

It Starts on the Streets
Capacity Development in Law Enforcement Institutions:
a forgotten force in Rule of Law for Development

By

Theodore V. Parran III

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 1. Home Country Practice
 As described in Section III, law enforcement across Latin America is still often
 characterized by poorly trained, poorly paid, poorly supervised, generally unprofessional
 policing institutions. In such areas of the world where law enforcement organs are most lacking,
 they also are some of the most ignored, misunderstood, and even maligned of all governance
 functions and actors. While the reasons for this marginalization of law enforcement functions are
 many and varied, several undercurrents stand out.

a. Flaws in Governance and Rule of Law Practice

First, general governance across Latin America is often haunted by the ghosts of illegitimacy, a legacy that lingers from a history of colonialist/imperialist domination. This history of governance as the tool of colonial exploitation and extraction in Latin America still colors the social and political discourse. This exploitative system has often been perpetuated by local power groups that stepped into the vacuum left with the collapse of colonial authorities. Because of this legacy, the state is often viewed by its constituents with skepticism and suspicion, with security apparatuses receiving a lion's share of this mistrust. Individual institutions themselves are also often caught in a self-replicating cycle of insularity and exploitation, unable and unwilling to change. This dynamic of distrust and deep-seated hostility also colors many Latin American nations' view on outside influence in national affairs. Outside influence can bring back the shadows of recurring colonial interference, creating mistrust and communication breakdowns that often frustrate possible donor engagement.

A second historical current is the remnants of the Cold War's dynamics throughout Latin America. Fledgling Latin American nations in the midst of their transition and development following their independence found their social and political structures subsumed into the U.S.-Soviet geopolitical struggle. This dynamic, in many respects, locked their governance systems in place with insurgencies fighting central authorities, supported by either the U.S. or Soviet Union, depending on regional and local dynamics. In these situations, and they were numerous, preserving the state's physical security at all costs was often used as the state's justification for its barbarity. This resulted in further damage to the state's credibility in many instances, and in particular the credibility of tainted security institutions. Internally, this dynamic continues to contribute to mistrust of state institutions and policies associated with security. The Cold War's lingering chill also colors many Latin American state's relations with outside actors, as influence in national policy and practice is also commonly viewed with skepticism based on the past machinations of the U.S. and Soviet Union in the region.

b. Flaws in LEI Structure and Practice

Regarding law enforcement specifically, many modern Latin American police agencies have their roots in the colonial authority's tools of control and oppression. Under colonial rule, and often extended after independence, militarized institutions more akin to a national guard or gendarmerie were responsible for maintaining peace and order, (as described in Section III). The

civilian policing revolution, begun in London under the direction of Robert Peele, was neither seen nor heard. These institutions remained the blunt tools of state authority, militarized and politicized organizations unversed in preventative patrolling, investigation, or other policing techniques that are necessary to promoting Citizen Security in today’s challenging human environment.

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Abbreviations and Defined Terms

Abbreviations

- LDC – Least Developed Country
- LEI – Law Enforcement Institution
- LEO – Law Enforcement Officer
- MIC – Middle Income Country

Defined Terms

- Capacity – the ability of people, organizations and society as a whole to manage their affairs successfully¹
- Capacity Development – an approach to increasing organizational function through strategic, systemic, and personnel innovation and improvement
- Citizen Security – the general governance responsibility of preserving the citizen’s integrity of life and property from physical threats to that life and property
- Development – the growth of a nation’s overall economic strength and social stability best measured against past performance and future potential
- Good Governance – the presence of an authority that fulfills the following core governing functions; maintenance of adequate political security, economic security, social security, and most importantly for this inquiry, physical security
- Law Enforcement – law enforcement represents both the state practice of preventing and responding to criminal activity and the state institutions charged with those policing activities directed towards fulfilling that aim
- Responsible Policing – responsible policing is the practice of law enforcement possessing two main characteristics; (1) effectiveness, in that it adequately promotes and preserves a country’s internal physical security, and (2) accountability, in that it gives due respect to the fundamental rights of the individual (to be developed in Section IV B)
 - Accountable Policing – policing that respects the basic rights of the individuals in the society it serves, both the civilian and the suspect
 - Effective Policing – policing that adequately promotes and preserves a country’s internal physical security by deterring and responding to crime through effective and efficient policing strategies and tactics
- Rule of Law – a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards²

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¹ *The Challenge of Capacity Development: Working Towards Good Practice*, OECD/DAC, Paris (Aug 2006).

² *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN S/2004/616 (2004), <http://www.un.org/en/ruleoflaw/>

II. Executive Summary

The Citizen Security situation in many Latin American nations, particularly in Central America, is bleak. This crisis has wide ranging human costs, with deeply negative economic and social effect. Worse, home country and outside action intended to address the problem have proved largely ineffective, if not counterproductive. This study details this ongoing Latin American catastrophe through available evidence of Latin America's (and particularly Central America's) Citizen Security issues and the accompanying economic and social impact. In this context, it also examines state responses to these crises, both from home country and donor perspectives. This study then advocates for an increased presence of Rule of Law theory and practice in Citizen Security and law enforcement, positing that these tools of governance theory and practice are integral to the existence of Good Governance and the Rule of Law. To do so, it supports this conclusion with both theoretical argument and concrete support from country case studies. Finally, this piece offers a practical framework for law enforcement Capacity Development as a primary means of positive state action in challenging developing country Citizen Security environments. Drawing from the prevailing models of capacity development practice, it offers an approach to institutional development tailored to the specific needs of LEIs. In the face of dire Citizen Security needs, Rule of Law advising can strengthen law enforcement in developing countries by re-emphasizing Citizen Security as a component of Good Governance and the Rule of Law. Development actors can apply the tools of Capacity Development to focus on increasing the strategic, systemic, and most importantly, the personnel capacity of developing country LEIs. These efforts, if executed properly, can have a positive impact on communities' safety and peace, and thereby development.

III. Introduction

A. Subject of Inquiry

1. Statement of Problem

The core problem this inquiry addresses is current Rule of Law advising's inability or reluctance to properly consider Citizen Security challenges as a Rule of Law issue. This gap in theory and practice often results in development aid strategies and practices that fail to promote this badly-needed aspect of the Rule of Law in many of the world's MICs and LDCs, particularly those in Latin America. While this lack of emphasis on criminal insecurity results in several interconnected problems, the most direct challenge is the continued marginalization of law enforcement as a significant piece of the Rule of Law advising puzzle.

2. Significance

Law enforcement's marginalization presents a significant challenge to promoting the Rule of Law because, in many LDCs and MICs, law enforcement is an important in which the state intimately impacts the average citizen's daily life. It does so in two ways. In the negative, a poorly functioning criminal system is a threat to peace and stability in and of itself. This threat grows from two related problems; arbitrary state practices, and criminal activity. Regarding state practices, without the proper institutional training and control, law enforcement lends itself to arbitrary and authoritarian actions on the part of the state, and corruption and abuses on the part of individual officers. Regarding criminality, an inept, arbitrary, and/or corrupt law enforcement apparatus also results in high levels of violent and property crime, effectively undermining basic security necessary for development. In the positive, functional, effective, and accurate criminal enforcement is an indispensable piece of a state's ability to provide levels of Citizen Security necessary for all other peaceful pursuits. This is important not only to economic development, but also to the fundamental state function of preservation and promotion of its citizens' life and property.

B. Research Bounds

1. Research Objective

This study aims first to define the contours of Latin America's crime crisis. Second, it intends to show Citizen Security's theoretical and practical centrality to the Rule of Law and Good Governance, and thereby development. Third, it attempts to propose Rule of Law advising tools to improve Citizen Security through the Capacity Development of law enforcement

institutions. In particular, this study aims to provide practical data, analysis, and suggestions for future Rule of Law advising strategies in international donor practice, home-country policy formation and implementation, and practice of individual Rule of Law advisors.

2. Research Approach

This inquiry combines several research approaches to examine Citizen Security within the Rule of Law paradigm, applying each approach in an integrated theoretical and practical analysis to present a holistic picture of the need for Capacity Development in law enforcement institutions. First, this study uses an investigative approach to detail current criminal insecurity crises and demonstrate the development impact. Second, this study uses a traditional legal-analytical approach to assert and support physical security's importance within the theoretical framework of the Rule of Law and Good Governance. Third, this study uses a critical approach to assess current Rule of Law advising in Citizen Security and specifically in law enforcement. Fourth, this study incorporates a comparative approach throughout to delineate commonalities and divergences in the current criminal insecurity and rule of law situation, as well as to identify and develop applicable Capacity Building principles and tools.

3. Study Limitations

a. Lack of Empirical Data and Analysis Generally

One of the main limitations of this study is in areas where observations and conclusions could benefit from substantiation and support from empirical data and analysis. This limitation is present in the analysis of current Rule of Law advising in Citizen Security, as related quantifiable indicators are inadequate. Limited data availability also affects efforts to draw real-world correlations between Citizen Security and the presence or lack of economic development. This study's time and resource constraints also contribute to a limited capacity for empirical data collection and analysis. However, certain reliable sources of related information and analysis are available, and are incorporated into the discussion and analysis wherever possible. In particular, data and analysis from regional World Bank reports, as well as other IGOs like the Inter-American Development Bank and several policy institutes (ex. The Woodrow Wilson Institute) function as an offset for this lack of quantifiable data and information.

b. Existence and Availability of Case Study Country Data and Legal Materials

This study also faced a challenge relating to the existence and availability of country-specific legal materials. While legal codes and institutional regulations are sometimes accessible,

this study dealt with a relative dearth of legal and social science analysis specifically dealing with crime and criminal justice in many Latin American countries. While there has been an apparent increase in related studies and analysis in the last decade, the topic remains under-treated when measured against the treatment of contemporary socio/legal issues. Given the gravity of the issue, this work attempts to help fill this gap, yet more study and work is certainly needed.

c. Support for Training Recommendations

Finally, this study found limited direct support for its recommendations on training and reform measures needed by law enforcement institutions in developing countries. This limitation is due in large part to the aforementioned limitations in the existing knowledge and resource base in this specialized topic area. However, this limitation was offset to a large extent by incorporating available publications concerning law enforcement training and reform in developed countries, as well as existing experience and literature on proper Capacity Development programming and education. This limitation was also further offset by direct input from experienced law enforcement professionals.

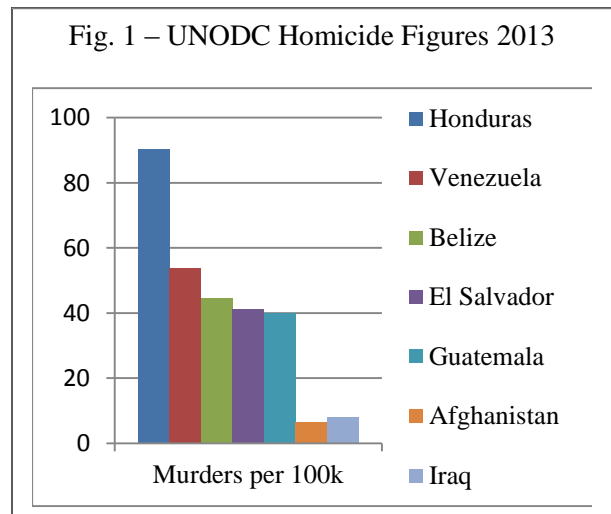
IV. The Current Condition of Citizen Security: Challenges and State Practice in Latin America

A. Citizen Security Crises – Latin America’s Common Crime Problem

1. Contours and Characteristics

Long-term and pervasive criminal insecurity bedevils many of the world’s nations, particularly in regions with low levels of Good Governance and the tenuous presence of the Rule of Law. Many countries in Latin America, in particular, rank among the highest in the world in many indicators of violent and property crime. For example, Honduras and Guatemala rank far ahead of war-torn countries like Syria and Iraq when measuring homicides. Mexico is currently struggling with its own Citizen Security crisis,³ and, while Columbia has seen its situation improve over the last decade, it also still grapples with violent threats to its internal stability and security. Even comparatively stable Latin American MICs such as Chile, Argentina, and Brazil face their own sizeable challenges in the Citizen Security sphere.

Current crime statistics tell a grizzly tale by the numbers. In the most recent figures released by the UNODC, the five countries with the highest murder rates are Honduras (90.4 murders per 100,000), Venezuela (53.7 murders per 100,000), Belize (44.7 murders per 100,000), El Salvador (41.2 murders per 100,000), and Guatemala (39.9 murders per 100,000).⁴ All countries are in Latin America, and with the exception of Venezuela, in Central America. These countries rank well ahead



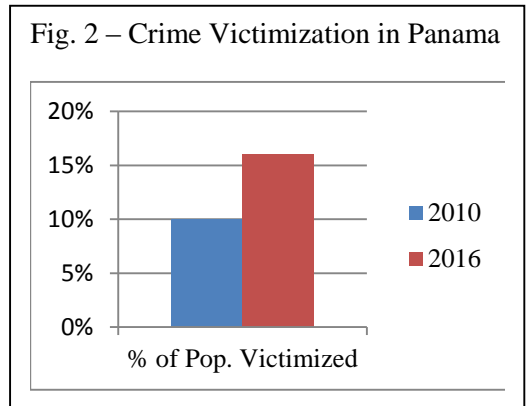
of war torn nations such as Afghanistan, (6.5 murders per 100,000), Iraq (8.2 murders per 100,000), and South Sudan (22.5 murders per 100,000).⁵ These same Latin American countries rank similarly when measured for petty crime, assault, and other forms of common crime.

³ See Marien Rivera, *Red Numbers of the Criminal Justice System in Mexico*, Centro de Investigación para el Desarrollo, October 2011, for comprehensive data on Mexico’s struggles with massive criminal conduct.

⁴ *Global Study on Homicide: Trends, Contexts, Data*, United Nations Office on Drugs and Crime (2013), 126.

⁵ *Id.*, 128, 129, and 124.

Of equal worry, this violence and insecurity destabilizes neighboring countries with a better track record in Citizen Security.⁶ Panama, traditionally a stable, low-crime country, has seen a significant increase in the percentage of its population fallen victim to crime, with its victimization rates rising from 10% in 2010 to 16% in 2013.⁷ Even states such as Brazil that have performed well economically over



the last decades continue to have crime rates that are significantly higher than their economic peers. All told, over 1 million Latin Americans have died as a result of criminal violence in the decade running 2000-2010.⁸ This report could continue with similar data and anecdotal evidence for volumes, illustrating a crisis that has killed and maimed more innocents than the major contemporaneous conflicts in Western Asia. It should suffice to say that, given the overwhelming amount of information detailing the Citizen Security situation in many Latin American nations, it is clear that there exists a fundamental crisis stemming from consistently elevated crime levels and states' inability to confront this threat.

In human terms, such crime and violence creates an environment of constant fear and distrust. Citizens of such countries as Honduras, Guatemala, and other similarly situated nations live under the specter of assault, rape, and robbery twenty-four hours a day. Coupled with limited or non-existent economic opportunities, criminal instability serves to keep the average citizen of these nations mired in poverty. For most, there is no escape or recourse, as law enforcement is either nonexistent or worse yet, even perpetrates similar abuses in the name of order, or for their own benefit. At its basis criminal insecurity threatens the safety and life of each individual, the ultimate responsibility that good governance and the rule of law strive to protect.

At the macro level, criminal insecurity negatively impacts communities and societies, with these effects apparent in indicators including quality of life, income levels, political freedom, education levels, and levels of individual human rights.⁹ The knock-on effects of such

⁶ See ex., Ivan Castro, *Ten Killed in Nicaraguan Gunfight near Honduran Border*, Reuters (5 Dec 2013)

⁷ *Panama: New security strategy seeks to reduce homicides*, Infosurhoy (30 Aug 2013), citing *Second Survey on Victimization and Social Perception*, Public Safety Observatory of the Panama Chamber of Commerce, April 2013.

⁸ *How to Prevent an Epidemic: Alternatives to the Iron Fist*, The Economist (16 Nov 2013) citing UNDP.

⁹ Hasan Tuluy, *Latin America: violence threatens a decade of progress*, World Bank (3 Apr 2013), calling citizen insecurity the "Achilles heel of development" in Latin America. See *Central America's Rising Crime and Violence*

instability are wide ranging as well, as such distrust and fear undermines the cohesion of communities and civil society at large. Criminal insecurity also wreaks havoc on the economic sector as well. If a given populace lives in constant fear of crime and violence, their ability to participate in economic life is severely limited, if not destroyed all together.¹⁰ Without security and safety, it becomes difficult, if not impossible, for an individual to be an actor in the economic system, whether that is as labor, consumer, investor, manager, creditor, or any other way that individuals and entities participate in the human marketplace each day.

Mexico’s situation is useful when attempting to quantify the economic effects of crime-driven instability in Latin American nations. While Mexico has so far struggled to adequately counter the pervasive entrenchment of brutal organized crime groups and widespread street crime, it has seen moderately successful efforts on the part of NGOs and the Mexican Federal Government to at least measure the broad effects of its criminal infestation. The following figures present telling indicators of just how severe, and economically damaging, Mexico’s criminal problems are. A 2012 survey found that an estimated 4.4 million reported and unreported cases of extortion occurred in the country in 2011.¹¹ A 2013 survey found that businesses victimized by extortion reported paying yearly protections averaging from roughly US\$3,500 for smaller businesses to US\$115,000 for larger.¹² Criminal enterprises also increasingly target rural businesses and farmers, with residents of Michoacán often paying US\$150 an acre for arable land and up to US\$0.25 per kilo to bring goods to market.¹³

Fig. 3 – Economic Effects in Mexico	
<i>Extortion Prevalence, 2011</i>	
Total Extortion Cases , 2011	4.4 Million
<i>Average Yearly Extortion Costs, 2012</i>	
Small Business	\$3,500
Large Business	\$115,000
<i>Rural Extortion Costs, Michoacán</i>	
Costs per Acre	\$150
Costs per Kilo of Produce	\$0.25
<i>Transportation Extortion Costs</i>	
Daily Costs, Tamaulipas	\$1,200
<i>Businesses Closings since 2010</i>	
Small-Medium	40,000

puts Region's Development at Risk, World Bank Summary Report, (7 Apr 2011), discussing the economic impacts of Central America’s crime problem, including that Citizen Security is consistently the primary public policy concern of citizens in the region.

¹⁰ See Aaron Morrison, *UN: Crime, violence keep Latin America back*, Miami Herald, (12 Nov 2013), detailing the human and economic costs of a decade’s worth of elevated violent crime levels across Latin America.

¹¹ *National Survey of Victimization and the Perception of Public Safety*, National Institute of Statistics and Geography, Mexico (2012).

¹² *National Survey: Crime-Related Business Costs*, Coparmex, 2013.

¹³ Daniel Higa, *Extortion on the Rise in Mexico*, Infosurhoy.com (5 Dec 2013).

Transportation is also affected, with freighters in Tamaulipas having to pay up to US\$1,200 a day to move their cargo across the state.¹⁴ All told, criminal enterprises affect most major sectors across Mexico's economy with profound effects, with upwards of 40,000 small and medium-sized businesses closing due to the lack of security since 2010.

More generally, organizations such as the World Bank conduct broad-based assessments of countries' Citizen Security situations, attempting to measure the existence and effects of violent crime, theft, and corruption. In Latin America in particular, the World Bank estimates that Central American nations lose annual growth of GDP 8-12% because of criminal insecurity.¹⁵ The above data from Mexico corroborates this assertion, with business throughout the country reporting significant losses and increased costs due to uncontrolled violence and criminality. When assessing several Central American countries, the World Bank estimates that a 10% reduction in homicide rates could boost annual economic growth per capita by as much as one full percentage point of GDP.¹⁶ By extension, if murder rates were brought within the average range of other similarly situated countries, the per capita GDP rate could increase by as much as 4-6%.

The average citizen is well aware of this cost, as "Public opinion polls show that a large majority of the population in these countries view crime as an unsettling deterrent to their current and future wellbeing".¹⁷ World Bank publications also detail the macro-level damage that rampant crime inflicts on a country, stating that, "high crime rates harm investment climates and divert scarce government resources to strengthen law enforcement rather than promote economic activity".¹⁸ Even in countries that are able to create growth in the face of security challenges, failure to limit crime and violence has a negative impact on economic outcomes. In the worst cases, criminal insecurity results in a total breakdown of the economic system.

2. Causes and Drivers

Any discussion of the roots of Latin America's crime problem must start with historical social and economic factors. Across Latin America, societies still bear certain resemblance to the systems entrenched during centuries of colonial domination and exploitation. This period was

¹⁴ Higa.

¹⁵ *Crime and Violence: A Staggering Toll on Central American Development*, World Bank, Press Release No: 2011/409/LAC, <http://go.worldbank.org/1E55TG7GH0>.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. See also *World Bank Summary Report*, Washington DC (7 April 2011), showing that, "71% of Central Americans identify crime as the main threat to their wellbeing".

marked by highly unequal societies governed by exploitative authorities unconcerned with even the basics of Good Governance. As a result, many Latin American nations, and in particular those in Central America, are home to some of the world's worst, most grinding poverty, massive income and wealth inequality, and deeply entrenched social hierarchies. Education is limited, and with many people never reaching secondary-level schooling, literacy rates are low. However, there are many other parts of the world that share these same characteristics, yet have far lower crime rates than the nations mentioned here. This in part can be explained by a social, cultural, and educational environment that accepts violence as commonplace, and has little presence of state-directed law and order in any legitimate sense. This lack in and of itself also has its roots in the colonial order, and will be detailed more thoroughly in Section III B.¹⁹

Turning to the nature of the crime landscape itself, the above factors contribute to active organized crime groups that destabilize many Latin American nations at all levels of society and government; local, regional, and national. The cultural and social dearth of law and order also leaves communities at the whims of petty criminals who perpetrate a constant stream of personal assaults, property crimes, and other offenses. The perpetrators of these crimes are spurred on by poverty and the almost non-existent possibility of criminal accountability. Rising out of and taking advantage of impoverished and socially broken communities, street gangs add a further layer of criminal violence and instability to already reeling communities.

To make matters worse, poor law enforcement itself exacerbates the problem, and even creates crime and insecurity of its own. First, police forces are often poorly trained, equipped, and led, leaving them simply unable to carry out even the most basic of policing responsibilities. Second, when police forces do engage in enforcement practices, their lack of training and proper leadership leaves their actions open to human rights abuses of several varieties. From physical abuse to abuse of authority, police in the mentioned countries are consistently cited for unprofessional and abusive practices. Third, corruption plagues many police institutions, with officers either turning a blind eye to illicit activities, or even participating in illegal actions from providing protection to committing crimes themselves.²⁰

¹⁹ In the long run, the only full solution for these problems is a re-alignment of social, cultural, and economic values. Yet, this paper aims to show that the simple improvement of law enforcement itself can have a significant impact on the public safety of the citizen, as well as the economic vitality of a given community, and even nation.

²⁰ David Luhnrow, *Mexico Cracks Down on Local Police Corruption*, Wall Street Journal (10 Jun 2009).

Given the situation, poor law enforcement exacerbates an already abysmal Citizen Security situation. This problem is prevalent across Latin American countries, including those that generally are considered more socially and economically stable. For example in Brazil, South America's most robust economy, poor law enforcement remains one of the "key systemic roadblocks to citizen security improvement in Brazil".²¹ In sum, poor law enforcement can be considered a major contributor to the situation as it not only contributes to direct violence, but also wrongful convictions, a lack of trust in policing (which frustrates invaluable community cooperation), and contributes to a larger breakdown in public governance.²²

B. Current State Practice in Citizen Security and Law Enforcement

Within this context, it is useful to detail the actions of states in response to the crisis. At all levels of government action, from local to international, resources have been poured into Citizens Security operations in one form or another. National policy and practice has attempted to address the situation, and international actors have promoted their own security operations in hope of either improving the situation or furthering domestically driven agendas.

1. Home Country Citizen Security Practice

Turning to home country efforts in Citizen Security practice, two common themes stand out. First is a particular mode of policing common to many Latin American nations, often referenced as the "Iron Fist" approach to Citizen Security. This approach is used most often by regimes with vestiges of the reactionary, authoritarian, state-centric model built under colonial rule and supported by local power interests (and often U.S. security actors) after independence. In such situations, states employ a heavy handed approach to policing either in response to citizen demands for safer communities, or in the face of violent unrest that could be interpreted as a threat to the state's monopoly on power. Across nations, the "Iron Fist" approach carries several common characteristics. It uses invasive and harsh policing operations that prioritize applied force, mass arrests, and the escalating use of violence in the face of opposition or

²¹ *Making Brazilians Safer: Analyzing the Dynamics of Violent Crime*, World Bank Sustainable Development Sector Management Unit, 54, citing Fernando Veloso and Sérgio Guimarães Ferreira, *É possível: gestão de segurança pública e redução da violência*, Contra Capa Rio de Janeiro (2008).

²² Interestingly, constructively addressing failures in law enforcement can have a rapid and significant positive impact on Citizen Security in spite of less than ideal economic and social factors within a community. For example, law enforcement practice in Nicaragua, as well as recent initiatives in some of Brazil's most dangerous slums, show that the introduction of better, more effective, more accessible, and more accountable policing can result in significantly improved security and peace in areas that remain economically depressed. These initiatives will be discussed in depth in the subsequent sections.

resistance. Second, this approach emphasizes hierarchy and the primacy of senior officers. Third, the institutions themselves are highly regimented with a strongly militarized culture and organization. It is, in sum, very much a militarized mode of policing.²³

Honduras and Guatemala, in their attempted transitions from civil war into stable and democratic government in the years after the Cold War, were faced with the daunting task of building civil police forces from scratch. For the balance of the previous 50 years, both countries' policing had been handled by militarized internal security services controlled either directly by the Army or the paramilitary and intelligence apparatuses of a militarized ministry of the interior. These forces, battling communist-driven rebels, received monetary, material, and instructional support from U.S. programs run through the Department of Defense and CIA. In the months after cease fires and peace deals were brokered between the government and the rebels, the nation-building coalition (involving the United States and several European nations, particularly Spain), set about creating a new LEIs to replace the old security apparatuses used primarily to oppress dissent.

The formation and constitution process for the new federal police did not take into account the nation's past and ended up reinforcing the flaws inherent in the old system. Some voices called for actions that would have actively worked to counter these historical trends. These steps would have included a total re-vamp of the personnel make-up of the federal police, with few remaining members of the old security services, a less centralized command structure, and improved training for officers in modern policing techniques and practices.²⁴ However, for reasons that remain unclear, the Spanish delegation worked with certain elements of the Honduran and Guatemalan governments to retain a majority of the former security personnel, limit the structural reforms implemented in the new national police, and overlook personnel training in modern policing techniques.²⁵ Consequently, the national police in Guatemala and Honduras have continued to be ineffectual law enforcement actors, and continue to be plagued by corruption and allegations of continued human rights abuses.²⁶

²³ Hugo Fruhling, *The Impact of Community Policing and Police Reform in Latin America*, in *Toward a Society under Law: Citizens and Their Police in Latin America*, eds. Joseph Tulchin and Meg Ruthenburg, 15, at 16-17.

²⁴ *Id.*, 17.

²⁵ William Stanley, *Building New Police Forces in El Salvador and Guatemala: Learning and Counter-Learning in Peacebuilding and Police Reform*, ed. Tor Tanki Holm and Espen Barth Eide, Norwegian Institute of International Affairs (2000), 113, at 114-115.

²⁶ *Protect and Serve? The Status of Police Reform in Central America*, Washington Office on Latin America (June 2009), 13.

A second theme is state practice in maintaining order that more closely resembles that of the former Soviet Union in what can be termed revolutionary states (or, states that often broke free of the authoritarian model). Rather than seeking to protect the central authority of the state, enforcement practices in these nations worked to ensure the political and social hegemony of the ruling political party and ideology. Across nations, political policing possesses several common characteristics. First, the authority structures of LEIs are controlled at the command levels (and often even at lower levels) by political actors. Second, these institutions often see a high rate of turnover in upper leadership. Like their “Iron Fist” relatives, these institutions also exercise a high degree of control over their rank-and-file, here through political means. Lastly, politicized policing institutions also leave most decision-making power in political hands, not with the LEI itself.

In the Western Hemisphere, Cuba serves as the most obvious practitioner of political policing. Having been ruled as a one party socialist state since the late 1950’s, its LEIs have functioned as political tools of the Cuban communist parties for decades. Rather than act as a force for public order and impartial justice, police in Cuba have served as the enforcers of political orthodoxy and social repression. Venezuela also serves as a useful contemporary illustration of the political policing model. Ruled since 1998 by a hardline socialist regime, Venezuela’s current policing climate has grown to closely mimic the prevailing models from past and current ideologically based regimes. Venezuelan police are closely controlled by the prevailing political coalition, and function as enforcers, silencing dissent and cracking down on the opposition, both individuals and movements.²⁷ Due to Venezuela’s continued political situation, the policing apparatuses have seen little, if any change in culture, organization, or approach to enforcement. The results, which can be plainly seen in the police’s recent reaction to opposition protest as well as the country’s abysmal criminal violence situation, leave Venezuela’s population exposed to massive criminal insecurity.

These institutional models have created several interconnected problems in policy and practice that produce the same negative impacts on the common citizen. Whether the ill effects are abusive policing measures or high crime rates, the above defined practices endanger the population by both failing to ensure security and also directly perpetrating violence.

²⁷ See Hannah Strange, *Venezuelan Opposition Leader Leopoldo Lopez Appears in Court over Protest Violence*, Vice News Americas (11 Sept 2014), detailing the politicized policing and criminal justice practices of Venezuela’s ruling powers.

Furthermore, they leave law enforcement ill-equipped to deal with the complicated and pervasive criminal problems pervasive in these regions.

2. Donor Practice in Citizen Security Programming

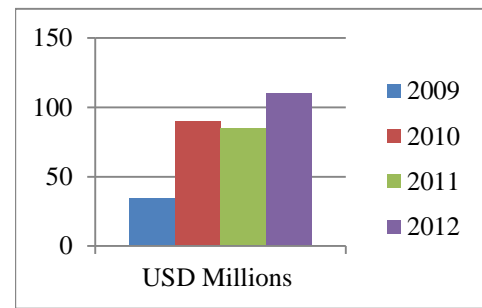
Outside actors also play a significant role in the Citizen Security picture in many Latin American nations. While the U.S. represents the major donor and actor in this sphere, particularly in Central America, various other states, IGOs, and NGOs also participate directly or indirectly in citizen security. Across these actors, several common trends in outside aid and practices are identifiable, and aid a better understanding of the individual practices in the field.

A common theme in donor aid for Latin American law enforcement is the prevalence of militarized assistance to regional law enforcement agencies. The U.S. in particular uses militarized aid strategies when contributing to Citizen Security efforts in the region. Militarized aid takes many forms, from direct support through equipment and funding to special-forces style training for elite law enforcement and paramilitary units. Also common are joint or foreign-led law enforcement operations, particularly where host nations lack the enforcement capabilities necessary for certain types of interdiction efforts (i.e. helicopters, night vision, advanced intelligence collection methods, specialized training, etc.).

Though the U.S., the major security donor in Central America, has begun to move away from Cold War and Drug War inspired support for militarized law enforcement capacities and practices, it continues to pour money into such pursuits. While exact dollar amounts are difficult to determine given the classified nature of much U.S. military and law enforcement spending, “[s]ome reports estimate that the U.S.

Department of Defense's counter-narcotics support to Mexico started at approximately \$34.2 million in 2009. It rose to US\$89.7 million in 2010...fell slightly in 2011 to US\$84.7 million...” and was estimated in excess of US\$100.4 million in 2012.²⁸ There has also been continued major

Fig. 4 – U.S. Military Expenditures for Mexican Law Enforcement



²⁸ Andrea Nill Sánchez, Mexico's Drug "War": Drawing a Line Between Rhetoric and Reality, 38 Yale J. Int'l L. 467 (2013), 47, citing Clare Ribando Seelke & Kristin M. Finklea, *U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond*, Cong. Research Serv., R41349 (2013), 31-37.

involvement from the U.S. DoD and CIA in Mexican law enforcement activities in the years stretching from 2007-2012.²⁹

A second common theme in external efforts in regional Citizen Security is law-based reform initiatives. These traditional Rule of Law projects take two general molds; one mold seeks to strengthen non-law enforcement justice actors, with the other working to create policy and legal structures to increase accountability in LEIs. Regarding criminal justice, many donors work to reform and improve the various legal frameworks and state organs responsible for the full range of criminal and civil justice. From training court personnel, to reforming outdated legal codes, to penal improvements and restructuring, donors have a strong presence in the strictly legal aspects of criminal justice.³⁰ Regarding policing itself, Rule of Law intervention in law enforcement often addresses accountability, generally using legalistic rule-based reform initiatives. These efforts seek to create legal and structural systems of police governance based on human rights standards and drawing heavily from international best practices materials.

Recently, Rule of Law actors have begun to incorporate more individual capacity development tools into their law enforcement advising. These efforts generally take the form of short seminar-type education initiatives and workshops. Some examples of this seminar-type approach include the U.S.'s recent shift in its Citizen Security efforts to include more training and education of personnel. As part of the newly inaugurated Merida Initiative, the U.S. and Mexico have worked to expand training for Mexican law enforcement personnel in order to bolster the implementation of sweeping reforms within the Mexican criminal justice system.³¹ The program features an array of courses to help officers prepare for the new challenges of an accusatorial system as well as expanded responsibilities within that system.

The major training program attached to this initiative, *Proyecto Diamante*, features a modular training program for current federal police.³² While the modules total nearly 250 hours of instruction, the curriculum covers a broad swath of law enforcement practice and features little hands-on skill training and education. Another Merida-driven initiative is the Gen. Ignacio

²⁹ Id.

³⁰ See Michael Shifter, *Countering Criminal Violence in Central America*, Council on Foreign Relations (Apr 2012), for a discussion of national level criminal justice and crime prevention efforts, with most law enforcement aid coming from the U.S. and going towards drug interdiction and active law enforcement operations.

³¹ Brandi Lowell and Keith Mines, *Mérida Initiative: Building a stronger security partnership*, The Canadian Foundation for the Americas (Nov 2011).

³² *PGR Pone en Marcha el "Proyecto Diamante" para Capacitar a Ministerios Públicos y Policía Federal Ministerial*, Procurada General de la Republica (7 Feb 2012).

Zaragoza National Police Training and Development Academy, built to give Mexico an adequate training facility for increasing law enforcement capacity.³³ However, it is unclear how the academy fits into the overall development scheme, what curriculum is in place, let alone what officers are eligible to attend and for what purposes. Official documentation places the number of trained officers at well over 5,000, but the thoroughness, applicability and effectiveness of training received is unknown.³⁴

³³ *Mexico & US Open Police Academy in Anti-Drug Fight*, Fox News Latino (5 May 2012).

³⁴ Tenoch Ortuño, *Mexico: New Scenarios for Police Training*, Infosurhoy (5 May 2013); Other active players in the Rule of Law field also dabble in law enforcement training as part of their Rule of Law advising activities. These efforts often peripherally involve law enforcement actors while focusing on hot-button issues like sex trafficking, violence against women, and other human rights abuses. These trainings are often short seminar-based workshop-oriented programs that attempt to transfer skills and tools to in-country practitioners. See *Training Honduran Law Enforcement Officials on Combating Sex Crimes*, American Bar Association Rule of Law Initiative (Nov 2013), See also, *Ecuadorian Police and Investigators Trained in Practical Skills*, American Bar Association Rule of Law Initiative (Sept 2013).

V. Rebalancing Citizen Security and Law Enforcement in the Theory and Practice of Rule of Law Advising

A. Citizen Security, Good Governance, and the Rule of Law

Citizen Security, for the purposes of this discussion, is the physical security of the individual citizen and their property. The security of the citizen and their property, in any forum, faces threats as diverse as dangerous environmental conditions, external invasion, violent political and social subversion, and common crime. Citizen Security, as a rule, is an integral piece of any functional, stable society, and is therefore the responsibility of not only the individual as citizen, but also the state as protector of its citizens. Without basic security, the individual, and thereby society, cannot participate in the elementary activities necessary for ordered human existence and growth.

1. Links in Theory

In a general sense, Citizen Security is a responsibility of governance. Governance, and specifically Good Governance, can be defined as the presence of an authority that fulfils the following core governing functions; maintenance of baseline political security, economic security, social security, and most importantly for this inquiry, physical security.³⁵ By maintaining these core governing functions, a given national, regional, or local governing body creates the environment in which its constituents can productively participate in the communal life of the system and society.³⁶ Good governance, if it is fulfilling its role of preserving physical security (here referenced as Citizen Security) maintains basic standards of security from external and internal threats of violent instability.³⁷

³⁵ Joseph Saba, “Emerging Trends in Justice and Development Practice in Fragile and Conflict-afflicted States” PROLAW® Visiting Lecture Series (20 Sept 2013).

³⁶ It is important to note that these governance functions are not absolute requirements in practice. Like in all human endeavors, the ideal governance circumstance where a society provides for perfect political, economic, social, and physical security is goal for which we strive, yet never attain. Rather, governance is best measured in degrees, with acceptable levels of the above needs determined one a case-by-case basis. While this dynamic is an important part of governance analysis, it is outside of the scope of this inquiry.

³⁷ When considering Citizen Security within the Rule of Law context, the antecedent discussion of governance is indispensable. Returning to the above quoted definition of the Rule of Law, the Rule of Law is, “...a principle of governance...,” in that it is a constituent part of governance’s theoretical construct and practical tool-box. Concerning theory, the Rule of Law is an ontological step below governance if one was to classify levels of state activity. This is based dually on Rule of Law’s theoretical construct as well as its real-world necessities. Both theoretically and practically, the Rule of Law cannot be used as a tool of governance, nor can the ‘Rule of Law’ state be attained without baseline governance in place. In practice, the two are often intertwined, but governance remains broader both conceptually and in practice, while the Rule of Law is narrower. For these reasons, both practical and theoretical, addressing governance is, in this author’s opinion, the necessary first step in any discussion of the practice and theory of the Rule of Law.

In a practical sense, most non-criminal or non-violent threats to Citizen Security are dealt with by state organs other than LEIs, and are therefore not part of this inquiry. For example, threats to security from illness or natural disaster are addressed by governance bodies dedicated to citizen health or infrastructure. Violent external threats to security are generally handled by a militarized governance organ. Law enforcement fits into this landscape when violent internal or criminal threats to Citizen Security need to be addressed. These threats range from wanton violence to violent political and social subversion. In this way, policing organizations often represents the strong arm of political authority tasked with maintaining public order and peace. In these instances, law enforcement agencies function as general governance organs, as opposed to their equally important roles as Rule of Law actors in crime control and prevention.

Citizen Security is also a fundamental concern of the Rule of Law, as crime, a common and threat to Citizen Security, is by its nature a legal problem.³⁸ As a Rule of Law concern, Citizen Security is subsumed into the legal framework of a country both in its laws and institutions. The most common criminal threats to Citizen Security are violent and property crime, or, actions committed against the integrity of the citizen's person or property that are made illegal through a given legal framework. Persons who offend against criminal legal norms and standards are generally dealt with according to those laws by an institutionalized system that administers criminal justice within the larger Rule of Law context. In most situations, this criminal law system is comprised of judges (who conduct a formal fact-finding and adjudication process), counsellors (who represent the state, the aggrieved, and/or the accused), and most important to this discussion, law enforcement organizations, who work to prevent, investigate, interdict, and apprehend criminal elements. When this system functions properly, crime is responded to in a prompt and effective manner, with perpetrators apprehended and tried in a measured and fair process. When this system does not function properly, criminality is pervasive

³⁸ The Rule of Law is, according to the United Nations, “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and which are consistent with international human rights norms and standards”. Though the Rule of Law is identified and explained from varied viewpoints by many prominent legal, economic, and social science scholars and practitioners, its formulations all share the fundamental principles that the Rule of Law defines a mode of governance that respects the basic rights of the individual, subjects all societal actors to the operation of the law, and ensures that the law is fair in its constitution and application. Missing from many discussions of the Rule of Law, however, is the antecedent discussion of governance itself. Addressing governance, in this author's opinion, is the necessary first step in any discussion of the practice and theory of the Rule of Law, as the Rule of Law in both practice and theory, is a constituent part of overall governance.

and goes unchecked, and crime erodes the strength of a society's legal framework, thereby frustrating or even destroying the Rule of Law.³⁹

2. Links In Practice

The contours of law enforcement's twin governance and Rule of Law roles are distinct in theory, but in practice, they are often inseparable. This truth is dictated by the realities of governance, for the simple reason that the Rule of Law and governance functions are often carried out by the same institutions tasked with responding to a broad range of internal threats to public order and security. Furthermore, the inter-related nature of the threats themselves contributes to this merging of theoretical constructs in practice. While concepts such as Good Governance and the Rule of Law may be separated to an extent in theoretical discussions of their origins, makeup, and function, in real-world state practice, they grow and falter together as part of the organic human effort of self-ordering.

Columbia's recent Citizen Security challenges are illustrative of how the two theoretically distinct areas of state practice often merge in the real-time challenges of growing governance and promoting the Rule of Law. From a governance perspective, Columbia has fought a low-intensity war against Marxist-inspired rebels for over 40 years. The aim of these groups is to undermine the very governance and social system of Columbia, making them a basic threat to the fundamental pillars of governance. From a Rule of Law perspective, Columbia has struggled to counter rampant organized crime groups responsible for massive drug trafficking operations, widespread crime and violence, and undermining the integrity of the state itself through corruption. The aim of these organizations is not the overthrow of the Columbian state, but profit and power based on criminal activity, and so is a direct challenge to the Rule of Law.

While the two threats, in theory, fit neatly into the "governance" and "Rule of Law" categories, in reality, the two challenges are merged both in their composition as well as in the state's response. In their composition, the guerrillas and organized crime often work together to control drug supply and transport networks, sharing in the profits to either finance attacks on the state (the guerrillas), or further their activities and influence (organized crime). The state's

³⁹ The recent developments in Mexico's Citizen Security situation illustrate just how damaging rampant criminal activity can be to not only the rule of law, but to fundamental governance itself. Due to skyrocketing organized crime activity and its progeny, violent crime and corruption, many states in Mexico fail to deliver not only an adequate Citizen Security environment, but also basic services unrelated to law enforcement and criminal justice.

response also blends its two responsibilities, often using the same law enforcement and paramilitary agencies to counter both guerrillas and organized crime.

Given Citizen Security's importance both to the Rule of Law and existence of Good Governance, security through effective and responsible law enforcement must be a priority for all states. Without the proper ability to protect and promote physical security, many developing nations cannot hope to exercise good governance or grow the rule of law. This lack adversely affects not only a nation's law and order situation, but its development goals as well.

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From a practical perspective, it may seem obvious that law enforcement serves a primary role in countering crime and violence. However, the relationship between law enforcement and crime levels is more nuanced than such a simplification. There is significant scholarly debate, both in theory and in practice, about the exact nature of the link between policing and crime levels. While a lengthy discussion and analysis of the theoretical and practical links between policing and crime levels is beyond the scope of this study, it is useful to investigate law enforcement's efficacy in promoting Citizen Security as far as possible.

There is a strong body of evidence suggesting policing's considerable influence over various levels of criminality and public safety. For example, increasing levels of resources, particularly manpower, into street-level policing has shown positive influence on reducing crime rates, particularly in urban settings.⁴⁰ Other studies have found that high levels of low-level police corruption (and therefore ineffectiveness) strongly correlate to high levels of property and violent crime.⁴¹ Also, levels of positive and negative public perception of policing institutions offer some support for the link between policing and crime levels, as police are viewed as more professional and trustworthy in communities where crime rates are lower.⁴²

The Citizen Security and law enforcement situation in several Latin American nations lends further credence to the conclusion that effective policing does contribute directly to lower

⁴⁰ See Meares, at 1874-75, for a discussion of applicable social science research supporting the conclusion that increased police effectiveness does directly correlate with reduced crime rates, citing studies showing increased sizes of police forces in U.S. urban areas does directly correlate to lower crime rates (Rafael Di Tella & Ernesto Schargrotsky, *Do Police Reduce Crime? Estimates Using the Allocation of Police Forces After a Terrorist Attack*, 94 Am. Econ. Rev. 115 (2004), 130-31), as well as the effectiveness of geographically targeted "hot spot" policing (Anthony A. Braga & David L. Weisburd, *Policing Problem Places: Crime Hot Spots and Effective Prevention* (2010), 15-17).

⁴¹ See David Luhnnow, *Mexico Cracks Down on Local Police Corruption*, Wall Street Journal (10 Jun 2009).

⁴² See Holm and *Protect and Serve?*

levels of crime and violence. Looking specifically at El Salvador, Guatemala, Honduras, and Nicaragua, crime levels and law enforcement effectiveness indicators are inversely correlated. This correlation is particularly significant given the countries' commonalities in other factors that contribute to crime and violence levels.

In the early 1990's each of these Central American countries emerged from decades of social strife and low-intensity conflict. As these countries attempted to move beyond this history of violence, they shared similar national characteristics; deep social divisions, histories of authoritarian rule and guerilla insurgencies, and extreme poverty amongst a population caught in the transition from rural to urban areas. Against this backdrop, each country went through a similar state building process, part of which involved the improvement and transfer of policing to civilian authorities. Thirty-five years on, each country has a significantly different Citizen Security situation. Guatemala and Honduras rank among the most dangerous places on earth. El Salvador, while not as dangerous as its northern neighbors, continues to have a tenuous Citizen Security situation. Nicaragua, like its neighbors is still beset by widespread poverty, yet sees its crime and violence indicators at far lower levels than its peers to the North.

Possible reasons for this regional variance could include higher levels of organized crime and drug trafficking in Honduras and Guatemala, as well as the stronger presence of street gangs, or "Maras". However, these factors only account for a minor percentage of total murders and violent crimes, and very few property crimes. Data from World Bank and UNODC studies show that less than 30% of all murders in Central America are attributable to organized crime activities, and of those, only half (15% of total) are gang-related. While localized data is virtually non-existent, crime surveys from Central American cities such as Villa Nueva, Guatemala (pop. 200,000), show that the most common crimes were robbery, battery, homicide, and auto theft.⁴³ Anecdotal evidence lends support to these figures as well, with local administrators in Honduras characterizing drug trafficking actors as outsiders who come and go, often with little involvement in local affairs. According to villagers in Honduras' Miskito areas, traffickers establish airstrips in the back-country and generally refrain from major involvement in local life unless labor is needed for maintenance or logistics. The few local merchants and traders that do

⁴³ Fruhling, 30.

become more heavily involved in the trafficking operations are those that fall victim to targeted violence.⁴⁴

Rather, the formation, composition, and practices of the countries' policing institutions are likely much stronger determinants of crime levels. Of these countries, Honduras and Guatemala have the least professionalized, least trained, worst equipped, and most incompetently supervised police forces. This situation results from several intertwined failures on the part of national governments and the international actors involved in the police reform process.

First, certain international actors and the national governments colluded during the restructuring process to recycle personnel wholesale from the former paramilitary and militarized security services.⁴⁵ Even now, the officer recruitment process does little to ascertain the personal reliability of applicants.⁴⁶ Second, the new governance frameworks created abbreviated training programs with little or no follow-up once cadets leave their academies.⁴⁷ These inadequate training programs have been further shortened and eviscerated by funding cuts.⁴⁸ Third, the legacy structures from the previous militarized organizations were kept largely intact in the new policing institutions.⁴⁹ As a result, Honduran and Guatemalan policing is virtually non-existent, if not worse, and directly contributes to the country's abysmal security situation.

This can be contrasted with both the policing and Citizen Security situation in Nicaragua. Nicaragua emerged with similar difficulties as Honduras and Guatemala in the 1980's and early 1990's, and remains a largely impoverished country. Yet during the national restructuring after the Sandinista takeover, and again with the transfer of power in 1990, it managed to build a police force that is largely professionalized, well trained, and adequately equipped and supervised. Nicaragua was able to achieve such a result because of several important innovations on the part of the national government (and somewhat by international actors). First, the new policing organs instituted thorough vetting processes for all new members of the police forces.⁵⁰ While some former military and paramilitary members were subsumed into the new policing

⁴⁴ Mattathias Schwartz, *A Mission Gone Wrong*, 6 Jan 2014.

⁴⁵ *Protect and Serve?*, 4-5. 5 years after the peace accords in Guatemala set up the new force, 60% of officers had been members of the old forces.

⁴⁶ *Id.*

⁴⁷ *Id.*, 13, 15. In Guatemala, the cadet training academy is virtually closed for lack of funding and interest from administration and command.

⁴⁸ *Id.*

⁴⁹ *Id.*, 4-5.

⁵⁰ *Id.*, 6-7.

institutions, the recruitment process helps ensure reliable cadet candidates. Second, cadet training is a years long, intensive process featuring secondary and university level education, as well as comprehensive continuing education for officers in the field.⁵¹ Third, the institutional structure better promotes effective command and facilitates merit based promotion.⁵² As a result, Nicaragua's police forces are better trained and prepared, on average, than their counterparts in Honduras and Guatemala, and most importantly, Nicaragua's crime rates are far lower than its northern neighbors.

El Salvador's situation is also instructive, as it is in many ways the median between Nicaragua's measured success and Guatemala's and Honduras' abject failure. During its national transition, it succeeded in establishing a modestly effective civilian police force as the result of well-focused international intervention and middling interest from the national government. In El Salvador, recruitment serves to remove undesirable candidates, but does little to bring in exemplary cadets. As a result, some former military and paramilitary members were subsumed into the new policing institutions, but the recruitment process generally keeps those with prior convictions and other unsavory ties out of the academy. Cadet training is a yearlong education that gives officers baseline competencies and skills, and the institutional structure is a move away from military control. However, a strongly vertical structure still frustrates innovation and competent leadership. In this context, El Salvador's crime rates hover between those of Guatemala and Honduras, and the police force is viewed much more positively (36%) than those in Guatemala and Honduras (10%), but less favorably than in Nicaragua (over 50%).⁵³

So long as underlying factors (i.e. corruption) do not frustrate law enforcement efforts, effective law enforcement plays a key role in reducing crime and improving the Citizen Security situation.⁵⁴ As the Central American experience illustrates, a community will benefit from lower

⁵¹ *Protect and Serve?*, 16. Training has three levels; Policing training (formación) for training new cadets and those working towards promotion to investigator or other higher ranks, administrative training (capacitación) for active police and administrative personnel for further promotion, and continuing education (preparación continua) for all police personnel.

⁵² *Id.*

⁵³ Holme, 121.

⁵⁴ While not the main focus of this study, corruption certainly can and does adversely affect law enforcement capability. Interestingly, corruption has a nuanced relationship with policing effectiveness, with the presence or lack of corruption in general not necessarily determinative of its effect on policing effectiveness. Rather, the link appears to be more directly correlative with corruption at lower levels of police hierarchy; the more corrupt the street officer, the less effective his professional (or unprofessional) application of law enforcement practice. Corruption at high levels of police hierarchy seems to have little effect on effectiveness if it is limited at lower levels. Again, the experience of Nicaragua vs. Honduras, Guatemala, and Mexico are instructive. All three suffer corruption at high

crime rates if it can count satisfactory law enforcement as one of its governance tools and Rule of Law actors.⁵⁵ On the contrary, if satisfactory law enforcement is not present, then a given nation cannot hope to provide a safe and peaceful environment for its citizens and their development.

B. Responsible Law Enforcement: Ideal Good Governance Tool & Rule of Law Component

Assuming that the above evidence indicates an actionable interconnection between policing and crime levels, governance actors must then determine what methods of policing are most effective at improving a given country's physical security situation. Contemporary material on policing is consumed with this important question, and therefore offers numerous possible approaches ranging from reactive investigatory approaches to community engagement strategies.⁵⁶ Yet almost entirely lost in this discourse is any constructive discussion of what *mode* of policing is needed when implementing any or all of the discussed methods.⁵⁷ This study posits that any policing method must be implemented using broadly applicable modes of policing, referenced here as Responsible Policing. Responsible Policing is the practice of law enforcement possessing the two characteristics of (1) effectiveness, in that it adequately promotes and preserves Citizen Security from violent and property crime, and (2) accountability, in that it gives due respect to the fundamental rights of the individual citizen.

This conception of Responsible Policing is the only mode of policing that can accurately describe law enforcement's proper place within Good Governance and the Rule of Law. This

levels of police command, with the most senior officers trading on the influence and power of their positions for political or monetary gain with national elites and narco-traffickers (who are often one and the same). At street level, the professionalism and institutional strength of Nicaragua's police generally limits local corruption to negligible levels, with high-level corruption only influencing daily practice when it is directly needed to facilitate an illicit goal. In Honduras, Guatemala, and Mexico, pervasive street-level corruption often obliquely related or unrelated to high-level corruption makes street-level policing ineffective and even a threat itself.

⁵⁵ See *Bringing the state back into the favelas of Rio de Janeiro: Understanding changes in community life after the UPP pacification process*, The World Bank (Oct 2012), detailing the transformation of community life in three major areas after the state had re-asserted its police presence in several favelas. Residents described three major improvements after the implementation of the UPP program; "(i) the freedom to move and live without fear; (ii) the regulation of leisure and community life; and (iii) the aspirations for the future." At 66. While these impacts were felt almost immediately after the effective security operations under the UPP programs, recently crime and violence have begun to move back into the favelas as criminal elements change tactics and strategies. See Miriam Wells, *Gangs Reassert Themselves in Rio's 'Pacified' Favelas*, InSightCrime.org (24 Mar 2014), detailing the re-infiltration of criminal groups after initial successes in pacified favelas, <http://www.insightcrime.org/news-analysis/gangs-reassert-themselves-in-rios-pacified-favelas>.

⁵⁶ See ex. Margaret Shaw and Vivien Carli eds., *Practical Approaches to Urban Crime Prevention*, UNODC (2011), Criminal Justice Assessment Toolkit, UNODC (2006), *Handbook on Police Accountability, Oversight, and Integrity*, *Criminal Justice Handbook Series*, UNODC (2011), etc., as two examples among many.

⁵⁷ If modes of policing are discussed, it is only in relation to what method is in fact the best policing method.

conclusion is drawn from the above discussion of those governance functions and law enforcements responsibilities therein (see Section IV). In the context of those responsibilities, law enforcement can only fulfil its obligations under Good Governance and the Rule of Law if it can achieve its purpose of countering and preventing crime, and not itself contribute to the undermining of Good Governance and the Rule of Law. Hence, effectiveness and accountability are the most significant traits of law enforcement.⁵⁸

Effective Policing is police practice that adequately promotes and preserves a community's security by deterring and responding to crime using applicable policing tools. The need for effective policing is fairly self-evident, as without it, the main tool by which the state promotes and preserves local security cannot fulfil its role. The choice of policing method, and the tools it gives to officers, is an important question that, like all Rule of Law initiatives, should be determined on a case-by-case basis. Unless local factors are properly considered, the likelihood of success for an applied policing method is low. This axiom of Rule of Law practice in large part explains the disagreement amongst policy makers and theoreticians on what comprise "ideally effective" methods of policing.⁵⁹

Missing from each of these approaches is any substantive discussion of one of the most strongly determinative inputs for the success of any personnel-driven institution or pursuit – training and education.⁶⁰ Regardless of the actual method of law enforcement used by a state's

⁵⁸ See Tracey L. Meares, *The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing – and Why it Matters*, 54 Wm. & Mary L. Rev. 1865, for a discussion of the need for a more holistic and accurate policy view of what good policing actually is. Though using differing terminology, she elucidates a mode of policing containing many commonalities with the above defined conception of "responsible policing".

⁵⁹ Common policing methods. **Problem-oriented policing**: public safety diagnostic process focusing on understanding and overcoming community problems, in which institutions other than the police, such as NGOs and citizens, play a central role. It includes the identification of problems in a district through analysis and consultation with citizens, strategic planning to establish priorities and means of action, and assessment to target the impact of action taken and make the necessary changes efficiently. **Reactive Policing**: policing that reacts downstream of criminal activity itself and involves responding to calls and managing crises. **Community policing (street-level)**: Based on the concept of geographical responsibility, this type of street-level community policing emphasizes knowledge through greater proximity and an increased police ability to respond to the needs of the population. **Community policing**: Police model which promotes closer relations and partnerships between the police and the community for more effective prevention of crime and insecurity. **Accessible/Proximity policing**: this police model is primarily based on the idea of an effective partnership between the police and the local community to manage security and ensure order that adheres to the principles of geographical responsibility, decentralization, and territorial organization. **Territorial Policing**: A policing strategy that bases administrative and organizational responsibility in the district or territory, particularly as regards the fight against petty or moderately severe delinquency. From Maurice Chalom et. al., *Urban Safety and Good Governance: The Role of the Police*, United Nations Human Settlements Program (Feb 2001), i-ii.

⁶⁰ See Fruhling, 15-39, for a thorough survey of attempted community policing initiatives in Latin American policing. However, scant attention is paid to training when attempting to identify reasons for success or failure of a

law enforcement agencies, the personnel tasked with actually implementing the given policy must have the requisite capabilities to make the proper impact on crime and violence where it occurs; on the streets of the communities in which they serve. Training and education is a fundamental piece of growing the individual's ability to carry out their tasked responsibilities in such an unpredictable environment. The individual's work environment (co-workers, supervisors, organizational structure, etc.) is also a strong determinant of their effective execution of their duties. The institution itself must also be capable of managing and directing the work of its officers in order for law enforcement to be effective. In this way, the ability of the individual officer and the institution are the strongest determinants of effective law enforcement, but must be understood within their institutional context.

Accountable Policing is policing that respects the basic rights of the individuals in the society that it serves, both the civilian and the suspect. This aspect of policing has emerged as a major piece of law enforcement theory and practice recently, and its growing emphasis has rightly placed it alongside effectiveness as one of the foundational principles of policing in open and democratic societies. Like with methods for police effectiveness, there are many proposed methods and little consensus regarding how to best promote accountability in law enforcement.⁶¹ Furthermore, many of the methods attempted in developed and developing countries have failed to significantly increase police accountability, even where there is institutional will to follow through on such measures.⁶²

Again in this situation, there is little emphasis placed on the centrality of training and education in determining the professionalism of persons faced with uncontrolled and unpredictable situations such as those often faced by law enforcement officers. Regardless of the method chosen to help ensure accountability of law enforcement institutions, law enforcement

given policing program. When training was addressed, it most frequently mentioned in the context of seminars and leadership training for upper-level officers, not intensive training for street-level enforcement activities (ex. 32), or glossed over as if profound changes in officer training and education automatically appear with the selection of a new enforcement strategy (ex. 34).

⁶¹ Some commonly promoted methods of police accountability include the following: internal discipline through departmental codes of conduct and police-administered oversight; external discipline through professionalism provisions promulgated and oversight administered by another branch of government, such as the judiciary or legislature; civilian oversight through public oversight boards, independent arbitrators, or other similar mechanism; and accountability through applicable criminal and civil legal standards. *Handbook on Police Accountability, Oversight, and Integrity*, Criminal Justice Handbook Series, UNODC (2011), 12. See also Meares, at 1867-8, for an overview of the voluminous nature of U.S. law and scholarship on police accountability from a regulatory perspective that is primarily limited to "redressing the illegitimate exercise of power."

⁶² Fruhling, 19.

personnel must have the requisite skills to interact justly, day in and day out, with the citizens of their communities. If this level of professionalism is achieved, accountability is built from the ground up by the individual officer. Like with effectiveness, an individual's accountability is also strongly influenced by the work environment. Institutionally, law enforcement organizations must be capable of promoting and measuring individual officer's accountability. In this way, the ability of the individual officer and the institution itself are the strongest determinants of accountable law enforcement.

In the quest for safer communities through improved law enforcement, Rule of Law actors are uniquely poised to have an immediate and substantial positive impact, for several reasons. First, Rule of Law actors, particularly those already active in law enforcement aid and criminal justice system advising, have much of the needed knowledge and exposure to the current challenges and needs in developing country policing. Second, the major Rule of Law actors have many of the necessary relationships with various national bodies and ministries that oversee policing institutions and policy. Third, and most importantly, Rule of Law actors have developed a unique tool set for increasing the ability of governmental institutions generally (a point that will be returned to in Section V and detailed in Section VI).

VI. Current State Practice in Depth

B. Causes and Drivers of State Practice in Citizen Security and Law Enforcement

1. Home Country Practice

As described in Section III, law enforcement across Latin America is still often characterized by poorly trained, poorly paid, poorly supervised, generally unprofessional policing institutions. In such areas of the world where law enforcement organs are most lacking, they also are some of the most ignored, misunderstood, and even maligned of all governance functions and actors. While the reasons for this marginalization of law enforcement functions are many and varied, several undercurrents stand out.

a. Flaws in Governance and Rule of Law Practice

First, general governance across Latin America is often haunted by the ghosts of illegitimacy, a legacy that lingers from a history of colonialist/imperialist domination. This history of governance as the tool of colonial exploitation and extraction in Latin America still colors the social and political discourse. This exploitative system has often been perpetuated by local power groups that stepped into the vacuum left with the collapse of colonial authorities. Because of this legacy, the state is often viewed by its constituents with skepticism and suspicion, with security apparatuses receiving a lion's share of this mistrust.⁶³ Individual institutions themselves are also often caught in a self-replicating cycle of insularity and exploitation, unable and unwilling to change. This dynamic of distrust and deep-seated hostility also colors many Latin American nations' view on outside influence in national affairs. Outside influence can bring back the shadows of recurring colonial interference, creating mistrust and communication breakdowns that often frustrate possible donor engagement.

A second historical current is the remnants of the Cold War's dynamics throughout Latin America. Fledgling Latin American nations in the midst of their transition and development following their independence found their social and political structures subsumed into the U.S.-Soviet geopolitical struggle. This dynamic, in many respects, locked their governance systems in place with insurgencies fighting central authorities, supported by either the U.S. or Soviet Union, depending on regional and local dynamics. In these situations, and they were numerous, preserving the state's physical security at all costs was often used as the state's justification for its barbarity. This resulted in further damage to the state's credibility in many instances, and in

⁶³ Fruhling, 16.

particular the credibility of tainted security institutions. Internally, this dynamic continues to contribute to mistrust of state institutions and policies associated with security. The Cold War's lingering chill also colors many Latin American state's relations with outside actors, as influence in national policy and practice is also commonly viewed with skepticism based on the past machinations of the U.S. and Soviet Union in the region.

b. Flaws in LEI Structure and Practice

Regarding law enforcement specifically, many modern Latin American police agencies have their roots in the colonial authority's tools of control and oppression. Under colonial rule, and often extended after independence, militarized institutions more akin to a national guard or gendarmerie were responsible for maintaining peace and order, (as described in Section III). The civilian policing revolution, begun in London under the direction of Robert Peele, was neither seen nor heard. These institutions remained the blunt tools of state authority, militarized and politicized organizations unversed in preventative patrolling, investigation, or other policing techniques that are necessary to promoting Citizen Security in today's challenging human environment.⁶⁴

The "Iron Fist" approach has its roots in the authoritarian colonial regimes, where the security services existed to preserve the power and authority of the colonial state controlled by the European political and economic powers (replaced by local powers after independence). Where the "Iron Fist" has dominated, law enforcement institutions generally are limited by the following flaws that undermine their effectiveness and accountability. First, this approach often fails to respect individual rights in any form during, placing the state's use of force to preserve order above all other legitimate governance principles. Second, its emphasis on hierarchy and the primacy of senior officers (rooted in the upper command's need to maintain control over rank-and-file) renders pointless proper training of and autonomy for the line officer; their sole purpose in the state-centric model is the application of force in preservation of the central authority. Third, as highly regimented, militarized institutions, their culture and organization lends them to great institutional inertia when faced with the need to change or innovate.⁶⁵

⁶⁴ See George Withers et. al., *Practice What You Preach: The Separation of Military and Police Roles in the Americas*, Washington Office on Latin America (Nov 2010), 8-14, for a discussion of the historical trends behind Latin America's militarized institutional approach to security.

⁶⁵ Fruhling, 16-17.

These limitations have grave consequences for the effectiveness and accountability of law enforcement institutions in countries with a history of centralized policing institutions and draconian policing practices. Harsh and arbitrary practices contribute to both unaccountable institutions and ineffectiveness. The hierarchical tradition leaves street-level offices, the most important law enforcement actors, without the skills, knowledge, or responsibility to adequately pursue proper law enforcement, adversely impacting their effectiveness.⁶⁶ Institutional inertia presents obvious problems with structural change and cultural transformation often necessary to increase both effectiveness and accountability.

Politicized policing grows out of the revolutionary context present in several Latin American countries. In states where rebel groups, often backed by the Soviet Union, claimed the upper hand, the security forces became the tools of political and social orthodoxy, serving to both demand the adoption of a particular ideology, as well as preserve the authority of the ruling political party and regime. In these situations, a differing set of general limitations plague law enforcement institutions. First, command level (and often even at lower level) control by political actors unversed in law enforcement makes prioritizes political and social control over crime control and prevention. Second, high turnover rates in the upper command undermine institutional cohesion. Third, strong control over rank-and-file officers limits their ability to carry out necessary policing activities, as well as frustrates skill and competency training. Fourth, the prioritization of social and political control results in arrests and detentions of political and social undesirables, and the escalating use of violence in the face of political opposition or resistance.

Such limitations have serious consequences for the effectiveness and accountability of law enforcement institutions in countries with a history of ideologically-driven policing practices. Harsh and arbitrary practices in pursuit of social and political control contribute to both unaccountable institutions and ineffectiveness. The tradition of political control leaves street-level offices, the most important law enforcement actors, without the skills, knowledge, or responsibility to adequately pursue proper law enforcement, adversely impacting effectiveness. These flaws are exacerbated by the lack of command control within the institution, which

⁶⁶ Fruhling, 17.

function without the cohesion necessary to make the structural change and cultural transformation often necessary to increase both effectiveness and accountability.⁶⁷

These institutional progenitors have created several interconnected problems in policy and practice that, while unique to each institution's evolution, produce the same negative impacts. In sum, these flaws leave law enforcement ill-equipped to deal with the complicated and pervasive criminal problems pervasive in these regions.⁶⁸ Without the proper tools and skills, law enforcement in these nations will continue to prove little aid to Citizen Security in their respective communities.

2. Donor Country Practice

a. Prevailing Development Priorities and Approaches in Citizen Security

Because of underlying priorities, Development and Rule of Law theory and practice place little practical emphasis on Citizen Security. Many development and rule of law strategies pay lip service to the need for peace and security, but offer little concrete guidance or programming to improve often dismal security situations in many developing countries. This inattention can be attributed to several factors, chiefly the economic drivers behind development theory and practice and institutional approaches within the field and its security sector competition.

First, prevailing conceptions of development place particular weight on the economic development of a given nation or region. This emphasis arises first from the economic theory behind the major aid and development donors. The history, theory, and practice of the Breton Woods organizations, and the influence of neo-liberal economics in development theory and practice are well established and have been discussed ad nauseum. For the purposes of this discussion, suffice it to say that this theory and approach has left an indelible mark on the focus of many of the leading development actors as they pursue a given economic agenda and seek to

⁶⁷ Both “Iron Fist” and Political policing bear strong similarities in their justification and practice with the political principle of “state of exception” (or state of emergency), in which the threat to the existence of the state itself is so severe as to warrant the abrogation of the rule of law (and consequently the need for accountability) in furtherance of the preservice of the state. See Giorgio Agamben, *State of Exception*, University of Chicago Press (2005). Or rather, in this circumstance, this sovereignty principle defined by Schmitt is a useful theoretical tool to understand the genesis and continuation of draconian or politically motivated security practices in countries like Honduras, Guatemala, and Venezuela. However, it is equally doubtful that such a principle can apply in this circumstance, as a legitimate legal structure must first exist in order to be suspended. Here, it is first likely that such a structure never existed, and second, if it ever did, it is likely abrogated, rather than suspended. See also Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press (1998).

⁶⁸ While the outcomes of Political and “Iron Fist” policing are largely the same, it is important to draw out the structural and cultural differences, as otherwise a coherent capacity development program is impossible for such an institution in the practical implementation process.

improve national economic performance. Furthermore, today's market-driven, results-oriented rule of law and development practice landscape inherently pushes development actors towards legal and institutional programming that directly impact the means and methods of commerce and therefore has measurable outputs and indicators of success.

The effects of these factors, among others, can be seen across the spectrum of development practice. Not surprisingly, this emphasis has resulted in development and rule of law efforts that oftentimes focus on just one of the above pillars of the good governance – economic security.⁶⁹ One need not look far to see the massive and pervasive scale of legal and institutional development and reform in economic law and policy in countries ranging from Guatemala to Nepal.⁷⁰ These effects impact Citizen Security efforts both in that they distract from directed Citizen Security programming, but also oftentimes fail to create the kind of growth and opportunity needed and desired.

Second, the institutional and practice approach of many development actors also frustrates or ignores improvement of Citizen Security in developing countries. From the perspective of NGO practice, there is a habit of viewing the state itself as a monolithic impediment hostile to their stated aims of development (particularly social and political development). This view is especially strong when dealing with security sector actors.⁷¹ Aid delivery strategies and structures, even when attempting to grow home-country capabilities in the Rule of Law or other governance or social area, often are predetermined to create dependencies. This is certainly true of state-administered aid, but also increasingly of NGO practice.⁷² This trend is also highly visible in the security sector, where outside actors create dependencies through direct interdiction and other dependent action.

Both of these trends limit the scope and effectiveness of Citizen Security initiatives. Mistrust and misunderstanding of state organs themselves limits donors' workable implementation partners, as Citizen Security is an area of growth and governance that is uniquely

⁶⁹ See Eade, *Capacity-building: An Approach to People-centred Development*, at 21, for a discussion of Development Aids' history and the priorities that have shaped its theory and practice.

⁷⁰ To be fair, adopting countries themselves were all too ready to accept new means and methods of economic regulation in the form of new law and institutions, either because of a sincere belief that these changes would spur growth and alleviate problems (likely themselves caused by the shortcomings in other core governing functions), or because they came with large funding disbursements integral to the maintenance of government and personal interests.

⁷¹ See Eade, *Capacity-building: An Approach to People-centred Development*, at 20.

⁷² This is certainly true of state-administered aid, but also increasingly of NGO practice. See Deborah Eade, *Capacity building: who builds whose capacity?*, *Development in Practice* Volume 17, Issue 4-5, 2007, 630-639.

within the state's responsibility and therefore requires the state's full involvement. Home-country dependency in Citizen Security is also devastating for long-term stability, as only through in-country growth and improvement can Citizen Security be adequately developed.

Third, militarized law enforcement aid stems from the confrontational postures of the Cold War era and U.S. domestic politics surrounding narcotics. The outcomes from such efforts are mixed. In the short term, joint operations help developing countries counter organized crime through investigation and interdiction operations for which they might not otherwise have the capacity.⁷³ Upgraded equipment and military-style training can be useful if directed properly. In the negative, direct action can increase political friction and resistance to outsider activity, limiting donor ability to affect positive change.⁷⁴ Direct militarized assistance in the form of materiel and training also often contribute to waste or misuse. Addressing the U.S.-Mexico efforts detailed above, such spending has produced little impact on the price of drugs in the U.S. the amounts being transported into the country, or crime levels in Mexico. Most importantly, such aid is only a short-term stop-gap that merely covers up the deeper law enforcement issues and fails to build host-country capacity.

b. Prevailing Development Tools and Methods

Linked with, but not dependent on the theories and priorities which drive development work, are the tools and practices through which development actors attempt to implement their theories and priorities. Similar to the currents detailed above in development theory and priorities, the practice of development work itself has certain defining characteristics, and has undergone changes (and will continue to change). In the Citizen Security sector, development practice is often characterized by several shortcomings detailed in Section III. Chiefly these include heavy input to traditionally legal sector criminal justice actors, overemphasis on accountability and structural change, overreliance on best practices manuals, and inadequate training support.

Rule of Law work in traditional criminal justice institutions is often undertaken in order to improve Citizen Security. These efforts certainly are necessary to the proper function of the criminal justice system, and contribute to its goal of administering justice and promoting peace.

⁷³ See Charlie Savage, *D.E.A. Squads Extend Reach of Drug War*, New York Times (6 Nov 2011), detailing in-country interdiction efforts in Honduras.

⁷⁴ See Mattathias Schwartz, *A Mission Gone Wrong*, 6 Jan 2014, detailing a failed raid involving D.E.A. operatives that resulted in civilian injuries and deaths and significant backlash both in Honduras and in Washington, D.C.

However, any improvement of the courts or other attached institutions is vulnerable to frustration if and when the first step of the criminal justice fails to function; law enforcement. When law enforcement remains the weak link in the justice system, it contributes to long-term waste and frustration of legitimate Rule of Law goals in criminal justice.

Second, there is an emphasis on accountability and structural change in developing country law enforcement agencies, which has two interconnected roots. This is due in part to the real need for increased accountability on the ground, as police in many developing countries are often corrupt and abusive. This emphasis is also attributable to the preconceptions about police accountability that Rule of Law actors carry with them from their own experience in developed countries, where police are generally adequately trained and supervised for effectiveness, but not accountability. It is telling that much of the developed country legal perspective on policing is consumed entirely with accountability, and not effectiveness.⁷⁵

These undercurrents manifest themselves in legalistic accountability reforms as described in Section III. While often needed, such accountability programs generally fail in developing country policing institutions for two interconnected reasons. First, these institutions often simply lack the capacity to implement or adhere to any sort of accountability programming, let along the challenges of complicated, administratively rigorous compliance programs.⁷⁶ Second, legalistic, top-down accountability programming is itself highly suspect. Such reforms have not worked

⁷⁵ See Meares, at 1869-70, discussing contemporary North American scholarship on police accountability as taking the view that police are, at best, “a necessary evil as opposed to a welcome utility or potentially critical mechanism for empowering communities in democratic terms...In this world the ideal is always less policing.” This approach, when applied to developing nations struggling with crime problems, is particularly damaging, as what is needed is more and better policing, not less policing further constrained by stringent legal frameworks. Particularly telling, she points out that,

“the lawfulness discussion proceeds as if police effectiveness is not only irrelevant but almost an anathema when it comes time to evaluate police. The party line here is that police adherence to strict dictates that constrain their discretion always results in more liberty for individuals, and the higher levels of crime that we might experience as a result of less policing is simply a price we pay for more freedom in society (citing Tracey L. Meares & Dan M. Kahan, *When Rights Are Wrong: The Paradox of Unwanted Rights*, in *Urgent Times: Policing and Rights in Inner-City Communities 3* (Joshua Cohen & Joel Rogers eds., 1999). What this view ignores is that crime and predation among individuals can and does result in significantly less freedom for residents of high crime communities. Residents of high crime communities, for example, could and *1875 often do see higher levels of policing as a way to achieve freedom as opposed to a way to limit it (citing Tracey L. Meares & Dan M. Kahan, *Law and (Norms of) Order in the Inner City*, 32 *Law & Soc’y Rev.* 805, 830-32 (1998)).

⁷⁶ Structural initiatives to increase accountability are often useless in many developing countries, as the institutional infrastructure and integrity needed to make such programs function properly is underdeveloped or non-existent. See Cynthia Alkon, *The Flawed U.S. Approach to Rule of Law Development*, 117 *Penn St. L. Rev.* 797 (2013), “The key flaw to the United States’ approach to rule of law development is routinely including the ‘standard menu’ of rule of law development assistance as a part of the overall development effort without regard to whether the recipient country is at a developmental stage where it is able to absorb some or all of this type of aid.”

particularly well in developed countries, where accountability is still a major need. More importantly, such accountability reforms do nothing to address the underlying problem; a lack of practical law enforcement capacity. While accountability is a worthy goal, and features prominently in this analysis as well, there is little point in promoting an accountable police force that still fails to achieve its primary purpose of law enforcement.

The accountability discussion leads us to a third flaw in law enforcement advising. Often, accountability programming, and support for policing in general, is dependent on so-called “Best Practices” manuals and materials.⁷⁷ Based on these materials, the suggested means and methods of police reform call for complicated schemes of cutting-edge policing practices, incorporation of cross-cutting themes that even developed nation police institutions struggle to address, and in-depth classroom instruction in human rights coupled with stringent procedural and legal checks based on prevailing human rights standards.⁷⁸ Missing from such approaches is any substantive guidance on how to actually achieve any of the mentioned needs in practice.⁷⁹

Fourth is the approach take to training that, if and when it is used in developing country law enforcement programming, generally consists of short, seminar-based training courses and workshops. These approaches, while effective for teaching certain technical skills to public service personnel in a variety of narrow fields, simply cannot provide the kind of in-depth and sustained input needed for law enforcement capacity development. While such training is important, it often glosses over the more fundamental issues with the primary enforcement

⁷⁷ See, for example, the plethora of UNODC and UNOHCHR materials on police oversight and accountability.

⁷⁸ Experience with attempted police reforms over the last two decades in developed countries often shows limited, or even negligible, increases in police accountability even after comprehensive plans for oversight and accountability mechanisms. Rather, there is a small but growing body of thought that the most (and likely only) effective way to sustainably increase the accountability of law enforcement institutions is through proper intensive professional training and adequate follow-up through continuing education. David H Bayley, *Law enforcement and the rule of law: Is there a trade-off?* 11/1/02 *Criminology & Pub. Pol’y* 133.

⁷⁹ Likewise, what little input that exists regarding law enforcement capacity development pays scant attention to training and professional development. See Chalom et. al., at 10, for an example of an overly technical, theory level public security plan that advocates implementing complicated and cutting edge policing strategies and tactics, but only briefly mentions the massive training needs associated with such an audacious program. Such a flaw in design and implementation is evident in Guatemala’s attempted incorporation of community policing into its law enforcement framework, see Fruhling, at 29. See also Allan Kaplan, *Capacity building: Shifting the paradigms of practice*, *Development in Practice*, Vol. 10 Issue 3-4 (2000), 517-526, for a critique of development practice’s focus on the material and tangible aspects of organizational development, particularly the directly measurable indicators of assistance programming and the heavy reliance on training manuals and best-practices materials. See also Dani Rodrik, *Institutions for High-Quality Growth: What they Are and How to Acquire them*, 35 *Studies in Comparative Int’l Development* 3 (2000), 3, for a discussion on well-designed strategies for institution building that take into account local knowledge and do not over-emphasize best practice blueprints observed in developed countries at the expense of local participation and experimentation. These trends and concepts will be discussed further in Section V(B) and VI.

institutions that should be dealing with these issues, traditional law enforcement. Here, the Rule of Law field stumbles into an attempt to apply an advising strategy to a new challenge without fully determining the situation's underlying needs. As a result, these courses have a limited ability to increase the desired participant skills and tools.⁸⁰

c. Re-appraisal of Development Priorities and Practices

In reacting to many of the above issues, scholarly and practitioner self-assessment has attempted to redefine what constitutes development over the balance of the last two decades, as well as what methods are best suited to achieving those ends. Responding to apparent failures of prevailing aid models, theoreticians and practitioners have refocused their efforts. They have emphasized not only legal frameworks and market liberalization, but have also focused on the accompanying social and political factors that are inextricably linked to development. These efforts have attempted a more holistic definition of development, from including a more inclusive set of economic indicators to looking at human development in total.⁸¹ In practice, this shift has also fostered a deeper understanding of the need for intervention not only in legal codes and frameworks, but also in the institutions and the society within which they exist. For the purposes of this study, this attempt to redefine development will be viewed as an attempt to re-emphasize the social and political aspects of good governance seemingly forgotten in the first attempts to reform the legal structures that promote economic stability.⁸² These efforts are well intentioned, and represent a more coherent and holistic approach to development.

In large part this shift has been an evidence-based reappraisal that flows from the clear failures of previous economic and legal reform efforts. In many cases, these failures were due to institutional shortcomings on the part of the state. In an attempt to help remedy these issues, development actors have sought to examine the institutional needs of various developing country implementing agencies and propose methods to increase their levels of effective functionality.

⁸⁰ Sue Kenny and Mathew Clarke, Eds., *Challenging Capacity Building: Comparative Perspectives*, (2010), 14, describing the prevailing use of short term passive knowledge-based learning rather than active skill-building learning in training approaches for development.

⁸¹ While this effort to redefine development is well intentioned, it is fundamentally an attempt to draw the other core aspects of good governance besides economic security into what defines development. While a discussion of the wisdom and validity of drawing good governance principles into the discussion of what constitutes development is interesting and compelling, it is outside the scope of this study.

⁸² Amartya Sen elucidates what can be termed the "Capabilities Approach" to development: development measured by quality of life, human development in total, where such things as expansion of goods and services, increase in utilities, and meeting basic needs are not the aims of development, but mere measuring sticks. See Deborah Eade, *Capacity-building: An Approach to People-centred Development*, Oxfam 2005, at 16.

This need, within development theory and practice, has seen the revival of an approach that was once quite in vogue before falling out of favor more recently; Capacity Development.

B. Capacity Development: the Future of State Practice in Law Enforcement

Within the development world, Capacity Development, alternately known as capacity building, has had a long and tortured history. Beginning in the late 1980's, amoebic development theories of many stripes took on the mantle of Capacity Development to describe their methods and goals. However, no firm understanding of what this concept actually meant was readily available, which resulted in a protean mess of development theory and practice. "Capacity Building," by the mid-1990's, had come to be the latest meaningless buzzword used by many donors to describe their supposedly enlightened and progressive aid strategies.⁸³ Interest in Capacity Development, which had subsided in the late 1990's as aid actors grew tired of the undefined and seemingly useless concept, again grew in the mid-2000's. Development actors, realizing that institutional ineptitude remained one of the most significant blocks to economic and overall development, needed a means to help remedy such issues.⁸⁴ Little by little, from this morass emerged more hardened understandings of what Capacity Development was, and how it fit into the practice of International Aid and Development.⁸⁵

One conception of capacity development, promoted chiefly by civil society NGO's, stresses the education and enabling of individuals and non-governmental entities to advocate for

⁸³ See Eade, *Capacity-building: An Approach to People-centred Development*, 15. The author describes the major trends in Capacity Development practice and theory as it relates to Development 1980-2000, and attempts to offer a more precise, thorough, and actionable conception of what Capacity Development is in theory and practice. The author includes theoretically sound and practically useful conceptions of Capacity Development, quoting Marshall Wolfe, *Elusive Development*, Zed Books 1996, at 40, stating that the, "Roots of capacity development in general development theory... promotes the increase of individual and societal skills and competencies: he describes it as "...a capacitating" operation [which] does not try so much to define or control the future as to establish present conditions or capacities which will permit a given society to meet its problems... The emphasis in such an approach is not on setting future appropriate output targets but on diagnosing the current weaknesses and potentials and finding appropriate policies..."

⁸⁴ *Donor Support for Institutional Capacity Development in Environment: Lessons Learned*, OECD Development Assistance Committee (2006), 39.

⁸⁵ It is also useful to define what Capacity Development is *not*. Capacity Development, from a training perspective, is *not* the prevalent one-off workshop based approach that is mostly useless (see Eade, *Capacity-building: An Approach to People-centred Development*, 31), or a tool to create aid dependencies for donor country exploitation (id., 32). Nor is it Eade's proffered vision – Capacity Development is, according to Eade, "Strengthening people's capacity to determine their own values and priorities, and to organize themselves to act on these [as] the basis of development." This author strongly disagrees with this conception of Capacity Development, which seems prevalent with many socially-minded NGOs. First, it is flawed because the definition is itself circular and therefore fails a basic test of intellectual rigor. Second, it is flawed because the stated goal is an impossible (and likely unethical) target for any actor that does not arise from within the society that seeks growth or change. Third, this conception continues the trend of overly broad, poorly defined conceptions of development. Fourth, it continues to sideline the state, an integral player in development, from the process.

social and economic change and growth. Capacity development, in this form, stems in part from the writings of development thinker and practitioner Allan Kaplan, active in several socially-minded NGOs beginning in the late 1980's.⁸⁶ The other conception applies to more general structural efficiency within existing organizations, and usually government or governance institutions. This conception, growing out of the practice of more state-centered aid programs, is promoted most strongly by the more institutional aid actors like development banks and national development agencies.⁸⁷ In this situation, both approaches to capacity development are applicable and needed.

An organizational and personnel approach to increasing institutional capacity is essentially to increasing the effectiveness of developing country law enforcement organizations. A personnel centered approach is integral because effective policing is almost wholly dependent on the individual skills and capacities of the officers enforcing the law and promoting security in the community on a daily basis. An organizational approach is also necessary, as the structure, culture, and integrity of an institution directly impacts the individual's ability to carry out their obligations and fulfil their responsibilities. Without these inputs, any desired improvement in policing performance and public safety will remain frustrated.

It is worth emphasizing the need for significant investment in personnel training and skill building in the context of law enforcement institutional development. Law enforcement, by its nature, is an intensely personnel dependent governance function, placing massive responsibility and expectations on individual police officers. Faced with workplace demands that are varied beyond measure, and with very little immediate support or supervision, officers are tasked with making instantaneous decisions based on limited information that can significantly alter or even end the lives of involved persons and themselves. In such situations, proper training and support of individual competency is the only way for the institution to directly influence the officer's day to day professional performance.

This reality has far reaching consequences for both effectiveness and accountability. The effectiveness link is obvious, as without the proper skills and structural support, police forces are

⁸⁶ Jan Ubels, et al., eds., *Capacity Development in Practice*, Earthscan (Sept 2010), detailing Kaplan's conception of Capacity Development comprised of the elements of context/conceptual framework, vision, strategy, culture, structure, skills, and resources.

⁸⁷ Ubels, et al., 18-20, describing the ECDPM approach to capacity building as an institutional model based on the organization's ability to carry through on its core capabilities of self-organization, results generation, relation (i.e. political interaction), adaption and growth, and coherence (i.e. unity of purpose and function). See example, *Capacity Assessment and Capacity Development Tool Kit*, Asian Development Bank, 2008.

relegated to ineptitude at best. Regarding accountability, emerging research from developed countries indicates that the possibly the only way to truly increase accountability is to (1) give officers the skills, tools and associated protocols to do the job properly within the bounds of the law in the first place, and (2) positively reinforce proper conduct while adequately remedying breaches of professionalism.⁸⁸ Without significant investment in, first and foremost, officer training and education, and second, in their institutional support structure, law enforcement effectiveness and accountability cannot be increased.⁸⁹

⁸⁸ Recently, there have been studies, particularly in the US and Canada, that seek to understand why structural reforms have not helped improve police accountability, and the worthwhile ones point to a lack of training and education to accompany the increased oversight.

⁸⁹ The need for intensive personnel training is further fortified by the evidence of an overwhelming number of failed Citizen Security programs involving police reform and reorganization across the global South. Some notable examples include the failure of community policing programs in SA because of inadequate training (see Holme at 181), a largely ineffective CIVPOL mission in Croatia featured minimal personnel development to support massive structural and strategic shifts that limited to seminar style training of upper level officers (see Holme at 147), and an anemic UN mission for Palestinian policing that established no training component whatsoever, though the entire mission aimed to create a new professional policing institution from the ground up (see Holme at 163).

VII. A Practical Framework for Law Enforcement Capacity Development

Drawing on the conceptual frameworks offered by the major approaches to capacity development, this paper offers a similar framework tailored for use by law enforcement institutions. It consists of three “levels” of intervention; strategic capacity development, systemic capacity development, and personnel capacity development. The core concern of each level can be summarized as follows. The strategic level concerns itself with the ability of the overall governance framework to choose the law enforcement approach to help ensure peace and security. The systemic level concerns itself with the proper institutional structure necessary to help the individual officer responsibly carry out day to day law enforcement practice. The personnel level concerns itself with the preparation of individual officers for responsible day to day law enforcement practice.

One could criticize this three-pronged approach to institutional development, as it might appear that some of the higher-level aspects of institutional function from the Kaplan or ECDPM conceptual frameworks are missing. On the one hand this criticism is true, as facets like context/conceptual framework and vision from Kaplan, and coherence from the ECDPM, seem to be missing. However, this lack is not an oversight. Rather, it is a recognition of the fact that these institutional aspects generally are inherently a part of or even dictated by the mission and nature of law enforcement.⁹⁰

A. Strategic Capacity Development

Strategic capacity development is an integral aspect of current theory and practice, precisely because strategic capacity is a determinative factor in overall organizational strength and effectiveness. For the purposes of this discussion, the areas of strategic capacity most important for law enforcement institutions are as follows: the Citizen Security assessment, to determine community needs in safety and security; law enforcement policy selection, to

⁹⁰ Regarding context and conceptual framework, policing fulfills a certain niche of governance that generally is common across countries and carries certain contextual responsibilities; namely, countering criminal activity and preserving peace. Regarding coherence, the above described mission gives policing organizations their coherence, at least conceptually (incompetence and corruption can destroy that unity of purpose, but those are problems of a lower ontological level than institutional coherence). Furthermore, it is this author’s conviction that discussions of such issues are a uniquely indigenous function of community social discourse at the national, regional, and local level, and that outside actors have no business attempting to supplant or shape this dialogue (here about the role and function of police in their communities). It is possible that aid and development actors have a role to play in facilitating that dialogue where it might be stymied or anemic, yet even those efforts are fraught with socially and morally dangerous spring-traps.

determine what policing methods are necessary to address the defined needs; and policy translation, to properly facilitate the implementation of the chose methods.

In this area, Rule of Law practitioners have a wealth of tools and experience in needs assessment, program design, and implementation. In many countries suffering from criminal Citizen Security crises, national, regional, and local communities struggle to adequately exercise this policy discourse. While the end goal is to promote such capability with home country communities and political systems, it is possible for outside actors to play a constructive role in this phase of institutional capacity development.⁹¹ Specifically dealing with the strategic capacity of law enforcement, Rule of Law actors would do well to incorporate the following aspects into their assessment, policy discussion, and implementation practices in Citizen Security.

First, regarding assessments, there is little data currently available on criminal insecurity in many developing countries, and in particular, in Latin America. Thus, in-depth data collection and analysis is integral to any coherent program planning for Citizen Security initiatives. Second, Rule of Law actors, when determining an applicable law enforcement method, would be well served to consult both academic experts in criminal justice, as well as law enforcement practitioners from developed and developing countries with successful policing programs. Often, in policing reforms in developed countries, policy drivers fail to incorporate know-how, knowledge, and professional judgment from within law enforcement institutions, and therefore hamstring their efforts from the very beginnings of the design phase.⁹² In the translational or implementation portion of strategic capacity, it is absolutely necessary to create structures and mechanisms that continue to build lower level capacities far beyond the end of the project. These efforts will largely be described in the following discussions of the systemic and personnel needs of law enforcement institution capacity building. In all three phases, Rule of Law actors must also be mindful of conducting this process in a way that, in every possible way, incorporates

⁹¹ It is here assumed that industry best practices in strategic planning and practice are not only well understood, but also would be adhered to in a Citizen Security context. Therefore, the particulars of industry best practice in these contexts will not be addressed. There are a plethora of helpful tools to facilitate the practice of institutional capacity development, for example, materials from the Learning Network on Capacity Development, ex., *How to assess existing capacity and define capacity needs*, [Learning Package on Capacity Development](http://www.lencd.org/learning/howto-assessneeds), <http://www.lencd.org/learning/howto-assessneeds>, and, *Institutional Assessment and Capacity Development : Why, What and How?* Office for Official Publications of the European Communities (2007).

⁹² This oversight can frustrate a project in a number of ways, including a lack of buy-in from the institution being molded to selection of a policing strategy unfit for a given Citizen Security situation.

home country actors, in the hopes that their involvement will help grow their policy and implementation abilities.⁹³

B. Systemic Capacity Development

Systemic capacity development is also an integral aspect of current theory and practice, as it too is a strong determinate in overall organizational strength and effectiveness. While this aspect of institutional development is in part dictated by the findings and choices of the above defined strategic process, there are some constants that are important aspects of structural adjustment in the law enforcement context. Again, Rule of Law actors have a wealth of tools and experience in interacting with and influencing institutional frameworks and operations.⁹⁴ For the purposes of this discussion, the areas of systemic capacity most important for law enforcement institutions are as follows: the institutional framework, comprised of the regulatory and organizational infrastructure setting the bounds of the institution's daily operations (or, command and control); institutional advancement systems, comprised of the means and methods of personnel assessment and promotion; and institutional integrity systems (personnel conduct and discipline). Specifically dealing with the systemic capacity of law enforcement institutions, Rule of Law actors need to address the following factors, among others, when working with structural adjustments in Citizen Security.

First, regarding institutional frameworks, it is necessary to promote the devolution of measured amounts of responsibility and autonomy away from centralized structures and to lower levels of command, and even the individual officer. While the exact nature of this transfer must be determined by each communities' needs, a common theme across Latin American law enforcement is hyper-centralization rooted in a militarized institutional past. Unless this changes, lower level officers will continue to lack the ability to take actions necessary to adequately enforce the law and work within their communities.⁹⁵ Another common difficulty that must be addressed, are institutional advancement patterns common to most Latin American policing institutions. Based most often on political expediency and corruption, police forces would benefit significantly from regularized, merit based promotions practices. Lastly, Rule of Law

⁹³ However, this should not be the main goal, as creating and implementing an improved Citizen Security apparatus is the main goal. Massive input already has been and continues to be put into improving the policy structure and abilities of developing countries, often with little impact.

⁹⁴ It is again assumed that industry best practices in structural change and strengthening are not only well understood, but also would be adhered to in a Citizen Security context. Therefore, the particulars of industry best practice in these contexts will not be addressed.

⁹⁵ A common fear in such situations is unaccountability and corruption. Accountability is dealt with next.

practitioners active in Citizen Security would do well to learn from the largely ineffective integrity reforms in developed country policing, and work with police officers and administration to determine constructive conduct and discipline structures, rather than view these important stakeholders as enemies. Without a constructive structure for accountability that both promotes proper conduct and remediates improper conduct that has buy-in from the institution it seeks to regulate, accountability programming is doomed to failure. These suggestions tie directly into the most important aspect of capacity building for law enforcement institutions – personnel capacity.

C. Personnel Capacity Development

Turning now to personnel capacity development, institutional development efforts are faced with the least understood, least studied, least implemented and likely most difficult of all development efforts. That is precisely because such efforts are the most complicated, as they seek out, interact, and intervene directly with human persons as individuals, and there are few pursuits as or more complicated than that in this world. But it is precisely this endeavor that is missing from much of the Capacity Development discourse. What is missing is a concrete discussion of how to best increase the skills and capabilities of the institution’s personnel, as individuals.⁹⁶ This shortcoming is particularly damaging in the law enforcement sphere, as much of the needed capacity in policing institutions is held by the individual officer, not the structures or strategies that direct him or her.

Luckily, certain Rule of Law actors have tools and experience in building individual capacity, and can further fortify this base with further rule of law inquiry as well as with input from outside the field. For the purposes of this discussion, the areas of personnel capacity most important for law enforcement institutions are as follows: personnel selection, comprised of the means and methods of personnel recruitment; personnel training, comprised of the means and methods by which entering personnel are given the skills and competencies required by their duties; and professional education, comprised of the means and methods by which the skills and competencies of employed personnel are maintained, expanded and improved. Specifically dealing with personnel capacity of enforcement institutions, Rule of Law actors need to address

⁹⁶ This seems to be a knowledge and research gap not only in the development field, but in studies of professional institutions and organizations in general, judging from the applicable materials available on organizational function and behavior generally. While “training of trainers” has emerged as a popular tool for individual capacity development, its effectiveness has not been affirmatively demonstrated.

the following factors and employ the following techniques, among others, when working with personnel improvement in Citizen Security.

2. Selection

Personnel selection, even amongst developed country law enforcement agencies, is often an overlooked determinant of institution building and maintenance. Unless an organization can find personnel with adequate drive and qualifications, there is a lower likelihood that its constituent personnel will be able to internalize training and education to then positively contribute to the organization's activities and mission. Some important factors in selection of police personnel can be drawn from good practices used by, not surprisingly, more effective law enforcement agencies in both developed and developing countries. These include appropriately targeted recruitment strategies,⁹⁷ adequate background checks, recruitment and training visits with candidate families and community members,⁹⁸ and appropriate aptitude testing.

3. Training

Training and education, because of its importance to responsible law enforcement, is largely the centerpiece of this inquiry. To focus the discussion, it is useful to turn to what little literature exists for training skill-based professionals in peace and security operations. In English language sources, one of the main institutions that has poured resources and research into skill-based training is the U.S. military. Like with much of the strategic planning and logical framework tools now ubiquitous in Rule of Law and Development practice, this legacy of in-depth, skill-based adult education can be adopted and adapted to fit the needs of development actors in the Citizen Security sector.

First pioneered in U.S. military training, capacity development practitioners would do well to adopt and adapt the following tried and true pedagogical methods of adult education developed during long-running training analysis and design begun in the early days of WWII.⁹⁹ For whatever criticisms one might have of the U.S. military (which are likely better directed at a particular political regime rather than the rank and file), it is undeniable that it is able to, in a short period of time, train its personnel to be reliably proficient in a wide range of skill-based competencies. Often, the same soldier, sailor, airman, or marine is rapidly trained to be not only

⁹⁷ *Protect and Serve?*, 17-18.

⁹⁸ *Id.*

⁹⁹ This study does not mean to say that the U.S. military holds any sort of monopoly on this theory or practice of training and education. Rather, it is the major practitioner of this variety of training approach that has any foothold in English language sources on capacity development and training.

competent, but professionally capable, in skills ranging from flight control, to fire-fighting, to first aid, to hand-to-hand combat. Furthermore, training programs then grow the participant's ability to exercise judgment, measuring when to apply which skill and to what ends. It is a versatile and adaptable approach well suited to personnel capacity development in general. It is particularly applicable in the quest for better policing, as an adaptable proficiency-building approach is indispensable when attempting to give officers the tools necessary for a wide range of responsibilities and tasks.

This educational methodology has at its core the following four facets. First is instruction of participants, to illustrate the basic practical principles that underpin the skills. Second is skill demonstration to participants, to allow them to closely observe the application of the practical principles that they have already learned intellectually. Third is application or practice by participants, the step which allows them to internalize the actual skill itself. Fourth is evaluation of participants' acquisition and retention of the hoped-for skills. To create such an educational program, another process is needed, and one in which rule of law practitioners have a wealth of experience; the project implementation process. While this process needs little elaboration here, its basics as applied to law enforcement consist of; (1) a capabilities needs analysis, (2) education program design, (3) education program implementation and finally, (4) education program evaluation.¹⁰⁰

Clearly, the substance of each plan would differ in its implementation, and this question of composition would be determined in practice by the needs determined in the Citizen Security

¹⁰⁰ See generally, Larry Gene Nicholson, *Instructor Development Training: A Guide for Security and Law Enforcement*, Butterworth-Heinemann, (Boston 1997). His approach, and most adult-learning tools, key into what this author considers a fundamental truth about human persons; that in an educational sense (and even more broadly), we are experiential learners, first and foremost. Only by using education and training techniques that give proper attention to this facet of our nature can we hope grow ourselves and the persons we expect to perform professionally to be more proficient at a given occupation. This is particularly true in situations where an occupation requires a majority of practical application of skills and tools, supported by the knowledge underpinning those skills and tools, not the other way around. To illustrate, a police officer, in order to carry out an effective, accountable search and seizure, does not need to know the thousands of volumes of case law and statute governing that interaction because, (1) he or she is not processing that information in real time to guide his or her actions, and (2) that amount and variety of information cannot create a guide for proper action applicable across situations. Rather, an effective, accountable search and seizure process is a skill that an officer can master in its basic form, *with* the proper constitutional or human rights components already present in the skill approach. Basic knowledge then can *support* the learned and perfected skill as a way to reinforce the necessity of using the skill properly, as well as helping the officer to adapt the skill to fit varied practical situations. Drawn from 2nd District Commander Tom Stacho, *Interview*, Cleveland Police Department (7 October 2014), and Special Agent (Ret.) Joseph Metallo, *Interview*, U.S. Drug Enforcement Agency (15 April 2014). Academics in criminal justice and governance are almost singularly unable to understand this dynamic, not because they lack the ability, but because this approach is so foreign to their inherently cerebral academic and professional approach and world view. See Meares, at 1870-1.

assessment.¹⁰¹ However, the pedagogical methodologies of these plans are necessary to training and educating personnel in skill-based professions, and share common features associated with certain modes of rule of law practice currently used in the capacity development area. It is in this application that rule of law practitioners and capacity development experts could and should play an integral role in growing law enforcement capacity in developing countries.

4. Continuing Education

Ongoing training is the third piece of a successful institutional capacity development training program. Continuing training throughout a professional's career is integral to their ability to adapt to new challenges, learn new skills, and improve existing competencies. Such professional education is particularly important for law enforcement officers, as their roles and responsibilities vary drastically as community Citizen Security needs evolve. It is not enough to re-tool cadet training and education in the face of such changes; serving officers and leadership also need to adapt their practice and learn new skills to deal with these contingencies.

Again, the methods used to carry out an LEO professional education training program must have the same characteristics as those defined for initial training. While training can be less time and resource intensive for some skills in this situation (such as those needed for promotion and leadership), many require the same investment and approach as in cadet training. This is particularly true when LEOs must acquire new competencies and skills to deal with evolving Citizen Security needs. In sum, like all training needs, each needed skill or competency will have its own training and education requirements for the successful transmittance of those pedagogical goals to the individual officer.

Another aspect of continuing education that is invaluable to personnel training in law enforcement is peer-to-peer learning. Valuable for professional development in general, peer-to-peer learning remains invaluable for all forms of officer professional development. Regarding leadership training, leadership development oftentimes is dependent on "tribal" knowledge and experience that cannot be effectively taught using methodologies useful for acquiring knowledge or even skill based competencies.¹⁰² Specifically, such peer-to-peer learning for leadership is

¹⁰¹ See Jefferson Marquis et. al., *Developing an Army Strategy for Building Partner Capacity for Stability Operations*, RAND Corporation (27 May, 2010), discussing U.S. Department of Defense capacity development efforts in stabilization operations in fragile states recommending a better balance of methods and means tailored to each country's needs, particularly in training new members of the home country's security services.

¹⁰² See Tricia Browne-Ferrigno and Rodney Muth, *Leadership Mentoring in Clinical Practice: Role Socialization, Professional Development, and Capacity Building*, Vol. 40 Edu. Admin. Q'rly No. 4 (Oct 2004), 468-494. This

most effective when conducted in a practice-based learning environment, where trainees work in conjunction with mentors to gain experience and guidance on real-time competency in a given circumstance or situation.¹⁰³ While most often used in a continuing education role, this mode of instruction is also helpful in general practical education programs.

D. Personnel Capacity Development as a Building Block of Institutional Efficacy

The need for effective training programs is directly supported by law enforcement failures and successes across the development spectrum. As experience in El Salvador shows, the effective pieces of the new police force are the divisions and units that went through the new updated training courses after the foundation of the current academy.¹⁰⁴ Chile, which has shown a dedication to innovation and growth in police training, has the highest public perception of its police forces, and some of the lowest urban crime rates in the Americas.¹⁰⁵ Successful internally driven retraining of over 1,000 police officers in Bogota contributed to an almost immediate decrease in street crime.¹⁰⁶ Proper initial and continuing education also contributes to the morale of a police force, and has inherent bonuses for accountability as well.¹⁰⁷

Regarding accountability, developing country law enforcement would do well to learn from the many failures in accountability programming in developed countries. As have been described above, legalistic, oversight dependent accountability regimes do little to increase accountability. Instead of creating a more open and effective police force, these approaches treat the police as an enemy, rather than as a partner, in the quest for public security. This mindset results in the following damaging outcomes. First, it reinforces institutional insularity within the

paper, “provides perspectives on the benefits of mentoring through clinical practice preparation programs... through models and programs in which aspiring [administrators] can gain authentic administrative work experience guided by mentors...” and also discusses, “...the critical importance of practice and administrative mentoring in... initial and continuing preparation.”

¹⁰³ Id.

¹⁰⁴ Stanley, at 119, 121. Even so, little practical, hands on training is given, with new officers reporting that they feel incompetent in the skills needed to actually do the job, learning most of what they need in the field after graduation.

¹⁰⁵ Fruhling, 31.

¹⁰⁶ Fruhling, 33. See also, María Gabriela Córdova, *Panama: New security strategy seeks to reduce homicides*, Infosurhoy.com (30 Aug 2013), detailing Panama’s training-based plan to reduce violent crimes like assault and homicide.

¹⁰⁷ Referencing Commander Tom Stacho, *Interview*, Cleveland Police Department 2nd District (7 October 2014). See also Bayley, discussing police training and accountability;

“One possibility would be to broaden the approach to the teaching of law and ethics to police recruits. In addition to instructing them in the requirements of due process and the value of the rule-of-law in democratic societies, they would be presented with the utilitarian arguments [about the benefits of being both effective and accountable at the same time]. In effect, the tradeoff problem would be met head on with police officers at the very beginning of their careers.”

rank and file, pushing unprofessional conduct further underground. Rather than preventing such conduct, it actually makes it more difficult to counter. Second, these approaches fail to create a climate where officers and the community in proactive crime investigation and prevention activities, further damaging both the relationship and the overall Citizen Security situation. Third, such accountability programs add further layers of bureaucracy and process, further damaging institutional efficiency and effectiveness, and increasing overhead costs in already cash-strapped organizations.

Rather, a well-designed systemic and personnel capacity building program can give a policing institution the tools to constructively promote accountable police practice and effectively remedy malfeasance. In the positive, a well formulated personnel capacity development program would train officers in law enforcement skills and principles that already incorporated, as part of their design and practice, the relevant standards of professionalism. Adequate follow-up in both professional development training as well as in the systemic rubrics for evaluation and promotion then incentivize proper conduct using the already learned skills and competencies. This approach builds individual ownership, responsibility, and involvement in accountability, and thereby grows the culture of accountability in the LEI at large. In the negative, LEIs still need proper oversight and independent review of identified misconduct, but that should be considered the last line of defense, not the first.¹⁰⁸

¹⁰⁸ See Bayley,

“The more effective strategy, then, for changing the mindset of police officers is to convince the leaders of police agencies that violating the rule-of-law is not a sound law enforcement strategy, so that they will then be emboldened to change the moral tone, disciplinary mechanisms, management priorities, and career incentives within the organization. Research has shown time and again that organizations are...powerful determinants of the behavior of people within them [citations omitted].”

See also, Meares, at 1880-1;

“The fundamental problem with evaluating police conduct solely with respect to lawfulness is that the law has no capacity, or very little capacity, as it is written today to tell police how to arrest or stop someone in a way that will tend to support police legitimacy (citing William J. Stuntz, *Local Policing After the Terror*, 111 *Yale L.J.* 2137 (2002), 2141). More than this, police rarely are trained in norms that would support this disposition. Instead, rookie police officers spend literally hours and hours reading law to learn when they are legally allowed to stop, arrest, and search [citing a previous W&M police survey]. They are not correspondingly trained about how to conduct themselves so as to create and maintain their legitimacy in the community. The consequence is plain: any attempted strategy to both describe and remedy a problem that exists in multiple dimensions will fail if the proposed strategy is unidimensional.”

Interestingly, many of the State Highway Patrol LEIs in the U.S. give their LEOs training in exactly the kind of behavioral and situational skill building that allows them to interact professionally with civilians in their daily practice. Consequently, State Highway Patrol LEOs, and consequently their LEIs, are viewed with far more respect and trust than many local LEOs and LEIs. Anecdotally, recently in Ferguson, Missouri, the positive (or at least significantly less confrontational and destructive) civilian response to State Patrol intervention vs. the negative

Furthermore, this author is of the conviction that law enforcement, as an institution, possesses inherent qualities and structure that allow training and education to have added effect where it might be less impactful in other organizations. Kaplan describes a hierarchy of need for the effective operation of an organization, with training and skill-building a constituent part. He correctly points out that, “The organization *sic* that does not know where it is going and why, that has a poorly developed sense of responsibility for itself, and that is inadequately structured, cannot make use of training courses and skills acquisition.”¹⁰⁹ While this hierarchy certainly applies to law enforcement organs, these pitfalls of institutional function can be more easily mitigated because of law enforcement’s inherent mission, identity, and structure. While these institutional aspects of mission, identity, and structure must often be tailored to new modes of policing, their existence gives law enforcement institutional development an organizational stronghold to begin with; construction does not have to begin from the ground.¹¹⁰

civilian response to local LEI intervention is a good illustration of the positive outcomes possible when such an approach is taken both in training and practice.

¹⁰⁹ Kaplan, *Capacity building: Shifting the paradigms of practice*, 519.

¹¹⁰ See generally, Merilee S. Grindle ed., *Getting Good Government: capacity building in the public sectors of developing countries*, Harvard Studies in International Development (1 Aug 1997), for guidance on both the theory and practice of governance capacity development drawing on successes and failures in developing country advising and innovation. This work focusses on developing human capital through training and education, reforming structures to increase efficiency and effectiveness, and the role of technical advising in these processes.

VII. Conclusion

Given the dire Citizen Security situation in many of the poorest Latin American nations and the ensuing effects on social and economic development, it is imperative that aid actors work to improve this situation immediately. The recent massacre of Mexican students at the hands of local police are yet another grisly reminder of the deep challenges faced in improving law enforcement capacity in Latin America.¹¹¹ In particular, law enforcement institutions and practice are an integral, and often forgotten, force in the improvement of Citizen Security challenges. Rule of Law advising, and development actors in general, have a responsibility to work with security providers to strengthen law enforcement through well-designed and implemented Capacity Development programming, focusing on the objectives of increasing the strategic, systemic, and most importantly, the personnel capacity of law enforcement institutions. Without it, the safety and security of Latin American peoples will remain only a dream, and the development of their nations and communities will continue to sputter and fail.

From a U.S. perspective, these recommendations should be a key piece of any coherent policy response to the recent and troubling influx of migrant children into the U.S. from Central America. The driver behind this crisis is the dismal security situation in those home countries. As has been demonstrated in the above analysis, much of the violent crime responsible for this instability is unrelated or only tangentially related to organized crime and drug trafficking.¹¹² Rather, the deeper problem is failure of states to create and support strong institutional culture and practice amongst its law enforcement bodies to promote the street-level safety of its citizens. While this signifies an even more fundamental problem of governance and political dysfunction in general, for the purposes of this discussion, it suffices to say that a targeted improvement of law enforcement institutions and practice in these countries would have strong impacts on the Citizen Security picture, as well as development in general.

¹¹¹ Harriet Alexander, *Mexican Mayor Captured after Weeks on the Run Following Student 'Massacre'*, The Telegraph (4 Nov 2014).

¹¹² The notion that the drug trade itself and the militarized response of the US are responsible for Latin America's crime problem simply is not supported by the facts of such a complex social, political, and cultural crisis. While hard to quantify, the U.S.'s current role in solving the problem is likely negligible, as is the U.S.'s role in exacerbating the problem. Even the notion that drug trafficking itself leads to crime is suspect, as there is often massive illegal drug use and infrastructure in developed countries that only produces violence in communities that already are predisposed to violent crime (i.e. poor urban communities with little education and weak governance and institutional presences).

Sources

1. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, Stanford University Press (1998)
2. Giorgio Agamben, *State of Exception*, University of Chicago Press (2005)
3. Harriet Alexander, *Mexican Mayor Captured after Weeks on the Run Following Student 'Massacre'*, The Telegraph (4 Nov 2014)
4. Cynthia Alkon, *The Flawed U.S. Approach to Rule of Law Development*, 117 Penn St. L. Rev. 797 (2013)
5. David H Bayley, *Law enforcement and the rule of law: Is there a trade-off?* 11/1/02 Criminology & Pub. Pol'y 133 (2002)
6. *Bringing the state back into the favelas of Rio de Janeiro: Understanding changes in community life after the UPP pacification process*, The World Bank (Oct 2012)
7. Tricia Browne-Ferrigno and Rodney Muth, *Leadership Mentoring in Clinical Practice: Role Socialization, Professional Development, and Capacity Building*, Edu. Admin. Q'ly vol. 40 no. 4 (Oct 2004), 468-494
8. *Capacity Assessment and Capacity Development Tool Kit*, Asian Development Bank (2008)
9. Ivan Castro, *Ten Killed in Nicaraguan Gunfight near Honduran Border*, Reuters (5 Dec 2013)
10. *The Challenge of Capacity Development: Working Towards Good Practice*, OECD/DAC, Paris (Aug 2006)
11. Maurice Chalom et. al., *Urban Safety and Good Governance: The Role of the Police*, United Nations Human Settlements Program (Feb 2001)
12. María Gabriela Córdova, *Panama: New security strategy seeks to reduce homicides*, Infosurhoy.com (30 Aug 2013)
13. *Donor Support for Institutional Capacity Development in Environment: Lessons Learned*, OECD Development Assistance Committee (2006), 39
14. Deborah Eade, *Capacity-building: An Approach to People-centred Development*, Oxfam (2005)
15. Deborah Eade, *Capacity building: who builds whose capacity?*, Development in Practice Vol. 17 Issue 4-5 (2007), 630-639

16. *Ecuadorian Police and Investigators Trained in Practical Skills*, American Bar Association Rule of Law Initiative (Sept 2013)
17. Hugo Fruhling, *The Impact of Community Policing and Police Reform in Latin America*, in Toward a Society under Law: Citizens and Their Police in Latin America, eds. Joseph Tulchin and Meg Ruthenburg, 15-39
18. Merilee S. Grindle ed., *Getting Good Government: capacity building in the public sectors of developing countries*, Harvard Studies in International Development (1 Aug 1997)
19. *New Police Forces for El Salvador and Guatemala*, in Peacebuilding and Police Reform, Tor Tanke Holme and Espen Barth Eide, eds., Norwegian Inst. of Int'l Affairs (2000)
20. *Handbook on Police Accountability, Oversight, and Integrity*, Criminal Justice Handbook Series, UNODC (2011)
21. Daniel Higa, *Extortion on the Rise in Mexico*, Infosurhoy.com (5 Dec 2013).
22. *How to assess existing capacity and define capacity needs*, Learning Package on Capacity Development, The Learning Network on Capacity Development
23. *How to Prevent an Epidemic: Alternatives to the Iron Fist*, The Economist (16 Nov 2013)
24. *Institutional Assessment and Capacity Development: Why, What and How?* Office for Official Publications of the European Communities (2007).
25. Allan Kaplan, *Capacity building: Shifting the paradigms of practice*, Development in Practice, Vol. 10 Issue 3-4 (2000), 517-526
26. Sue Kenny and Mathew Clarke, Eds., *Challenging Capacity Building: Comparative Perspectives*, (2010)
27. David Luhnnow, *Mexico Cracks Down on Local Police Corruption*, Wall Street Journal (10 Jun 2009)
28. Jefferson Marquis et. al., *Developing an Army Strategy for Building Partner Capacity for Stability Operations*, RAND Corporation (27 May, 2010)
29. Tracey L. Meares, *The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing – and Why it Matters*, 54 Wm. & Mary L. Rev. 1865 (2013)
30. Brandi Lowell and Keith Mines, *Mérida Initiative: Building a stronger security partnership*, The Canadian Foundation for the Americas (Nov 2011).
31. *Mexico & US Open Police Academy in Anti-Drug Fight*, Fox News Latino (5 May 2012)

32. Larry Gene Nicholson, *Instructor Development Training: A Guide for Security and Law Enforcement*, Butterworth-Heinemann (Boston 1997)
33. Tenoch Ortuño, *Mexico: New Scenarios for Police Training*, Infosurhoy, (5 May 2013)
34. *PGR Pone en Marcha el “Proyecto Diamante” para Capacitar a Ministerios Publicos y Policia Federal Ministerial*, Procurada General de la Republica (7 Feb 2012)
35. *Protect and Serve? The Status of Police Reform in Central America*, Washington Office on Latin America (June 2009)
36. *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN S/2004/616 (2004), <http://www.un.org/en/ruleoflaw/>
37. Dani Rodrik, *Institutions for High-Quality Growth: What they Are and How to Acquire them*, 35 *Studies in Comparative Int’l Development* 3 (2000), 3
38. Joseph Saba, “Emerging Trends in Justice and Development Practice in Fragile and Conflict-Afflicted States,” PROLAW® Visiting Lecture Series (20 Sept 2013)
39. Andrea Nill Sánchez, *Mexico’s Drug “War”: Drawing a Line Between Rhetoric and Reality*, 38 *Yale J. Int’l L.* 467 (2013), 47, citing Clare Ribando Seelke & Kristin M. Finklea, *U.S.-Mexican Security Cooperation: The Mérida Initiative and Beyond*, Cong. Research Serv., R41349 (2013), 31-37.
40. Charlie Savage, *D.E.A. Squads Extend Reach of Drug War*, *New York Times* (6 Nov 2011)
41. Michael Shifter, *Countering Criminal Violence in Central America*, Council on Foreign Relations (Apr 2012)
42. Commander Tom Stacho, *Interview*, Cleveland Police Department 2nd District (7 October 2014)
43. William Stanley, *Building New Police Forces in El Salvador and Guatemala: Learning and Counter-Learning in Peacebuilding and Police Reform*, ed. Tor Tanki Holm and Espen Barth Eide, Norwegian Institute of International Affairs (2000), 113
44. Hannah Strange, *Venezuelan Opposition Leader Leopoldo Lopez Appears in Court over Protest Violence*, *Vice News Americas* (11 Sept 2014)
45. *Training Honduran Law Enforcement Officials on Combating Sex Crimes*, American Bar Association Rule of Law Initiative (Nov 2013)
46. Jan Ubels, et al., eds., *Capacity Development in Practice*, Earthscan (Sept 2010)

47. Miriam Wells, *Gangs Reassert Themselves in Rio's 'Pacified' Favelas*, InSightCrime.org (24 Mar 2014)
48. *World Bank Summary Report*, Washington DC (7 April 2011)
49. George Withers et. al., *Practice What You Preach: The Separation of Military and Police Roles in the Americas*, Washington Office on Latin America (Nov 2010)

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