2017

Policing in Partnership: Nicaraguan Policies with Implications for U.S. Police Forces

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INTRODUCTION

In the face of surging regional violence, processes and techniques developed by the Nicaraguan National Police yield the lowest violent crime rates in the region, in spite of ranking as the poorest country in Central America.[1] Bucking the trend towards militarization in regional police forces, mirroring U.S. policy,[2] Nicaragua has developed community-centered programs that emphasize restorative justice.[3] In this endeavor, Nicaragua is harnessing the intent behind the traditionally backward-looking goals of transitional justice mechanisms[4] and deploying these tenets towards a proactive state-security model.[5] This concept is codified in legislation aimed at prioritizing citizen security through programs emphasizing constant reform of security apparatuses in partnership with the population.[6] Nicaragua's community-policing techniques, informed by the vernacular of transitional justice, are intended to prevent the reoccurrence of

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[1]   Santiago Ramirez, Inter-American Development Bank [IDB], *Violence and Crime in Nicaragua: A Country Profile*, Discussion Paper, No. IDB-DP-306, 34 (June 2013) (measuring GDP per capita; in terms of real GDP Nicaragua ranks second poorest behind Belize).

[2]   This phenomenon has been described as the "(re)production of US-American state sovereignty through 'de-territorialized campaigns of public safety' that are 'focused on countering territorial contamination and transgression—'terrorist', demographic and biological infiltration.'" Markus-Michael Müller, *Punitive Entanglements: The War on Gangs and the Making of a Transnational Penal Apparatus in the Americas*, 20 GEOPOLITICS 696, 697 (2015).

[3]   Yader Prado Reyes, *Primera Comisionada Aminta Granera: En Nicaragua el Pueblo es Protagonista de su Propia Seguridad*, EL 19 (Sept. 8, 2016), http://www.el19digital.com/articulos/ver/titulo:46168-primera-comisionada-aminta-granera-en-nicaragua-el-pueblo-es-protagonista-de-su-propia-seguridad.

[4]   These programs are targeted at preventing the "recurrence of crises and future violations of human rights, to ensure social cohesion, nation-building, ownership and inclusiveness at the national and local levels and to promote reconciliation." Pablo de Greiff, *Annual Rep. on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence*, ¶ 46, U.N. Doc. A/HRC/21/46 (Aug. 9, 2012); *see* Ruti G. Teitel, *Transitional Justice in a New Era*, 26 FORDHAM INT'L L.J. 893 (2002) (describing the backward looking nature of traditional transitional justice). Here, Nicaragua has applied the tenets of non-recurrence through constant reform aimed at ownership and inclusiveness in the community through partnerships at the policing level. *See* Ley No. 872, 26 June 2014, Ley de Organización, Funciones, Carrera y Régimen Especial de Seguridad Social de la Policía Nacional, [Ley de Bienestar y Seguridad Social] [Wellbeing and Social Security Law] tit. I., ch. II., Art. VII, LA GACETA, DIARIO OFICIAL [L.G.], 7 July 2014 (Nicar.) [hereinafter Ley No. 872].

[5]   *See* Ley No. 872, *supra* note 4.

[6]   *See id.*

violence by addressing root causes[7] rather than reacting to them and perpetuating cycles of violence.[8]

Nicaragua's experiences have not comported with its neighbors, both regionally and globally. In explaining incongruous crime statistics, the Director of Nicaragua's National Police, Aminta Granera, emphasized that her department's greatest strength rests in its commitment to community involvement.[9] This concept of community involvement is not a uniquely Nicaraguan development. The 1990s saw the rise of community policing in the United States before gang violence pivoted policy towards the militarization of these police forces, a technique then copied by many of Nicaragua's neighbors.[10] In many ways, Nicaragua's policies build on the intellectual antecedents of American community policing, presenting a new modern form, worthy of transfer, that U.S. forces should consider tailoring to their own communities.

Through an examination of Nicaragua's community-focused processes and techniques, exportable and best practices will be distilled. In order to extract uniquely Nicaraguan methods, neighbors' approaches will be compared, highlighting different strategies while distinguishing alternative factors that have been proposed as drivers of violence or peace. Once Nicaraguan practices have been differentiated from the region, they will be contrasted with those in place in U.S. jurisdictions (as it relates to national trends given the lack of a national police force). Specific emphasis will center on the prevention of, and not the reaction to, crime through cooperation with stakeholders, including but not limited to: community members, victims, perpetrators, and the criminal justice system with a focus on law enforcement.

While there are manifold factors contributing to violence in the region, this inquiry will focus exclusively on youth gang violence and the processes by which Nicaragua confronts this challenge. This study will not delve into the

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[7]   Mark Ungar & Enrique Desmond Arias, *Reassessing Community-Oriented Policing in Latin America*, 22 POLICING SOC'Y 1, 2 (2012).

[8]   This reactionary response to gang violence, as one author suggests, has led to "more powerful and brutal" gangs as "all-out war" has led to continued violence at unprecedented levels. José Miguel Cruz, *Criminal Violence and Democratization in Central America: The Survival of the Violent State*, 53 LATIN AM. POL. & SOC'Y 1, 26 (2011).

[9]   Hannah Stone, *Exporting Nicaragua's Security Model*, INSIGHT CRIME (Mar. 9, 2012), http://www.insightcrime.org/news-analysis/exporting-nicaraguas-security-model (summarizing her model as one that is "preventative, proactive, communitarian, deeply rooted in the heart of the community.").

[10]   *See generally* Luis E. Preciado, *State Approaches Toward Reducing Youth Violence in Honduras and Nicaragua*, 3 (2015) (Masters Thesis Naval Postgraduate School).

political process other than that which cannot be divorced from police practice.[11] While interdisciplinary scholarship has focused on economics and policies underlying narco-trafficking, this Comment will be constrained to the violence executed by youth gangs and governmental responses. There will be a further emphasis on the frontline community level to address this violence and the ensuing effect on its prevalence and subsequent rehabilitation and incarceration of individuals involved in its perpetuation. Finally, an emerging topic specifically in Nicaragua has been gender-based violence; this category of violence is admittedly broad and will not be subjected to a cursory mention when it is deserving of its own scholarship. This Comment will not delve into political power structures except when necessary to frame youth gang violence within the context of its historical and geopolitical reality.

Part I of this Comment will frame the development of Nicaragua's policies, guided by the overarching aims of transitional justice and shaped by the role of youth gang violence. Gangs and their composition will be surveyed to understand the impetus behind responses and ensuing outcomes of programs in Central America. Against this backdrop, U.S. gang prevalence and responses will be surveyed, setting up a foil to the Nicaraguan approach that will be subsequently unpacked. Part II will analyze Nicaragua's specific initiatives, exposing best practices that operate independently of historical influences and can be distinguished from its neighbors and thus exported. This template, predicated on public legitimacy gained through community involvement, education, and rehabilitation, will then be extrapolated beyond countries transitioning from violence to democracy, specifically U.S. police forces. This process will highlight the critical nature of the police-community interaction as the "first link in the criminal justice system."[12] While definitions of community-oriented policing vary widely from jurisdiction to jurisdiction, consensus may exist at a "fundamental level" once "factors contributing to the divergence of definition" have been addressed.[13] This entire process will be driven by context, as mimetic approaches have exposed the pitfalls of broadly applied yet

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[11] Political structure will have to be discussed in the context of Nicaragua and her neighbors to analyze the claim that "references to *maras* and migration have obscured explanations" of violence in the region and the disparate levels of violence can be explained by State contributions to violence which is evidenced by their "tolerating, encouraging, and even participating in the production of criminal violence." Cruz, *supra* note 8, at 25−26.

[12] *Crime in Latin America: A Broken System*, THE ECONOMIST (July 12, 2014), http://www.economist.com/news/americas/21606864-citizens-security-regions-biggest-problem-time-improve-criminal-justice-broken. [hereinafter *Crime in Latin America*].

[13] SUMEDH RAO, GSDRC HELPDESK RESEARCH REPORT: COMMUNITY POLICING IN FRAGILE AND CONFLICT-AFFECTED STATES 3 (2013), http://www.gsdrc.org/docs/open/hdq997.pdf.

untailored solutions.[14] The conclusion section will promote Nicaraguan components embodied by four factors: (1) political commitment to reform, (2) community involvement, (3) restorative justice through education and rehabilitation, and (4) public legitimacy. These factors can then be tailored to the U.S. system resulting in a modern definition of community policing informed by Nicaragua's transitional justice experience.

I.   BACKGROUND

The field of transitional justice provides a framework informing the transition from violence to democracy.[15] Once truth, justice, and reparations have been addressed, the end goal is institutional reform ensuring non-recurrence;[16] however, existing police culture and strained community relations have become roadblocks impeding progress before, after, and during these transitions.[17] This blurring of the boundary between periods of transition and normalcy has created tension between traditional transitional justice frameworks and steady-state transition.[18] This contradiction predicated on the time horizons of transition makes local context critical in shaping the outcome and legitimacy of the rule of law.[19] Nowhere is this paradigm more evident than in Latin America, specifically Central America, where a "pervasive weakness in the basic institutions of the rule of law" has engendered a marked lack of faith in the criminal justice system.[20]

This lack of faith in the criminal justice system is warranted, as worldwide homicide conviction rates stand at forty-three out of every one hundred murders, whereas in Latin America less than half, roughly twenty out of every one

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[14]   CHARLES M. KATZ & VINCENT J. WEBB, POLICE RESPONSE TO GANGS: A MULTI-SITE STUDY 321 (2004), https://cops.usdoj.gov/html/cd_rom/solution_gang_crime/pubs/PoliceResponsetoGangs.pdf.

[15]   Ruti Teitel, who coined the term, defines transitional justice as the "conception of justice associated with periods of political change." Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69, 69 (2003).

[16]   Intuitively, to guarantee non-recurrence, constant and responsive reforms would be required to encompass a "holistic" approach. de Greiff, *supra* note 4, ¶ 20.

[17]   RAO, *supra* note 13 (explaining that "there have been some benefits, though the programmes have not been as transformative as hoped" in conflict-affected states, stemming from police culture and community relations).

[18]   Teitel, *supra* note 15, at 93; *see also* Teitel, *supra* note 4, at 896 (describing this shift as one that is moving away from "judgment" and is being "associated with the more complex and diversely felt necessities of State-building in contemporary political circumstances").

[19]   Teitel, *supra* note 15, at 93.

[20]   *Crime in Latin America*, *supra* note 12 (Examining this breakdown, it is imperative to view transitional justice mechanisms through the lens of "the characteristics of the contexts in which they are applied" given the reality that they must be "fine-tuned, targeted and sensitive to context."); de Greiff *supra* note 4, ¶ 18.

hundred, are convicted.[21] While the core processes of transitional justice seek justice, reparation, truth, and reform, steady-state transition applies these concepts to instances of "pervasive conflict."[22] Central American nations may not be in the midst of traditional transitional periods; however, institutional breakdowns illustrated by gang violence should be addressed within this broader concept of "steady-[s]tate" transitional justice.[23] This "expanded humanitarian discourse" that emerges as a result of the politics of globalization is driven by instability begotten by violence.[24] As a result, Nicaraguan approaches can be seen through the lens of two of the transitional justice processes: constant *reform* targeted at *justice* in the midst of violence.[25]

This systemic breakdown, fueled by violence, has resulted in "internal displacement" and "record-level emigration of unaccompanied alien children (UAC) and families to the United States."[26] It is this context of violence and diaspora that led the U.N. High Commissioner for Refugees to declare that violence, specifically *gang* violence, has created a "refugee-like" situation.[27] While the specter of traditional war may have yielded to a democratically elected government, institutional development continues to indicate that this transitional period may not be over, as factors including the "absence of violence," tracked by the Inter-American Development Bank, suggest that Central American countries continue to confront systemic problems.[28]

As a result, analysis of police-community relations and police culture through the lens of transitional justice,[29] couched in the discourse of human

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[21]   *Crime in Latin America*, *supra* note 12.

[22]   de Greiff, *supra* note 4, ¶ 10. The UN Special Rapporteur defines this set of processes as "preventing the recurrence of crises and future violations of human rights, to ensure social cohesion, nation-building, ownership and inclusiveness at the national and local levels and to promote reconciliation." *Id.* ¶ 46; *see* Teitel, *supra* note 15, at 71−72, 78, 89−90 (describing the post-Cold War transitions as being associated with "diverse Nation-building projects" and describing present conditions of ongoing conflict).

[23]   Teitel, *supra* note 15, at 89−90.

[24]   *Id.* at 90.

[25]   *See* de Greiff, *supra* note 4, ¶ 46.

[26]   CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., RL34112, GANGS IN CENTRAL AMERICA 1 (2016).

[27]   *Id.*

[28]   Ramirez, *supra* note 1, at 34.

[29]   de Greiff, *supra* note 4, ¶ 46 (examining the community policing initiatives through the lens of the goals of transitional justice, set out as justice, reparation, truth, and reform (in order to prevent re-occurrence)).

rights law,[30] provides a pathway for achieving stability and peace.[31] Transitional justice has been characterized as "backward-looking" in its application to prior conflicts,[32] but the community policing principles developed by Nicaragua in the crucible of steady-state transition provides a template to escape this cycle of historical "concepts of justice" through a State-Security model.[33] This State-Security model is predicated on the transitional justice tenet of non-recurrence achieved through proactive community engagement by the police force at a local level.[34] Through its employment of this approach, Nicaragua has emerged as an outlier in terms of its crime statistics, which result from policing practices guided by both its internal culture and community outreach.[35] While developed in an evolving transitional period, this methodology should be considered in other applications given local gang and community contexts that extend beyond the traditional "transitional" period.

A. The Rise of Youth Gangs

In Central America, youth gangs,[36] like the Mara Salvatrucha (MS-13) and Barrio 18, are instigators of systemic violence.[37] Disagreement exists as to the scope of violence attributable to these gangs, with regional estimates ranging

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[30] For example, it has been argued that rather than criminalize certain acts coupled with forceful responses, institutions would be better served by hewing to U.N. Rights of the Child Convention. JOSÉ LUIS ROCHA & DENNIS RODGERS, GANGS OF NICARAGUA 162 (IMPRESIONES HELIOS 1st ed. 2008). In fact, the *Mano Dura* approach in El Salvador was struck down for its violation of the Convention. RODGERS ET AL., GANGS OF CENTRAL AMERICA: CASES, COSTS, AND INTERVENTIONS (2009), *reprinted in* SMALL ARMS SURVEY; OCCASIONAL PAPER 23, 12.

[31] Ramirez, *supra* note 1, at 34 (the six World Governance Indicators are "political stability/absence of violence, control of corruption, regulatory quality, rule of law, government effectiveness, and voice and accountability"); *see also* Rao, *supra* note 13, at 2 (drawing from case studies in Afghanistan, Kenya, and Sierra Leone, the author has found that through these relationships, state legitimacy was strengthened along with trust while exposing a series of lessons that are indicative of the challenges which will be highlighted throughout Central America).

[32] Teitel, *supra* note 4, at 905 (describing this "backwards-looking" approach as one that is "not capable of ensuring prospective security").

[33] It has been argued that transitional justice principles are not "adequate" in guiding situations "addressing the move to politics," but a post-conflict conception of these principles can provide "needed authority" guiding "situations of heightened political fragmentation." *Id.*

[34] Stone, *supra* note 9.

[35] *Crime in Latin America*, *supra* note 12.

[36] Youth gangs are defined by members ranging between twelve and twenty-four years of age. Seelke, *supra* note 26, at 1–2.

[37] *Id.* at 5–7. "Youth gangs" is the most encompassing term as there is no "universally accepted definition" of what constitutes a "gang" amongst law enforcement agencies; therefore, in surveys, agencies are asked to identify "a group of youths or young adults in your jurisdiction that you or other responsible persons in your agency or community are willing to identify as a 'gang.'" Also "youth" is not synonymous with "juvenile." *National Youth Gang Survey Analysis*, NAT'L GANG CTR., https://www.nationalgangcenter.gov/Survey-Analysis (last visited Sept. 14, 2017).

from 10%-60%.[38] Further clouding these numbers is the fact that not all gangs are cataloged equally, leading to two distinct classifications in Central America: *pandillas* and *maras*.[39] Grasping the nuanced distinction between these two classifications is critical, as the dichotomy has resulted in disparate governmental responses driven by societal perceptions.[40]

Gang culture in Central American society has entrenched itself as a "persistent social phenomenon" constantly evolving from its inception in the urban modernization of the 1940s.[41] The emergence of modern gangs in the region can be traced to the end of the conflicts of the 1990s when former guerillas found themselves "facing situations of heightened uncertainty, insecurity, and socio-economic flux" upon returning to civilian life.[42] These former freedom fighters, lacking a clear direction or sense of purpose, founded gangs whose structure channeled "traditional organizational vehicle[s] for collective youth action."[43] *Pandillas* represent the historical notion of gangs in Central America composed of "localized groups that have long been present in the region," while *maras* are derived from transnational roots.[44]

When interviewing members of *pandillas* across national lines, a single word was used to describe their individual organizations: family.[45] This characterization is unsurprising given their roots in collective youth action, which morphed into "local vigilante style self-defense groups."[46] While it would be easy to write *pandillas* off as remnants of regional conflicts, this would be neglecting the reality that *pandillas* are byproducts of the society in which they exist, evolving along with their communities and experiences.[47] This community dynamic cannot be stressed enough, as it undergirds the Nicaraguan response. While still drawing from *pandilla* culture, the *maras* combine influences that

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[38]   RODGERS ET AL., *supra* note 30, at 1.

[39]   Seelke, *supra* note 26, at 3.

[40]   The *Mano Dura* approach rose to prominence as a response to the *mara* ascendency, while Nicaragua's community-oriented approach is lauded for the very reason that it has excluded *mara* gangs from its borders. Reyes, *supra* note 3.

[41]   Dennis Rodgers, *Nicaragua's Gangs: Historical Legacy or Contemporary Symptom?*, N. AM. CONG. ON LATIN AM., https://nacla.org/article/nicaragua%25E2%2580%2599s-gangs-historical-legacy-or-contemporary-symptom (last visited Sept. 14, 2017).

[42]   RODGERS ET AL., *supra* note 30, at 6.

[43]   *Id.*

[44]   Seelke, *supra* note 26.

[45]   JOSÉ ALBERTO RODRÍGUEZ BOLAÑOS & JORGE SANABRIA LEÓN, DEMOSCOPÍA S.A., MARAS Y PANDILLAS, COMUNIDAD Y POLÍCIA EN CENTROAMÉRICA 14 (2007).

[46]   Rodgers, *supra* note 41, at 2.

[47]   *Id.*

span local communities and shared societal experiences, leading to their disparate treatment.[48]

While the origin of the term *mara* is one that has emerged as a result of convoluted and sometimes inconsistent designations, its source can be traced to El Salvador.[49] *Maras* brought their violence and culture home with them upon their return from abroad rather than forming organically following domestic conflict.[50] This transnational component has been mapped to the expulsion of 200,000 individuals who were deported from the United States between 1998 and 2005, roughly a quarter of whom were convicted criminals.[51] Among this criminal contingent of deportees were members of the 18th Street Gang, which was founded by Mexican immigrants in Los Angeles, that expanded rapidly by recruiting Salvadoran and Guatemalan refugees.[52] The 18th Street gang recruited members to fight turf wars with its rival (and also potentially a spin-off) gang, MS-13.[53] As deportees arrived home, their Americanized gang culture did not supplant local *pandilla* culture. Rather, their culture incorporated aspects of both traditions, creating the *maras,* which are now pervasive in the Northern Triangle countries (composed of Honduras, Guatemala, and El Salvador).[54] This transnational component has resulted in the importation of transnational policing techniques specifically "inspired—in ideational as well as in practical terms — by New York City-style zero-tolerance policing."[55] In the eyes of a "growing number of observers," *maras* have transcended the scope of traditional gangs and are seen as a "new urban insurgency."[56] Given this classification, it is not surprising that the term "war," rather than policing, describes state responses to *maras*.[57] In spite of this transnational or globalized influence, it has been argued

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[48] *Id.* at 4 (terming their origins as stemming from a "unique transnational development").

[49] Anika Oettler, *The Central American Fear of Youth*, 5 (2) INT'L J. CONFLICT & VIOLENCE, 261, 266 (2011).

[50] Rodgers, *supra* note 41, at 2–3. (It is worth noting that, while Northern Triangle refugees gravitated to the West Coast where MS-13 and 18th Street [Barrio 18] were born, Nicaraguan immigrants were concentrated in Costa Rica and Miami, which did not suffer from the same gang dynamic). Stone, *supra* note 9.

[51] Rodgers, *supra* note 41, at 2. Following the 1996 passage of the Illegal Immigration Reform and Immigrant Responsibility Act, 46,000 convicts were deported for any conviction resulting in a sentence of one year or more. RODGERS ET AL., *supra* note 30, at 7.

[52] RODGERS ET AL., *supra* note 30, at 7.

[53] *Id.* (explaining the origin of the word "MS" [Mara Salvatrucha] as a "combination of *salvadoreño* and *trucha*, meaning 'quick thinking' or 'shrewd' in Salvadoran slang").

[54] Rodgers, *supra* note 41.

[55] Müller, *supra* note 2, at 709.

[56] *Id.* at 697.

[57] *Id.* at 696.

that *pandillas* are actually more representative, globally speaking, of "youth gangsterism" than the *maras*.[58]

Focusing on Central America, the State Department has estimated that *mara* membership in the Northern Triangle numbers as high as 85,000,[59] while the United Nations Office on Drugs and Crime (UNODC) has placed that same regional number at close to 500,000.[60] As a result of this data, within the context of violence and diaspora, Central American nations have implemented programs to combat both violence and immigration trends, targeting the youth gangs seen as a root cause of this "refugee-like" crisis.[61] These programs have received heightened scrutiny following the passage of a Central America border control agreement, enabling the visa-less passage between citizens of Northern Triangle countries and their neighbor to the south, Nicaragua.[62] It was feared that unrestricted flow of individuals would inevitably allow for the movement of gang members and the accompanying exportation of violence and displacement that had become endemic in the Northern Triangle.[63] To date, Nicaragua remains *mara* free.[64]

Meanwhile, Guatemala, El Salvador, and Honduras have seen spiking homicide rates that have oscillated between twenty-four and eighty homicides per 100,000 inhabitants over the last decade, with El Salvador's surging past one hundred homicides per 100,000 inhabitants in 2015.[65] While academics dispute the percentage shares of violence attributable to gangs,[66] government responses have not suffered from such equivocation.[67] These Central American countries have adopted some form of reactionary measures in response to what is seen as

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[58]   Rodgers, *supra* note 41, at 4 (This distinction potentially makes lessons learned from *pandilla* engagement [i.e. Nicaragua] more widely applicable outside of the region).

[59]   Silva Mathema*, They are Refugees: An Increasing Number of People are Fleeing Violence in the Northern Triangle*, CTR. FOR AM. PROGRESS (Feb. 24, 2016), https://www.americanprogress.org/issues/immigration/news/2016/02/24/131645/they-are-refugees-an-increasing-number-of-people-are-fleeing-violence-in-the-northern-triangle/.

[60]   RODGERS ET AL., *supra* note 30, at 4.

[61]   Seelke, *supra* note 26.

[62]   Stone, *supra* note 9.

[63]   *Id.*

[64]   Reyes, *supra* note 3.

[65]   Seelke, *supra* note 26, at 6; *see also* Ramirez, *supra* note 1, at 15 (charting homicide rates in Central America between 1996 and 2012); *see generally* Orlando J. Pérez, *Gang Violence and Insecurity in Contemporary Central America*, BULLETIN OF LATIN AMERICAN RESEARCH 32, 217–34 (2013) (Homicide rates are the most reliable indicator of violence given that homicides rarely go unreported).

[66]   RODGERS ET AL., *supra* note 30, at 1; *see also* Cruz, *supra* note 8, at 25 (positing that *maras* are merely "scapegoats for insecurity and justified draconian state responses," shifting the burden of violence from gangs to state actors).

[67]   ROCHA & RODGERS, *supra* note 30, at 179.

a "destabilizing menace, more immediate than any conventional or guerilla war."[68] However, their efforts have not yielded Nicaragua's results.[69] Further, Northern Triangle policies mirror U.S. techniques, presenting a regional analogue that enables comparison of policies within the region for analysis outside of its borders.[70]

Gang violence is not purely a Central American problem; between 2009 and 2012, gangs in the United States added 400,000 members to their roles, an increase of forty percent.[71] This statistic is of particular importance given that these gangs are responsible for an average of forty-eight percent of violent crime and up to ninety percent in some jurisdictions.[72] Further, MS-13 and the 18th Street Gang are expanding faster than other national gangs, and, given their "transnational" component, U.S. responses have focused not only at home but also abroad.[73] The Mérida Initiative, "the largest multi-year U.S. foreign aid and security package," prioritized the gang problem by naming it one of its four pillars.[74] Critics have described this approach as constituting the "[re]production of US-American state sovereignty . . . 'focused on countering territorial contamination and transgression;'" however, examining statistics both at home and abroad demonstrates that this approach is not producing the intended results and space exists for an alternative approach.[75]

B. U.S. Police Culture in Context of Gang Violence

In the United States, the concept of community-oriented policing rose to prominence in the 1990s and was characterized by the development of a close working relationship between community members and police officers.[76] This response was one of several stimulated by 200 distinct recommendations in a report compiled by commissioners selected by President Johnson, who were

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[68]   *Id.* This characterization emerged during a regional summit of heads of Central American states. *Id.* at 180.

[69]   RODGERS ET AL., *supra* note 30, at 4 ("These qualitative studies also highlight the fact that there is great diversity among countries in the region. At this writing, El Salvador, Guatemala, and Honduras are clearly experiencing much greater levels of gang violence than Costa Rica and Nicaragua.").

[70]   *See generally* Müller, *supra* note 2, at 709–10.

[71]   *2011 National Gang Threat Assessment*, FBI, https://www.fbi.gov/stats-services/publications/2011-national-gang-threat-assessment (last visited Sept. 14, 2017).

[72]   *Id.*

[73]   Müller, *supra* note 2, at 715.

[74]   *Id.*

[75]   *Id.* Violence statistics in countries containing *maras* have in fact risen significantly since 2007. *See* Seelke, *supra* note 26, at 1, 14; 2011 National Gang Threat Assessment, *supra* note 71.

[76]   Ungar & Arias, *supra* note 7 (discussing the origins of community-oriented policing as it was exported to Latin America).

charged with investigating the state of Law Enforcement and Administration of Justice in America.[77] Community-oriented policing was, in part, a legacy of problem-oriented policing (POP), a direct result of the commission's report that shaped a new organizational structure termed the Professional Model.[78] Acting within the constraints of this professionalization, community-oriented policing emphasized patrolling and interacting with the community in order to proactively police these communities, as opposed to focusing on reacting to crimes after they had occurred.[79] Community policing identified that it was the general fear of being bothered by disorderly actors that enabled police visibility to elevate the perceived level of public order.[80] However, these interactions with and within the community will only function with community buy-in; otherwise, patrols simply produce presence, not results.[81] The community must perceive the intent of police behavior as being driven by a sense of community cooperation to address jointly identified problems and not by the threat of punishment.[82] While these concepts were being introduced in police forces across the United States, extrinsic factors led to legislation that shifted police strategies in order to deal with new realities.

California, in response to the nationally televised Rodney King riots, led the way in 1992 with the implementation of strict measures meant to crack down on gang violence.[83] A signature provision in this legislation granted prosecutors the ability to charge minors as adults, resulting in prison terms for hundreds of

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[77]   Nicholas de Katzenbach et al., *Foreword to* THE CHALLENGE OF CRIME IN A FREE SOCIETY, A REPORT BY THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE (1967) (intending to understand more "about those who commit, about those who are its victims, and about what can be done to reduce it" to create a "safer and more just society").

[78]   The Professional Model was characterized by updating departments and reorganizing them according to a rigid hierarchical structure which was characterized by three tactics: "(1) Motorized patrol, (2) rapid response to calls for service, and (3) retrospective investigation of crimes." Mark Moore, Robert Trojanowicz & George Kelling, *Crime and Policing*, NAT'L INST. JUST. (1988).

[79]   Ungar & Arias, *supra* note 7. Problem-oriented policing on the other hand simply sought feedback from citizens in order to "help them identify and solve problems in their own communities," a backward-looking approach that was confronted by community policing. Moore, Trojanowicz & Kelling *supra* note 78, at 3.

[80]   James Q. Wilson & George L. Kelling, *Broken Windows; The Police and Neighborhood Safety*, ATLANTIC MONTHLY 29, 32 (1982) (Interestingly, in 1982, data did not support the concept of community-oriented policing as an effective way of cutting street crime as harm was not equated with fear but rather disorder).

[81]   Tom Tyler, *The Paradox of American Policing: Performance without Legitimacy*, DISPATCH, July 2010, http://cops.usdoj.gov/html/dispatch/July_2010/AmericanPolicing.asp.

[82]   This legitimacy can only be developed when it is the "fairness of police behavior–not the fear of police force and the threat of punishment–[that] creates legitimacy, and through it drives public actions." *Id.*

[83]   These riots "heavily involved" both the 18th Street Gang and the Mara Salavatrucha and were part of the impetus behind the passing of these toughened laws. RODGERS ET AL., *supra* note 30, at 7.

underage members of *mara* gangs.[84] This cohort would form part of the nearly 200,000 individuals who were deported as a result of the congressional passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.[85] The implementation of this legislation prompted an analogous national trend in police culture.

A corresponding movement towards the militarization of police forces, paralleling these stricter laws, became a key component of zero-tolerance policing.[86] In order to enforce this type of mandate, there was a greater emphasis on—or in some cases, the creation of—police paramilitary units (PPUs) and SWAT teams.[87] Police forces that had been associated with a community policing model implemented these militarized components that were irreconcilable with a community-oriented approach.[88] This disconnect was further reinforced within these departments by creating specialized gang units whose focus was reactionary, eschewing traditional community- and problem-oriented policing practices.[89] The centralized gang unit response, as it currently functions, is incompatible with community policing given its emphasis on decentralization and lack of community involvement.[90] Based on multi-site studies, when gang officers do partner with the community, their singular goal is to access information, not the "co-production of public safety."[91] This contradiction, created by gang units within departments committed to community policing, can only be understood in the context of abstract and inclusive definitions extended to modern community-oriented policing.[92] Given this ambiguity and these divergent concepts across jurisdictions,[93] a space exists both abroad and at home to determine the essential nature of these various

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[84] *Id.*

[85] *Id.* at 6. This was the same group that would form the transnational component of the *mara* gangs in the Northern Triangle. Rodgers, *supra* note 41, at 2.

[86] MATTHEW T. DEMICHELE & PETER B. KRASKA, *Community Policing in Battle Garb, in* MILITARIZING THE AMERICAN CRIMINAL JUSTICE SYSTEM: THE CHANGING ROLES OF THE ARMED FORCES AND THE POLICE 82, 88–89 (Peter B. Kraska ed., UPNE 2001).

[87] *Id.* at 83.

[88] *Id.* at 88–89.

[89] KATZ & WEBB, *supra* note 14, at 321. Anecdotally, a precinct lieutenant described his gang unit's use of community policing as follows: "[Y]es, from a standpoint that there is liaison and they are dealing with the internal customers, mainly patrol officers, yes. No, from the standpoint that they are not solving problems long term, they are solving them short term . . . the short-term reactionary issues." *Id.* at 424.

[90] *Id.* at 396.

[91] *Id.* at 475.

[92] For example, broad-ranging definitions of community-oriented policing models have described portions of the Professional Model, the "broken windows" approach, and even a "governmentality" approach. *See generally* DEMICHELE & KRASKA, *supra* note 86.

[93] *See generally id.*

programs as they are informed by the goals of transitional justice exemplified by Nicaragua's approach.

C. Regional Responses to Gang Violence

One of the more prevalent approaches in Central America employs "*mano dura*" (directly translated as "heavy hand"), which has become the catch-all term for militarized approaches aimed at addressing the surging violence in the region.[94] These approaches are intended to deter "anti-social behaviors" in specific neighborhoods through the use of what can only be called "aggressive tactics."[95] These approaches track the U.S. concept of zero-tolerance policing and provide a counterpoint to the Nicaraguan model, notwithstanding that their histories reflect many of the same transitional antecedents Nicaragua experienced.[96]

In El Salvador, where there were nine murders per day by 2014,[97] these strategies resulted in 2,438 arrests just for having signature gang tattoos and wearing particular clothing styles.[98] This crackdown stemmed from the criminalization of petty crimes and social disobedience, signaling the commitment of El Salvador to purging themselves of the *maras*.[99] The seriousness of the government's intent was reinforced by the operations' assignment to military units rather than the police force.[100] Further cementing its commitment to militarization, El Salvador introduced Operation New Dawn in 2009, officially assigning forty percent of its military force to public security matters.[101] This delegation of traditional police operations to the military was not unique to El Salvador. Guatemala codified the role of their military in police

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[94]   Preciado, *supra* note 10; *see also* José Miguel Cruz, *The Root Causes of the Central American Crisis*, 114 CURRENT HISTORY, Feb. 2015, at 43, 47 [hereinafter "The Root Causes"]. Other program names demonstrate the same commitment to repression as evidenced by "the Broom Plan, the Zero Tolerance Plan, the Hard Hand Plan and the Super Hard Hand Plan." ROCHA & RODGERS, *supra* note 30, at 162.

[95]   Oettler, *supra* note 49, at 273; *see* Müller *supra* note 2, at 712 (describing the analogous "tough on crime approach" imported from the United States).

[96]   DEMICHELE & KRASKA, *supra* note 86, at 84*; see, e.g.*, Müller, *supra* note 2, at 705, 709 (describing civil gang injunctions in the U.S. which closely track the "anti-social behaviors" targeted by Northern Triangle governments).

[97]   Seelke, *supra* note 26.

[98]   Oettler, *supra* note 49, at 261. These arrests were short lived as the original mano dura plan was struck down in El Salvador for violating UN Rights of the Child conventions. ROCHA & RODGERS, *supra* note 30.

[99]   Preciado, *supra* note 10, at 3–4.

[100]   *Id.*

[101]   Matt Budd, *Countering Militarised Public Security in Latin America: Lessons from Nicaragua*, SUSTAINABLE SECURITY (Nov. 12, 2013), https://sustainablesecurity.org/2013/11/12/community-policing-in-nicaragua/.

action through the *Protocol for Inter-institutional Action*.[102] Honduras emphasized this entwinement of their military and police forces in the public security domain by vesting police authority in the Ministry of Defense, establishing the Military Police of Public Order.[103] Nicaragua, on the other hand, implemented a different community-centered approach.

D. Nicaragua's Approach To Gang Violence: In Context of National Police

In order to understand the distinct police culture and the relationship with the community, it is imperative to place the analysis of Nicaraguan programs in the context of its history.[104] This history, like that of its neighbors, is riddled with transitions between governments facilitated by violence, yet did not result in the implementation of *mano dura* methods. Following nearly two decades of civil war, a peace agreement was negotiated in 1990 between the Sandinistas and the Contras.[105] Armed gangs emerged from the ranks of both sides following the ceasefire.[106]

These *pandillas* formed a natural extension for returning soldiers as it provided the opportunity to continue "serving and protecting friends, families, and local communities in a post-war context marked by heightened political polarization and spiraling insecurity."[107] *Pandillas* traced their roots to this context of security and neighborhood order.[108] The first part of the 2000s, however, shifted their focus from providing security and order to illicit dealings that traded on the cachet of threats and violence.[109] This development can be understood through the broader lens of Nicaragua's transformation to a neoliberal economic model in which a cohort of young Nicaraguans lacking education or trade skills found themselves unemployed, as sectors that traditionally had required labor-intensive work were modernized.[110] While the

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[102] *Id.* In this capacity, 4,000 soldiers were deployed in "troubled neighborhoods in Guatemala City." ROCHA & RODGERS, *supra* note 30, at 178.

[103] Budd, *supra* note 101. "This collaboration extended to joint urban patrolling, sometimes even using tanks." ROCHA & RODGERS, *supra* note 30, at 178.

[104] As Ralph Waldo Emerson opined, all history is subjective in the mind of each individual; but, by placing facts in context, we can attempt to understand the development of the Nicaraguan security apparatus. Ralph Waldo Emerson, Collected Essays of Ralph Waldo Emerson, *History*, EASTON PRESS 5 (1962).

[105] Preciado, *supra* note 10, at 44.

[106] *Id.* at 45.

[107] Rodgers, *supra* note 41, at 3 (internal quotations omitted).

[108] *Id.*

[109] *Id.* This shift mirrors the violence endemic in *mara* dominated Northern Triangle countries. Seelke, *supra* note 26, at 6.

[110] Rodgers, *supra* note 41, at 3. This dearth of available jobs pushed this younger generation into gangs which lacked the soldiering background that *pandillas* drew from following the peace accords in 1990. *Id.* This

pandillas were transforming, the Nicaraguan National Police was developing responses geared towards the realities of this new status quo.

The Nicaraguan National Police traces its origins to the 1979 *Fundamental Statute of the Republic* (FSLN), which created the first security institution distinct from the Army following the Sandinista transition from the Somoza dictatorship.[111] Internal, as well as international political pressure following the end of hostilities between the Sandinistas and the Contras, forced the National Police to move beyond its origins in the Sandinista revolution.[112] In order to break with this tradition rooted in the Sandinista party structure, the Organic Law of 1996 was implemented, which reformulated the institution and "guaranteed a non-partisan nature."[113] Following this rebranding, the National Police underwent a series of five-year plans, constantly reshaping and adapting its structure.[114]

Throughout this continuous transformation, Nicaragua's police force has remained the least funded force in the Northern Triangle.[115] Paradoxically, this police force is, in the words of its director, "the smallest police force in Central America, with the lowest salaries, but with the best results of any in the region."[116] There are a number of metrics that support this assertion. For example, the most recent numbers available place Nicaragua's homicide rates at eight per 100,000 inhabitants, the lowest such statistic in the region.[117] Another indicator, which can be related more directly to youth gangs, is the shocking

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economic insecurity is often mentioned in the U.S. context, where, in response to drivers of gang affiliation, one gang officer perceived that "[p]art of that, I'm sure, is socio-economic." KATZ & WEBB, *supra* note 14, at 321.

  [111]   Ramirez, *supra* note 1, at 32.

  [112]   This is indicative of the underlying trend of constant reform. *Id.* at 34 (This pressure "to eliminate its historic links to the FSLN" was the catalyst that spurred the definition of the force's "institutional purpose.").

  [113]   *Id.* While the non-partisan nature of the police force is touted following the enactment of the 1996 law, Director Granera was previously Chief of Staff for the Interior Ministry during the first Sandinista regime and credits her decision to participate in the new force as one made after deciding "not [to] hand[] my rifle over to someone who will use it against my people." *Id.* Additionally, the strengthening of security institutions has been attributed to the Sandinistas following the transition in order to "legitimate" their role post-1990. Cruz, *supra* note 8, at 25.

  [114]   Seelke, *supra* note 26, at 13; *See* POLICÍA NACIONAL, SISTEMATIZACIÓN DEL MODELO POLICIAL COMUNITARIO PROACTIVO DE NICARAGUA, 38 (2011). [hereinafter MODELO POLICIAL COMUNITARIO PROACTIVO].

  [115]   The Root Causes, *supra* note 94, at 47.

  [116]   Tim Johnson, *Nicaragua's Top Cop, Who Once Wanted to Be a Nun, Fends Off Drug Gangs*, MCCLATCHEY HYDE DC (Nov. 15, 2011), http://www.mcclatchydc.com/news/nation-world/world/article 24718984.html.

  [117]   Reyes, *supra* note 3 (other indicators of security are also analyzed in this Comment).

statistic that in a country of over six million inhabitants there are only seventy juveniles in custody.[118]

Nicaraguan results represent a marked departure from those stemming from *mano dura* techniques employed in Northern Triangle countries and in analogous forms in the United States. The foregoing analysis will distinguish unique features of Nicaragua's juvenile justice program that relies on: (1) political commitment to reform, (2) community involvement, (3) restorative justice through education and rehabilitation, and (4) public legitimacy. The Nicaraguan approach will be sharpened by the counterpoint provided by U.S. and regional responses to gang problems. These best practices are exportable, and U.S. policies should be tailored to these practices, resulting in a return to the historical concept of community policing.

II.   ANALYSIS OF THE PROBLEM

While the United States may have developed modern community-oriented policing strategies, Nicaragua created a version adapted to its own specific needs that continues to be shaped by constant reform targeted at non-recurrence.[119] This process is anything but stagnant and requires political commitment to continuous reform.[120] Confronted with the ambiguous and seemingly paradoxical application of community-oriented policing models worldwide, Nicaragua's practices have the potential to inform a broader understanding of community-oriented policing. The lessons learned from this period of transition should not be confined to situations defined by transition but rather to any community that would benefit from the implementation of similar programs tailored to their specific situations on the ground. This application provides timely knowledge that should inform practices in the United States where social action groups have advanced the argument that "militarization of police departments further erodes the trust that should exist between residents and the police," highlighting a disconnect between citizens and their police forces.[121]

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[118]   Eyder Peralta, *With a Soft Approach on Gangs, Nicaragua Eschews Violence*, NPR (Oct. 28, 2014), http://www.npr.org/sections/parallels/2014/10/28/359612148/with-a-soft-approach-on-gangs-nicaragua-eschews-violence. Programs that may influence this number will be discussed in greater depth in the analysis of Nicaragua's programs, specifically those of their Juvenile Affairs division. Seelke, *supra* note 26, at 13. This division "runs at least two anti-gang activities a month," which focus on preventative and rehabilitative techniques through involvement in "family, school and community interventions." *Id.*

[119]   This continuous process can be seen through the implementation of successive five-year plans in an effort to constantly improve best practices and adapt to realties of changing dynamics. Seelke, *supra* note 26, at 13; *See also* MODELO POLICIAL COMUNITARIO PROACTIVO *supra* note 114, at 38.

[120]   *See generally* Seelke, *supra* note 26, at 13 (describing successive five-year plans).

[121]   Tyler, *supra* note 81.

The term "community policing" is inherently subjective, holding different meanings for each jurisdiction shaped by local conditions and relationships.[122] For the purposes of this Section, it will refer to its most basic concept—"policing in partnership with the community."[123] While violence in Central America is undoubtedly the product of many factors,[124] the culture of Nicaragua's National Police and its engagement and partnership with the community, codified as a result of political commitment to reform, is a distinct practice.[125] In Nicaragua, security gains targeted at addressing problems stemming from *pandillas* have simultaneously precluded the importation of *mara* violence endemic in the Northern Triangle.[126]

While programs like *mano dura* are overwhelmingly popular with their corresponding populations, human rights abuses identified by the U.S. State Department and violations of the U.N. Convention on the Rights of the Child (CRC),[127] compounded by a lack of reduction in rates of violence, point to a need for an alternative approach.[128] The United States is facing a similar problem compounded by social perceptions that stem from a lack of trust between the community and its officers.[129] The militarization of police forces typified by *mano dura* approaches has not provided answers to these dilemmas. Similarly, the CRC only provides standards that signatories agree not to violate but does not provide avenues through which to protect their populations while simultaneously protecting the rights established by the convention.[130] One solution operating within the constraints of the convention can be illustrated by the Nicaraguan approach through "inclusive and cooperative processes."[131] These processes can be understood in the context of their four key components:

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[122]   For an overview of different uses of the term "community policing" within different State applications, *see* RAO, *supra* note 13, at 1–6.

[123]   *Id.* at 1.

[124]   Cruz, *supra* note 8, at 25.

[125]   *Crime in Latin America*, *supra* note 12.

[126]   Stone, *supra* note 9.

[127]   ROCHA & RODGERS, *supra* note 30, at 178–79 (describing the striking down of Salvadoran approaches in contravention of the CRC).

[128]   In the years following the implementation of these approaches, there was actually a spike in violence, leading to the theory that it was, in fact, State-sponsored violence, which begat more violence while also obfuscating the State's role in the violence itself. Cruz, *supra* note 8, at 25–26.

[129]   Tyler, *supra* note 81.

[130]   *See generally* National Juvenile Justice Network [NJJN], *The Convention on the Rights of the Child: Implications for Juvenile Justice Reform*, Fact Sheet, at 2 (Mar. 2010).

[131]   Sarah Westerlund & Marlene Widenbladh, *The Rural Judicial Facilitators Program in Nicaragua–an Exemplary Model of Restorative Justice?,* MFS-report No. 43, UMEÅ UNIVERSITY DEPARTMENT OF LAW, p. 14. (Mar. 3, 2007).

(1) political commitment to reform, (2) community involvement, (3) restorative justice through education and rehabilitation, and (4) public legitimacy.

A. A Softer Approach

Rather than *mano dura*, Nicaraguan programs have taken a less combative approach,[132] which is reflected even in the branding of their programs. Names include the "Bethlehem Plan" and the "Beach Plan."[133] Rather than criminalizing behaviors that resulted in the mass incarceration of youth gang members[134] in contravention of the CRC,[135] Nicaragua has taken a restorative approach to juvenile justice.[136] This is not a "soft form of justice" offering impunity to the perpetrators of violence, but rather a constant reform of an institution, guided by transitional justice mechanisms in the hopes of perpetuating justice by preventing recurrences of violence.[137] This approach is characterized by community engagement informed by efforts targeted at non-recurrence achieved through institutional reform.[138] These measures are promulgated by a clear and continuous political commitment to reform.[139] These reforms prioritize community involvement, providing for the implementation of restorative justice programs that confer public legitimacy.[140] This approach is reflected in the development of the Nicaraguan National Police's youth programs. The National Police breaks its initiatives into four distinct time periods: (1) 1970-1998, (2) the mid-1990s, (3) 1999-2003, and (4) post-2004.[141]

During the first period, the Nicaraguan assembly promulgated the "Ley Tutelar de Menores" regulating the relationship between youth, their families,

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[132]   The point has been made that these approaches might be "softer" in nature given the lesser level of violence exhibited by *pandillas*. ROCHA & RODGERS, *supra* note 30, at 179. *But see* Rodgers, *supra* note 41, at 6–7 (describing the nature of the *pandillas* as more representative of "youth gangsterism," a distinction which potentially makes lessons learned from *pandilla* engagement more widely applicable outside of the region).

[133]   ROCHA & RODGERS, *supra* note 30, at 162.

[134]   For example, following the implementation of hard line approaches, El Salvador's "incarcerated population has doubled over the past five years." *Id.* at 178; *see also* RODGERS ET AL., *supra* note 30, at 7 (describing the crackdown following the Rodney King riots).

[135]   *See* ROCHA & RODGERS, *supra* note 30, at 178–79.

[136]   *See* MODELO POLICIAL COMUNITARIO PROACTIVO, *supra* note 114, at 38 (understanding the program as written).

[137]   This concept of transition in post-conflict settings comes about "as a result of generalized social conflict in which, among other factors, there is a plethora of violent agents," a situation that Nicaragua is proactively combatting through preventative approaches in an attempt to promote non-recurrence. de Greiff, *supra* note 4, ¶ 19, 20.

[138]   *See* Ley No. 872, *supra* note 4.

[139]   *See id.*

[140]   *See generally Crime in Latin America*, *supra* note 12; *see also* Tyler, *supra* note 81.

[141]   *See* MODELO POLICIAL COMUNITARIO PROACTIVO, *supra* note 114, at 38–39.

and the State.[142] Within this context, the Department of Evaluation of Minors was established, whose stated mission was to rehabilitate adolescents rather than incarcerate them.[143] In the second phase, the National Police placed the interest of the child first, undertaking programs that involved the participation of churches, local leaders, and family members, including them in the broader dialogue.[144] This type of community involvement is demonstrative of the legitimacy conferred through meaningful partnership with the community.[145] These programs have been criticized as political instruments used to strengthen the current political leadership, necessitating the clarification of the line between political support and control.[146] A metric related to community involvement divorced from this specter of political subterfuge is the public trust in police leadership given the personal tension between President Ortega and Director Granera.[147] Director Granera sits atop the list of twenty-six Nicaraguan public officials with an approval rating of eighty-seven percent.[148]

Social action groups in the United States have not conferred this level of legitimacy on their police forces, as evinced by their position that the "militarization of police departments further erodes the trust that should exist between residents and the police."[149] Director Granera credits her department's multidisciplinary approach to policing for her success but emphasizes community involvement, not militarization, as its greatest strength.[150] One department in which this community involvement is stressed is in the Department of Juvenile Justice.[151]

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[142]   *Id.* at 38.

[143]   Specifically, this program sought to rehabilitate adolescents who suffered from addictions and had run-ins with the law in order to "correct" behaviors rather than punish. *See id.*

[144]   *See id.*

[145]   This legitimacy can only be developed when it is the "fairness of police behavior–not the fear of police force and the threat of punishment–[that] creates legitimacy and through it drives public actions." Tyler, *supra* note 81, at 2.

[146]   Peralta, *supra* note 118.

[147]   Stone, *supra* note 9 (describing political promotions, the current Director's Sandinista ties, and WikiLeaks cables demonstrating political intrigue).

[148]   Johnson, *supra* note 116.

[149]   *Turning Back the Tide: Promising Efforts to Demilitarize Police Departments*, POL'Y LINK ADVANCEMENT PROJECT (Apr. 2015) https://static1.squarespace.com/static/55b673c0e4b0cf84699bdffb/t/55b85c4fe4b044c6d34683d8/1438145615746/PL_BCC_DEMIL_POLICE_DEPT_04292015_rev.pdf.

[150]   Stone, *supra* note 9 (summarizing her model as one that is "preventative, proactive, communitarian, deeply rooted in the heart of the community"); *see also Crime in Latin America*, *supra* note 12 (pointing out the unique feature of the recruitment process, which requires community approval for each academy recruit, potentially serving as a driver for community engagement and buy-in).

[151]   *See* MODELO POLICIAL COMUNITARIO PROACTIVO *supra* note 114, at 39.

Through this community partnership, the National Police realized the value in continuing to shift its focus from reactive measures to preventative measures and educational outreach.[152] Building on the second phase, which emphasizes youth involvement, phase three saw the modernization of the police force and the creation of the Juvenile Affairs Division, which focuses on the dynamics of violence aimed at understanding risk factors that would identify youths prone to violence and gang affiliation in order to rehabilitate them.[153] The fourth phase culminated in 2004 with the introduction of the Drug Abuse Resistance Education Program (DARE) program as well as Nicaragua's signature "No Violence Program."[154]

The preventative approach that was in place post-2004 utilizes a three-level continuum to rank youths according to risk levels before tailoring outreach programs to specific needs.[155] Level 1 includes all youths who are given information that pertains to education and social interactions through outreach programs, like DARE.[156] Level 2 includes juveniles struggling with drugs or violent behavior.[157] Diagnostics and psychological help are sought for this group, with the hope that, along with familial support, problems can be addressed, allowing for the integration of the child as a contributing member of the community.[158] Level 3 involves juveniles identified as participating in gang activity or having other criminal histories, which puts them in the highest risk category.[159]

In response to this highest risk category, the Juvenile Affairs Division developed a holistic process informed by the Nicaraguan National Assembly's promulgation of El Código de la Niñez y la Adolescencia, whose stated purpose is to put the interests of the adolescent first.[160] In this endeavor, "community" is a term that pervades every step of the process.[161] Through partnerships with the community, neighborhoods are reviewed in coordination with local stakeholders, and individuals are identified who fall into this highest risk

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[152]   *See id.* at 38.
[153]   *See id.*
[154]   *See id*.
[155]   *See id.* at 40.
[156]   *See id.*
[157]   *See id.*
[158]   *See id.*
[159]   *See id.*
[160]   *See id*. This goal is also in keeping with the UN in Rights of the Child Convention. National Juvenile Justice Network [NJJN], *supra* note 130, at 2.
[161]   *See generally* MODELO POLICIAL COMUNITARIO PROACTIVO, *supra* note 114, at 39.

category.[162] Once at-risk youth have been identified, they are not arrested; rather, their familial and community relationships are evaluated to produce a psychosocial assessment.[163] This decision to first pursue rehabilitation in partnership with the community not only reinforces public perception of "fairness of police behavior" as opposed to "the fear of police force and the threat of punishment," but also results in "legitimacy and through it drives public actions."[164] Integrative methods are then sought to involve the youth in community events while stressing the importance of social relationships.[165]

Following this introductory vetting phase, the youth is offered a place at the national trade school in return for a pledge before his or her community to commit to non-violence.[166] Upon graduation from this seven-track technical program, partner corporations employ the former gang members.[167] This re-integration into the community demonstrates a full cycle of a Juvenile Justice initiative, which is credited in large part for Nicaragua's low violence statistics and the incarceration of a mere seventy youths in the entire country.[168] While these numbers are impressive, criticism has ascribed success to manifold factors.

Critics of the Nicaraguan system have posited that the decline in gang violence is "short term" and the efforts of government organizations and NGOs suffer from a lack of funding.[169] This is a difficult concept to square with legislation codifying these principles in Nicaraguan law[170] and the long-term statistics supporting the efficacy of the Nicaraguan model in spite of a lack of funding.[171] This criticism would be better directed at other Latin American countries that all have chronically underfunded "crime prevention" bodies (as are their rehabilitation programs) but have not experienced the same drops in violence that Nicaragua has been able to achieve on a national level.[172] While funding plays a role, political capital outside of Nicaragua has been spent on militarization rather than community-centered reforms.[173]

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[162]   *See id.*

[163]   *See id.* at 40.

[164]   Tyler, *supra* note 81.

[165]   *See* MODELO POLICIAL COMUNITARIO PROACTIVO, *supra* note 114, at 40–41.

[166]   *See id.* at 41 (understanding the program as written).

[167]   *See id.*

[168]   Peralta, *supra* note 118.

[169]   Richard Maclure & Melvin Sotelo, *Youth Social Capital Formation in Nicaragua*, 22 INT'L J. OF CHILDREN'S RTS. 385, 404 (2014).

[170]   *See generally* Ley No. 872, *supra* note 4.

[171]   Seelke, *supra* note 26, at 13.

[172]   *Id.* at 13.

[173]   Stone, *supra* note 9.

Other criticisms have ascribed Nicaragua's enviable statistics not to any particularly successful program, but simply to institutional factors that distinguish it from its neighbors.[174] Specifically, critics argue Nicaragua's institutionalization of its National Police force was not hobbled by "elements of the old regime" and was able to evade "public accountability" resulting from "political agreements" in the Northern Triangle.[175] Holdovers from prior regimes were able to exploit state institutions maintaining holds on the levers of power, perpetuating extralegal violence.[176] This is a tenuous claim given the "highly-charged atmosphere of Nicaraguan politics."[177] The institutionalization and professionalization of the police force are the very reasons Nicaragua's model should be exported to the United States. Further, the police force—especially its leadership structure—has a degree of stability not present in the Northern Triangle, but which is endemic in the professionalized U.S. system.[178] There is, however, one glaring impediment to this analogy.

The most difficult concept to square with democratic governance is a vestige of what can only be described as a Stasi-esque state security model. The Nicaraguan government has promulgated "Citizen Security" legislation that codifies the goals of the police force while empowering citizens.[179] To this end, Social Prevention of Crime Committees have been formed along with Cabinets of Citizen Power, which "provide a direct link with the community."[180] While these types of programs have been criticized as having been "crafted as political tools,"[181] the underlying concept is nonetheless laudable and further demonstrates a political commitment to reform. It would be naïve not to express concern, given the structure of the cabinets and the presidential link to the cabinet and the police force.[182] However, the past three years have assuaged these fears, and the takeaway has shifted from the structure of the system to the intent behind it. This intent should be understood as involving the population in its own security system by integrating its engagement with the police force.

While Nicaragua may not be able to export its neighborhood watch, political reform conducive to the underlying trust between the community and police

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[174] José Miguel Cruz, *Democratization Under Assault: Criminal Violence in Post-Transition Central America* 173 (2010) [hereinafter "*Democratization Under Assault*"].

[175] *Id.* at 172.

[176] *Id.* at 161.

[177] Stone, *supra* note 9.

[178] *Id.*

[179] Ley No. 872, *supra* note 4.

[180] Budd, *supra* note 101, at 4 (numbering 40,000 members and 143 Cabinets respectively).

[181] Peralta, *supra* note 118.

[182] Stone, *supra* note 9.

force presents an exportable community policing model aimed at combatting youth gang violence. It is political commitment to community involvement in restorative justice programs that promotes the public legitimacy that Nicaragua's neighbors and the United States desperately need.

While their neighbors have "pared down to little more than monthly meetings,"[183] Nicaragua has focused its police force on "targeting the social conditions that cause" crime and developed "conditions which reduce it."[184] Nicaragua and its neighbors are populated by an overwhelming percentage of citizens who recognize crime as a threat to their "[n]ation's well-being."[185] Rather than addressing fear through community policing, Northern Triangle countries implemented problem-oriented approaches that relied on military coordination.[186] These approaches mirror the gang-unit approach undertaken by many U.S. jurisdictions, where the most commonly used measures are described by agencies as targeted patrols and specialized "gang units."[187] These techniques typically focus on suppression tactics, which were once the most prevalent tactic in the United States but were "frequently viewed as the least effective."[188] This method has remained popular not because of its effectiveness in local jurisdictions, but rather as a result of "mimetic processes" targeted at creating "institutional legitimacy," rather than tailoring programs to "environmental contingencies."[189]

One of the most copied programs was that of the Los Angeles Police Department (LAPD), whose Community Resources Against Street Hoodlums (CRASH) unit "became a national model."[190] While "community" figures prominently in the CRASH acronym, its operations were characterized by "decisively and aggressively" executed operations that, in a single year, yielded

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[183]   Ungar & Arias, *supra* note 7, at 3.

[184]   Budd, *supra* note 101, at 4 (focusing specifically on "juvenile justice and intra-family or sexual violence").

[185]   Finding upwards of seventy-four percent of Central American residents perceived this threat. Orlando J. Pérez, *Gang Violence and Insecurity in Contemporary Central America*, 32 J. SOC'Y LATIN AM. STUD. 217, 220 (2013).

[186]   Budd, *supra* note 101, at 2.

[187]   Seventy-six percent of agencies surveyed used targeted patrolas while sixty-four percent had established a gang unit or assigned a gang officer. ARLEN EGLEY, JR., ET AL., HIGHLIGHTS OF THE 2012 NATIONAL YOUTH GANG SURVEY, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, https://www.ojjdp.gov/pubs/248025.pdf.

[188]   Suppression tactics generally describe "arrest, prosecution, and incarceration of gang members." Eric Fritsch et al., *Gang Suppression Through Saturation Patrol, Aggressive Curfew, and Truancy Enforcement: A Quasi-Experimental Test of the Dallas Anti-Gang Initiative*, 45(1) CRIME AND DELINQUENCY 122, 122 (1999).

[189]   Agencies simply adopted programs modeled on those that had been perceived as successful. KATZ & WEBB, *supra* note 14, at 479.

[190]   *Id.* at 2–3.

upwards of 25,000 arrests for "the slightest infractions."[191] This mindset won national acclaim, yet a mere ten years later CRASH had been disbanded as scandals devastated community trust, making excessive force and extrajudicial enforcement become standard operating procedure.[192] Short-term crime reductions were achieved through brutal tactics, whose unsustainable practices not only eroded public trust but also failed to achieve long-term reductions in youth gang violence.[193] This is where Nicaragua's experience is most useful when distinguished from its neighbors, where mimetic processes modeled after these hard-line U.S. techniques failed.[194] Rather than short-term gains achieved through aggressive and abrasive tactics, Nicaragua focused on long-term outcomes through policing in partnership with the community.[195] Further, when neighboring countries have engaged in piecemeal community policing, trials in smaller cities in Guatemala and El Salvador have been successful.[196] Assuming adequate political support, this success has come despite their limited scope and funding, indicating the portability of some form of community model.[197]

While the name or classification of the gang, along with percentages of violence attributable to gangs, may vary from country to country, governments should target the underlying fear through legislation fostering community policing. Problem-oriented policing addresses disorder resulting from crime, not fear.[198] In the United States, this was best characterized in a survey of gang units that found that "underlying" issues were not in the officer's purview, as the gang units saw their role as purely "reactive in nature—that they were to respond to real problems after they occurred."[199] Here, the emphasis on community involvement was simply gathering intelligence that would lead to the resolution of backward-looking investigations.[200] Intelligence is a laudable and necessary first step, but simply applying it to backward-looking investigations not only fails to address the root cause of the violence but also limits its value. For

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[191]   *Id.* at 2.

[192]   *Id.* at 3. (exposing extrajudicial excessive force, planting of drugs, and all-out war on certain racial groups perceived to be gang members).

[193]   *Id.* at 2–4.

[194]   The vernacular "war on transnational street gangs" has led to "US interests in shaping regional politics and order" and the "logic is that crime and violence have overwhelmed local police forces—weak and corrupt to begin with—and therefore the armed forces are necessary for the state to provide security." Müller, *supra* note 2, at 697.

[195]   *See generally* MODELO POLICIAL COMUNITARIO PROACTIVO, *supra* note 114, at 38.

[196]   *See* Nancy E. Brune, *Sustaining Security: Community Policing in the Americas*, AMERICAS QUARTERLY 112, 113 (2014).

[197]   *See id.* at 112, 117.

[198]   Wilson & Kelling, *supra* note 80.

[199]   KATZ & WEBB, *supra* note 14, at xv, 14–15.

[200]   *Id.*

example, this limited value is seen in the feedback loop described by an Albuquerque police commander who described his gang unit's community involvement as it related to intelligence gathering: "We know who they are and what they do, and we communicate with them. But we're not going to change them . . . they basically say that they are a bad guy and you have got to catch me."[201] This department identified gang members and engaged with them, but the dialogue could only end in arrest and incarceration. Alternatively, the Nicaraguan approach envisions an outcome where the gang members can be reintegrated into their community as productive members of society.[202]

This same underdeveloped community policing dynamic is seen in Dallas. The Dallas Police Department received a grant in 1996 to implement "Interactive Community Policing."[203] This initiative manifested itself in three main suppression tactics: "aggressive truancy enforcement," "high visibility patrols," and "stopping and frisking suspected gang members or other suspicious persons."[204] This approach does not engage the community in the vein of Nicaraguan partnership but demonstrates the varied application of the community concept.[205] Given this wide gap between the U.S. and Nicaraguan models, a return to a conventional standard embodied by Nicaragua's concept of "policing in partnership with the community," codified through political commitment, presents a path to restorative rather than retributive justice.[206]

Like most theories, the abstract appears straightforward, but the reality is more convoluted. The Nicaraguan methodology should not be duplicated. Instead, the intent behind the development of their practices should be considered in the implementation of community-oriented policing practices. Political commitment to reform aimed at codifying a community-focused approach has granted legitimacy in the eyes of the Nicaraguan population while effectively stifling youth gang violence.[207] In the United States, officers have identified that "[t]he neighborhoods kind of need to protect themselves. I think that has given rise to some of the gang activity."[208] Given this sentiment, why not partner and provide an alternative collective security strategy?[209] Policing in partnership has become a catchphrase worldwide, but in Nicaragua it has

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[201] *Id.* at 402.

[202] *See* MODELO POLICIAL COMUNITARIO PROACTIVO, *supra* note 114, at 38–39.

[203] Fritsch et al., *supra* note 188, at 122.

[204] *Id.* at 123.

[205] DEMICHELE & KRASKA, *supra* note 86, at 84

[206] RAO, *supra* note 13, at 1.

[207] *See* MODELO POLICIAL COMUNITARIO PROACTIVO, *supra* note 114, at 39.

[208] KATZ & WEBB, *supra* note 14, at 321.

[209] *Id.*

become more than just a lofty ideal. It has been codified in legislation aimed at policing in partnership with the community.[210] Reflecting on this development through the lens of transitional justice, the Director of Juvenile Affairs opined, "[t]he repression that we had during the 70s, taught us a lesson," specifically "that when there is repression, there is a reaction."[211]

<center>CONCLUSION</center>

In our globalizing world, transnational as well as inter-state gang problems will continue to proliferate. However, by focusing on local efforts and sharing best practices, agencies can learn from their peers and gain legitimacy through partnership with the community. No matter the number of arrests, the reality remains that this is not a zero-sum game. Conditions exist which give rise to these gangs, and only through proactive community engagement can they be addressed. No gang problem is the same and responses must be tailored to the individual communities.

A first step has been taken in the United States where gang units gather information on gang activities.[212] The information has been deployed in backward-looking investigations and gang harassment affected through suppression strategies.[213] Building on these information-gathering techniques, the information gathered could be deployed in the vein of the holistic Nicaraguan approach, which engages youth gang members.[214] Whether transnational, local, or inter-state, any juxtaposition of the aforementioned local engagement should begin at the community level. Local engagement with the community will not only enable more efficient intelligence gathering but will also create a relationship where the "fairness of police behavior—not the fear of police force and the threat of punishment—creates legitimacy and through it drives public actions."[215] This linkage enables police departments and local communities to address underlying causes of youth gang membership that are specific to their individual communities while realizing simultaneous gains in public perception through transparency, combatting the corrosion of "trust that should exist between residents and the police."[216]

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[210]   *See* MODELO POLICIAL COMUNITARIO PROACTIVO, *supra* note 114, at 39.

[211]   Peralta, *supra* note 118.

[212]   KATZ & WEBB, *supra* note 14, at 13–14.

[213]   *Id.*

[214]   *See* MODELO POLICIAL COMUNITARIO PROACTIVO, *supra* note 114, at 38–39.

[215]   Tyler*, supra* note 81.

[216]   *Id.*

Reform does not always guarantee success. Indeed, there have been a number of failed efforts to implement community policing practices aimed at addressing gang violence.[217] Nicaragua does not represent a silver bullet guaranteeing success in addressing youth gang violence, but its holistic approach enabled by political commitment to reform demonstrates the practice of theoretical precepts advanced in the United States.[218] Building on these concepts of "community embeddedness, formal problem solving, and geographic accountability," gang units will be both more effective and more legitimate.[219] Community policing should not refer to an abstract concept but should facilitate these models in practice through continuous community engagement, as demonstrated by Nicaraguan policies. While each iteration of community policing will be different, through continuous reform, undergirded by political commitment to reform, community partnership will combat drivers of youth gang violence. This co-production of security will result in communities in which local, transnational, or any hybrid thereof will be unable to find roots. While there may be a consensus at a "fundamental level" as to the nature of community policing, there are "factors contributing to the divergence of definition" which should attempt to channel Nicaragua's approach, stressing: (1) political commitment to reform, (2) community involvement, (3) restorative justice through education and rehabilitation, and (4) public legitimacy.[220]

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[217]   Brune, *supra* note 196, at 6–8.

[218]   KATZ & WEBB, *supra* note 86, at xvi–xvii.

[219]   *Id.*

[220]   RAO, *supra* note 13, at 3.