

MARGARET POPKIN: *Peace Without Justice, Obstacles to Building the Rule of Law in El Salvador*. University Park, PA: Pennsylvania State University Press, 2000.

El Salvador has been among the most violent places on earth over the last 30 years. A decade-long civil war took the lives of some 90,000 Salvadorans, including the country's Catholic Archbishop and dozens of foreign nationals. Yet, in a period in which peace agreements have forged a considerable measure of political peace, civil violence in the form of criminal behavior has surged to unprecedented levels. Murder rates in El Salvador are among the highest in the world, at times exceeding levels encountered in the darkest days of the civil war and military repression. As during the war, the costs of violence continue to weigh most heavily on the poor and marginalized sectors of society. In a book that traces the thread of impunity that motivated and persists after this civil war, Margaret Popkin attributes the astonishing legacy of Salvadoran violence to the acute failure in building the rule of law as a central pillar of a democratic peace.

Judicial reform was one of the central, if vaguely articulated, demands of the insurgent opposition, FMLN, in acceding to disarmament. In this book, Popkin lays out in seven chapters the accumulated evidence explaining why high expectations regarding judicial reforms have been frustrated. Transcending important questions of judicial rules, such as appointment processes, oral versus inquisitorial investigative procedures, and budget control, the core problem is one of political will. Based on extensive research and experience working in El Salvador with non-governmental human rights organizations between 1985-1992, the author provides a rich perspective of the struggle for control over the administration of justice there. The book also makes an important contribution to the literature on institutional reform by comparing the impact of the Salvadoran post-conflict truth commission to similar democratic transitions underway in Chile, Argentina, Haiti, Guatemala and South Africa.

First among many obstacles blocking effective judicial reforms was the absence in El Salvador of any previously functioning judicial system worth rebuilding. For much of the twentieth century, privileged elite interests, shielded by the protection of the military and security forces, deprived Salvadoran society of an independent, professional, transparent and efficient justice system. Over the past fifty years, and at a tremendous cost in terms of human life, political opposition from below has opened the door to reforming an institutionally weak legal system. The payoff in terms of a more effective judicial system has, so far, been mixed.

Post-war leaders, both national and foreign, as well as civil society, have

faced the formidable task of building the rule of law from scratch. The imprint of the Cold War is clearly visible in the judicial gridlock that stymied the hoped for institutional reforms. As the principal backer of the Salvadoran government, the U.S. Agency for International Development made early investments in modernizing the judicial and public safety sector, but failed to reach out beyond trusted governmental interests. Popkin lays specific responsibility with the U.S. for defending a weak internal investigative capacity within the police, whose failure to root out corrupt elements has devastated post-war police effectiveness and preserved a culture of impunity. When the process atrophied, no popular support existed for pressuring intransigent veto players. The United Nations, often representing European interests sympathetic to leftist opposition, endorsed a different constituency within the justice sector. Competition between USAID and the U.N. resulted in rancor between the courts, attorney general, police and legislature, effectively closing the space necessary for any coalition of local actors to appropriate the reform process. A less considered but equally significant factor may have been the extent to which both donors' motivations were guided more by the institutional needs of market liberalization than by the defense of the victims of injustice.

Popkin illustrates the demobilizing effect on civil society of donor dominated institutional reforms as the Achilles heel of the Salvadoran Truth Commission and, to a lesser extent, of the new National Council for the Defense of Human Rights. As a major government concession in the Peace Accords, the Truth Commission was charged with investigating human rights violations committed during the conflict and issuing recommendations regarding reparations. Because the three principal members of the Commission were non-Salvadorans, no governmental, nor civil society interests came to own a process viewed as externally imposed. Popkin adds that nine of the thirty-two investigations profiled in the Commission's report involved foreign-born victims, which may explain why Salvadoran civil society has so far failed to mobilize to demand any follow-through action on the report's recommendations. U.S., French and Salvadoran lawyers have pressed for prosecution of known perpetrators in now famous cases of human rights violations, but recent efforts have failed, at least in part, because no local Salvadoran social movement is demanding justice.

While capable of fighting the U.S.-armed Salvadoran military to a stalemate, the FMLN lacked the power or vision to negotiate verifiable improvements in the justice sector. In an intriguing strand of her narrative that deserves a much fuller treatment, Popkin suggests that the FMLN probably underestimated the importance of an accountable judicial sector and settled for a relative purging of the Salvadoran army of its most

notorious violators of human rights. No doubt these same restrictions would curtail the political careers of implicated FMLN leaders. She suggests that struggles within the FMLN over personal and factional influence prevented the opposition party from advocating more forcefully for a process that would inevitably lead to a full public airing of past wrongs against the Salvadoran population. Popkin's comparisons to other experiences of how past accounts have been rendered, and their respective impact on democracy, is particularly insightful.

The confluence of donor heavy-handedness and opposition vulnerability has contributed to a weak, fearful civil society that has so far been unable, or unwilling, to assume its critical role in the building of the rule of law. As a consequence, reconciliation is slowed by the non-recognition of the victims of the past conflict by powerful interests in society. For example, the absence of any monument to the victims of the conflict postpones a period of national grieving. Murder, kidnapping and the terror associated with organized crime in general have now eclipsed past political violence in the eyes of those having survived both. Support for authoritarian solutions, and increasing episodes of vigilante justice, pose a fundamental threat to any sustainable democratic project.

Popkin concludes that international pressure has been, and will often be, essential for even modest improvements to the justice sector in El Salvador, but persuasively shows the downside to excessive reliance on foreign expertise. Judicial reform requires home-grown political will. Another important lesson of the Salvadoran case is how the lack of broad-based coordination early in the reform process severely truncated its prospects. Despite massive donor inputs, there is still no single reliable source of murder or crime data in El Salvador, no doubt a consequence of externally stoked competition within the justice and public safety sector. The author recommends early, external evaluation of judicial reform projects that move beyond traditional progress indicators, such as counts of training sessions, caseload flows, and conviction rates, to political questions of fairness, accountability to international norms, and the erosion of entrenched military, police and elite impunity.

*Peace Without Justice* is a sober reminder of the limitations of externally mediated, top-down institutional reforms. That neither peace nor justice have followed El Salvador's civil war only underscores this failure. The book makes an important contribution to the debate over the rule of law as it affects the democratic processes underway in developing countries like El Salvador.