

Democratisation, War and State-Building: Constructing the Rule of Law in El Salvador*

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Abstract. After long neglecting issues of citizen security and justice, democratisation theorists have recently begun to recognise the importance of the rule of law. Yet theorising the construction of state institutions of security and justice has tended to be piecemeal and divorced from broader theoretical debates. Using the case of post-war El Salvador, this article first argues that justice and security are tremendously important for the survivability and everyday relevance of democracy, given that crime is the chief threat to support for democracy.

Second, the article explores competing views of institutional reform. It finds support for path-dependent ‘mode-of-transition’ approaches that postulate heightened agency to adopt new rules and reform institutions during uncertain transition periods. However, more sceptical cultural and institutional theorists are right insofar as the *formal* removal of authoritarian structures and personnel is easier than the *informal* transformation of state practices and of society’s attitudes about state services. The article also finds that security (i.e., military, intelligence and police) reforms operate differently to judicial reforms, which were more difficult and were less tied to the country’s peace process. The interaction of these reform processes with a post-war crime wave helps explain why international observers consider El Salvador’s reforms a success story, but many Salvadoreans do not.

After long neglecting issues of citizen security and justice, democratisation theorists have recently begun to recognise the importance of the rule of law. Some scholars have also called for more attention to state-building in the developing world.¹ Yet theorising the construction of state institutions of security and justice has been piecemeal to date. Organisation theory, the

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¹ Dietrich Rueschemeyer, ‘After State Failure,’ Paper presented at conference on ‘Democratization After War,’ Brown University, Providence, April 2002, and Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, *Bringing the State Back In* (Cambridge, 1985).

state-building literature and cultural theories generally predict that reform is unlikely – difficult, resisted and slow. Others, including scholars of transitions and post-conflict reconstruction, are more optimistic that state-building and constructing the rule of law are possible, often in conjunction with political transitions.² Who is right?

El Salvador's security and justice reforms, undertaken after its 1980–1991 civil war, offer an opportunity to explore these competing claims. According to conventional criteria, wartime El Salvador represents something between a 'hard' and an 'easy' case. Although agreement existed about its borders and ethnic tensions were absent, it was a poor country whose armed conflict affected most of its territory, with a political culture deemed inimical to democracy and institutional reform.

My main argument is three-fold. First, the case of El Salvador shows that justice and security are tremendously important for the survival of democracy and its relevance for everyday life. Citizens' primary sustained concern after the country's transition from authoritarian rule was crime, and in 1999, some 55 per cent cited crime as a justification for the toppling of democracy, double the number who cited any other reason.³ Rather than the military or economic crisis, crime represents the biggest threat to democracy in El Salvador and other countries.

Second, the Salvadorean experience indicates that, yes, state-building is possible in poor, post-conflict societies, but according to certain patterns and limits. The case broadly confirms path-dependent 'mode-of-transition' approaches that postulate heightened agency to adopt new rules and reform institutions during the uncertainty of transition periods. However, security reforms operate differently to judicial reforms. Military and police reforms conform more closely to the mode-of-transition approach than judicial reforms, occurring mainly during the window of opportunity provided by transitions. They are less likely to occur before that window opens or to take place after it has closed.⁴ Even so, cultural and institutional sceptics are right to signal constraints, as the *formal* removal of authoritarian structures and

² Juan Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation* (Baltimore, 1996); Guillermo O'Donnell, 'On the State, Democratization and Some Conceptual Problems,' *World Development*, vol. 21 (Oct. 1993): 1355–69; Larry Diamond, *Developing Democracy: Toward Consolidation* (Baltimore, 1999); Marina Ottaway, 'Think Again: Nation-Building,' *Foreign Policy* (Sept./Oct. 2002); Department for International Development, 'Understanding and Supporting Security Sector Reform,' (London, 2002); William C. Prillaman, *The Judiciary and Democratic Decay in Latin America* (Westport, Connecticut, 2000); Pilar Domingo and Rachel Sieder, *Rule of Law in Latin America* (London, 2001).

³ Mitchell A. Seligson, José Miguel Cruz, and Ricardo Córdova, *Auditoría de la Democracia, El Salvador 1999* (San Salvador, 2000), p. 156.

⁴ See my 'War Transitions and the New Civilian Security in Latin America,' *Comparative Politics*, vol. 35, no. 1, 2002.

personnel is easier than the *informal* transformation of state institutions and of society's attitudes and demands about state services. Successful civilianisation of internal security in El Salvador did not produce representative and accountable 'democratic policing'.⁵ As tends to be the case in most industrialised democracies, police reforms only occurred in response to scandals once El Salvador's peace process was concluded.⁶

Finally, the Salvadorean case suggests that judicial reforms, even when initiated in adverse wartime conditions for patently political purposes, may lay the groundwork for improved judicial institutions once a political transition occurs. Inspired by counterinsurgency efforts and a cynical desire to allay human rights concerns, US-backed judicial reforms had little practical effect during the war. However, they laid the groundwork for reforms adopted as part of the peace negotiations that enhanced professional standards and judicial independence from the executive. Such advances notwithstanding, however, the justice system continued to be politicised, slow, and held in low regard. Institutional, economic and cultural factors partly explain this pattern.

A sharp post-war increase in violent crime also helps account for the pattern of judicial reform. Although the crime wave was the biggest obstacle to security and justice reforms, it also generated constituencies for new reforms outside the context of the peace process and sparked creative new strategies for reducing violence and improving justice. The crime wave underlies the most provocative aspect of El Salvador's police and justice reforms: international observers consider them a success story, but Salvadoreans are far less enthusiastic. This contradiction, reflecting divergent interests between international actors and citizens of post-conflict societies, also points to the lack of conceptual agreement on what aspects of judicial and security reforms are important. International actors remained enamoured of improved human rights performance, enhanced civilian control, and reduced threats to internal and international security. One UN report proclaimed the country's police reforms 'the most far-reaching and important public security reform in Latin America' during the past decade, and USAID sought to model other programmes on the experience in the early 2000s.⁷

⁵ On 'democratic policing', see David Bayley, *Democratizing the Police Abroad: What to Do and How to Do It* (Washington, DC, 2001); Charles T. Call, 'Pinball and Punctuated Equilibrium: The Birth of a "Democratic Policing" Norm?', paper presented at International Studies Association conference, March 2000; and Rachel Neild, 'Democratic Policing,' *Conflict Security and Development*, vol. 1, no. 1 (Summer 2001).

⁶ Lawrence W. Sherman, *Scandal and Reform: Controlling Police Corruption* (Berkeley, 1978).

⁷ See 'UNDP Security Sector Reform Assistance in Post-Conflict Situations: Lessons Learned in El Salvador, Guatemala, Haiti, Mozambique, Somalia and Rwanda,' Draft Report prepared by Luis Salas and Laura Chinchilla for UN Development Programme (New York, 20 June 2001).

Yet Salvadorean public opinion, while positive about many specific reforms, showed clear dissatisfaction with the government's ability to provide citizen security and justice.

I. Civil war and peace in El Salvador

In a ceremony in January 1992, the high command of the leftist Farabundo Martí National Liberation Front (FMLN) and the negotiating team of the right-wing Salvadorean government, joined by President Alfredo Cristiani, signed a global peace accord ending twelve years of civil war in a tiny Central American country that had become a Cold War battleground. El Salvador is now considered among the most successful instances of implementation of a negotiated peace agreement in the post-Cold War period. The cease-fire between the two sides was never broken. By 1994, guerrilla forces were demobilised and reconstituted as a political party; significant demilitarisation of society and the state had taken place; and elections had transpired through which the former guerrillas became the second most powerful party in the country. The peace accords were the catalyst for the incipient institutionalisation of political democracy in El Salvador.⁸

The character of the Salvadorean war shaped the peace. Civil war was rooted in class and ideological, rather than religious or ethnic, divisions. A small number of landed elites controlled the state in alliance with a powerful military that guaranteed order in exchange for resources and autonomy.⁹ The FMLN, which emerged in the 1970s, enjoyed its strongest support in poor, rural areas. The trappings of democracy co-existed with authoritarianism. Periodic, flawed elections occurred under a constitution between 1948 and 1979, in which military officers usually won the presidency. In one of the few statements with which his leftist opponents agreed, President Cristiani in 1992 said that the causes of El Salvador's war lay in deep social, cultural and social divisions and the absence of democratic political space.¹⁰ After the

⁸ Elisabeth J. Wood, *Forging Democracy From Below* (Cambridge, 2001); Terry Lynn Karl, 'El Salvador's Negotiated Revolution,' *Foreign Affairs*, 71, no. 2 (Spring 1992); George Vickers, 'A Negotiated Revolution'; *NACLA Report on the Americas*, vol. 25, no. 5 (May 1992), pp. 4–8; Tommie Sue Montgomery, *Revolution in El Salvador: From Civil Strife to Civil Peace*, 2nd edition (Boulder, 1995).

⁹ William D. Stanley, *The Protection Racket State: Elite Politics, Military Extortion and Civil War in El Salvador* (Philadelphia, 1996); Philip J. Williams and Knut Walker, *Militarization and Demilitarization in El Salvador's Transition to Democracy* (Pittsburgh, 1997); Mariano Castro Morán, *Función política del ejército salvadoreño en el presente siglo* (San Salvador, 1989); James Dunkerley, *The Long War: Dictatorship and Revolution in El Salvador* (London, 1982); Enrique A. Baloyra, *El Salvador in Transition* (Chapel Hill, 1982).

¹⁰ Cristiani's quote, at <http://www.elsalvador.com/noticias/especiales/acuerdosdepaz2002/>, is discussed by Héctor Dada, 'Procesos de Negociación Comparados: El Caso de El Salvador,' in Peralta (ed.), *Procesos de negociación*, p. 30.

failure of a reformist government – installed by a junior officers' coup – to stem growing violence in the early 1980s, military and economic elites, under US pressure, drafted a new constitution and held elections while at the same time bolstering their counterinsurgency efforts.

Three features of the war influenced security and justice reforms. First, the peace emerged from a 'strategic stalemate' where both sides eventually recognised their inability to defeat the other.¹¹ The FMLN controlled one-third of the country's territory, making El Salvador's revolutionary civil war the closest thing to a draw in recent Latin American history. Second, international actors played an important role. The United States provided the Salvadorean government with \$3.2 billion in economic aid and \$1.1 billion in military aid between 1980 and 1991, which was indispensable in preventing a victory by the Cuban- and Nicaraguan-backed rebels.¹² With the fall of the Berlin Wall in 1989, the main international support for both parties declined, and the new Bush administration backed a negotiated settlement. The UN played an important role in mediating the negotiations held between 1990 and 1992. Finally, human rights occupied a central place in the war, at home and abroad. An estimated 75,000 persons died during the war, the majority civilians killed at the hands of the government security forces and its affiliated death squads. Atrocities committed in El Salvador's civil war received tremendous international attention and sparked intense US policy debate and scrutiny.¹³

II. The peace agreement and security and justice reforms

Before and during the war, internal security was wholly militarised and no police reforms occurred except to enhance the security forces' capacity to carry out counterinsurgency.¹⁴ The Defence Ministry had constitutional responsibility for internal security and controlled the three main police forces: the urban National Police, the rural National Guard, and the Treasury Police. The military and police forces relied mainly on recruits drafted into service and professional career standards were minimal. Death squads operated especially out of the police forces and military intelligence, although mainline army units also committed massacres and torture during the war. Due to the government's human rights violations, the FMLN's position

¹¹ Karl, 'A Negotiated Revolution'.

¹² James Dunkerley, *The Pacification of Central America: Political Change in the Isthmus, 1987–1993* (London, 1994), Appendix 7.

¹³ Cynthia J. Arnson, *Crossroads: Congress, the President and Central America, 1976–1993* (University Park, PA, 1993).

¹⁴ In 1989 the Cristiani government reversed the only purported attempt to 'civilianise' the National Police. Charles T. Call, 'From Soldiers to Cops,' unpubl. PhD diss., Stanford University, 1999; Stanley, *The Protection Racket State*.

during peace talks prioritised the demilitarisation of internal security and the enhancement of human rights protections.

Impunity for human rights abuses reflected broader problems of the judiciary. El Salvador's three constitutional branches of government had existed for decades, but the formal judiciary remained highly politicised, corrupt and unprofessional. Little history of informal conflict resolution or community-based justice prevailed, lending importance to the formal justice system, whose inquisitorial model emphasised written evidence and assigned judges to supervise investigations. Yet judges routinely retained part-time private practices to supplement low salaries. During the war, judges and prosecutors often took bribes, including from those representing accused guerrillas. Those judges and prosecutors handling cases of disappearances, massacres or extrajudicial executions were often threatened or killed. Before 1991, not a single army officer was convicted of a serious human rights violation.

The Peace Agreement

El Salvador's peace agreement contained sweeping military and police reforms, and less ambitious though still important judicial reforms. Remarkable for their level of detail, the final accords provided the framework for security and justice policy for several years. Although radical change of the economic structure of the country was a central FMLN objective throughout the war, only about 10 per cent of the final accords was dedicated to social and economic issues. Instead, the majority of the text set out commitments for reforming the military and police forces and provided details of the military cease-fire. The salient points are summarised below.

Cease-fire and Demobilisation. A formal cease-fire would begin on 1 February 1992, two weeks after the signing of the accords. Within 30 days, all the FMLN's arms, munitions and personnel, including clandestine units, would be concentrated in 15 sites. The armed forces would be restricted to sixty-two specific barracks or sites except under special circumstances. After the concentration of forces, 20 per cent of the FMLN forces would reintegrate into civilian life in specified, periodic intervals of several weeks, culminating in the end of demobilisation and disarmament on 31 October 1992.

Military and Intelligence Reforms. Significant reductions in military personnel were stipulated. The military would abdicate all internal security functions except in exceptional circumstances. The three security forces – the Treasury Police, the rural-oriented National Guard and the urban-oriented National Police – would be dissolved. Paramilitary civil defence patrols were disbanded

and legally barred. The army counterinsurgency units were dissolved, forced recruitment was suspended, and civilian input and human rights issues were integrated into military doctrine. The military-controlled National Intelligence Directorate was replaced by a State Intelligence Office (OIE) run by a civilian reporting directly to the president and supervised by the legislature.

Police Reforms. The accords created a new National Civilian Police (PNC) outside the Defence Ministry to be the sole national-level public security force. The PNC had responsibilities for maintaining order and protecting citizens, a doctrine that explicitly emphasised human rights and a civilian leadership. The legislature could remove the PNC Director for human rights abuses committed by the force. The two sides eventually agreed that at least 60 per cent of both the officer-level and the basic agent personnel of the PNC would be 'civilian' applicants, persons never having served as combatants. No more than 20 per cent of the PNC could be ex-members of the National Police; and no more than 20 per cent could be ex-guerrillas. Applicants were required to pass an entrance exam administered by the new civilian-run National Public Security Academy (ANSP) responsible for recruitment, selection, initial training and in-service training. The accords included a draft law for the structure and doctrine of the PNC and a draft law for the new academy.

Human Rights and Judicial Issues. The agreement created an Ad Hoc Commission to review the files of military officers and to recommend names to be purged; a UN-supervised Truth Commission to prepare a report assigning responsibility for the most egregious human rights violations of the war; and specified that a Human Rights Ombudsman chosen by the legislature and independent of the executive, would receive complaints and investigate and report on human rights violations. Judicial reforms, less extensive than the reforms to coercive forces, included increasing the autonomy of the National Judicial Council from the powerful and politicised Supreme Court and restricting judges' ability to act as public notaries with the aim of limiting conflicts of interest. Six per cent of the national budget was set aside for the judicial branch.

Mechanisms for Implementation. The accords stipulated that a National Commission for the Consolidation of Peace (COPAZ), comprising two representatives each from the government and the FMLN, plus one representative from each political party, would be 'responsible for overseeing the implementation of all the political agreements reached by the Parties.'¹⁵ COPAZ's

¹⁵ This mandate is from Section I.1 of the New York accords, signed on 25 September 1991, the contents of which were explicitly reaffirmed in the Chapultepec Accord.

powers included drafting legislation for the legislative assembly. The parties to the accords were bound to its findings. In accordance with the agreements, COPAZ was formally constituted on 1 February 1992. However, the accords were explicit in denying COPAZ any executive powers, 'since it is the [responsibility of the] Parties, through their internal machinery, to carry out the peace agreements.'¹⁶ With the signing of the final accord, the mission of the UN Mission in El Salvador (ONUSAL) was expanded to include the 'verification and monitoring of the implementation of all the agreements' (SCR 729), and ONUSAL played an indispensable role in implementation.

III. The evolution of security reforms

Relative to other peace processes, implementation of El Salvador's peace accords enjoyed remarkable success. Neither party ever broke the ceasefire. COPAZ was established and served as a mechanism for resolving differences over interpretation and outright resistance to fulfilment of the accord's provisions. Where necessary, the ONUSAL pressed for compliance. After initial footdragging, the government dismantled the National Guard and the Treasury Police, and quartered its troops. The FMLN demobilised its 12,362 troops by December 1992, transforming itself into an active but divided political party.¹⁷ The governing party, ARENA, won the presidency and a majority of both legislative seats and municipal governments in March 1994, a result recognised by all parties. The FMLN became the second most powerful party in the country, losing the presidential elections to ARENA in 1999, but gaining a plurality of seats in the legislature in 2000 and 2003, as well as control of the country's main city governments. In the security area – military, intelligence, and policing – civilianisation was largely achieved.

A. Purging and Reforming the Military and Intelligence Units

Many provisions of the peace agreement aimed to transform the repressive and powerful armed forces. Unlike the FMLN, the government did not agree to dismantle its military forces; therefore, institutional reforms to the military were considered extremely important by the guerrillas and other groups, not only as a guarantee for the FMLN's return to civilian life but also for the possibility of full democratisation. Most military leaders, not having been defeated on the battlefield, continued to view the FMLN as an illegitimate

¹⁶ *Ibid.*, Section I.4. 'Powers' of COPAZ.

¹⁷ Montgomery, *Revolution in El Salvador*, p. 227.

force and to reject any intrusion by civilians into military affairs. Because most of the commitments lay on the government's shoulders rather than the guerrillas', and because distrust of the military ran high, much of the implementation phase focused on overcoming military opposition.

After resistance and delays, the armed forces accepted most institutional changes: the dissolution of the three police forces under its control, the circumscribing of its internal security functions, the dismantling of paramilitary civil defence forces, the suspension of forced recruitment, and the modification of its doctrine and training under an Academic Council that included civilians of diverse political backgrounds. It also reduced its ranks ahead of schedule, dropping from 63,170 in size as of 1992 to some 30,500 by 1994, although this dramatic reduction was probably overstated due to thousands of 'ghost soldiers' on the original rosters whose salaries were pocketed by corrupt officers.¹⁸ The new State Intelligence Organisation was created under presidential supervision; however, it drew upon old military intelligence personnel. In addition, the military continued to oversee the country's National Intelligence School, effectively expanding its coverage to civilians, and the Defence Ministry's intelligence units continued to focus upon internal intelligence activities.¹⁹

In El Salvador, a salient marker of military reform concerned the fate of military officers implicated in war-related murder and torture. An Ad Hoc Commission and a Truth Commission were established to foster accountability for past human rights violations. The Ad Hoc Commission, composed of three Salvadoreans, was charged with reviewing 2,293 officer files in four months, and few expected it would have much effect. In September 1992, however, the Ad Hoc Commission recommended the removal or transfer of 103 officers, including the Minister and Vice-Minister of Defence, most of the generals, and many colonels.²⁰ Despite the military's outcry and the government's reticence, by June 1993 all those named had quit or been forced to retire.

The purge of these senior commanders, the most thorough purge ever of a Latin American army not defeated in war,²¹ was only made possible by the report of the UN Truth Commission, a UN panel of three international notables. Published in March 1993, the Truth Commission report named the individual military officers and other persons responsible for the worst human rights violations during the war. Most damaging was the description of the role played by Defence Minister René Emilio Ponce, during a meeting

¹⁸ Williams and Walter, *Militarization and Demilitarization*, p. 162.

¹⁹ UN ONUSAL Human Rights Division, *9th Report of the Human Rights Division* (Aug.–Oct. 1993), p. 25.

²⁰ Letter from United Nations Secretary General to the Security Council, UN Doc S/25078 (Jan. 1993).

²¹ Williams and Walter, *Militarization and Demilitarization*, p. 163.

with his top commanders, in ordering the widely publicised 1989 massacre of six Jesuit priests and two female assistants.

In the absence of an FMLN victory, the peace accord and international pressure to comply with its provisions were indispensable conditions (in the absence of an FMLN victory) for ousting these senior officers. The government's eventual compliance occurred largely through pressure from the United Nations and donor countries. The newly elected Clinton administration withheld \$11 million in US military aid contingent upon the government abiding by the Ad Hoc Commission's report.

All in all, remarkable progress was achieved in military reform. For the first time in history, a Latin American military submitted its officer corps to external review and vetting. Its worst human rights violators were purged, its budget reduced, and new levels of accountability and civilian input reached. As of 2002, the army was roughly the same size as the National Civilian Police, and its missions and doctrine reflected significant emphasis on classic external defence functions and respect for human rights and civilian control. The armed forces generally did not challenge their post-war place in society, and polls showed the military enjoying a positive image after the accords.²²

At the same time, informal attitudes showed that continuities and prior practices persisted. The armed forces continued to carry out internal security functions and retained a strong sense of institutional autonomy. In July 1993 President Cristiani called out the armed forces to patrol the highways as a means to curb rising violent crime, including highway robberies, without seeking the requisite congressional approval. Much of the population welcomed these developments. Additional internal security roles followed, including patrols of the annual coffee harvest as well as joint patrols with the new police force in which military personnel greatly outnumber police officers.²³ Many officers bristled at the notion of civilian oversight or input, and the Defence Minister remained an active-duty general in early 2003. Free from fear of prosecution, former military officers were active in business and held elected office.

B. Public Security and Police Reforms

Ten years after the war, perhaps the most acclaimed aspect of reconstruction in El Salvador remained the public security reforms set forth in the peace accords. The creation of a new National Civilian Police (PNC) was crucial for peace and democracy in El Salvador for several reasons. First,

²² IUDOP, 'Encuesta de Evaluación del Año 2001,' Serie de Informe #91 (San Salvador: IUDOP, 2001).

²³ Call, 'From Soldiers to Cops'; William D. Stanley, *Protectors or Perpetrators: The Institutional Crisis of the Salvadorean Civilian Police* (Washington, DC, 1996).

the agreement to integrate ex-combatants into the police unravelled what UN mediator Alvaro de Soto called the ‘Gordian knot’ of the negotiations, namely the army’s refusal to accept FMLN troops into its ranks. Instead the FMLN settled for incorporation of its combatants into the PNC. In addition, the public security reforms embraced a civilian notion of policing, specifying a police doctrine oriented toward protecting citizen rights rather than state interests and creating mechanisms of command and oversight wholly outside the military structure. Government negotiator David Escobar Galindo called the PNC the most significant (*‘más trascendental’*) institution to come out of the reforms,²⁴ and UN Secretary-General Boutros Boutros Ghali hailed the new police force in 1995 as ‘one of the fundamental elements of the peace accords and perhaps the single component with greatest hopes.’²⁵

Those high hopes were initially met. In March 1993, the population of Chalatenango, a guerrilla stronghold, lined the roads to welcome the first deployments of the PNC, commanded by Subcommissioner Carlos Lopez, a former urban FMLN commander. His second-in-command, Subcommissioner Luís Tobar Prieto, had been a National Police investigator. Tobar Prieto’s reflections two years later illustrate the impressive degree of political integration and transformed attitudes during the early days of the PNC:

Perhaps for those of us who lived that experience [the war] for ten or twelve years, the experience of Chalatenango was good for us, and for me personally it was excellent. We arrived there, a new police force with 19 posts, 400 people, to cover the department of Chalatenango, but not to cover it based on our police knowledge or experience because the truth is we didn’t have any. Instead we covered it with a willingness to work, and I’ve always said the enthusiasm for work of those first classes of the PNC is incredible – people who came from different backgrounds having lived through the war, but people with the new doctrine, a new philosophy, convinced that there had to be a change... It was a very nice experience, very nice, and [so was] the relationship that developed there between ourselves and the people – because I knew every person who’d been in the Front [FMLN], and they knew that I’d been in the old police.²⁶

The PNC quickly dismantled a criminal gang, and deployments to other areas of strong guerrilla sympathy followed. In a December 1993 survey in those areas, 71.0 per cent of respondents approved of the work of the PNC, and only 2 per cent saw it as ‘bad’ or ‘very bad’.²⁷

By 1994 the PNC had been deployed to the remainder of the country, amidst public demands for even quicker deployment. The decision to mix

²⁴ Personal interview with David Escobar Galindo, Jan. 1995, San Salvador.

²⁵ Secretary General’s report to the General Assembly, A/50/517 (6 Oct. 1995), para. 7

²⁶ Personal interview with Subcommissioner Luís Tobar Prieto, 23 Nov. 1995, San Salvador.

²⁷ Poll by Public Opinion Institute (IUDOP), University of Central America (UCA). Conducted in Chalatenango and Cabanas. Results in *Estudios Centroamericanos (ECA)*, Nov.–Dec. 1993, p. 1154.

ex-guerrillas, ex-National Police officers, and civilian commanders inside each territorial delegation helped prevent the force from reproducing partisan divisions while providing sufficient security guarantees to the FMLN and its supporters. The early dissolution of the old National Police after senior investigators from the force were videotaped robbing a bank only heightened the positive image and expectations of the new police.

The process of political integration and civilianisation within the police encountered obstacles and resistance, occupying significant UN attention.²⁸ Initially, the government and the military resisted demobilising the old security forces, withheld promised resources, and successfully 'smuggled' ineligible military personnel into the police academy by passing them through the National Police. Although the existence of the PNC was never in question, uncertainty prevailed throughout the transition about whether the new police would, as prescribed under the new constitutional provisions, supplant the military, intelligence agencies and other police forces as the sole source of internal security. In the hardest fought struggle, the old Anti-Narcotics Unit and a Special Investigations Unit were initially transferred wholesale into the new police, in an apparent violation of the accords and despite the reported presence of tainted police agents in both.²⁹ After significant UN pressure, each member of the units was subjected to individual scrutiny. Many resigned en masse, while others entered the PNC, but two years were lost in the detailed negotiations. Especially after the discovery of an illegal arms cache in late 1993, the FMLN acquiesced to government non-compliance on several issues related to the PNC in exchange for immediate benefits, complicating the UN's role.

Problems among former enemies inside the police were surprisingly few. Ex-guerrillas and ex-army officers sometimes expressed distrust of one another and disdain for the lack of operational experience of civilians. Nevertheless, in only a few years former FMLN commanders worked alongside ex-lieutenants of the old security forces with relatively few problems. Former guerrillas ceased to be active in partisan activities.³⁰ By 2002, some PNC officers and analysts believed that ex-guerrillas and civilians felt a sense of marginalisation WITHin the hierarchy, and the numbers showed that promotions had favoured former military officers, who also occupied

²⁸ Gino Costa, *La Policía Nacional Civil de El Salvador, 1990–1997* (San Salvador, 1999).

²⁹ The head of the Anti-Narcotics Unit, who had been appointed Deputy Chief of the new PNC, was forced to resign under suspicion of involvement in illicit activities. According to UN investigators, 13 of the roughly 100 prior SIU investigators were implicated in political murders or their cover-up *after* the ceasefire. UN document in author files; Call, 'From Soldiers to Cops'; and Costa, *La Policía Nacional Civil*.

³⁰ Personal interviews with ex-FMLN PNC officers and FMLN party officials, 1996, San Salvador.

many top command posts as well.³¹ Nevertheless, the promotions process involved a merit-based system difficult to manipulate, and even critics attributed favouritism more to personal ties than to political background. In 2003, the administration of Francisco Flores appointed Commissioner Ricardo Meneses as police director, the first director drawn from the uniformed ranks and a former army officer. In the end, the incorporation of former enemies provided important security guarantees for the peace process and internal checks on police partisanship.

C. The Post-War Crime Wave

Effectiveness ultimately proved to be the Achilles heel of the new police and justice system. The first signs of rising crime occurred in 1992 polling data, where crime almost tripled in frequency as a perceived problem facing the country.³² Between 1993 and 1999, crime would consistently be ranked as the single most important problem facing the country in surveys conducted by the Central American University's Public Opinion Institute (IUDOP).³³ In the 1993 survey, 88.6 per cent believed crime to have increased, and over two-thirds were afraid of being assaulted in their own homes.³⁴ According to the same poll, 76 per cent of respondents routinely failed to notify the authorities when victimised by a crime, and 34 per cent stated that they or an immediate family member had been robbed during the previous four months. Although ONUSAL initially downplayed the crime wave as a product of media hype, ONUSAL's own crime statistics showed a 300 per cent increase in crime between January and September 1993. Survey data shows how crime supplanted war and politics between 1991 and 1994, just as the war terminated. In mid-1993 crime became the 'main problem facing the

³¹ Of the 18 serving Commissioners (the highest career rank) in March 2002, eight were former military officers, six were civilians, and four were former guerrillas. In theory, the initial quotas would have yielded no more than four ex-combatants from each side (20 per cent of total), and at least nine civilians. However, the eligible pool was skewed due to negotiations between the two parties in 1993 which permitted fewer ex-guerrillas in the very first senior officers' class of the police academy. Those in the first academy class who were not promoted either were excluded for legal disciplinary reasons, failed the exam, or chose to leave the institution. Author's data, and correspondence with Jaime Vigil Recinos, director of the National Public Security Academy and member of the promotion committee, May 2003. See his 'El Salvador's National Public Security System,' unpublished paper, November 2002.

³² Polls conducted in Jan., May and Oct. 1992, cited in IUDOP, *Estudios Centroamericanos (ECA)* (Nov.–Dec. 1992), Table 2, p. 1072.

³³ See IUDOP polling results in *ECA*, Sept. 1993, Aug. 1994, May–June 1995, May–June 1996, and June 1997.

³⁴ IUDOP, 'La delincuencia urbana', *ECA* (April–May 1993), pp. 471–79. In contrast to all other IUDOP polls cited herein, this poll was limited to urban respondents whose perceptions of crime tend to be more acute than rural residents.

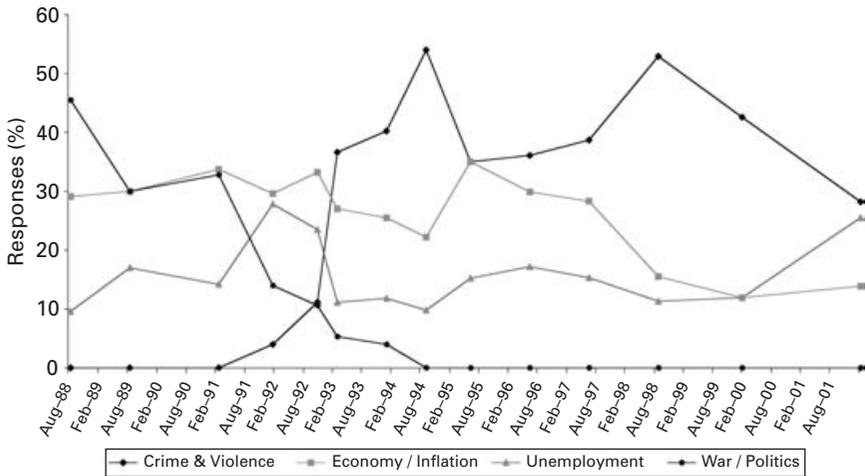


Fig. 1. UCA Survey Responses to Question, 'What is the main problem facing the country?'

country' in people's eyes, and topped reported concerns consistently until this writing ten years later.

National level crime statistics confirmed people's perceptions. From 1992 to 1994, reported homicides rose from 3,229 annually to 7,673.³⁵ Kidnappings for ransom increased dramatically, and armed robberies of banks, armoured cars and automobiles became a regular occurrence. By 1995 deaths by homicide exceeded the average annual number of deaths during the twelve-year war, and in 1996 El Salvador's homicide rate reached 139 per 100,000, the second highest in the world according to one study.³⁶ Political commentators noted how the country's major newspapers had become virtual crime reports, with the first few pages routinely dedicated to the previous day's worst crimes and most significant arrests. As Figure 2 shows, the country's homicide rate rose immediately after the war (earlier statistics are not reliably available) and stayed extremely high throughout the mid-1990s before declining in the early 2000s.

Significant discrepancies and problems with statistics from all government agencies have persisted to the present, and in the late 1990s the Attorney

³⁵ Reliable statistics are hard to come by. The 1992 figures are from the Director of Statistics, State Prosecutor's office (*fiscalía*). The 1996 figures exclude non-intentional homicides, from José Miguel Cruz, Alvaro Trigueros and Francisco Gonzalez, *El crimen violento en El Salvador* (San Salvador, 2000).

³⁶ El Salvador's rate passed even that of Colombia, and was matched only by South Africa. See World Bank study cited in *Los Angeles Times* (6 Sept. 1997), p. 2.

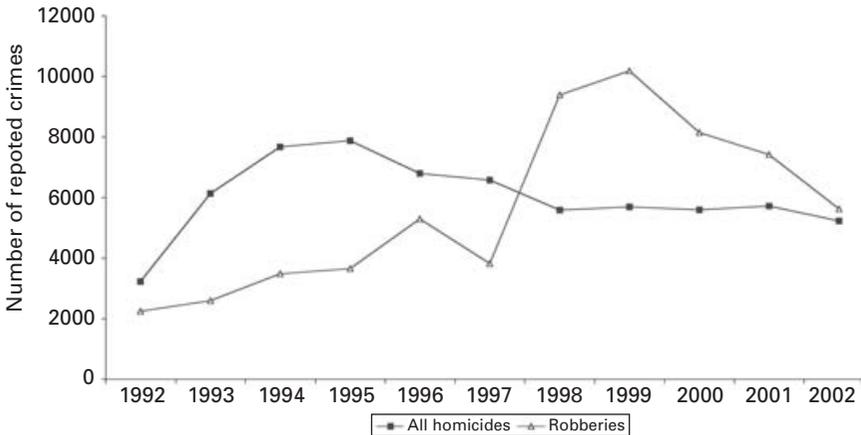


Fig. 2. Homicide and robbery rates in post-war El Salvador. Source: *Fiscalía General de la República*.

General's office adjusted its figures downward.³⁷ Nevertheless, even adjusted homicide rates still show El Salvador among the most violent countries in the world.

Overall violent crime seemed to conform to three stages. In 1991–95, during demobilisation, ceasefire and the replacement of the old security forces, crime skyrocketed. Between 1996 and 2000, crime stayed at high levels, with kidnappings and robberies dipping then surging once more. Finally, from 2000 until the end of 2002, all major crime categories showed a notable decline. Kidnappings dropped from 114 in 2000 to 49 in 2001, and all reported crimes declined by 14 per cent between 2000 and 2001.³⁸ Victimization surveys – often considered the best indicator of crime trends – show that overall crime declined slightly after 1994, and diminished at an even higher rate in the late 1990s.

The reasons for this pattern of violent crime – dramatic rise, levelling off, then slight decline – are unclear. Crime trends may conform to stages in the institutional development of the PNC, as suggested by Vigil Recinos,³⁹ to changes in governments, or to political phases of the peace process or democratic transition. Some observers believe that changes in police management, especially a programme (called '*Eficacia*') that held police commanders accountable for lowering crime in their zones, helped reduce crime under the directorship of Mauricio Sandoval after 2000.

³⁷ Cruz et al., *El crimen violento en El Salvador*.

³⁸ Based on statistics provided by the PNC Office of Statistics, March 2002.

³⁹ Presentation by Jaime Vigil Recinos at workshop, Oxford University, 12 May 2003.

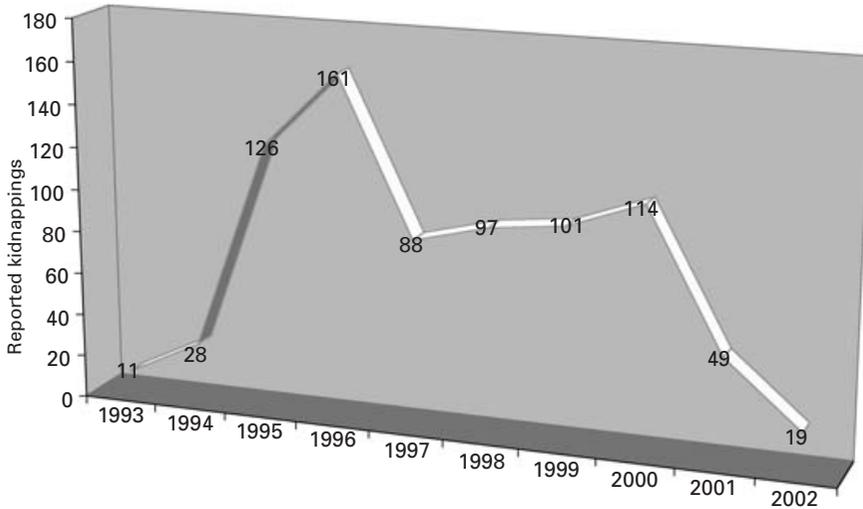


Fig. 3. *Reported kidnappings in post-war El Salvador.* Source: *National Civilian Police, collected and provided by Commissioner Jaime Vigil.*

Given the perceived inability of the government to deliver justice and security, a high portion of the population – 46 per cent – believed in 1996 that people had a right to take justice into their own hands. In some cases, people bypassed the judicial system. Between December 1994 and March 1995, a clandestine group calling itself the ‘Black Shadow’ claimed responsibility for assassinating sixteen known criminals who had avoided prosecution in the eastern city of San Miguel. Five PNC officers, including the departmental commander, and several prominent citizens were arrested and charged in 1995, and the killings stopped. Alarming, public opinion was evenly divided between support for and repudiation of this ‘death squad’ for common criminals.

In the face of the sustained crime wave in the late 1990s, the private sector, the media, non-governmental organisations (NGOs), and new government bodies became increasingly involved in public security policy. A National Public Security Commission, formed in 1994 to keep police reforms on track, was granted policy-making authority by President Francisco Flores in 1999 and sought to develop comprehensive, long-range plans for crime prevention and reduction. In addition, active private security firms, regulated only loosely, skyrocketed from fewer than ten in 1992 to over eighty in 1995, and 265 in 2001.⁴⁰ Private security agents grew in number from 6,000 in 1996

⁴⁰ Call, ‘From Soldiers to Cops.’ On private security, see Lidice Michelle Melara Minero, ‘Los servicios de seguridad privada en El Salvador’, *Estudios Centroamericanos*, issue 636 (Oct. 2001), pp. 907–32.

to 18,943 by 2001, fostering concerns about unequal access to security and inadequate oversight of firms comprised mainly of ex-soldiers. Legislation aimed at strengthening oversight and transparency of private agencies took effect in 2001.

Ironically, the very same conditions that made security reforms possible – the transition from war *cum* democratisation – also created obstacles to reform. The end of civil war and the political transition fuelled a dramatic rise in crime for several reasons. First, the vast majority of combatants were demobilised in an extremely brief period following the end of the war. Within one year, 12,362 guerrillas, some 20,000 soldiers and around 30,000 civil defence guards were left unemployed. Leaving a public security gap,⁴¹ the number of people circulating under arms decreased from 60,000 (including combatants on both sides) to only about 6,000 National Police officers, as all armed forces personnel were confined to quarters during the demobilisation process in early 1992. The peace processes in both El Salvador and Nicaragua left thousands of weapons in civilian hands. In 2000, the Defence Ministry reported 165,186 firearms registered for personal or commercial use, with an estimated 200,000 additional unregistered.⁴² Social habituation to using violence as a means of resolving conflicts also contributed to the crime wave.

The transaction costs of security reform also abetted growing crime. Disruption of the internal security system took its toll. The eventual turnover of almost the entire investigative units meant that networks of informants had to be reconstructed. A large number of former combatants were also implicated in criminal activity, sometimes working together in gangs. A 1999 survey sample of the country's prison inmates found that 22 per cent of them had been members of the armed forces or the old security forces, and 6 per cent were ex-guerrillas.⁴³ Of prisoners between 26 and 40 years of age, 44 per cent were ex-combatants, even though only 6 per cent of the general population had served in the war. Furthermore, while the retention of relatively few former police helped vacate a prior institutional culture of impunity and military-style policing, it also left fewer experienced police on the force. In sum, the combination of peace and regime change opened the door both to reforms and diffuse violence.

⁴¹ This concept has received systematic treatment in Robert Oakley et al., *Policing the New World Disorder* (Washington, DC, 1998).

⁴² Ministerio de Defensa, 'Cuadro de armas registradas a nivel nacional por departamento y tipo, 1994–2000', author files.

⁴³ Cruz et al., *El crimen violento*, p. 101. The survey included 581 (8.3 per cent) of 6,793 prisoners, housed in 11 of the country's 23 detention centres.

D. Shortcomings of Security Reforms

If more pessimistic advocates of cultural and state-building approaches cannot account for the rapid demilitarisation of El Salvador's security system, they do accurately portray the difficulties of transforming day-to-day practices of security forces. The successful formal reform of policing did not lead to fully accountable, responsive citizen-oriented public security. Difficulties are evident in three areas.

First, corruption appeared to abate in the first years of the PNC's existence, but subsequently to worsen. As high-profile kidnappings and other violent crimes increased between 1999 and 2000, so too did the involvement of PNC officers in committing these crimes. In 2000, the main quick-response unit was dismantled in its entirety because many of its members had established a crime racket. One reason for escalating corruption as the force grew was ineffective internal discipline and control.⁴⁴ Following news reports of police involvement in several serious crimes in early 2000, the legislature granted the PNC director new interim powers to purge the police force. In addition, the president created a presidential commission to purge the police. The '*depuración*', probably the highest profile operation affecting the PNC between 1998 and 2002, resulted in the dismissal of 1,215 officers and administrative personnel between August 2000 and December 2001, not counting another 1,485 persons dismissed through normal channels in 2000–01.⁴⁵ This limited purge and reform, occurring well after the peace process was concluded, lends credence to the idea that scandal is most likely to spark police reform once a transition period is over, a well-established pattern in industrial democracies.⁴⁶

A second arena of continuity with prior policing referred to social expectations and relations with the coercive apparatus of the state. It proved easier to change institutions than to change state–society relations, and civilianisation brought only a partial redefinition of police–society relations.

⁴⁴ A UN report found that, five years after the PNC's deployment, the oversight mechanisms of the PNC 'never succeeded in establishing themselves as guarantors of transparent police procedures nor of the application of appropriate discipline'. Cited in Jeannette Aguilar Villamariona, Edgardo Amaya Cobar, Jaime Martínez Ventura, *Información y gestión policial en El Salvador* (San Salvador, 2001), p. 61.

⁴⁵ 'Decree 101' *depuración* figures were provided by PNC Director Mauricio Sandoval in March 2002. Normal disciplinary figures are from the El Salvador section of the US Department of State's *Country Reports on Human Rights Practices* (2001). Based on his research, Academy director Commissioner Jaime Vigil Recinos concluded that 329 PNC members were dismissed due to the executive commission established by the president; another 817 were dismissed through Decree 101; and an additional 830 were dismissed by December 2001 due to changes to the Organic Police Law and the disciplinary regulations in late 2000. See his 'Improved Behaviour in Human Rights?', unpublished paper, March 2003, pp. 10–11.

⁴⁶ Sherman, *Scandal and Reform*.

Although many citizens reported less fear of approaching members of the police, the PNC's relations with society did not exhibit the trust and integration common in many industrialised democracies. As one man described to me after his car was stolen, 'I wouldn't just go into a police station. I call my friends who are in the PNC when I need help.'⁴⁷ The establishment of emergency services ('911') for city and town dwellers with access to a telephone increased police response, but also frustration in the light of new expectations of practically immediate response. In a 1996 poll, fifty-six per cent of respondents expressed 'little' or 'no' confidence in the PNC, 28 per cent said they had 'some' confidence in the PNC, and only 15 per cent expressed 'much' confidence in the new police force.⁴⁸ By 2001, the numbers had improved, with 25 per cent having 'much' confidence in the police force and 45 per cent expressing little or no confidence.

The difficulties of community policing experiments illustrate the problems of police-society relations. Although community members had less fear of approaching the police after the reforms than before or during the war, efforts to stimulate community participation have not thrived. Early efforts by Security Minister Hugo Barrera to create a 'neighbourhood watch' programme met with legislative objections and were widely viewed as a method of expanding police intelligence on communities, possibly for partisan advantage. A pilot project ended after one of its leaders was found dead under mysterious circumstances. A second community policing initiative died with the change of government in 1999. The PNC maintains 'Community-Oriented Policing' offices that act mainly as public relations outfits.

A final US-funded programme initiative called 'Community Police Intervention Patrols' (PIP-COM) was linked to community policing, but was widely recognised as a targeted and active patrolling method on regular routes.⁴⁹ Combined with other techniques, the PIP-COM programme seemed to help lower crime rates considerably in neighbourhoods where it was implemented. Yet the PIP-COM programme illustrates the challenges of transforming the mentality of police officers. Encouraged to fill out 'citizen contact cards' to gather information on suspects in neighbourhoods, some PNC agents instead used the cards to gather data on all citizens with whom they had contact, including victims.⁵⁰ Although regular meetings with communities were held, these generally sought to share information and gather information more than to respond to community concerns. In 2002 PNC

⁴⁷ Personal interview with person requesting anonymity, Sept. 1995, San Salvador.

⁴⁸ See IUDOP poll of July–Aug. 1996, *Series de Informes* 57, p. 103.

⁴⁹ Personal interview with ICITAP El Salvador Project Manager Louis Cobarruvias, March 2002, San Salvador.

⁵⁰ Personal interview with two PNC agents, March 2002, San Salvador Centro Station.

director Mauricio Sandoval had sought to expand the initial PIP-COM experiences to other jurisdictions.

A third arena illustrating the limits of reform is human rights. With the end of the war, political violence declined markedly. The UN reported a significant improvement in human rights between 1991 and 1995, including the complete cessation of ‘disappearances.’⁵¹ While torture of detainees was commonplace, indeed routine, during and before the war, in the first nine months of 1993 there were only nine cases of torture reported to ONUSAL.⁵² The Human Rights Institute of the University of Central America (IDHUCA) reported only 12 killings attributed to police or military forces in 1995, in contrast to an annual average of thousands during the war.⁵³ These dozen alleged killings were many times fewer than the 488 deaths attributed to common criminals during the same period. A ‘Joint Group,’ formed by the United Nations and the Salvadorean government helped to deter political violence in the period leading up to the March 1994 ‘elections of the century.’⁵⁴

As is typical of democratic regimes, state human rights violations increasingly took the form of excessive or otherwise illegal use of force by police officers against suspected common criminals. In 1997–1998, for example, the Human Rights Ombudsperson reported 72 allegations of arbitrary killings (many involving police use of force), 15 allegations of forced disappearances, 12 complaints of torture, 799 cases of mistreatment, 447 complaints of arbitrary detentions, and 931 complaints of lack of due process, such as slow justice, insufficient defence counsel, and so forth).⁵⁵ These allegations do not represent verified violations of human rights – upon investigation, for example, none of the cases of forced disappearances proved valid. However, as is typical in stable democracies where police have the most contact with the populace, the most common perpetrators of violations of civil and political rights were not the military or the judiciary, but the National Civilian Police.⁵⁶

⁵¹ S/1995/220, 24 March 1995, para. 29. Author translation from Spanish.

⁵² Ninth Report of the Director of the Human Rights Division of ONUSAL, Aug.–Oct. 1993, Table 4. ⁵³ ‘Los Derechos Humanos en 1995’, *Proceso*, no. 691, p. 29.

⁵⁴ The elections were so named because they were the first in which the FMLN, and thus the full political spectrum, participated, and because the municipal, legislative and presidential elections coincided (which occurs only once every 15 years).

⁵⁵ See Procuraduría para la Defensa de los Derechos Humanos, ‘Informe de Labores, Junio 1997–Mayo 1998’ (San Salvador, 1998), pp. 230–238. Figures reflect complaints from 1 June 1997 to 31 May 1998.

⁵⁶ Between 1 January and 21 December 2001, the Public Security Ministry (virtually all cases here involve police) was accused in 39 per cent of cases, followed by the Public Ministry (14 per cent), the Municipal governments (10 per cent), the Judiciary (10 per cent), and the Ministry of Education (4 per cent). *Informe de la Procuraduría para la Defensa de los Derechos Humanos: Julio–Diciembre 2001* (San Salvador, 2002).

E. Summing Up Security Reforms

The shape of police and military reforms was dictated largely by the highly detailed blueprint laid out in the peace agreements. Certain broader implications can be drawn from three stages of reforms. First, from 1991–1995, coincident with the decline of armed hostilities and the immediate post-war period, the old security forces were dismantled and new ones created. Future-oriented institutional reforms were rooted in the past, concerned especially with curbing the power of the armed forces in internal security and intelligence. By 1995 El Salvador's touted police reform showed significant achievements. The public security system was firmly under civilian control, significantly more accountable to elected authorities than any prior security force. The PNC was perceived by the population as the principal source of public order, citizen security, and criminal investigations in the country, and a principal defender of human rights. A poll conducted in 1995 showed that 49 per cent of respondents believed that the PNC's conduct was better than that of the old National Police, whereas only 18 per cent thought it worse.⁵⁷ Donor agencies explicitly cited El Salvador's police reforms as a model. Focusing especially on demilitarisation, professionalism, and human rights conduct, many international police experts regarded the country's police reforms as the most successful post-conflict internal security reforms of the decade.⁵⁸

Yet formal institutional changes introduced during the 'big bang' of the peace process confronted informal socio-cultural constraints that continued to limit the impact of reforms in daily practice for the first years of the new regime. Nor did successful civilianisation of the organisational hierarchies of police and intelligence ensure the civilianisation of police interaction with citizens. Problems of abuse and corruption worsened. International actors were slow to try to respond to these developments and continued to focus on the positive aspects of the security reform.

Furthermore, political integration and civilianisation of policing proceeded more successfully than the development of crime control capabilities. Coincident with this first phase of cease-fire and demobilisation of forces (1992–1995), crime climbed precipitously. From the general approval of the PNC's first deployments, public confidence fell as the new force assumed security for the entire country and seemed unable to stem the crime wave.

⁵⁷ IUDOP, 'Encuesta de Evaluación del Año 1995,' Serie de Informes 52, Cuadro 32, p. 39. Some 27 per cent responded that the conduct of the PNC was the same as that of the old police.

⁵⁸ Of six experts and former US and UN officials asked in personal interviews in Jan.–Feb. 2002 to name the most successful police reforms of the past decade, El Salvador was the only country to be named by all six.

Improved civilian control and accountability failed to eliminate problems of ineffectiveness.

In a second phase (roughly 1995–1997, after implementation of the vast majority of the peace accords' provisions was completed), crime remained at high levels, with some variation across categories. El Salvador continued to serve as a model for international post-conflict police reform. By the late 1990s, the contrast was striking between the positive international opinion of security sector reforms in El Salvador and the decidedly more mixed domestic opinion.

During a third phase, from the late 1990s onward, after a 'transitional period' of roughly five years (1992–1997), the country's security system showed the ability of self-correction and further reform characteristic of industrialised democracies. Scandal tended to be the main catalyst for reforms. Repeated revelation of PNC agents' involvement in organised kidnappings and robberies prompted exceptional procedures for powers of dismissal, helping ameliorate earlier weaknesses in the selection of personnel. Surveys in 2001 showed that, by a margin of over 2 to 1, respondents believed the PNC to be more efficient, professional, rights-respecting and honest than five years earlier.⁵⁹ Once past the initial transition period, policing practice demonstrated a greater capacity to approximate formal doctrine, and reform patterns resembled those of stable democracies. Yet most Salvadoreans, while recognising improvements, held either lukewarm or negative opinions about the PNC's effectiveness and corruptibility. We turn now to issues of justice, where expectations were lower and obstacles higher.

IV. The evolution of justice reforms

The Salvadorean conflict helped bring human rights to the fore of international discourse and activity during the 1980s. It is unsurprising that much of the peace agreement focused on ways to prevent human rights abuses in the future. However, these provisions focused more on the security arena and on redressing past abuses than on constructing a reformed judiciary. El Salvador's justice reforms originated during the war, were subsequently advanced by a few provisions of the peace agreement, and deepened through the Truth Commission's report. They subsequently evolved due to international funding and pressure, the crime wave's impact, and activism on the part of civil society. Although international analysts did not consider the country's justice reforms a model, they viewed the experience as a moderate success.

⁵⁹ 'Encuesta de evaluación del año 2001,' No. 91 en Serie de la Universidad Centroamericana (San Salvador, June 2002).

A. War-Time Judicial Reform Efforts

In contrast to experience in many other armed conflicts, El Salvador's criminal justice reforms were initiated, though without much success, during the war itself. Corruption, cronyism and subordination of the criminal justice system to the executive all increased under the pressures of the armed conflict. Fear played an important role in impeding judicial action on human rights violations. Following the assassination of the country's archbishop Oscar Romero, four US religious workers, and two US officials of the American Institute for Free Labor Development between 1980 and 1982, the US Congress began pressing for judicial results at a time when the Reagan administration escalated military and economic assistance to the embattled Salvadorean government.

During this period, US assistance provided the engine for judicial reform efforts.⁶⁰ USAID's bilateral Administration of Justice (AOJ) project for El Salvador, its first in Latin America, had a budget of \$9.2 million between 1984 and 1989. The US project concentrated on gaining convictions in high-profile cases, especially where the victims were US citizens. It supported judicial protection in two cases involving US victims and funded a new Commission to Investigate Criminal Acts (CIHD), including its Special Investigative Unit (SIU), charged with investigating cases affecting the 'national conscience'.⁶¹ It also supported judicial training and the creation of a Salvadorean Legal Reform Commission (CORELESAL) to draft new laws.

Faced with an evident lack of political will among Salvadorean elites to support comprehensive reform, wartime judicial reform efforts focused instead on improving technical capabilities such as case-loads, case management, judicial administration, police investigative skills, and forensics capabilities.⁶² Strikingly absent from these efforts were plans to address the questions of power over the justice system, independence of the judiciary, or integrity of the process from threats and bribery (even FMLN-affiliated groups bribed judges to free people from jail). Like most judicial reform programmes of this period, El Salvador's experience eschewed challenges to

⁶⁰ In addition to these internationally inspired initiatives, some Salvadorean-led efforts slightly enhanced judicial independence in the new constitution of 1983. Margaret Popkin, *Peace Without Justice: Obstacles to Building the Rule of Law in El Salvador* (University Park, PA, 2000), pp. 73–6.

⁶¹ Lawyers Committee for Human Rights, *Underwriting Injustice: AID and El Salvador's Judicial Reform Programme* (New York, 1989); Margaret Popkin, *Peace without Justice*.

⁶² See Popkin, *Peace Without Justice*, pp. 57–73; General Accounting Office (GAO), *Foreign Assistance: Promoting Judicial Reform to Strengthen Democracies*, GAO/NSIAD-93-149 (Washington, DC, Sept. 1993); Thomas Carothers, *Aiding Democracy Abroad* (Washington, DC, 1999).

powerful political and economic interests behind injustice.⁶³ Despite their shortcomings, USAID-funded efforts to redress human rights violations assuaged congressional reservations and ensured a continued flow of US military and other assistance throughout the 1980s, responding to overriding US counterinsurgency aims. In this sense, judicial reforms harmed the search for justice.

Unsurprisingly, these efforts did virtually nothing to advance prosecution for political murders, enhance judicial independence from the executive, or alleviate fear of violence among lawyers, prosecutors and judges. Even in major cases of political killings, inadequate investigations, lack of arrests, and dismissal of charges were the norm.⁶⁴ From the start of the war to date, no intellectual author of a war-related killing has ever been convicted. Justice reform efforts during the war had minimal impact, as military, economic, and political elites, including the entrenched right-wing Supreme Court, stymied reform.

At the same time, El Salvador's experience illustrates that some positive impact derived from the reforms, and that wartime judicial reform efforts may be worthwhile. Judicial reforms undertaken during El Salvador's war served as more than a fig leaf for continued counterinsurgency assistance. They laid the groundwork for new attitudes about judicial independence and accountability, and advanced modernisation of certain codes. CORELESAL drafted new criminal procedure codes and new family and juvenile justice codes which all became the core of new laws after the conflict. Furthermore, the US-funded efforts helped develop greater support within the legal community for greater judicial independence and for reducing the tremendous power of the Supreme Court over the entire judiciary. In contrast to these judicial reforms, police reform efforts undertaken during the heat of El Salvador's war yielded few benefits and implicated donors in the security forces' human rights violations.

B. The Truth Commission

El Salvador's war crimes were addressed through a combination of purges, truth-telling, and institutional reforms to government security and judicial institutions.⁶⁵ The Ad Hoc Commission and the UN Truth Commission

⁶³ Carothers *Aiding Democracy*; Michael Dodson, 'Assessing Judicial Reform in Latin America,' *Latin American Research Review*, vol. 37, no. 2 (2002), pp. 200–20.

⁶⁴ See Doggett; and Lawyers Committee for Human Rights, *El Salvador: Human Rights Dismissed* (New York, 1986).

⁶⁵ On truth commissions, see Priscilla Hayner, *Unspeakable Truths* (New York, 2000); Martha Minow, *Between Vengeance and Forgiveness* (Boston, 1998); Neil Kritz, *Transitional Justice*, 4 vols. (Washington, DC, 1995); and Alexandra Barahona de Brito et al., *The Politics of Memory and Democratization*, 2nd edition (Oxford, 2001).

became the main vehicles both for purges of the armed forces and for exposing its involvement in egregious human rights violations. In contrast to many other transitions, no prosecutions for atrocities occurred after the war because of the amnesty law passed in 1993.⁶⁶ Instead, days after the Truth Commission released its report, the legislature quickly heeded President Cristiani's call to pass a sweeping amnesty law. Understood to bar criminal prosecutions, civil suits, and judicial investigations into the fate of victims, the law was not actively opposed by the FMLN, protecting both its guerrillas and the government's soldiers from prosecution for all crimes, and victims received no reparations.⁶⁷

The first step to address judicial integrity during the peace process was the United Nations Truth Commission, which remains the most visible mechanism addressing past atrocities in El Salvador. The Truth Commission was charged with investigating 'grave acts of violence' after 1980, and investigated 32 prominent cases as well as describing the nature of death squad organisations during the war.⁶⁸ The report named sixty-two military officers, six FMLN leaders, and several civilians for their responsibility in committing or covering up the country's most serious wartime human rights violations.⁶⁹ It estimated that the military and paramilitary death squads were responsible for 95 per cent of all human rights abuses committed between 1980 and 1992, with the FMLN responsible for the remainder. As described earlier, the report effectively ended the military careers of those named in it. Despite its flaws, the Truth Commission report helped to undermine the myth of the armed forces as honourable defenders of the nation, further curbing its political power and detracting from the public reputations and electoral possibilities of those named from both sides of the war.

The Truth Commission also made a series of recommendations for reforms to the judicial system. The Commission surprised the government by calling for the resignation of the entire sitting Supreme Court and for further decentralisation and depoliticisation of the court system. Citing the old SIU's involvement in covering up the Jesuit murders and other crimes, the report also called for the dissolution of that unit. Explicitly doubting that El Salvador's weak judicial system would be capable of prosecuting those named in its report, the Truth Commission recommended instead that they

⁶⁶ Previous amnesty laws were passed in 1983, 1987, and 1992 to free political prisoners on both sides. Popkin, *Peace Without Justice*, p. 40.

⁶⁷ Popkin, *Peace Without Justice*, pp. 6 and 150–1. In 2002, a US jury awarded three Salvadorean torture victims \$54 million in a civil suit brought against two Salvadorean generals living in the United States.

⁶⁸ The mandate of the Truth Commission is contained in the Mexico accords signed in April 1991.

⁶⁹ See UN Commission on the Truth, *De la locura a la esperanza* (San Salvador, 1993).

be barred from holding public office for at least ten years, with a permanent ban on holding defence or internal security posts.

Although both sides had agreed to abide by the Truth Commission's findings, the government quickly made clear that it would not do so. Members of the government negotiating team criticised the commission's work as biased and exceeding its original mandate (Hemisphere Initiatives 1994a: 6). The Chief Justice of the Supreme Court, ARENA-appointed Mauricio Gutiérrez Castro, defiantly announced that the peace accords were an agreement of the executive branch and did not touch the judiciary, and that 'only God' could remove him from his post. ONUSAL had criticised the suggested ban on holding public office as unconstitutional and in violation of due process,⁷⁰ and several of those named in the report, both ex-soldiers and ex-guerrillas, subsequently sought and won seats in the National Assembly.

Several weaknesses undermined the power of the Truth Commission's recommendations. It operated under a short six-month lifespan, and omitted thousands of extrajudicial executions and kidnappings by selecting only exemplary cases.⁷¹ In addition, because the Truth Commission offered no incentives for perpetrators to come forward, it relied on good faith alone. Consequently, the report failed to mention those who remained silent, but perversely punished those who came forward and acknowledged their role (most notably one faction of the FMLN, the ERP). Finally, victims received little attention. Only a handful of the 75,000 victims' families received information about the fate of their loved ones, and none received psychological services or compensation, although the Truth Commission called for reparations and other steps toward reconciliation.⁷² Nevertheless, the Truth Commission represented perhaps the most important public instrument of truth, accountability and an end to impunity to have emerged in El Salvador. Although many of its recommendations were never implemented, they contributed to greater professionalism in the judiciary.

C. Judicial Independence and Accountability

The Salvadorean case illustrates the difficulty and resistance that judicial reforms, even more than police reforms, are likely to confront unless the

⁷⁰ Popkin, *Peace Without Justice*, p. 128; Personal interview with two PNC agents, March 2002, San Salvador Centro Station.

⁷¹ Lawyers Committee for Human Rights, *Improvising History: A Critical Appraisal of the United Nations Observer Mission in El Salvador* (New York: Lawyers Committee for Human Rights, 1995).

⁷² Margaret Popkin, 'The Challenge of Building the Rule of Law in Post-War El Salvador,' paper delivered at conference on 'Building the Rule of Law in the Context of a Peace Process,' Institute for Latin American Studies, University of London (London, 2000), p. 5.

judicial branch has already been completely disarticulated. Given the adamant resistance by the Supreme Court to reforming the judicial system, few changes occurred until after the new government and Assembly took office in mid-1994. After lengthy partisan debate, a new Supreme Court was elected in conformity with the process contained in the constitutional amendments passed as part of the peace process. The National Council of the Judiciary and civil society, through the Bar Association, submitted ranked nominations for Supreme Court magistrates to the Legislative Assembly, which approved its choices by a two-thirds majority to staggered terms of nine years, rather than the previous terms that coincided with the electoral cycle.

The resulting Supreme Court was decidedly more professional, more politically plural, and less partisan, although political party ties continued to enter into the selection process. In this sense, the peace process did not fully depoliticise the courts. Instead, increased meritocratic standards combined with political plurality, as justices supported by the left, centre and right parties were named to the bench. The justice reforms *pluralised* the courts more than *depoliticising* them, but with improved standards of merit. At the same time, some believe that partisan wrangling and political criteria became more important in the 1997 and 2000 selection processes of Supreme Court magistrates. El Salvador's short experience thus far casts doubt on the proposition that pluralisation will lead to depoliticisation of the judiciary.

Despite some important steps toward devolving some of the power of the Supreme Court to the National Council on the Judiciary, the judicial system remained highly centralised. In particular, the Supreme Court retained a determinant voice in the selection and removal of lower court judges. In 1994 the National Council of the Judiciary was able to commence a process of reviewing judges. Investigations launched into judges' records by a Department of Investigations created by the Supreme Court resulted in a high number of suspensions and other lesser sanctions against lower-court judges. However, when the term (1994–1997) of the first post-war Chief Justice ended, only 31 judges out of 520 had been removed, only one officially for corruption.⁷³ Five years later, the Supreme Court still seemed reluctant to discipline lower-court judges. Despite recommendations by the National Council of the Judiciary to sanction 230 judges based on its 2000–2001 evaluations, the Court only disciplined 19 judges in 1999, 15 in 2000, and 48 in 2001.⁷⁴ After it was discovered that 450 prosecutors and judges had lied

⁷³ Popkin, *Peace Without Justice*, p. 212. By 2002, the total number of judges had grown to 640, with 322 justices of the peace, 251 first instance judges, 52 second instance magistrates and 13 Supreme Court magistrates. Figures provided to author by the Supreme Court, Sala de lo Civil, 7 March 2002.

⁷⁴ US Department of State, 'Country Reports on Human Rights Practices for 2001,' chapter on El Salvador (Washington, DC, 2002), Section 1.e.

about their legal degrees or received them improperly, temporary powers permitted the dismissal of 36 prosecutors and 24 administrative personnel from the Attorney General's office in 2001.⁷⁵

D. The Attorney General's Office and Criminal Procedure

Beyond the courts and police, among the most important areas of judicial reform was the transformation of El Salvador's legal system, involving changes in the role of the Attorney General's office, in criminal law, and in procedures for administering justice. Under the continental inquisitive system of justice historically prevalent in Latin America, the instructing judge was charged with directing investigations, supervising the work of police and prosecutors. In contrast to the Anglo-American accusatory system's reliance on oral trials and competing cases presented by the defence and the prosecution, instructing judges primarily review written evidence in order to determine guilt or innocence. The peace process, international trends, and US aid contributed to a transformation of the judicial system in El Salvador toward the accusatory model, with generally positive results in terms of efficiency and transparency. Yet again these reforms carried costs.

Compared to the police reforms, the transformation of the role of the Attorney General's office was gradual yet encountered similar problems. Since 1950, the Attorney General (*fiscal general*) and prosecutors (*fiscales*) have always formed part of the Public Ministry. Charged with representing the interests of the state and society and with defending the juridical interests of the poor, the Public Ministry comprises not only the Attorney General's office, but also the Public Defender and the Human Rights Ombudsperson. The 1991 constitutional reforms passed as part of the peace process granted the Attorney General's office the power to 'direct' investigations rather than just 'safeguard' (*vigilar*) them.⁷⁶ Subsequent reforms and the adoption of new criminal laws endowed the prosecutor with greater responsibilities still, reducing both judicial power and police discretion in criminal investigations. The 1991 reforms also enhanced political diversity and plurality in the selection of the attorney general by requiring a two-thirds legislative majority for a candidate's approval.

Among the most significant changes in criminal justice were new codes adopted in the 1990s. Development of more modern codes occurred during and after the war, with important international influences, boosted by

⁷⁵ Comisión Especial para una Evaluación Integral de la Fiscalía General de la República, *Diagnóstico integral y recomendaciones para el fortalecimiento de la Fiscalía General de la República* (San Salvador, 2001). See also FESPAD, 'Estado de la Seguridad Pública y la Justicia Penal en El Salvador 2001' (San Salvador, May 2002).

⁷⁶ My translation. On the attorney general's office, see *ibid.*, pp. 1–13

growing recognition of the need to improve justice in the face of crime and of the low prestige of the judiciary. In April 1998, after significant international input and domestic debate and delay, a new criminal procedure code (CPC), Penal Code and Sentencing Law went into effect. The new CPC significantly modernised the criminal justice process, moving it toward a more adversarial system while retaining some inquisitorial elements. Oral testimony became more prevalent, and prosecutorial discretion (including the introduction of a form of plea bargaining) was introduced. Important limits on police and judicial abuses were adopted as well as procedural guarantees, including eliminating the admissibility of confessions taken without the presence of a lawyer presence, limiting the time for different phases of the judicial process, capping the length of pre-trial detention, and requiring immediate appointment of defence counsel.⁷⁷

Yet the enhanced role of the prosecution in the judicial system was not matched by corresponding resources or institutional development. The 1991 constitutional reforms stipulated that 6 per cent of the national budget would go to the judiciary, but the public ministry was excluded. Consequently the courts were overresourced, while the remainder of the justice system suffered from poor funding. As with the police, the attorney general's office needed to grow quickly, improve personnel, and retain some expertise despite having a large number of underqualified personnel. The peace accords provided for none of these exigencies. One-third of prosecutors in 1997 were not attorneys. The budget of the public ministry and its size were inadequate for assuming many tasks formerly carried out by police and judges. The UN Development Programme and bilateral donors supported projects to train prosecutors and bolster their ability (and confidence) to take control of investigations from the police. Like the PNC, the attorney general's office grew at such a high rate that quality control was sacrificed. At the end of 2000, over half the prosecutors had been in post for fewer than three years.⁷⁸ With the enhanced role of the prosecutor, the corresponding role of defence attorneys also gained importance, but training and funding for these offices remained low, putting poor defendants in greater jeopardy.

The justice sector experienced many of the same limits to reform as the security sector. The government only began to remedy these problems several years after the war, when special legislation was adopted to provide for a process of *depuración* of the Attorney General's office similar to that of the PNC, and additional funding was provided.⁷⁹ Corruption among

⁷⁷ Popkin, *Peace Without Justice*, pp. 219, 235–41.

⁷⁸ Comisión Especial, *Diagnóstico integral y recomendaciones*, p. 37.

⁷⁹ The Attorney General's budget more than doubled from 70 million colones in 1997 to 162 million colones only two years later – but still remained one-fifth of the budget of the courts. *Ibid.*, p. 73.

prosecutors had by then become apparent. The peace process failed to address deficient legal education and curriculum or problems in the process of approval of lawyers to the bar, which received scant attention only several years later.⁸⁰

A year after the new codes went into effect, evidence suggested improvements in efficiency in case management, coordination within the justice sector, conviction rates, and citizen access to justice.⁸¹ The new codes, especially the CPC, directly addressed the legal pitfalls that had permitted state torture and terror, and largely brought the country into conformity with international human rights standards. Yet the new codes coincided with ongoing insecurity and a sharp increase in reported robberies. One understudied provision of the new Penal Code gave double or triple credits for pre-trial days served in detention as a deterrent to that practice and a means to reduce the prison population.⁸² As a result, several notorious criminals were released amidst great publicity. Critics used the new laws as a convenient scapegoat and a distraction from the inadequacies of the criminal justice system and other factors in the crime wave. A backlash in public opinion ensued that contradicted the overall picture of stabilisation, even lowering, of most crimes. One 1998 survey showed that 35 per cent of respondents thought that weak laws were the main reason for the PNC's inability to combat crime, far ahead of any other response.⁸³

At the same time, the crime wave and dissatisfaction with high levels of violence generated creativity in criminal justice reform. Civil society played a relatively minor role in the negotiation and implementation of El Salvador's police reforms, but its role grew in both security and justice reform throughout the 1990s. Research organisations became more sophisticated in their analysis, providing data and analysis of public safety issues used by policy-makers and advocates. In response to the inability of tougher law enforcement and legal measures to stem crime, several projects focused on violence prevention, seeking to address broader factors associated with violent behaviour. These programmes included work with youth, child abuse programmes, drug rehabilitation, neighbourhood watch schemes, and domestic violence education and prevention. One project involving the police, scholars and NGOs gave university researchers access to data on small arms in exchange for help in improving the PNC's data base management and capacity.⁸⁴ Donors like the Inter-American Development Bank and the

⁸⁰ Popkin, *Peace Without Justice*.

⁸¹ *Ibid.*, p. 240.

⁸² *Ibid.*, p. 239.

⁸³ Poll cited in José Miguel Cruz, 'Police Reform, Violence and Citizen's Insecurity in El Salvador,' paper given at LASA Conference, Dallas, March 2003, p. 20.

⁸⁴ UN Development Programme (UNDP) project executed by FLACSO, National Public Security Council, FESPAD and the UCA. Personal interview with Marcela Smutt of UNDP, March 2002, San Salvador.

United Nations shifted attention to violence prevention and reduction in innovative programmes. By the late 1990s, NGOs and thinktanks played an increasingly important role in improving police operations and planning and in judicial reform and code revision.

E. Justice, Gender and Youth

The evolution of security and justice for women and children followed a pattern similar to overall reforms. Security reforms improved the formal place of women in the police, but informally exhibited considerable continuity with the past, as cultural patterns were slow to change. The new PNC included women in the country's security forces for the first time. By March 2002, women comprised 7.1 per cent of PNC officers, an important gain, but still below the majority of the population they represented. The proportion of female officers increased with each career grade, reaching 15 per cent of senior officers.⁸⁵

At the same time, enhanced protections did not ensure security or justice for women. Peace exposed women to increased domestic violence as combatants accustomed to violence returned home with dim employment prospects.⁸⁶ Reported domestic violence and rapes increased in the first several post-war years, due partly to new laws criminalising domestic violence and marital rape and partly to greater reporting.⁸⁷ In addition, senior police-women tended to be channelled to non-operational posts, and many police and judicial personnel failed to enforce the new laws.

In the courts the peace process had less impact on women's representation than in the PNC, as women already occupied many judgeships. By 2002 women comprised 40 per cent of judgeships in the country, but with reduced rates (only 16 per cent) at the higher appellate levels.⁸⁸ While the peace process helped provide an opening for human rights generally, several advances in the status and treatment of women and minors were not directly attributable to the peace process. A new juvenile justice code, drafted during the

⁸⁵ The regional average in 1999 was 8 per cent. In June 2001 the percentage of women at each rank was 15.8 per cent of *comisionados*; 14.5 per cent of *subcomisionados*; 11.1 per cent of *inspectores*; 10.4 per cent of *sub-inspectores*; 5.8 per cent of *sargentos*; 5.3 per cent of *cabos*; 6.9 per cent of *agentes*. El Salvador figures provided by the Director-General of the PNC in March 2002. In 1996, women comprised only 6.1 per cent of the PNC.

⁸⁶ Tracy Fitzsimmons, 'Engendering a New Police Identity?', *Peace Review*, vol. 10, no. 2 (1998), pp. 269–74.

⁸⁷ Reported rapes climbed steadily from 382 in 1996 to 818 in 2001. Annual data given to author by PNC.

⁸⁸ In 2002 women comprised 256 of the country's 640 judges, viz. 44.7 per cent of justices of the peace; 40.2 per cent of first instance judges; 17.3 per cent of second instance magistrates; and 13.3 per cent of Supreme Court magistrates. Figures provided by *Sala de lo Civil, Corte Suprema de Justicia*, current as of 7 March 2002.

war and approved in 1994, provided that minors under 18 would be tried in separate courts, limited their sentences to seven years, and included alternatives to incarceration. Many Salvadoreans blamed the new protections for a perceived increase in crime by juveniles, especially skyrocketing numbers of youth gangs, and a backlash ensued.⁸⁹ Yet both the new youth and family codes reflected international trends and activism as much as domestic factors. Between 1994 and 1998, all five Central American republics passed youth criminal codes to bring them into conformity with the 1990 UN Convention on the Rights of Children.⁹⁰

F. Judicial Efficacy and Legitimacy

By 2002, judicial reforms had achieved some improvements in technical areas but not in public opinion. Perhaps reflecting the deleterious effects of the crime wave, the image of the judiciary did not improve in the years immediately following the war. In a 1994 poll, only one-fifth (20 per cent) of respondents reported increased confidence in the judicial system over the past five years (the term of President Cristiani).⁹¹ In 1996, over half of the populace expressed little or no satisfaction with the work of the Supreme Court, and only 7 per cent were 'very' satisfied with its work. Also in 1996, four times as many people thought the country's justice system was 'corrupt' as thought it 'honest', and four times as many thought that 'many judges are subject to political control' as thought not.⁹²

Those figures did not improve over time. A World Bank project stated in 2002 that justice reform efforts 'have had mixed results in effectiveness and gaining citizen confidence.'⁹³ Gains in case management and sentencing rates were not matched by greater legitimacy. In a 1998 poll, respondents ranked the Supreme Court at the bottom of the list of institutions which 'best defend human rights' in the country, after the army, the church, the police, and human rights groups.⁹⁴ Similarly, twice as many people blamed

⁸⁹ Some 236 youth gangs existed in 1993, and estimated gang membership grew to 30,000–35,000 by 2001. Maria L. Santacruz Giralt and Alberto Concha-Eastman, *Barrios adentro: la solidaridad violenta de las pandillas* (San Salvador, 2001), p. 13.

⁹⁰ UN Development Programme, *Estado de la región en desarrollo humano sostenible* (UNDP, 2000).

⁹¹ Some 37 per cent reporting no change in confidence, and 30 per cent reported less confidence. US Information Agency, 'Benchmarks in Democracy Building: Public Opinion and Global Democratization,' special report, interviews conducted in El Salvador in September 1994, p. 55.

⁹² IUDOP, 'Encuesta sobre Derechos Humanos y el Sistema Judicial,' (San Salvador: July–Aug. 1996), pp. 80, 83.

⁹³ World Bank, 'El Salvador–Judicial Modernization Project', Project Id. # SVPA64919 (May 2002), p. 1.

⁹⁴ IUDOP, 'Encuesta de evaluación de Derechos Humanos y la PDDH' (San Salvador, 1998), p. 35.

judges for the high crime rates in 1998 as blamed the police.⁹⁵ One poll in 2001 found that 48 per cent expressed a lack of confidence in the judiciary, a higher percentage than ten years earlier, when the war ended.⁹⁶ As of autumn 2001, 57 per cent of the country's prison population had not been tried.⁹⁷ News editorials in 1997 reflected a general sense that the pace of reviews within the judiciary remained slow.

Ten years after the peace accords, the judicial system remained weak, inefficient, antiquated, overly partisan, and subject to corruption. The vagueness of the accords' provision regarding the judiciary played a role, as did political horse-trading and a virtual stalemate within the legislature over constitutional and legal reforms and judicial procedures. Despite bemoaning these deficiencies, political parties continued to favour partisan loyalty over competence in judicial appointments. More serious for democratic consolidation, within four years of the peace accords, polling data revealed support for the return of a hardliner as president to confront growing crime.⁹⁸ Polls by Latinobarometro showed a dramatic decline in support for democracy in El Salvador, from near 80 per cent in 1998 to 40 per cent in 2000.⁹⁹ Violent crime and insecurity played a prominent role in this unfortunate shift.

V. *Conclusions*

El Salvador's post-war security and justice reforms suggest several important conclusions for understanding the rule of law and state reform. First, sceptics about the possibilities for rapid state transformation are wrong, at least under certain circumstances. Post-war settings where the prior state is not victorious provide windows for some success in state reform. The weakening or dislocation of state power that transpires when a negotiated end to war occurs opens the door to institutional reform, especially the demilitarisation of internal security institutions.¹⁰⁰ If democratisation opens the door to institutional reform, then democratisation linked to the termination of war provides a 'big bang,' because wars affect states, not just regimes.

El Salvador experienced an important transformation of decades-old military and police doctrines, training and deployments, as well as important modernisation, pluralisation and greater independence of the judicial system. These changes were relatively rapid and significant, accomplished with an

⁹⁵ IUDOP, 'Encuesta de opinión sobre delincuencia' (San Salvador, July 1998) p. 20.

⁹⁶ CID-Gallup poll in 'Jueces en la mira', *Diario de Hoy* (14 Feb. 2002).

⁹⁷ Figures provided to author by Corte Suprema de Justicia (March 2002).

⁹⁸ 'Piden mano dura contra el crimen,' *El Diario de Hoy* (30 Jan. 1996), p. 2.

⁹⁹ Cited in Miguel Cruz, 'Police Reform, Violence and Citizen's Insecurity,' p. 23.

¹⁰⁰ Charles T. Call, 'War Transitions and the New Civilian Security in Latin America,' *Comparative Politics*, vol. 35, no. 1 (Fall 2002), pp. 1–20.

important international role in design and implementation. While one can question the choices of international actors, they undeniably helped create and sustain formal security and justice reforms. These reforms included more than merely professionalisation, but also affected doctrines, structures and conduct. Agency by national and international actors can pay off in the face of structural obstacles posed by culture, economic structure and warfare.

Yet some caveats are required. El Salvador suggests that the window of opportunity for formal institutional reforms is short-lived, lasting only a few years. Significant security reforms occurred in conjunction with peace negotiations and implementation of the peace accords, all within three years of the agreements.

Moreover, informal social and cultural structures and attitudes were less affected by peace and democratisation than were formal state institutions. During democratisation, newly empowered domestic political actors often conform to the same socio-cultural practices as previous elites. International interventions and assistance reinforce this focus on changes to formal, rather than informal, institutions. Donors generally target formal organisations where their aid programmes, conditionality and diplomacy can demonstrate visible results. In El Salvador, state reforms removed the most visible formal vestiges of prior institutions more successfully than they inaugurated new concepts and practices. It proved more difficult to instil a police commitment to public service, community input and participation, and accountability than it did to displace the military as the protagonist in internal security. Civilianisation did not produce full accountability, transparency, or conformity to standards of 'democratic policing'.

Nor did it produce effectiveness. Indeed, the transaction costs of demilitarisation heightened the post-war crime wave. The success of El Salvador's police reform was hampered by a dramatic rise in violent crimes and perceived insecurity. The Salvadorean case suggests that the rise, leveling off, and decline of violent crime may correspond to stages of democratic transitions from war. Statistics, although problematic, reveal high levels of violent crime as the main weakness of post-war security in El Salvador and the biggest threat to the survival of electoral democracy. Of course, the case also illustrates the importance of improving statistics-gathering capacity in efforts to establish the rule of law. El Salvador, ironically, also served as a laboratory for innovative experiments in preventing and reducing violence, involving NGOs, think tanks, and government agencies.

If El Salvador shows what types of state-building *can* occur in post-war settings, it also indicates that the circumstances of the armed conflict and of its termination made state reform possible. First, the circumstances of this society and its war compare favourably to many other situations. The small

size, relative ethnic and religious homogeneity, and history of formal electoralism made negotiated settlement easier and more likely to hold than in larger and more divided societies with no experience of elections. Although personalism and clientelism remained strong in El Salvador, formal organisations (be they parties, state ministries, or non-governmental organisations) generally transcended individuals and survived leadership changes, making for a higher degree of institutionalisation. The stalemate in the armed conflict also created propitious conditions for democratisation and state-building, as some theorists have argued.¹⁰¹ Finally, coincident with the end of the Cold War, the great powers concurred on a strong UN role and relatively generous reconstruction funds compared to some subsequent missions.

On the other hand, some conditions limited the possibilities for state reform. A history of elections and separation of powers – even under authoritarianism – can also undermine reform efforts. Opposition parties can veto new proposals; judiciaries can proclaim their independence from the executive and reject reforms; and new governments can abandon or reverse achievements. Political culture and informal clientelism were factors which made it difficult to define new relations between police and society and that favoured in persistent corruption. Although El Salvador's economy grew in the years immediately following the war, a recession and continued inequality prevailed, rooted in neoliberal economic policies and the structure of the economy. These economic structures and choices contributed to common crime and to limits on state resources to confront it.¹⁰²

Alongside the transition from war, democratisation was important too. The democratic nature of the subsequent regime enabled self-correcting mechanisms to improve imperfect state institutions, though not dramatically, subsequent to the transitional period. Police reform came to resemble patterns in industrial democracies. Two implications of this analysis are that war is underestimated as a factor in disrupting and reforming the state in most democratisation theory, and also that electoral democracy in poor countries shares some characteristics of democracy in industrialised economies.

El Salvador illustrates how the international image of a reform process can diverge from local perceptions. The police reform, held up as a model, has enjoyed some notable successes, but its inability to adequately combat rising criminal violence, to weed out corrupt or criminal personnel, and to inspire confidence among the population also merit analytic attention. Other post-conflict societies have encountered problems of rising crime, backsliding on reforms, corruption, and disillusionment among the populace.

¹⁰¹ Terry Lynn Karl, 'Dilemmas of Democratization in Latin America,' *Comparative Politics*, vol. 23, no. 1 (Oct. 1990); William I. Zartman, *Ripe for Resolution* (New York, 1989).

¹⁰² See Wood, *Forging Democracy from Below*; James K. Boyce, *Economic Policy for Building Peace: The Lessons of El Salvador* (Boulder, 1996).

Without clearly understanding the complex relationships among different elements of the security and justice systems, the sources of resistance to post-war reform, the impact of measures to deal with the past upon future justice, and the divergence of local and international perspectives, our understanding of post-conflict peacebuilding and international policies will be limited.