidencial de la República de Nicaragua* (Protocol for
the Procedure of Transfer of the Presidential Mandate of the Republic of
Nicaragua, or Transitional Protocol) was designed during negotiations on

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[36]   Brown, *The Real Contra War: Highlander Peasant Resistance in Nicaragua,* Univer-
       sity of Oklahoma Press, 2001; Foran/Goodwin, 'Revolutionary Outcomes in Iran
       and Nicaragua: Coalition Fragmentation, War, and the Limits of Social Transfor-
       mation', 22(2) Theory and Society 1993, 222–227; Henriksen/Kindblad, 'Neoliber-
       alism, patriarchal rule, and culture change at the turn of the twentieth century: the
       case of Tasbapauni', in Baracco (ed.), National Integration and Contested Auton-
       omy: The Caribbean Coast of Nicaragua (2011), 201.
[37]   Bothmann, 76–79, 135–138.
[38]   Bothmann, 91–92.
[39]   Ibid., 96–98.

the transition and further outlined the specific conditions of the transfer; namely, a continuation of the structure of the armed forces (though with a reduction of the overall size), protection for labor unions and mass organizations, job guarantees for state officials, civil authority over police forces, and compensation for landowners who had their properties seized after the first transition. Further promises were made to provide assistance and pensions to those harmed in the war and to disarm both the army and Contra forces.

The changes brought on by the Chamorro government were significant but limited and the FSLN continued to hold significant control over the army and many government institutions, despite a reduction in the size of the former.[40] Instead, the following years were characterized by volatility and a focus on maintaining peace. The 1987 constitution drafted by the FSLN remained in place (constitutional reform would take place several years after the second transition), blanket amnesties were introduced, and there is very little evidence that displaced former landowners received any compensation for lost land.[41] However, one of the larger changes during the Chamorro administration was the retreat from mixed economic policies that supported cooperative production and distribution toward a more free market or neoliberal capitalist economic model.[42]

With regard to conventional transitional justice mechanisms, neither the regime of the 1980s nor that of the 1990s chose to implement strategies to deal with past injustices. The Junta and FSLN had just one method of dealing with the human rights violations of the Somoza regime: associates of the regime were to be put on trial and punished for crimes. Trials, however, centered around the idea of 'victor's justice' and were conducted arbitrarily through special tribunals and appeals courts. These courts have been criticized for convicting defendants with a vague definition of 'human rights violations'—namely, anyone associated with the Somoza regime—insufficient evidence, and in expedited timeframes.[43] Far from a liberal definition of justice, it is clear that the FSLN's approach to addressing past injustices consisted of eliminating all traces of the previous regime; still, the approach did little to aid the transition of society. The mid-1980s through the election of Violeta Chamorro were

[40]   Dore/Weeks, 32–34.
[41]   Bothmann, 100.
[42]   Utting, Amalia Chamorro, and Christopher Bacon, *Post-conflict Reconciliation and Development in Nicaragua: the Role of Cooperatives and Collective Action,* United nations Research Institute for Social Development Working Paper 2014-22, 2014.
[43]   Bothmann, 118.

dominated by the use of amnesties, and finally the adoption of the *borrón y cuenta nueva* policy, centered around forgetting past conflicts and moving forward.

While reasons for each regime's choice in respective approaches to transitional justice have been advanced, it remains uncertain whether these policies truly addressed the underlying conditions that led to violence and human rights abuses. Following Hansen's goals of transitional justice, it can be argued that underlying conditions were not addressed by amnesties or trials; however, other actions may have attempted to address these issues, such as through structural adjustments or social and economic policies. Nonetheless, it is clear that each regime had distinct perceptions of which underlying causes were most important and how to address them given the context in which the transitions took place. Therefore, it is essential to analyze how these unconventional methods of transitional justice were implemented and what consequences may have arisen as a result.

4. Systemic Changes: Development of Institutions and Systems of Inclusion

4.1 First Transition: The FSLN's Popular Revolutionary Democracy and the Evolution of Liberal Democracy

Oppressive regimes tend to rule within structural and institutional conditions that allow for human rights abuses and exclusion of sections of society, such as women or indigenous peoples, from participation or decision-making. Transitional justice has often been imagined in the context of a transition from such a regime to a liberal democracy; however Hansen contends that there is a spectrum of liberal-illiberal transitions and that the particular institutional and structural setting that is created by the transition is in fact part of the attempts to deal with past injustices. Gready and Robins expand this argument to include active participation and decision-making roles for members of underrepresented communities to ensure that new policies and other transitional justice approaches accurately meet the needs of these groups.[44] Such inclusive processes seek to address underlying causes of violence and conflict within a country.

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[44]   Gready/Robins, 357–358.

The fall of the Somoza regime and formation of the Junta in 1979 brought an end to the illiberal rule of the past 43 years as well as the structures—like the constitution, National Congress, National Guard, judiciary, and other state institutions—that supported it.[45] Thus, brand new institutions were to be formed, initially by the Junta and later by the Council of State and Cabinet. Among the first actions of the Junta was to enact the Statute on the Rights and Guarantees of Nicaraguans, a positive step toward liberalization and democratization in the country. Similarly, the adoption of the Law for Political Parties in 1983 and a new constitution in 1987 enshrined equal rights for men and women, rights to health, education, social security, housing, and environment, freedom of assembly and to form political parties, and created a separation of powers through four branches of government—the executive, legislative, judicial, and electoral. Conversely, the Sandinista regime imposed limits to rights throughout the 1980s, due in a large part to the continued violence of the Contra War. A State of Emergency was imposed immediately after the fall of Somoza and was followed by various iterations up through 1988. The result was the suspension of many of the rights included in the previously mentioned documents, including the right not to be arbitrarily detained, the right to strike and freedom of expression, movement, and association.[46] Further, the judicial system set up to prosecute human rights abuses under the Somoza regime was widely seen as 'victor's justice,' with little to no regard for civil and political rights.[47]

The FSLN's domination over the creation of new institutions further shaped the regime's liberalization, but in a very particular manner; rather than a liberal, Western-style democracy, centered around elections as democratic participation, the FSLN strove to develop a 'Popular Revolutionary Democracy,' characterized by the mobilization of grassroots organizations in both rural and urban spaces having the ability to participate in politics.[48] Beyond these bodies, the development of traditional, liberal democratic institutions were not given priority in the early 1980s. These mass organizations were given formal representation in the Council of State and had legitimate influence over decisions made by the FSLN. However, relations between the state and grassroots organizations were not always amicable, and were "tied closely to the government's percep-

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[45]   Bothmann, 76.
[46]   Ibid., 122–132.
[47]   Bothmann, 118.
[48]   Foran/Goodman, 224; Williams, 172–176.

tion of the external threat."[49] Elections in 1984 presented an opportunity for the inclusion of liberal democratic values within the evolving structure of new Nicaraguan institutions. While international election observers characterized the elections as free and fair, the abstinence of a large coalition of business groups and labor unions undermined its legitimacy.[50]

It may be easy to dismiss the FSLN regime of the 1980s as nondemocratic or illiberal, however an analysis of the context of the transition provides some deeper insights. Primarily, the continuation of violence during the transition by a variety of factions, led the FSLN to make difficult choices about what political freedoms and institutions could be developed and over what timeframe this could be done. Initial promises of civil, political, economic, and social freedoms were partially reversed in an effort to push security and peace; nonetheless, there is some evidence that these protective measures actually increased participation in rebel groups.[51] Other contextual factors, such as post-revolution economic devastation and outside influence from the US also affected the FSLN's ability to adopt new and effective institutions from the beginning of the transition. Countries in economic turmoil need more time to form new and strong institutions and often prioritize the reconstruction of society over the formation of a liberal democracy.[52] Nonetheless, the pressure to stabilize the country following the transition may have pushed the FSLN leadership to adapt their institutions and systems. This imbalance of interests and needs could explain the FSLN's mixed approach and eventual shift toward more liberal democratic structures in the late 1980s.

The participation of concerned parties through unions and grassroots movements also formed a major part of the FSLN's approach to transitional justice throughout the 1980s. Their attempts to create a 'Popular Revolutionary Democracy' involved many underrepresented actors—rural cooperatives, poor workers, women among them—in the decision-making process through mass organizations. The *Unión Nacional de Agricultores y Ganaderos* (National Union of Farmers and Ranchers of Nicaragua, or UNAG) was able to modify a government resettlement program as well as reforms to agrarian law.[53] Still, not all segments of society were represented equally or granted equal influence. The *Asociación de Mujeres Nicaragüenses Luisa "Amanda Espinoza"* (Luisa Amanda Espinoza Asso-

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49   Williams, 177.
50   Bothmann, 129; Williams, 178.
51   Foran/Goodwin, 228.
52   Hansen, 14.
53   Williams, 173.

ciation of Nicaraguan Women, or AMNLAE), for instance, has addressed some practical problems that women face, yet their program "remains one conceived in terms of how functional it is for achieving the wider goals of the state."[54] Further, the influence of such organizations was drastically reduced following the 1984 elections.[55] The inability of some groups to express themselves within the new system also contributed to the rise of violent resistance. The case of indigenous populations on the Caribbean coast of Nicaragua illustrates this most clearly—the attempts of the FSLN to integrate the strongly autonomous communities into their regime led to feelings of alienation and to the mobilization of indigenous masses into resistance forces through MISURATA and MISURA.[56] While given representation in the Council of State, relationships remained hostile.

By the mid-1980s, the FSLN was already enacting a number of re-forms to deal with the conflicts in the country. A liberalization of the po-litical and electoral systems, peace talks with rebel groups, and amnesties replacing trials were all key elements of this shift. Given that the systems and institutions were created anew, and within the context of continued violence and poor economic performance, it is reasonable that the institu-tions would need to adapt and develop. The illiberal state of emergency laws and trials of ex-Somoza supporters could be justified as necessary to develop and protect institutions; nonetheless, their implementation was reminiscent of similar laws in place during the Somoza regime. The involvement of underprivileged groups in creating a new and more fair system also held the potential to create a truly inclusive and socially con-scious transition. Limits placed on extent of participation—including an imbalance of decision-making power between different groups, the hier-archical structure of organizations (taking power away from smaller, more local organizations), and eventually the reduction of structural influence on the government—hindered the FSLN's ability to execute truly trans-formative justice measures. Nonetheless, the FSLN's concessions to their vision of justice were necessary for bridging the gap between the regime and the Contras and for a prompt end to violence.

[54]   Molyneux, 251.
[55]   Dore/Weeks, 32–34.
[56]   Bourgois, 'Nicaragua's Ethnic Minorities in the Revolution', 36(8) Monthly Re-
       view 1985, 38–40.

4.2   Second Transition: Balancing Liberalization and Sustainable Peace

The elections of 1990 represent a major turning point in the structure of institutions in Nicaragua, although the legacy of the FSLN's years in power remained to a degree. The various peace accords signed, and in particular the Sapoá Accord of 1988, served as a "negotiated transition" and set forth many of the structural reforms carried out by the Chamorro government.[57] Structural conditions included a return to guaranteeing freedom of expression, political participation for all through elections, and the establishment of a western-style liberal democracy.[58] Further structural changes and concessions to FSLN institutions came immediately following the election of 1990 and the creation of the Transitional Protocol—specifically, respect for the integrity of the armed forces amidst a reduction in numbers (a Sandinista-dominated institution), constitutional protection for mass organizations and labor unions, job guarantees for state officials (which were also FSLN-dominated), subordination of the national police to civil authority, and, perhaps most importantly, retention of the 1987 constitution.

Notably, this second transition did not eliminate the institutions established by the FSLN, but rather modified them. Many of the fundamentals of a liberal, electoral democracy had been established in the years leading up to 1990, although plenty of areas of contention still existed. In one case, the Chamorro government ordered the police to close the National Assembly and seize its assets, after the supreme court annulled the assembly election.[59] Further, by conceding to allow many FSLN-dominated institutions to remain in place—with the goal of pursuing peace and reconciliation between the different governing factions—the transition did not address some of the central structural issues that led to the conflicts of the 1980s. While civil and political liberties were gradually restored, institutions remained only partially liberal with endemic instability, internal contradictions, and the potential for exploitation.[60] For

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[57]   Bothmann, 105.

[58]   Kinzer, 374.

[59]   Williams, 181–182.

[60]   See Martí i Puig, 'Nicaragua: Chapiolla Democracy', in Levine/Molina (eds.), The Quality of Democracy in Latin America (Lynne Rienner Publishers, 2011), 173–200; Martí i Puig (Claire Wright, Trans.), 'The Adaption of the FSLN: Daniel Ortega's Leadership and Democracy in Nicaragua', 52(4) Latin American Politics and Society 2010, 79–106.

example, the FSLN maintained a significant level of influence and power, engaging in "behind-the-scenes lobbying" to persuade Chamorro's government to change economic policies and acted as a mediator between the government and mass organizations like those of the sugar and banking industries.[61] The goal of ending violence and creating stability was a major factor in the agreement on the Transitional Protocol and may explain in part the degree of structural changes that the second transition brought. One attempt to reform the constitution in 1995 brought the Chamorro government to "the verge of ungovernability."[62] Economic conditions began to improve, although struggles continued and may have contributed to the lack of reformation of institutions during the early 1990s.

The modified liberal, electoral democracy that took form in the late 1980s and early 1990s significantly changed the access and participation of different segments of society. No longer possessing direct access to government institutions or decision-making privileges, the preexisting mass organizations had to rely on government representatives being receptive to their needs and demands. While these changes began during the FSLN regime in the 1980s, the groups still had significant connections to the Sandinistas and thus more opportunities for participation; in the years following the second transition, mass organizations' relation to official institutions deteriorated and the organizations became frustrated.[63] Several groups that felt underrepresented turned to other means of expression, including strikes and violence in the years that followed. While overall civic involvement continued to increase during the 1990s, the struggle of many groups to have their concerns addressed illustrates the retreat from participatory, grassroots mechanisms of transformative justice. Moreover, elites and the business community gained more influence in formal government structures than during the FSLN's regime.[64]

The use of blanket amnesties as a conventional transitional justice tool is also noteworthy. The balancing of political, economic, and social factions within Nicaragua was essential to curbing violence in the early 1990s.[65] While the use of amnesties avoids the illiberal practices of the trials against Somoza affiliates in the 1980s, it is characteristic of the volatile situation that the Chamorro government had to mediate during its time in power. The use of amnesties may have reinforced the FSLN's hold

[61]   Williams, 182.
[62]   Bothmann, 158.
[63]   Williams, 180–181.
[64]   Foran/Goodwin, 234; Williams, 180.
[65]   Bothmann, 162–166.

on power in the military, police force, and various government institutions and certainly did not change the structure of institutions. At the same time, a blanket amnesty portrayed the new government as impartial in a very divided society.

It must be repeated that transitional and transformative justice occur over extended periods of time. Systems, institutions, and the involvement of mass organizations have continued to develop after the end of Violeta Chamorro's presidency in 1996.[66] While these later changes may have had an effect on the sustainable peace in Nicaragua, it is valuable to compare the periods of transition of the FSLN and the Chamorro government to understand how initial approaches between the two differed and what policies were changed immediately following the second transition, as these institutional changes addressed discontents with FSLN structures. Further, these structures directly relate to economic and social policies put forward by each of the transitional governments. The ideologies and approaches to dealing with the economic and social discontents influence structural choices and in turn these structural choices influence how the governments respond to the needs of different groups within society. Thus, the analysis will now turn to the socioeconomic factors addressed by each transition.

5. Socioeconomic Justice: Limited but Potent Changes for the Underprivileged

5.1 First Transition: Economic Restructuring, Expanded Access to Resources, and Discontents

Prior to the Sandinista Revolution, inequality in Nicaragua was widespread and multifaceted. A small percentage of the population owned the majority of land in the country, most Nicaraguans lived in extreme poverty, and minority groups felt the effects of poverty particularly strongly.[67] Economic and political power were concentrated in the hands of a few elites while most Nicaraguans saw little or no improvements in their socioeconomic conditions. This disparity created further inequalities in health, education, and access to food or employment opportunities. Edward Muller and Mitchell Seligson make a particularly strong case

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[66]   Puig, 94–96.
[67]   Bothmann, 70; Kinzer, 268.

for how these socioeconomic deficiencies influenced citizens' decisions to pick up arms and join the movement against the Somoza regime alongside political repression, overall economic development and political violence.[68] Agrarian inequality, alongside a semi-repressive regime, low economic development, and governmental acts of coercion, are among the most important determining factors for political violence.

These inequalities were a major part of the FSLN and other rebel groups' platforms for change prior to and during the first transition. Among the Junta's first actions in power was a complete overhaul of the socioeconomic policies of the past five decades. The largest programs included a literacy or alphabetization campaign, a vaccination campaign, and a massive redistribution of property.[69] These adjustments created nearly instantaneous improvements to the living conditions of poorer Nicaraguans in the early 1980s: vaccinations for Malaria, Measles, DPT, and Polio increased drastically, causing a 50% decrease in malaria cases and a virtual end to Polio and Measles; illiteracy was reduced to 13% from 50%; and agricultural cooperatives increased their share of land.[70] On a larger scale, the FSLN designed a mixed-economy system with a range of public and private enterprises and corporations, including *Corporaciones Nacionales del Sector Público* (National Corporations of the Public Sector, or CORNAP).[71]

Nonetheless, socioeconomic policies were not without their setbacks. Nicaragua's economic underdevelopment prevented the FSLN's socioeconomic campaigns from moving at a faster pace and limited resources were spread thin between social programs and the Contra War.[72] The violence of the war itself further limited the development of social and economic policies because of the risk to the volunteers carrying out the campaigns, who on several occasions were kidnapped or intimidated.[73] Further, some

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[68] Muller/Seligson, 'Inequality and Insurgency', 81(2) The American Political Science Review 1987, 425–452. See Figure 4. Observed Causal Paths in the Multivariate Causal Model, 442.

[69] Bothmann, 126.

[70] Austin/Fox/Kruger, 'The Role of the Revolutionary State in the Nicaraguan Food System', 13(1) World Development 1985, 21–24; Bothmann, 126; Garfield/Taboada, 'Health Services Reforms in Revolutionary Nicaragua', 74(10) American Journal of Public Health 1984, 1143.

[71] Bothmann, 126; Rodríguez/Rivas, 'Inequality and Welfare Changes: Evidence From Nicaragua', in Nellis/Birdsall (eds.), Reality Check: The Distributional Impact of Privatization in Developing Countries (2005), 118–120.

[72] Austin/Fox/Kruger, 32; Dore/Weeks, 19.

[73] Bothmann, 149.

policies were responsible for fostering the anxiety, discontent, and mobilization of opposition to the FSLN, most notably those regarding land reform and private property.[74] Consequences included a severe labor shortage in the agroexport sector and hyperinflation. In the second half of the 1980s, the FSLN modified policies and attempted to include the upper and middle classes within its economic policies.[75]

Social policies focusing on marginalized groups also brought mixed results. While many women's issues were addressed, such as the Provision Law that sought to create gender equality in the household, improvements to women's health and safety provisions at work, and entitlement to their own wages rather than to the male head of household.[76] Further, structural equality of women and more general economic policies like those previously mentioned benefitted women more than men—traditionally more men were educated and earned money for the family. Nonetheless, women's rights remained in this context of economic reform as the primary goal of the FSLN.[77] Similarly, the FSLN attempted to address the discontents of the indigenous communities on the Caribbean coast. Philippe Bourgois notes that the Caribbean coastal economy and culture had very little connection to Managua or western Nicaragua.[78] Further, the economy of eastern Nicaragua did not experience the same drastic economic inequality that was present in the west of the country. FSLN attempts to integrate the coast into a more centralized state and economic structure lead to feelings of alienation and resentment in indigenous communities; despite significant contributions from the FSLN in the form of government services and investments, many indigenous communities were displaced by violence and imposition between anti-government forces and the FSLN.[79]

Similar to structural and systemic transitions, socioeconomic policies changed and evolved over the course of the FSLN's rule in the 1980s. The pressure of the Contra War and poor economic conditions influenced the implementation and effectiveness of projects and forced reconsiderations from leaders in the later years. While many economic policies directly addressed root causes of the Sandinista Revolution, they were not con-

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[74]   Foran/Goodwin, 228.
[75]   Ibid, 225–226.
[76]   Molyneux, 247–248.
[77]   Boesten/Wilding, 'Transformative Gender Justice: Setting an Agenda', 51 Women's Studies International Forum 2015, 78.
[78]   Bourgois, 31.
[79]   Bothmann, 143–148.

ducted with consideration to all segments of society. Short-term policies like the vaccination and literacy campaigns proved effective, but larger reforms like land reform as well as the overall restructuring of the economy were met with skepticism and backlash. Further, social policies targeting minorities and the most vulnerable communities were not prioritized to the same degree as the economic reforms and did not fully take differences into account.

5.2 Second Transition: Capitalism, Privatization, and a Shift of Attention

The transition to the Chamorro government of the 1990s again changed the direction of socioeconomic policy in Nicaragua. Many in the Chamorro government's coalition were former elites that had opposed the FSLN's approach to a mixed economy and favored a Western-style capitalist economy. Literacy programs and healthcare initiatives diminished, in particular the access for lower socioeconomic classes, and state-owned enterprises and CORNAP began the process of privatization, placing large corporations back in the hands of the elites.[80] These changes had real and stark effects on most citizens of Nicaragua, above all the poorest and led to inequality levels comparable to those during the end of the Somoza regime. Nonetheless, the overall economic condition of Nicaragua improved under Chamorro with hyperinflation coming under control in 1992, followed by reductions in the budget deficit and an increase in international investment.[81]

Some elements of Sandinista reforms remained in place, such as the socioeconomic rights guaranteed in the constitution to education, healthcare, and some reforms to the national economic system.[82] While education and healthcare accessibility fell under Chamorro, they remained more available to the economically underprivileged than during the Somoza regime. Further, the influence and power of unions and trade groups may have diminished, but was not altogether eliminated.[83] Promises of land and pension compensation—for former landowners who lost land during the FSLN's rule and former combatants, respectively—guaranteed in the

[80]   Rodrígues/Rivas, 85–121.
[81]   Williams, 182.
[82]   Constitute Project, *Nicaragua's Constitution of 1987 with Amendments through 2005*, Oxford University Press, 2014.
[83]   Williams, 181.

Transitional Protocol were not met, however. In the case of land, 83% of rural properties that were under review in 1990 had not been settled by 2001.[84] These issues led to some continued violence from both Contras and FSLN soldiers in the early 1990s; however, this violence was not as widespread or long-lasting as the prior conflicts.

For minority groups in the country, the second transition did not address many issues. While compensation for former combatants was provided, those who experienced the worst human rights abuses during the Contra War—specifically women and indigenous peoples—received no compensation.[85] Moreover, the return of elites to power in Nicaragua shifted focus farther away from minority rights to a traditional civil-political approach, where all citizens have formal rights to participate in liberal democratic institutions.

6. Lessons from the Dual Transition: Confronting Transformative Justice, Goals, Timeframes, and External Factors

As evident in the preceding analysis, Nicaragua's dual transition brought distinct structural changes to institutions and socioeconomic policies, although it would be a mistake not to recognize the context in which the transitions occurred as well as the compromises that each transitional regime made. Looking at these structures as a component of transitional or transformative justice, there are several key takeaways.

The first finding is that while neither transitional regime employed any significant mechanisms of conventional transitional justice beyond amnesty, each reformed systems to reflect their vision of a more just society. In the case of the FSLN, the socialist ideology sought to bring economic and social justice to those who had suffered under severe inequality and poverty during the Somoza regime. Providing resources for education, healthcare, and employment opportunities gave these communities new opportunities that had not existed under Somoza and which many who participated in the revolution had fought for. The FSLN also created completely new institutions, removing those which had been abused by the Somoza regime in the prior decades. These new structures, however,

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[84]   Broegaard, 'Land Tenure Insecurity and Inequality in Nicaragua', 36(5) Development and Change 2005, 852.
[85]   Bothmann, 100.

did not completely remove the potential for abuse, as evidenced by the enactment of various states of emergency. Further, while the 'Popular Revolutionary Democracy' involved a wide range of actors in the form of grassroots organizations, the extent to which these groups were able to influence decisions varied and uneven power structures favoring the FSLN prevented the mechanism from allowing for full and active participation.

The transition to a liberal democracy with the ascension of Violeta Chamorro to the presidency saw the implementation of vastly different methods of transformative justice. Eleven years after the fall of Somoza, the Chamorro government focused on bringing stability to the country through institutional and economic reforms. While the second transition did not address socioeconomic concerns of the underprivileged, the reforms nonetheless affected social and economic outcomes. The institutional and economic mechanisms of justice did not have a strong attachment to grassroots movements and thus the transition was led with more of a top-down approach than the first transition; nonetheless, the retaining of some institutions from the FSLN regime shows that the second transition was not an attempt to create a completely new system, but rather to make adjustments to what the Chamorro regime found unjust in previous structures.

The second finding regards each regime's decisions in implementing their methods of transformative justice. Some common goals were shared by both regimes: a shared desire for the establishment of a democratic system—although their definitions differed—to replace the illiberal system of the Somoza dictatorship, an end to violence and human rights abuses, and creating a stable and independent economy. The FSLN adjusted their transformative justice approaches throughout the 1980s in order to address these goals; the continuation of violence through the Contra War brought about changes to the established 'Popular Revolutionary Democracy' and led to peace talks and elections, while changes to the structure of economic policies and unions attempted to address hyper-inflation. Similarly, the Chamorro government's compromise on the transition of power—keeping Sandinistas in positions of power in institutions—and drastic economic reforms had the goals of ending violence and improving economic conditions.

However, the FSLN and Chamorro governments had disparate goals and ideas as to the root causes of the conflict. The first transition represented a replacement of elites in power with representatives of the lower class who had suffered under the socioeconomic conditions of the Somoza regime and sought to form an inclusive system; the second transition wit-

nessed a return of elites to positions of power where the focus was on forming a modern capitalist liberal democracy that includes space for political pluralism and elections to decide leadership. This finding best represents the large divides within Nicaraguan society that date back to even before the Somoza regime—namely, stark differences of political opinion regarding the direction of the country.

It is clear that even prior to the first transition the revolution in the 1970s did not have a consensus as to the reasons for overthrowing the Somoza regime. This divide may indeed be one root cause of the violence prior to each transition (as well as the more sporadic violence following 1990), although more research would need to be done on this topic.[86] What is certain is that neither the FSLN or the Chamorro government could address all root causes with their approaches to transitional and transformative justice.

A third finding is the importance of the timeline of mechanisms of transformative justice. Many studies have noted the importance of timing or sequencing with regard to conventional transitional justice mechanisms.[87] This is evidently true for transformative justice approaches like systemic and socioeconomic changes; however, it seems that the timeframe may be more sensitive in these cases, as shown by the gradual change of strategy that the FSLN underwent in the 1980s. Reaction to policies may be stronger with regard to these changes and could lead to a breakout of violence or perhaps even the need for a second transition. Further research is recommended regarding the relation between transformative justice implementation and the potential for violent responses.

Finally, the relation between external actors and transformative justice must be further developed. Astrid Bothmann, in her dissertation on transitional justice in Nicaragua, has analyzed how the US involvement in the Contra War and the economic isolation of Nicaragua had a large impact on conventional transitional justice mechanisms during the transitions. Such research should be expanded to look as well at the influence of these factors with regard to systemic and socioeconomic justice mechanisms.

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[86] See de Volo, 'Dynamics of Emotion and Activism: Grief, Gender, and Collective Identity in Revolutionary Nicaragua', 11(4) Mobilization: An International Quarterly 2006), 461–474.

[87] See Fletcher/Weinstein/Rowen, 2009; Roehrig, 2009.

7. Conclusion

While Nicaragua's transition occurred before the idea of transitional justice had been popularized and expanded, it is clear that nonetheless both the FSLN and Chamorro government made strides toward resolving past injustices and preventing a return to conflict. Whether or not their efforts produced a truly stable and sustainable peace cannot be determined in this analysis; however, the focus on systemic changes and socioeconomic policies illustrates the relevance of these factors to the greater analysis of justice in times of transitions. The contrasting approaches of the FSLN and Chamorro governments is evidence of the range of different actions that are possible in these areas and gives us perspective on the *how* and *why* behind the violence and discontent during the dual transition in Nicaragua. While there is still much work to be done toward the integration of transformative justice theories into the field of transitional justice, this chapter endeavours to contribute to this development.

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