

# Constructing Justice and Security after War



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## Introduction

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IN 2003, THE IRAQI REGIME OF SADDAM HUSSEIN FELL to U.S.-led forces. The widely publicized situation that unfolded immediately afterward—rampant looting, widespread citizen insecurity, and impunity for all sorts of crimes—surprised most observers and U.S. officials. It also enraged many Iraqis who had been receptive to the U.S. invasion.

Yet Iraq's unfortunate weeks-long dearth of security and law did not surprise those familiar with other postwar societies. Before Baghdad fell, insecurity plagued Afghanistan for more than a year after the demise of the Taliban regime. Indeed, as the United States and its allies demonstrated a growing and unprecedented military capacity to topple regimes from Haiti and Kosovo to Kabul and Baghdad, all of these postintervention societies displayed serious and persistent problems of citizen insecurity and an absence of the rule of law.

Interestingly, negotiated settlements of civil wars exhibited equally vexing, though qualitatively distinct, problems of insecurity. El Salvador, South Africa, and Guatemala—three of the most successful peace processes of the 1990s—experienced worse violent crime *after* their wars concluded, leaping to the top of the world's homicide rankings. Organized crime in Bosnia deepened after the 1995 Dayton peace agreement. These and other cases underscore one of the central challenges of international security in the twenty-first century: How can external actors not only establish security in

the immediate aftermath of war but also create self-sustaining systems of justice and security in postwar societies?

## THE NEW RULE-OF-LAW CONSENSUS

This question has been neglected by scholars but is now recognized as a top priority by various international constituencies: the development industry, peacebuilding agencies, Western military forces, democracy promoters, and human rights organizations. Thomas Carothers refers to the “rule-of-law revival” during the 1990s, when Western governments and international organizations invested billions of dollars in programs to redraft constitutions and laws, strengthen judicial institutions, professionalize and reform police forces, curb corruption, and improve correctional systems throughout the former Soviet Union, Latin America, Africa, Asia, Eastern Europe, and the Balkans.<sup>1</sup> Among a plethora of development and security agencies, a new “rule-of-law consensus” has emerged.<sup>2</sup> This consensus consists of two elements: (1) the belief that the rule of law is essential to virtually every Western liberal foreign policy goal—human rights, democracy, economic and political stability, international security from terrorist and other transnational threats, and transnational free trade and investment; and (2) the belief that international interventions, be they through money, people, or ideas, must include a rule-of-law component.

These beliefs took root only in the 1990s. After having virtually eliminated foreign police aid and justice reform initiatives in the 1960s and 1970s, the United States was devoting a growing portion of its development assistance to promoting the rule of law by 2001. Two years later, the head of the UN Development Programme reported that 60 percent of its core funding went to “democratic governance,” including justice and security sector reform programs, rather than to traditional programs like health care and education.<sup>3</sup> European donors, who did not offer significant support for policing and justice systems upon withdrawal from their colonies in the 1960s and 1970s, began to do so in the 1990s.

International financial institutions for forty years shunned involvement with security or justice institutions as “political” and

outside the scope of their work. Yet by 2000 the World Bank and regional development banks had made the rule of law a centerpiece of their policy discourse, encouraging governments to rationalize their military expenditures and funding programs to disarm combatants and reconstruct judicial systems. These changes reflect a combination of factors: growing efforts to institutionalize human rights; broadened concepts of “development” and its links to governance; recognition that globalizing commerce requires institutions to protect capital; and frustration with the costs and risks to international military peacekeepers forced to police postwar societies.

[Events of?]The twenty-first century has only strengthened the rule-of-law consensus. The attacks of September 11, 2001, helped convince conservatives that unstable peripheral states without a rule of law pose a threat to the West’s security. Well-publicized looting and the security void that followed the fall of Baghdad starkly demonstrated the need for better international appreciation of and tools for this challenge. In mid-2004 UN secretary-general Kofi Annan released a UN report on the rule of law and transitional justice in postconflict societies.<sup>4</sup> Annan’s annual address to the General Assembly that year focused on the rule of law, and he urged member states to “restore and extend the rule of law throughout the world,” pledging to make strengthening the rule of law a priority for the rest of his term.<sup>5</sup>

What does this newfound attention to the rule of law mean for the peoples of war-torn societies? A growing number of analysts have recently concluded that international actors have enjoyed limited success in postwar peacebuilding. In particular, the difficulties of fostering self-sustaining justice and security systems have become apparent.<sup>6</sup>

Drawing on in-depth case studies of some of the most prominent (and successful) peacekeeping operations since the fall of the Berlin Wall, this volume addresses the following central question: *Can societies emerging from armed conflict create systems of justice and security that ensure basic rights, apply the law effectively and impartially, and enjoy popular support?* If so, how? What is the appropriate role for international actors in these processes? Are there patterns indicating what sorts of conditions and choices enhance justice and security, and which ones have negligible or perverse effects?

## FROM THE “RULE OF LAW” TO “JUSTICE AND SECURITY SECTOR REFORM”

Before examining what we know and don't know about these questions, a word about terminology is necessary. Obviously, the term “rule of law” is appealing to a number of constituencies, connoting legal frameworks, lawful conduct, and an orderly society.<sup>7</sup> Nevertheless, the rule of law is an imperfect concept for analysis of the bundle of national-level and local-level issues of external military defense, internal citizen security, and the perceptions and institutions of justice. The concept tends to focus on constitutions and laws (and lawyers) and less on military defense roles or citizen security systems and strategies.

Most scholars and practitioners embrace a minimalist and procedural definition of the rule of law, emphasizing legal rules for social, political, and commercial interaction. Carothers, for example, defines the rule of law as “a system in which the laws are public knowledge, are clear in meaning, and apply equally to everyone.”<sup>8</sup> In this prevalent view, the rule of law represents a predictable means of resolving disputes and, crucially, a curb on the arbitrary exercise of state power—the “rule of law” over the “rule of man,” as Aristotle put it.<sup>9</sup> Such a definition has the advantage of simplicity and allows for the analysis of relationships between the rule of law and goods like justice, security, participation, and economic growth.<sup>10</sup>

Yet this procedural definition fails to include just outcomes or conformity with human rights standards. In contrast to maximalist substantive definitions of the rule of law (which include fairness and human rights in the very content of the law), minimalist concepts can coexist with legalistic authoritarian regimes and with laws that discriminate or wholly exclude certain social groups.<sup>11</sup> As long as these unjust laws are applied consistently, minimalist definitions of the rule of law are met. Thus, apartheid South Africa and slave-holding U.S. states of the nineteenth century might all be characterized as enjoying the “rule of law.” Maximalist definitions, such as those used by the Organization for Security and Cooperation in Europe (OSCE), usefully embrace not only adherence to the law but also individual dignity and rights, effective institutions, and justice itself.<sup>12</sup>

However, maximalist definitions defy commonly held notions of the rule of law and are virtually impossible to empirically assess. Perhaps the most salient disadvantage of the rule-of-law concept is its connotation of public order. The term conveys legality, or enforcement of and adherence to the law, rather than citizen security, legitimacy of police and judicial institutions, or perceptions of justice.

In recent years some donor agencies have adopted an attractive alternative to the rule of law: the concept of “security sector reform” (SSR).<sup>13</sup> As defined by the British Department for International Development (DFID), one of its main champions, the “security sector” refers to

military, police, paramilitary, gendarmerie, machinery associated with ensuring accessible justice (police, judiciary, penal system), intelligence, customs enforcement and the civilian management and oversight authorities, including the Ministries of Defence and Finance.<sup>14</sup>

Although encompassing justice institutions, the concept of security sector reform [AU: Addition ok?] has in practice heavily emphasized the military and security issues, especially demobilization and reintegration, to the detriment of both citizen security and justice issues. European donors placed more nominal emphasis on civilian components and control after 2000, yet the centrality of military forces and issues remained through 2005. Another term, “administration of justice,” carries the converse liability, stressing justice with less focus on external or internal security.<sup>15</sup>

Consequently, this volume adopts the lexicon of “justice and security sector reform” (JSSR). In this sense, we seek to respond to valid criticism of the predominant literature by analyzing neither security nor justice institutions in isolation from one another and by uniting justice for past abuses on the one hand with justice in the present and in the future on the other hand. The UN Development Programme’s adoption of a policy paper on justice and security sector reform in 2002 reflects the recognition of the value of uniting these two concepts.<sup>16</sup>

“Security” here refers principally to the safety of individual citizens, social groups, and the state from physical violence. However,

the focus is narrower than “human security,” concentrating on the citizen security elements of that broader concept that would require a full analysis of state capacities and strategies, which lay beyond the initial scope of the enterprise.<sup>17</sup> This volume addresses the range of direct threats to physical security of the population, with special attention given to citizens’ perceived and actual security (i.e., citizen security) as well as public security.

We have deliberately sought to redress the imbalance of policy and scholarly discourse favoring *international* security over *internal* security. Much of the peacekeeping literature is implicitly concerned with advancing Western (especially U.S.) interests in combating instability, terrorism, drug trafficking, and other illicit transnational crime. Justice and security reforms are vital for addressing these important threats to international security. However, we emphasize the well-being of the inhabitants of postconflict societies, which is vital to the sustainable security and justice generally held to be valuable for international peace and security. Many case studies in this volume refer to the armed forces as a tool of external defense and security, but only to the extent that their role affects internal security, including their own role in aggravating insecurity through an inability or unwillingness to prevent human rights abuses or through their own commission of the same.

“Justice” refers to the ability of a society to resolve social disputes in a manner both nonviolent and accepted by disputing parties, even when they disagree with specific outcomes. Justice in the broadest sense is “fairness,” though this equation permits multiple concrete concepts of justice.<sup>18</sup> The study of social justice is the study of specific social institutions, yet these institutions are not themselves equivalent to the presence or administration of justice. Justice reflects not only a complex package of formal state organizations but also civil society’s interactions with the state and the mores, perceptions, and expectations of society. The chapters in this book seek to capture, even measure, the ability of formal justice systems to administer justice. Justice systems include constitutional and legal frameworks; formal courts and state offices of prosecution, defense, and monitoring of justice and rights abuses; and state and nonstate law enforcement capabilities, as well as informal and traditional institutions of conflict resolution.



Justice and security “reform” here refers to significant reconstitution of the structure, controlling organizations, and missions of the justice and security systems. Justice reform, for example, refers to attempts to reorient or redefine the overall character of the justice system, not attempts to modify specific institutions or behaviors in isolation from the other components of the justice system. Security reforms are defined in parallel fashion.<sup>19</sup> How do we actually measure security and justice? Before we answer this question, it is helpful to examine what we know and don’t know about these issues in postwar societies.

## WHAT WE KNOW AND DON’T KNOW ABOUT CONSTRUCTING SECURITY AND JUSTICE

This book tries to do three novel things. First, it seeks to examine some of the most prominent recent instances of a specific category—postwar societies—to shed light on the process of constructing the systems of justice and security. We hope not only to derive policy implications for international actors but also to add to the emerging study of the rule of law and justice and security sector reform.

That does not mean throwing out what we already know. Existing literature holds important knowledge to test and compare in analyzing these cases. Constructing justice and security involves state institutions: courts, police forces, prosecutorial offices, human rights ombudsperson offices, investigatory commissions, and so on. We know that state-building in industrialized democracies required long historical periods—decades, even centuries—to develop institutional legitimacy and to supplant loyalties to individual princes and lords. In addition, Europe’s wars of the 1600s and 1800s institutionalized tax collection practices so as to mobilize the resources needed to wage wars, and the formation of large standing armies created the backbone of state power and replaced local power relations.<sup>20</sup>

Yet in today’s postconflict societies, international actors are attempting to take shortcuts through those historical processes, creating public police forces and revamped judicial systems in a few months, while external resources are supplanting internal tax revenues and globalized communications are transmitting new ideas and

expectations. It is not clear whether such efforts can succeed. State-building scholarship is skeptical, but policymakers remain sanguine about the achievements of postwar state-building throughout the past decade.<sup>21</sup>

Much of the scholarship on the rule of law, like the state-building literature, is similarly skeptical of postwar societies' ability to quickly forge systems of justice and security. Modernization theory and its more palatable successors assume that the rule of law and democracy are a function of the existence of certain cultural values peculiar to the Western middle class.<sup>22</sup> Alternative historical perspectives critique these assumptions, noting that the rule of law preceded democratic entitlements in many European industrialized democracies. Both of these views assume that the emergence of the rule of law is a lengthy historical process linked to cultural or economic transformations. In this view, hasty efforts to foster the rule of law in only a few years are futile, especially in poor, ethnically divided societies with low degrees of institutionalization.

Yet we know little about how the rule of law emerges. Serious empirical studies are rare, and the multifaceted nature of the rule of law means that multiple factors impinge on its emergence and character. Some scholars emphasize economic or cultural factors, implying structural constraints. Others emphasize institutional engineering, implying agency. This volume, situated largely within the latter category, seeks to look beyond short-term engineering, identifying patterns that may confirm or contradict structural accounts.

We aspire to a second novel contribution with this volume: the equal, integrated treatment of security and justice issues in empirical research. Perhaps the highest-profile recent literature focuses on *international* efforts to construct the rule of law, especially in developing societies and in postconflict settings. This literature focuses explicitly either on policing issues or on justice issues. It contains important insights and debates for postwar societies.

On the policing side, Otwin Marenin, David Bayley, and others stress the constraints to reform, arguing that changing police organizations is difficult and confronts inertia-plagued, day-to-day routines embedded in resistant organizational cultures.<sup>23</sup> More recent research has sought to define ways that reform is possible.<sup>24</sup> Others argue that

moments of transition provide windows of opportunity for institutional reforms, including reforms of security doctrines and organizations.<sup>25</sup> Consonant with process-oriented approaches to democratization, these studies of postwar policing stress institutional agency, especially international factors—what these international organizations or foreign governments did, what they should have done differently, how they should have collaborated differently, how they accomplished their objectives—rather than the overall outcomes of rule of law.

Such research often emphasizes the viewpoints of international actors more than those of the populace experiencing justice and security reforms. For instance, Tor Tanke Holm and Espen Barth Eide's *Peacebuilding and Police Reform* and Robert Oakley, Michael Dziedzic, and Eliot Goldberg's *Policing the New World Disorder: Peace Operations and Public Security* illustrate the shortcomings of international actors in filling postconflict "public security gaps," the difficulties in finding the right international personnel for the right jobs, and the advantages of quality selection and training for new police recruits.<sup>26</sup> In contrast to soldiers, who generally have no fixed peacetime role, police professionals in every country usually carry out vital tasks on a daily basis to achieve their organizational aims. Therefore, police are seldom available in large quantities (say, hundreds or thousands) for dangerous jobs overseas. UN reports also have recognized these deficiencies.<sup>27</sup>

The latter two volumes emphasize order-maintenance tasks of postwar policing and focus heavily on international actors such as the UN Civilian Police, international military troops and gendarmes, and bilateral police advisers. Missing is systematic, focused comparative research from which reliable or robust generalizations about the success or failure of institutional development and sustainable security (as opposed to short-term order maintenance) can be drawn.<sup>28</sup> Marenin's *Policing Change, Changing Police* provides excellent, though disparate, case studies but analyzes only two postwar cases where international actors were heavily involved. Indeed, a number of excellent single case studies of police and justice reforms, especially of El Salvador and South Africa, provide valuable observations and conclusions.<sup>29</sup> This volume seeks to provide a more systematic, com-

parative examination of local security outcomes of, rather than international inputs to and outputs from, postconflict rule-of-law reform efforts. We hope to provide a rigorous analysis of a broad, important set of cases of postconflict security and justice institutional reforms and empirically grounded conclusions relevant for policymakers and scholars.

This is not to deny that some generalizations have achieved acceptance among most analysts of postconflict policing. Police reform decision makers, both national officials of new postwar regimes and international officials, increasingly adhere to a bundle of principles, including public policing, professionalism, basic respect for rights, an internal security doctrine that emphasizes protection of citizen rights rather than state interests, and some concept of democratic accountability. Scholars agree that police reform is deeply political, rather than simply a technical process. Thus, technical approaches to police assistance can be wasteful, even harmful, if used to advance repression or antidemocratic partisan agendas. Therefore, many analysts recognize that international police aid undermines reform goals if diplomatic and other leverage is not used when needed or if the overall political environment is antidemocratic.<sup>30</sup> In addition, scholarship on policing in transitional societies acknowledges that police reform takes years rather than months, that civilian models of policing are more appropriate than military models, that internal and external mechanisms of oversight have received too little attention, and that classroom instruction is no substitute for practical training and field supervision. All bemoan the inadequacy of international actors—be they bilateral powers that deploy insufficient or inappropriate resources, police advisers who blindly export their own models, international organizations that repeatedly fail to field sufficiently competent (or even qualified) staff, or all of the above when they refuse to permit local participation in security reform efforts. The deficiencies of justice and security reform are the same deficiencies that afflict state-building more broadly, as new research emphasized in 2003 and 2004.<sup>31</sup>

Furthermore, the police reform literature now routinely emphasizes the importance of integrating policing with judicial and penal systems. At a basic level, efficient, rights-respecting police serve no

purpose if the courts regularly release suspected perpetrators because of corruption or incompetence. On a deeper level, the rule of law requires fair and clear laws, competent and legitimate judicial authorities (civil and criminal courts, prosecution, and defense counsel), competent and rights-respecting rehabilitation systems, and desirable internal security systems. The conceptual link between security and justice in postconflict reform agendas had achieved widespread rhetorical acceptance among policymakers by 2004 but was reflected neither in research nor, as seen in this volume, in practice.

Just as scholars of policing began to turn their attention to postconflict and transitional societies in the 1990s, so too did some analysts of justice systems and judicial reforms. Studies by international financial institutions found that legal revision is insufficient to create a climate favorable for international investment and economic stability; institutional reforms are necessary as well. In Latin America, the region where international donors have long supported judicial reforms, donors modified programs to emphasize partnership with reform-minded officials, strengthening judicial independence rather than just efficiency, and the need for greater access to justice.<sup>32</sup> One of the most comprehensive studies, commissioned by the U.S. Agency for International Development (USAID), concluded that local initiative and ownership are often neglected but are fundamental to the success of international judicial reform efforts.<sup>33</sup>

Much comparative work on judicial reform reflects the same overemphasis on international actors and their interests as do most studies of policing. Recent writing on justice also reflects a separate bifurcation. Analysis of postconflict judicial reform has failed to engage efforts to address the role of those responsible for past human rights abuses. Similarly, edited volumes on accountability and judicial reform actors have focused more on accountability for past atrocities than on (re)building postwar judicial systems for present and future abuses. Neil Kritz's *Transitional Justice* series is among the most prominent, along with books by Priscilla Hayner and Martha Minow.<sup>34</sup> These works examine various means of dealing with past abusers, questioning whether a posttransition regime can credibly establish the rule of law if its very birth rests in granting impunity or amnesty for morally heinous acts.

However, those who seek redress for past atrocities rarely analyze the process of institutional reform of the justice system in a comprehensive manner.<sup>35</sup> Recently, we have seen some recognition of the need to integrate these two perspectives—past accountability and present judicial development—but written analysis has lagged.<sup>36</sup> Presenting studies that bridge the divide between dealing with past injustices and creating systems to address future injustices is the third novel endeavor of this volume.

One critique of these issues warrants attention. Some have questioned the motives behind the “rule-of-law revival,” alleging that these revived efforts seek to suppress challenges—be they by organized workers, antiglobalization activists, or ethnic and religious groups seeking greater political power—to free-market capitalism and U.S. hegemony. David Rieff, for instance, refers to international human rights as the new “religion” of the global order, providing ideological justification to self-interested, usually harmful, interventions in developing (and developed) countries.<sup>37</sup> Advancing the rule of law, in this view, is window dressing for the exercise of power by Western capitals and capital.

This book assumes that the populations of the societies involved can, under some circumstances, benefit from internationally supported justice and security reforms. Clearly, the United States and other powerful countries pursue their own interests, and the Bush administration made no secret of its desire for order in postconflict Afghanistan and Iraq. Fostering the rule of law in war-torn countries serves the interests of those seeking a stable investment climate and those not wanting to expend human and financial resources on violent conflicts in far-flung countries, even when violence may be morally justified. Yet the world’s torture victims, the bereaved relatives of those “disappeared,” and millions of persecuted ethnic groups increasingly give voice to their demand for justice and for prevention of future atrocities. Iraqi and Afghan voices were insistent on the need for more order after U.S. intervention. The cases in this book demonstrate that international programs have, in some war-torn societies, helped improve security and justice, preventing at least some carnage, even as they advanced other not-so-humanitarian Western agendas.

## MEASURING JUSTICE AND SECURITY

How should we assess, or measure, security and justice, or the rule of law? The contributors to this volume employ no single yardstick. Indeed, no single indicator is appropriate for every society, as the sources of insecurity vary in their nature and change over time. As suggested earlier, we believe that much prior literature focused on measuring the outputs of international programs rather than their impact on the societies where they were carried out, a tendency we seek to avoid.

In this volume we emphasize internal security over international security. In particular, we analyze both individual security (most relevant for common crimes like robbery and assault) and the security of the main social, political, and ethnic groups in society. Group security, often sidelined by liberal notions of individual security, is especially relevant after internal armed conflicts, especially conflicts over identity, and for marginalized groups like women. We seek to analyze the security, both subjectively perceived and objectively measured, of these groups. Analysis includes postwar patterns of human rights violations directed at certain ethnic groups and at members of formerly warring parties. We also examine patterns of violence against women and children, as Tracy Fitzsimmons does in her chapter devoted exclusively to postconflict issues of violence and gender.

Yet it is individual security, or rather *insecurity*, that seems to play an unexpectedly prominent role in the most successful cases of peace consolidation. We drew on official statistics of common crimes, especially violent crimes, and on independent crime data from international organizations where available. We sought out polling data measuring popular perceptions of citizen insecurity, justice systems, policing, courts, prosecutors, and human rights protections. We also relied on interviews with elites such as national-level security and justice officials, judges, police leadership, military officers, international peacekeeping officials, representatives of nongovernmental organizations working on human rights and justice issues, academic experts, and other social analysts. With these indicators, we seek to draw conclusions about outcomes in the areas of justice and security as

understood within postconflict societies, rather than just strict conformity with the law or performance of international organizations.

## THE CASES EXAMINED

This book examines the experience of countries that have recently undergone transitions from conflict with heavy international involvement. Specifically, it offers generalizations based on careful comparisons of justice and security reforms in postwar countries across Central America and the Caribbean, Africa, the Balkans, and East Timor. We have deliberately chosen cases that exhibit variation: some were civil wars and others interventions; some ended in negotiations and others in defeat; some enjoyed a past experience with relatively coherent formal institutions and others did not; some were provided with extensive security by international combat forces and others were not.

Studying countries emerging from warfare, be it civil war or intervention, offers two particular advantages. Much of what we know about the emergence of the rule of law is rooted in European or North American societies and emphasizes long historical patterns and slow-moving factors. In contrast to those experiences, postwar societies have almost all experienced wrenching disruptions of population, political regime, and economy. Some portion of their population was subjected to state violence, including mass murder and torture. All faced the challenge of redesigning new political regimes that would include leaders who had previously been pursued or persecuted. Consequently, reconstituting new systems of justice and security in short order became a necessity. Scholars have not sufficiently examined the experience of these postconflict countries in constructing security and justice, especially as such experience contrasts with the mainstream literature in this area.

Second, along with postauthoritarian regimes, postconflict societies may well signify the future trend of international involvement in fostering the rule of law and indeed of international development assistance. Since 1989 these countries have represented the highest-profile efforts in the world to bolster the rule of law. Of the many regime transitions between 1988 and 2002, constitutions were revised



in most cases, including South Africa, Nicaragua, Georgia, and Afghanistan. In El Salvador, Haiti, Kosovo, and East Timor, the United Nations oversaw the selection, training, and organization of new civilian police forces with new doctrines and new training academies. UN international war crimes tribunals were erected for the former Yugoslavia and for Rwanda, the first since the Nuremberg trials fifty years earlier, leading to a new International Criminal Court. Guatemala, Afghanistan, Bosnia, and Kosovo experienced significant changes to their justice systems. In Kosovo and East Timor, UN cops gathered from dozens of nations became the police force for the entire territory, issuing parking tickets, investigating organized crime, and arresting murder and theft suspects. In all postwar cases, discrete projects unfolded with goals such as controlling corruption, training judges, revising laws, and enhancing human rights protections.

Postconflict societies became the locus of the most expensive and ambitious rule-of-law projects and prominent laboratories for international thinking about justice reform and security reform around the world. We have focused especially on the few years in the immediate aftermath of war termination, largely because the causal effect of peace processes or intervention can be expected to diminish after several years. In some cases, this focus may seem strange since important political events subsequently occurred (e.g., the reelection of President Jean-Bertrand Aristide and his resignation amid a generally recognized failure of state-building). However, we believe the lessons of these immediate postwar periods remain highly pertinent for other cases of transitions from war. The chapters that follow examine what these cases tell us about several questions: (1) the extent to which constructing justice and security is even possible in war-torn societies, (2) what role international actors played in the transitions, and (3) what relation different aspects of justice, policing, and law reform have to one another.

In considering these questions, the chapters address a number of additional questions:

- How does war transform or degrade security and justice systems?
- When wars end, what patterns of violence and crime emerge? What factors contribute to these patterns?

- What is the outcome of police reforms and justice reforms? In what areas were they more effective than others?
- How legitimate are new security and justice systems? That is, how do citizens perceive new justice and security systems? How do victims, past and present, perceive those systems?
- What informal or nonconventional (e.g., tribal, local, or religious) systems of justice, conflict resolution, and policing seem to have worked?
- Is there a trade-off between effectively combating postwar crime and enhancing respect for citizen rights? Are there ways to achieve both simultaneously?
- What repercussions do actions (or inaction) against past abusers have on new judicial systems? Do trials foster legitimacy for postwar justice systems, or can such systems flourish without addressing past atrocities?
- Who are the losers in security and justice reforms, and can their position be improved?

Most of the contributors to this book are analysts or practitioners who have been involved in security or justice policy positions. Even the academics here have worked as consultants to the U.S. government, the United Nations, or nongovernmental organizations addressing police or justice programs in the regions about which they write. All contributors personally know many of the pertinent decision makers on justice and security sector reform during the postconflict period.

We have deliberately chosen cases from diverse regions of the world to bolster the reach and robustness of the findings. Latin America, as the source of many existing donor programs in supporting police reform and judicial reform, is the first region to appear in the volume. Case studies by Professors Charles Call on El Salvador and William Stanley on Guatemala show surprisingly different justice system outcomes from two apparently similar negotiated settlements to civil wars.

Haiti, the only nonwar transition in the volume, is included because judicial and police reforms were so central to the international reconstruction effort after U.S. intervention in 1994 to restore

elected president Aristide to power. The chapter's authors are Rachel Neild, who monitored police reforms on behalf of the nongovernmental Washington Office on Latin America; Ambassador Colin Granderson, who headed the joint United Nations/Organization of American States Civilian Mission in Haiti (MICIVIH) from 1993 to 1999; and Sandra Beidas, who served as head of the human rights office for MICIVIH.

Chapters on two African cases present very different experiences of police and justice reform. Rwanda, unusual for the horrific genocide that was separate but related to an internal armed conflict that brought the victorious Tutsi-led Rwandan Patriotic Front (RPF) to power in 1994, shows the challenges of postgenocide justice reform, as more than 120,000 suspects were imprisoned in 2000 for having killed up to a million victims. Charles Mironko, an anthropologist and former diplomat of the Organization of African Unity, and Dr. Ephrem Rurangwa, who fought with the RPF and served at this writing as deputy commissioner for operations of the Rwanda National Police, coauthored this chapter.

Postapartheid South Africa, which also emerged from its own unique experience combining repression, oppression, and sporadic armed conflict, is known for its Truth and Reconciliation Commission. However, its efforts to build multiethnic justice and security systems and to confront one of the world's highest homicide rates have been less examined. Janine Rauch, a criminologist who helped write the Mandela government's crime prevention plan, sheds light on that process.

Two prominent instances of international efforts to support security and justice reforms during the 1990s are Bosnia and Kosovo. Michael Doyle, an analyst with the nongovernmental International Crisis Group in Sarajevo, discusses Bosnia and Herzegovina's difficulty establishing multiethnic police and justice institutions in a bifurcated state under quasi-protectorate status. Colette Rausch, a former U.S. federal prosecutor who headed the Department of Human Rights and Rule of Law of the OSCE in Kosovo, examines efforts to build a new police force and new judiciary in that Yugoslav territory, an official international protectorate after the NATO-led war defeated Slobodan Milošević's forces in 1999.

East Timor's experience in erecting security and justice systems after its independence from Indonesia in 2002 shares a number of similarities with Kosovo's situation. Ronald West, who managed two USAID-funded projects that emphasized citizen access to justice, analyzes that country's experience, which along with Kosovo's is too recent to yield definitive conclusions about long-term effects but throws light on salient international efforts to construct security and justice in new political entities. Finally, Professor Tracy Fitzsimmons's chapter on gender issues in police and justice reforms in postconflict settings, based on fieldwork in the Balkans, Haiti, and Central America, adds an important and understudied dimension to the analysis. Arguing that peace may be harmful for women, she shows how justice and security reforms have enhanced women's security in some areas but failed in others.

Taken together, the case studies in these chapters represent perhaps the most optimal conditions for efforts to (re)constitute security and justice systems. In all cases, entrenched elite interests that generally resist changes to state institutions and practices have been weakened or ousted by force. We would expect posttransition settings, and especially postwar societies, to present an opportunity for institutional transformation.<sup>38</sup> New nominally democratic governments took power in every case. Such regimes should favor the processes and substance of justice. In addition, international diplomacy and development aid have deliberately sought to foster the rule of law in every case. Of course, war-torn societies present unique challenges, such as demobilized combatants and residual hatred. Poverty may have been exacerbated by war in places like Rwanda and Haiti. Nevertheless, we have selected cases that purportedly offer some tremendous advantages for postwar institution building. Some cases—El Salvador, South Africa, Guatemala, and Bosnia—represent the most successful instances of war termination and/or peacekeeping operations in the past decade. In other cases, such as Kosovo, East Timor, and Haiti, the slate was wiped as clean as possible by international forces that ousted old regimes and installed new ones.

What can these experiences tell us about going beyond immediate postwar security to the establishment of sustainable justice and security systems? In the end we hope both to improve the abilities of

international and national actors to advance democratic institution building in postconflict settings and to refine emerging theorizing of state-building and peacebuilding. Although we have selected some of the most prominent efforts at postconflict state-building since 1989, we hope that the conclusions will hold relevance for the full pool of postconflict cases, including cases from the former Soviet Union, Northern Ireland, Central and West Africa, Afghanistan, and Iraq.

## NOTES

1. Thomas Carothers, "The Rule of Law Revival," *Foreign Affairs* 77, no. 2 (1998): 95–106.

2. Others allude to this phenomenon. Rama Mani states that the "rule of law is a buzzword in policy discussions today, buoyed by newfound enthusiasm and support from donors and international organizations" in her draft "Exploring the Rule of Law in Theory and Practice," in *Rule-of-Law Programming in Conflict Management*, ed. Agnes Hurwitz (Boulder, Colo.: Lynne Rienner, forthcoming). Eric Scheye and Gordon Peake refer to the "exponential growth in the attention and resources devoted to SSR [security sector reform]" in their draft introduction to *Arresting Insecurity* (working title) (Boulder, Colo.: Lynne Rienner, forthcoming), 1.

3. Mark Malloch Brown, "Democratic Governance: Toward a Framework for Sustainable Peace," *Global Governance* 9, no. 2 (April–June 2003): 141–146.

4. Kofi Annan, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-conflict and Societies*, S/2004/616 (New York: United Nations, August 3, 2004).

5. Kofi Annan, secretary-general's address to the General Assembly, September 21, 2004, <http://www.un.org/apps/sg/sgstats.asp?nid=1088>.

6. See Scheye and Peake, introduction to *Arresting Insecurity*; David Bayley, *Democratizing the Police Abroad: What to Do and How to Do It* (Washington, D.C.: National Institute of Justice, 2001); and Bayley, "Policing Hate: What Can Be Done?" *Policing and Society* 12, no. 2 (2002).

7. See Allan Hutchinson and Patrick Monahan, *The Rule of Law: Ideal or Ideology?* (Toronto: Carswell Legal Publications, 1987); A. James McAdams, *Transitional Justice and the Rule of Law in New Democracies* (Notre Dame, Ind.: University of Notre Dame Press, 1997); Juan Mendez, Guillermo O'Donnell, and Paulo Sergio Pinheiro, eds., *The (Un)rule of Law and the Underprivileged in Latin America* (Notre Dame, Ind.: University of Notre Dame Press, 1999); Thomas Carothers, "The Rule of Law Revival"; Rama Mani, *Beyond Retribution*:

*Seeking Justice in the Shadows of War* (New York: Polity Press, 2002); and Hurwitz, *Rule-of-Law Programming in Conflict Management*.

8. Carothers, "The Rule of Law Revival."

9. Aristotle *Politics*, 3.15–16.

10. In this sense, and others described later in this chapter, the conceptual difficulties of the rule of law parallel those concerning the definitions of democracy.

11. Mani, *Beyond Retribution*, 25–31.

12. In its definition of the rule of law, the OSCE, for instance, includes "not merely" formal legality but also "justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression." Organization for Security and Cooperation in Europe, quoted in *ibid.*, 28.

13. On SSR, see Chris Smith, "Security Sector Reform: Development Breakthrough or Institutional Engineering?" *Journal of Conflict, Security, and Development* 1, no. 1 (2001); Organization for Economic Cooperation and Development/Development Assistance Committee (DAC), *Security System Reform and Governance: Policy and Good Practice* (Paris: Organization for Economic Cooperation and Development/DAC, 2004); Heiner Hanggi and Alan Bryden, *Reform and Reconstruction of the Security Sector* (Piscataway, N.J.: Transaction Books, 2003); Jane Chanaa, *Security Sector Reform: Issues, Challenges and Prospects* (Oxford: Oxford University Press, 2002); Scheye and Peake, *Arresting Insecurity*; and Michael Brzoska, "Development Donors and the Concept of Security Sector Reform" (Geneva: Geneva Center for the Democratic Control of Armed Forces, 2003).

14. UK Department for International Development, "Discussion Paper No. 1. Security Sector Reform and the Management of Defence Expenditure: A Conceptual Framework," Annex 3 in *Security Sector Reform and the Management of Military Expenditure: High Risks for Donors, High Returns for Development* (report on an international symposium sponsored by the UK Department for International Development, London, February 15–17, 2000, par. 1).

15. "Administration of justice" was the dominant term in the judicial aid area of the U.S. Agency for International Development during the 1980s. See Thomas Carothers, *Aiding Democracy Abroad: The Learning Curve* (Washington, D.C.: Carnegie Endowment for Peace, 1999).

16. UN Development Programme, *Justice and Security Sector Reform: BCPR's Programmatic Approach* (New York: Bureau of Crisis Prevention and Recovery, November 11, 2002).

17. The innovative and useful concept of human security is defined by the Commission on Human Security as the protection of "the vital core of all human lives in ways that enhance human freedoms and human fulfillment."

See Commission on Human Security, *Human Security Now* (New York: Commission on Human Security, 2003).

18. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap Press of Harvard University, 1971), 3–17.

19. Charles T. Call, “War Transitions and the New Civilian Security in Latin America,” *Comparative Politics* 35, no. 1 (October 2002): 1–20.

20. Charles Tilly, *Coercion, Capital, and European States, AD 990–1990* (Oxford: Blackwell, 1990); and Tilly, *The Formation of National States in Western Europe* (Princeton, N.J.: Princeton University Press, 1975).

21. Roland Paris, *At War's End: Building Peace after Civil Conflict* (Cambridge: Cambridge University Press, 2004); Kimberly Zisk Marten, *Enforcing the Peace: Learning from the Imperial Past* (New York: Columbia University Press, 2004); and Charles T. Call and Susan E. Cook, “Democratization and Peacebuilding,” *Global Governance* 9, no. 2 (April–June 2003). For more optimistic views, see Michael Doyle and Nicholas Sambanis, “International Peacebuilding: A Theoretical and Quantitative Analysis,” *American Political Science Review* 94, no. 4 (2000): 779–801; Sambanis and Doyle, “Alternative Measures and Estimates of Peacebuilding Success” (unpublished paper, 2005); Francis Fukuyama, *State-Building: Governance and World Order in the 21st Century* (Ithaca, N.Y.: Cornell University Press, 2004); and Timothy Sisk, “Democratization and Peacebuilding,” in *Turbulent Peace: The Challenges of Managing International Conflict*, ed. Chester A. Crocker, Fen Osler Hampson, and Pamela Aall (Washington, D.C.: United States Institute of Peace Press, 2001), 785–800.

22. See Seymour Martin Lipset, “Social Conflict, Legitimacy, and Democracy,” in *Political Man: The Social Bases of Politics* (Garden City, N.Y.: Anchor Books, 1960); Adam Przeworski, *Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America* (Cambridge: Cambridge University Press, 1991); and Larry Diamond, Juan J. Linz, and Seymour Lipset, *Democracy in Developing Countries* (Boulder, Colo.: Lynne Rienner, 1989). Dietrich Rueschemeyer, Evelyne Huber Stephens, and John D. Stephens reflect a similar approach, rooted in the emergence of a working class, rather than the middle class, in *Capitalist Democracy and Development* (Chicago: University of Chicago Press, 1992).

23. Otwin Marenin, *Policing Change, Changing Police: International Perspectives* (New York: Garland, 1996), 313; David Bayley, “Who Are We Kidding?, or Developing Democracy through Police Reform,” in *Policing in Emerging Democracies: Workshop Papers and Highlights* (Washington, D.C.: National Institute of Justice, October 1997), 59–64; Bayley, *Patterns of Policing: A Comparative International Analysis* (New Brunswick, N.J.: Rutgers University Press, 1985); Bayley, “The Limits of Police Reform,” in *Police and Society*, ed. David Bayley (Beverly Hills, Calif.: Sage Publications, 1977); and Bayley, “The Police



and Political Development in Europe,” in *The Formation of National States in Western Europe*, ed. Charles Tilly (Princeton, N.J.: Princeton University Press, 1975).

24. Bayley, “Policing Hate: What Can Be Done?” and *Democratizing the Police Abroad*.

25. See Charles T. Call, “War Transitions and the New Civilian Security in Latin America,” *Comparative Politics* 35, no. 1 (October 2002); William D. Stanley, “International Tutelage and Domestic Political Will: Building a New Civilian Police Force in El Salvador,” *Studies in Comparative International Development* (May 1995); Mani, *Beyond Retribution*; Bayley, “Who Are We Kidding?, or Developing Democracy through Police Reform”; and Charles T. Call and Michael Barnett, “Looking for a Few Good Cops,” *International Peacekeeping* 6, no. 4 (Winter 1999).

26. Tor Tanke Holm and Espen Barth Eide, *Peacebuilding and Police Reform* (London: Frank Cass, 2000); and Robert B. Oakley, Michael J. Dziedzic, and Eliot M. Goldberg, eds., *Policing the New World Disorder: Peace Operations and Public Security* (Washington, D.C.: National Defense University, 1998). See also Robert Perito, *Where Is the Lone Ranger When We Need Him?* (Washington, D.C.: United States Institute of Peace Press, 2004); and Graham Day and Christopher Freeman, “Operationalizing the Responsibility to Protect—the Policekeeping Approach,” *Global Governance* 11 (April–June 2005): 139–146.

27. See the Brahimi Panel, *Report of the Panel on United Nations Peace Operations*, A/55/305 (New York: United Nations, 2000); and Kofi Annan, *In Larger Freedom: Towards Development, Security and Human Rights for All* (New York: United Nations, March 2005).

28. In *Policing the New World Disorder*, Oakley, Dziedzic, and Goldberg focus less on outcomes of police reform efforts and more on immediate post-conflict public security gaps and on alternatives to policing roles for international military forces. Holm and Eide’s *Peacebuilding and Police Reform* (also published as the winter 1999 issue of *International Peacekeeping*) contains valuable thematic chapters and five case studies but fails to address identical questions and also focuses heavily on the role of international efforts rather than the results obtained. Nor did we the contributors to those volumes satisfactorily integrate judicial institutional development into our analyses of public security. A 1995 UNITAR conference report focused exclusively on the role of the UN Civilian Police rather than local police institutions. See Nassrine Azimi, ed., *The Role and Functions of Civilian Police in United Nations Peacekeeping Operations: Debriefing and Lessons*, report of a 1995 international conference in Singapore (Cambridge, Mass.: Kluwer Law International and UN Institute for Training and Research [UNITAR], 1996).



29. The best of these analyze police and judicial reforms in El Salvador and South Africa. For studies on El Salvador, see Gino Costa, *La Policía Nacional Civil de El Salvador (1990–1997)* (San Salvador: UCA Editores, 1999); Margaret Popkin, *Peace without Justice: Obstacles to Building the Rule of Law in El Salvador* (University Park, Pa.: Pennsylvania State University Press, 2000); Charles T. Call, “From Soldiers to Cops: ‘War Transitions’ and the Demilitarization of Policing in Latin America and the Caribbean” (Ph.D. diss., Stanford University, 1999); William Stanley and Charles T. Call, “Building a New Civilian Police Force in El Salvador,” in *Rebuilding Societies after Civil War*, ed. Krishna Kumar (Boulder, Colo.: Lynne Rienner, 1996); Margaret Popkin et al., *Justice Delayed: The Slow Pace of Judicial Reform in El Salvador* (Boston: Hemisphere Initiatives and WOLA, 1996); and William Stanley, *The Protection Racket State: Elite Politics, Military Extortion and Civil War in El Salvador* (Philadelphia: Temple University Press, 1996). For studies on South Africa, see Mark Malan, “Peacebuilding in Southern Africa: Police Reform in Mozambique and South Africa,” in *Peacebuilding and Police Reform*, ed. Holm and Eide; Jeffrey Lever and Elrena van der Spuy, “Challenges Facing Democratic Policing in South Africa” (unpublished paper, 2000); Wilfried Scharf, “Community Justice and Community Policing in Post-Apartheid South Africa: How Appropriate Are the Justice Systems of Africa?” (working paper, Institute of Criminology, University of Cape Town, 2000); Janine Rauch, “Police Reform and South Africa’s Transition” (working paper, Institute of Criminology, University of Cape Town, 1998); Graeme Simpson and Janine Rauch, “Reflections on the National Crime Prevention Strategy” (working paper, Centre for the Study of Violence and Reconciliation, Johannesburg, 1996); Mark Shaw, *Point of Order: Negotiating South Africa’s New Police Service* (Washington, D.C.: Center for Policy Studies, 2000); and Clifford Shearing, “Reinventing Police: Policing as Governance,” in *Policing Change, Changing Police: International Perspectives*, ed. Otwin Marenin (New York: Garland, 1996). See also other case studies in Holm and Eide, *Peacebuilding and Police Reform*; and Oakley, Dziedzic, and Goldberg, *Policing the New World Disorder*.

30. Bayley, “Who Are We Kidding?, or Developing Democracy through Police Reform,” 59, 63; Philip B. Heymann, “Principles of Democratic Policing,” in *Policing in Emerging Democracies: Workshop Papers and Highlights* (Washington, D.C.: National Institute of Justice, October 1997), 18; and Otwin Marenin, “United States Police Assistance to Emerging Democracies,” *Policing and Society* 8 (1998): 153–167.

31. Paris, *At War’s End*; Fukuyama, *State-Building*; Zisk Marten, *Enforcing the Peace*; and Stephen D. Stedman, Elizabeth Cousens, and Donald Rothchild, eds., *Ending Civil Wars* (Boulder, Colo.: Lynne Rienner, 2003).

32. See Rachel Sieder, “Rethinking Democratization and Citizenship: Legal Pluralism and Institutional Reform in Guatemala,” *Citizen Studies* 3

(1999): 1; Mendez, O'Donnell, and Pinheiro, *The (Un)rule of Law and the Underprivileged in Latin America*; Margaret J. Sarles, "USAID's Support for Justice Reform in the Americas," in *Rule of Law in Latin America: The International Promotion of Judicial Reform*, ed. Pilar Domingo and Rachel Sieder (London: University of London Institute of Latin American Studies, 2001), 47–79; and McAdams, *Transitional Justice and the Rule of Law in New Democracies*.

33. Linn Hammergren, *Code Reform and Law Revision* (Washington, D.C.: U.S. Agency for International Development, 1998).

34. Neil Kritz, ed., *Transitional Justice* (Washington, D.C.: United States Institute of Peace Press, 1995); Priscilla Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2000); and Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998).

35. One exception is Popkin, *Peace Without Justice*.

36. See, for example, the conference "Rebuilding War-Torn Societies: The Squaring of Truth Commission, Police Reform, Economic Development and Justice," Academic Council for the UN System (ACUNS), Yale University, March 2000; and the "Seminar on Peacekeeping and Peace Support Operations," International Peace Academy and Jane's Information Group, New York, November 2000.

37. David Rieff (presentation at "Justice and Local Governance after War: Afghanistan and Beyond," conference cosponsored by Watson Institute for International Studies, Brown University; Human Security Institute, Tufts University; and UN Development Programme, Boston, May 3, 2003).

38. Call, "War Transitions and the New Civilian Security in Latin America."