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Veröffentlichungsversion / Published Version  
Zeitschriftenartikel / journal article

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### Empfohlene Zitierung / Suggested Citation:

Ansorg, N., & Kurtenbach, S. (2023). Promoting Peace and Impunity? Amnesty Laws after War in El Salvador and beyond. *Journal of Global Security Studies*, 8(2), 1-19. <https://doi.org/10.1093/jogss/ogad010>

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# Promoting Peace and Impunity? Amnesty Laws after War in El Salvador and beyond

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## Abstract

Amnesty laws are a widespread practice in the transition from war to peace. They often aim at the transformation of violent conflict by making promises about exemptions from liability for war crimes. Critics argue that amnesties are in violation of international law and reproduce impunity in post-war societies, whereas supporters of amnesty laws focus on their peace-promoting features. Previous research has extensively looked into the second aspect, and found that amnesty laws can open the door to negotiations and a short-term termination of civil war. The question of impunity, however, has not been answered extensively. Applying a Historical Institutional framework, we assess the impact of the adoption of amnesty laws on societal impunity, defined as any person or group being exempt from punishment or free from the injurious consequences of an action. Case-study evidence from El Salvador shows that amnesty laws are reproducing existing power relations and thus inhibit profound reforms. With the help of amnesty laws, an institutional environment will be created that acts in the favor of involved parties for years, if not decades. We subsequently test these qualitative findings with a newly created dataset on post-war justice sector governance and reform across forty different post-war countries worldwide from 1990 to 2016, and with societal, police, and military impunity as dependent variables. Statistical evidence shows that amnesty laws significantly correlate with higher levels of impunity in a country. A peace agreement, or democracy at the end of war, reduces the risk of impunity even with amnesty laws present.

## Resumen

Las leyes de amnistía son una práctica generalizada en la transición entre la guerra y la paz. A menudo tienen como objetivo la transformación de los conflictos violentos mediante promesas de exenciones de responsabilidad por crímenes de guerra. Los críticos argumentan que las amnistías violan el derecho internacional y reproducen la impunidad en las sociedades de posguerra, mientras que los partidarios de las leyes de amnistía se centran en sus rasgos de promoción de la paz. Ha habido investigaciones anteriores que han analizado ampliamente el segundo aspecto y han concluido que las leyes de amnistía pueden abrir la puerta a las negociaciones y a una terminación a corto plazo de la guerra civil. Sin embargo, la cuestión de la impunidad no ha recibido una respuesta exhaustiva. Aplicando un marco institucionalista histórico, evaluamos el impacto de la adopción de leyes de amnistía sobre la impunidad social, definida como cualquier persona o grupo que queda exento de castigo o libre de las consecuencias perjudiciales de una acción. Las pruebas obtenidas de estudios de caso sobre El Salvador demuestran que las leyes de amnistía están reproduciendo las relaciones

de poder existentes y, por lo tanto, limitan la realización de reformas profundas. Debido a la ayuda que proporcionarían las leyes de amnistía, se creará un ambiente institucional que actuará a favor de las partes involucradas durante años, o incluso décadas. A continuación, demostramos estas conclusiones cualitativas usando un conjunto de datos recientemente creado sobre la gobernanza y la reforma del sector de la justicia de posguerra en 40 países diferentes en situación de posguerra en todo el mundo desde 1990 hasta 2016, y que tiene la impunidad social, policial y militar como variables dependientes. Las pruebas estadísticas demuestran que las leyes de amnistía se correlacionan significativamente con niveles más altos de impunidad en un país. La existencia de un acuerdo de paz, o de democracia al final de la guerra, reduce el riesgo de impunidad incluso cuando existen leyes de amnistía.

## Résumé

Les lois d'amnistie sont une pratique courante dans les périodes de transition vers la paix. Elles visent souvent à sortir d'un conflit violent en promettant aux criminels de guerre des exonérations de responsabilité pénale. Les voix critiques vis-à-vis des amnisties avancent que celles-ci violent le droit international et maintiennent l'impunité dans des sociétés post-conflit, tandis que les partisans de ces lois mettent en avant leur rôle de promotion de la paix. Les travaux de recherche ont jusqu'à présent examiné en profondeur le second aspect, et conclu que les lois d'amnistie ouvraient la porte à des négociations et à un arrêt rapide des conflits civils. Cependant, la question de l'impunité n'a pas fait l'objet de beaucoup d'analyses. Au moyen d'une approche relevant de l'institutionnalisme historique, nous évaluons l'impact de l'adoption de lois d'amnistie sur la question de l'impunité, définie comme permettant à un individu ou à un groupe d'être exempté de sanctions ou d'éviter les conséquences préjudiciables de ses actes. Nous nous appuyons sur une étude de cas au Salvador pour montrer que les lois d'amnistie reproduisent des relations de pouvoir existantes et, par conséquent, entravent de potentielles réformes en profondeur. En effet, ces lois concourent à créer un environnement institutionnel agissant en faveur des parties impliquées pendant des années, voire des décennies. Nous testons ensuite ces résultats qualitatifs par le biais d'un ensemble de données récemment créé sur la gouvernance et les réformes de la justice post-conflit dans 40 pays entre 1990 et 2016; les variables dépendantes sont les différents types d'impunité : sociétale, militaire et policière. Enfin, des résultats statistiques montrent une nette corrélation entre lois d'amnistie et haut niveau d'impunité à l'échelle d'un pays. Nous avançons qu'un accord de paix ou une construction démocratique à la suite d'un conflit réduit le risque d'une telle impunité, y compris lorsque des amnisties ont été décidées.

**Keywords:** amnesty laws, amnesty, war crimes, international law, reconciliation, post-war justice, post-conflict justice, impunity

**Palabras clave:** leyes de amnistía, amnistía, crímenes de guerra, derecho internacional, reconciliación, justicia de posguerra, justicia posterior a conflictos, impunidad

**Mots clés:** lois d'amnistie, amnistie, crimes de guerre, droit international, réconciliation, justice d'après-guerre, justice post-conflit, impunité

## The Conundrum of Amnesty Laws in the Aftermath of Violent Conflict

Amnesty laws were and still are a widespread practice in post-war countries. According to a justice dataset by [Binningsbø et al. \(2012\)](#), amnesty can be defined as “a promise (or in some cases formal legislation) on the part of the ruling party to not prosecute or punish past violators”. Out of 272 post-conflict justice processes in

Binningsbø et al.'s dataset, some form of amnesty was granted in ninety-two cases or 34 percent. More than 60 percent of these amnesties were unconditional, which means that potential perpetrators are not underlying any conditions to receive amnesty, such as telling the truth.

Although international law does not clearly prohibit the use of amnesties ([Clark 2018](#), 190), amnesties have been the matter of continuous criticism: Critics argue

that amnesties are in violation of international law and contribute to further violence and reproduce impunity (Thoms, Ron, and Paris 2008, 25; Skaar, Gianella Malca, and Trine 2015, 13). Yet, particularly in local communities or at the negotiation table it is argued that amnesties might be a “necessary evil” or the price to end a war as armed actors facing legal prosecution might not be willing to sign a peace agreement or lay down arms otherwise. However, if this is really the case, then what are mid- and long-term implications of amnesty laws during and after war?

Previous research has analyzed the effect of amnesty laws on armed conflict termination (i.e., short-term), finding that they can indeed help bringing warring parties to the negotiation table, and opening the door to peace (Dancy 2018; Daniels 2020). However, what has not been extensively studied so far is the mid- to long-term impact of amnesty laws on societal impunity after the end of war. Following Klem (2018), we conceptualize post-war transitions as a context of continuity and change, where conflicts prevail despite the fact that collective violence in the form of war has ended. In this paper, we ask the following research question: what impact do amnesty laws have on post-war societal, police, and military impunity? We define post-war impunity as any person or group being exempt from punishment or free from the injurious consequences of an illegal action. This might be a person of public interest such as politicians, but also security services such as police and military and common civilians. Related to this are questions on who the social actors or elites are who initiate amnesty, and who has to live with the consequences of an amnesty law or potential punishment.

By understanding amnesties as institutions and applying a Historical Institutionalist approach to post-war environments, we explore determinants of amnesties and assess the impact of the adoption of such a norm on the establishment of a transformative peace process at multiple levels (cf. Hall 1986; Steinmo, Thelen, and Longstrech 1992; Skocpol and Pierson 2002; Fioretos, Falleti, and Sheingate 2016). In detail, we look at the path dependency of setting up amnesties, how they directly address the atrocities committed by former warring parties, and how they might function as a turning point to incentivize an end to the war. In addition, we take a specifically political focus on amnesties and examine power relations leading to the agreement on amnesty laws taking into account dynamics at the local, the national, and the international level. This allows for the analysis of the implications amnesties might have for the post-war environment and the development of peace beyond the absence of war.

We adopt a mixed-methods research design to examine the medium- and long-term effects of amnesty laws on affected societies. The mixed methods approach also allows us to decrease the blind spots of just one method and type of data, and complements different methods’ strengths (Flick 2018). First, we explore our theoretical assumptions in an in-depth case study of the amnesty laws in El Salvador.<sup>1</sup> El Salvador is a particularly relevant case for our theory on the long-term effects of amnesty laws as it is considered a blueprint case for liberal peace-building. The 12-year long war came to an end with a comprehensive peace agreement and the armed opposition Frente Martí para la Liberación Nacional (FMLN) transformed into a successful political party. Yet, after the end of the war, El Salvador is considered one of the most violent countries across the globe with yearly homicide rates above forty as a minimum and up to over a hundred homicides per 100,000 inhabitants after the end of the war (K. Walter 2018, 188). Against this background, El Salvador is a puzzling case in terms of the coexistence of successful war termination and post-war liberalization on the one hand, and high levels of violence—and impunity—on the other. The question is thus: What long-term impact do amnesties have for the persistence and the dynamics of violence? El Salvador’s parliament passed two amnesty laws: The first amnesty law decriminalized the former guerrilla allowing the FMLN to transform into a political party and the second amnesty law secured overall impunity for gross human rights violations by the state and the guerrilla. The law was the product of the powerful economic and military elites controlling the parliament. Qualitative evidence from El Salvador shows that amnesty laws have been used in a post-war setting to perpetuate existing power relations; they shape the institutional environment in favor of involved parties for years, if not decades. However, they also enable long-term impunity due to the lack of trust in institutions and a general devaluation of the rule of law.

In a second step, we undertake a statistical analysis on a newly collected dataset on justice sector governance and reform (JSGR) across forty different post-war countries worldwide from 1990 to 2016. The JSGR dataset sets out to address the gap of comparative statistical data on post-war judicial reform by collating systematic information on the justice sector and its reform. For this particular paper, our dependent variable is impunity (societal, police, and military) after the end of war, measured as a situation where “certain citizen or groups in a

1 Extensive fieldwork has been done in El Salvador from March to April, 2017, where fifty two in-depth interviews and 3 focus group discussions were conducted.

country, are exempt from punishment or free from the injurious consequences of an action". Independent variable is the presence of (one or more) amnesty laws, defined as above. We also apply widely used control variables such as the existence of a peace agreement, other formal or informal transitional justice mechanisms, ethnic conflict, incompatibility, or the presence of a UN peacekeeping force. Our statistical analysis shows that amnesty laws are prone to increasing impunity in the long-term.

The paper proceeds as follows: In the next section, we discuss previous research on amnesty laws, before we elaborate on the theoretical framework used for our analysis in Section 3 of the paper. In Section 4, we discuss our methodology. Section 5 first undertakes a qualitative case study on El Salvador before moving on to quantitative analysis of short- and long-term effects of amnesty laws in post-war countries worldwide. The last section concludes with a discussion of findings.

### Previous Research on Amnesty Laws in Post-War Countries

Previous research on amnesties is driven by the debate within the field of transitional justice and post-war peacebuilding: peace versus justice or prosecutions versus amnesty (Mani 1998; Sriram 2000; Newman 2002; Hannum 2006; Sonnenberg and Cavallaro 2012, 254). This debate is based on different understandings of peace and justice: For the sake of maintaining justice and the rule of law, retributive justice strives for prosecutions and punishment for perpetrators of war crimes. Contrarily, restorative justice is considered to privilege peacebuilding over justice by promoting amnesty, truth commissions, and acts of forgiveness (Jeffery 2012, 63f). Regarding peace there is an increasing debate on the qualities of peace beyond the minimalist notion of peace as the absence of war or armed conflict. Here, a pathway from procedural justice to distributive justice to stable agreements and durable peace is identified (Druckman and Wagner 2019).

The peace versus justice debate has become more nuanced with legal aspects being investigated in more detail (Skaar, Gianella Malca, and Trine 2015, 13). Generally, no major international treaty explicitly prohibits amnesty laws. However, customary international law, backed by the UN Secretary General, states an international duty to prosecute certain crimes, including genocide, crimes against humanity, war crimes, and crimes of aggression (Ludwin King 2010, 8–14; Skaar, Gianella Malca, and Trine 2015, 23). Those so-called *core crimes* cannot be amnestied under international law and if they are, then national and international courts can try those cases.

Crimes below this gravity threshold can be covered by amnesties, which allow governments to provide impunity for less serious human rights violations (Skaar, Gianella Malca, and Trine 2015, 13).

Critiques consider amnesty laws as “denials of justice that encourage future impunity” (Thoms, Ron, and Paris 2008, 25). In line with international law, opponents argue that certain crimes like genocide or torture must be prosecuted (Ludwin King n.d., 14f). Amnesty opponents further highlight its contribution to violence. By excusing crimes through amnesty, the rule of law is considered to be undermined and future anti-social and criminal behavior is encouraged (Thoms, Ron, and Paris 2008). Not holding perpetrators accountable for their actions ultimately fosters a continuation of violence and armed conflict (although not necessarily war). Trejo et al. (2018) analyze the effects of transitional justice mechanisms (truth commissions, trials, and amnesties) on criminal violence in new democracies. According to their results, amnesties may ease democratic transitions but are also an important factor in the increase of homicide rates, because the cost and consequences of doing harm are considered low and impunity remains high. Within this line of argumentation, critics argue that amnesties enable offenders to remain part of the society they committed atrocities against. Pankhurst (1999, 242) highlights the “sense of injustice” that can result from the potential one-sided nature of amnesties, contributing to discontent of victims and ultimately threaten peace (Skaar, Gianella Malca, and Trine 2015, 13).

On the other hand, pragmatists consider amnesty laws as means to end war and thus as a starting point for transforming violent conflict (Mallinder 2008, 208; MacKenzie and Sesay 2012, 151). Consented amnesty can be an incentive for governments to step down or for rebel groups to join the negotiation table (Jeffery 2012, 63)—not offering some form of amnesty can thus inhibit war termination. Accordingly, supporting scholars view amnesty as the necessary price to end a war. In this regard, amnesty laws are even considered to promote reconciliation.

Empirical research has examined extensively the impact of amnesties on the ending of war, and the promotion of peace in the short-term. Most recently, Dancy (2018) has conducted the hitherto largest study on the same topic; he finds that amnesty laws only help in ending civil wars when they follow armed conflict termination and are embedded in peace agreements. In a more nuanced approach, Daniels (2020) analyses the effects of amnesties during armed conflict on specific forms of war termination. Her results show that only amnesties can promote negotiated settlements by reducing the

commitment problem if they are formal and independent of the inclusion or exclusion of heinous crimes.

With regards to the effect of amnesty laws on peace, findings are mixed. In 2004, [Snyder & Vinjamuri \(2004\)](#) conducted a study on the relationship between amnesties and peace, assessing thirty-two cases in a qualitative manner. They conclude that amnesties can be an effective peacebuilding tool, but only if perpetrators are subsequently removed from office, or if there is a strong institutional setting that prevents a return to violence. [Gates et al. \(2007\)](#) identify destabilizing implications of amnesties on peace (measured as absence of armed conflict).

While the effect of amnesty laws on peace as the termination of war or armed conflict has been extensively studied, the long-term impact on impunity has not received sufficient academic attention. One exception is a paper by [Mallinder & McEvoy \(2011\)](#), where they argue from a more theoretical perspective what capacities are necessary to prevent impunity after amnesty law, but they do not go into depth on an empirical level. We tackle this research gap by examining specifically the impact of amnesty laws on societal, police, and military impunity. By applying a Historical Institutional framework to the study of amnesties, we analyze the effect of amnesties on long-term peacebuilding and societal, police, and military impunity. This approach also enables us to include the logic and the interaction of power relations at different levels.

## The Conditions of Amnesty Laws from a Historical Institutional Perspective

A variety of transitional justice mechanisms is available to actors in a (post-) war society, including prosecution in national or international courts, truth commissions, or local (informal) justice mechanisms ([Clark 2013](#)). The decision for or against certain mechanisms is highly dependent on the specific circumstances and contexts of the society, and often reflects causes and dynamics of the conflict itself. In terms of amnesty laws, we assess the effect these laws have on impunity, as well as on the power relations after wars have ended.

There are various definitions of amnesty. Broadly, [Binningsbø et al. \(2012, 735\)](#) define amnesty as “a promise (or in some cases formal legislation) on the part of the ruling party to not prosecute or punish past violators”. [Olsen, Payne, & Reiter \(2010, 806\)](#) consider an amnesty as a “process where a state officially declares that those accused or convicted of human rights violations, whether individual or groups, are excused from prosecution, pardoned for their previous crimes,

and subsequently released from prison”. More narrowly, [Freeman \(2009, 13\)](#) defines an amnesty as “an extraordinary legal measure whose primary function is to remove the prospect and consequences of criminal liability for designated individuals or classes of persons in respect of designated types of offenses”. As these definitions indicate, amnesties can take the form of an actual law, an oral promise, a provision of a peace agreement, or a de facto amnesty because prosecutions simply do not take place ([Mallinder 2008, 3](#)).

Amnesty laws immunizing perpetrators of violence and human rights abuses from prosecution are highly contested but a political reality ([Mallinder 2007, 210](#)). Most countries transitioning from periods of unrest and violence face the challenge of “weighing the peace they believe will result from an amnesty against the justice that results from holding trials” ([Ludwin King 2010, 2](#)).

There are different purposes for an amnesty provision such as signaling forgiveness to military deserters, moving toward democracy, forgiving political prisoners, or protecting oneself with regard to future prosecutions ([Dancy 2018, 390](#)). Overall, they can be divided into *self-amnesties*, *amnesties ending conflict*, and *amnesties related to truth commissions*. Within the peace versus justice debate, different forms of amnesty matter: There are blanket or conditional amnesties, pronounced for individuals or all-inclusive ([Ludwin King 2010, 3](#)).

## Amnesties as institutions—a historical institutionalist view

In this paper, we examine determinants of amnesty laws and their impact on the establishment of peace in the aftermath of war. We consider amnesty laws as institutions, defined as formal or informal rules, procedures, or constraints that structure political, social, or economic interaction. Institutions are at the core of political relations ([March and Olsen 1989](#)). They are essential determinants of political behavior ([Peters 2012, 164](#)). For the purpose of this paper, we capture if there have been de facto or de jure amnesty laws.

To study the development and longevity of amnesty laws after war as well as their impact on post-war societies at different levels (local, national, and international), it is helpful to use a Historical Institutional approach. The concepts that Historical Institutionalism (HI) contributes help to illuminate the role of actors or agents, temporal dimensions, and unintended consequences of institutional choices (e.g., [Pierson 1996](#)). The main focus of HI are institutions and institutional change over time, taking into account social, political, and economic behavior from a historical perspective. This approach

relies heavily on (comparative or single) case studies and process tracing, and a thick description of potential pathways that lead to a certain outcome.

Amnesty laws are often a product of delicate negotiations between the conflict parties. As outlined above, amnesty laws aim at bringing conflict parties to the negotiation table and ensure that arms are laid down and not taken up again. Amnesty laws thus ensure a credible commitment to a peace agreement—in this case a legal concession toward perpetrators of violence—and to ending the war (e.g., B. Walter 2002). The aim is to overcome collective action problems and to cooperate for mutual gain (Moe 2005, 216). As such, amnesty laws are connected to questions of power, and we believe that any discussion on amnesty needs to attend to this aspect as well.

When analyzing amnesty laws in the transition from war to peace, it seems useful to apply a HI lens with a particular focus on power. In particular, two main features are of importance when exploring determinants of amnesty laws in (post-) war societies: “(1) it must be attentive to processes unfolding over time; and (2) it must focus on the ways in which core institutional arrangements—including policy arrangements—typically advance the interests of particular political coalitions” (Pierson 2016, 125f). With regards to amnesty laws, this means that we need to explore the processes that lead to the creation of these particular institutions, what interests they serve and what advantages they institutionalize, and how different conflict parties are involved in the institutional evolution of amnesty laws.

As Pierson outlines for internal policies in peaceful countries, winning coalitions will use their power to “change ‘the rules of the game’ to create further advantages down the road” (Pierson 2004, 20); this is even more the case in a volatile environment such as during peace negotiations, when there is a window of opportunity for former warring parties to create an institutional environment that acts in their favor. Amnesty laws constitute an important turning point in setting the path from war to peace. They involve large set up costs as they allow for war crimes to potentially go unpunished. Yet, their return is considered as invaluable by supporters, as they believe that amnesty laws have the ability to end the war and, under certain circumstances, keep beneficiaries in power. Thus, amnesty laws can be seen as a major turning point shaping a path-dependent future. According to Pierson, path dependency is defined as “dynamic processes involving positive feedback”, or self-reinforcement (Pierson 2004, 20). Hence, Pierson’s more general claim that any revisions will be “powerfully constrained and channeled by previous institutional choices”

is also and particularly valid for amnesty laws. An important aspect here is that all involved actors are better off if they agree to commit to the amnesty law and its conditions (although there might be differences in their individual gains) to end war; if they are not better off with the newly created law, then they would not participate and war would continue (cf. Pierson 2016, 131).

The newly created amnesty laws are then often the main product of an agreement or compromise between the conflict parties that create advantages for certain actors. Amnesty laws demonstrate the evidence that (former) warring parties have a capacity to overcome collective action problems and coordinate their actions in favor of beneficial outcomes for all involved (cf. Pierson 2016, 133). In the line of HI, they “generate feedback effects that reinforce the advantages of winners over time, transferring resources, necessitating or underwriting social investments, and sending signals about likely outcomes that can encourage individuals to switch sides or adapt” (Pierson 2015, 2016, 133).

Because amnesty laws are highly path dependent, they contribute to an institutional framework that acts in favor of those who were involved in its creation for years, if not decades to come. Hence the analysis of amnesties as institutions and the HI approach allows us to systematically link short-term advantages to end a war and long-term problems of promoting impunity by including the fact highlighted in the transitional justice (TJ) debate (cf. Sriram 2000) that amnesties might have contradicting determinants as well as fundamental consequences for social cohesion and societal dynamics. This is of great importance as it touches upon questions of transitional justice and reconciliation of societal groups in the aftermath of war—hence if we analyze amnesty laws, we also need to look at implications for those who have suffered from violence throughout the war. Amnesty laws also mean that victims of war crimes mostly absent at the negotiation table are deprived of their right to see perpetrators prosecuted; they, in return, walk freely after, for the sake of war termination. This might have major implications for the post-war environment, the affected communities or social groups, especially when there are no other mechanisms in place such as truth telling commissions and local reconciliation efforts. In many cases, amnesties are then only elite pacts that serve the interests of a few leaders.

### **Methodology: a Mixed Method Analysis to Assess the Effects of Amnesty Laws**

In this paper, we apply a mixed method research design to assess the impact of amnesty laws on impunity. The use

of different methods enables us to make use of the advantages, while addressing the weaknesses of each method. In particular, this allows us to include an in-depth case evidence on the specific causal relations, while also generating generalizable findings on the impacts of amnesty laws on long-term impunity. Furthermore, in the case of convergence of the results from both the qualitative and quantitative components, this could provide more valid inferences to be made.

Specifically, we first explore our theoretical assumptions with an in-depth case study of El Salvador. The Central American country is a fitting example to test our theoretical assumption as it is regarded a very successful case of liberal peace after war (cf. [Montgomery 1995](#)). El Salvador avoided a recurrence of war, but it evolved at the same time to one of the most violent countries across the globe ([Kurtenbach 2013](#)). Regarding amnesty laws, the first area of the qualitative analysis deals with the foundations of the amnesty law such as the structures of conflict, the patterns of violence during war, and the modes of war termination: This information is necessary to assess the power relations that shape rulemaking on the ground during and after the war. Violence targeting the combatants on the other side differs from widespread violence against civilians. A military victory can either promote self-amnesty for the winning side or grant amnesty generously to the inferior side. This analysis of the underlying power relations in the military field as well as in the larger social, political, and economic context helps us to identify the relevant actors and their agency in relation to amnesty laws. Power relations change opening or closing opportunities for amnesty, reconciliation and accountability. Their diverse and sometimes contradicting dynamics at the local, national, and international level are part of the analysis.

El Salvador was one of the first cases of liberal peacebuilding with a comprehensive transformative peace accord. While the peace agreement did not include an amnesty, the parliament passed a first amnesty for the former armed opposition of the Frente Martí para la Liberación Nacional. A second amnesty law was adopted by initiative of the powerful traditional after the publication of the Truth Commission. Given that institutional arrangements are often a product of political elites that typically advance the interests of particular political coalitions, El Salvador can be considered a solid test for our theory, as it is in line with the main assumptions of who agrees to and arranges institutional compromises. The case study is based on extensive fieldwork in El Salvador (see footnote 1). We also use primary and secondary sources such as legal documents, reports, official figures, and secondary literature.

In the second step, we generalize our findings with the help of a quantitative analysis on newly collected data on JSGR across forty different post-war countries from 1990 to 2016. The JSGR dataset aims to facilitate the study of the nature and scope of post-war judicial reform and the stability of peace (see Supplemental JSGR dataset for further information). In this dataset, systematic information on the following areas of the justice sector and its reform is collated: (1) *Representation*—how representative is the justice sector of the whole society? (2) *Independence*—how independent is the justice sector of political and private influence? (3) *Presence*—how accessible is the justice sector to all parts of the society? (4) *Scope* of the justice sector and its reform—does the justice sector have universal scope in the society? It explicitly focuses on aspects of governance—the conduct and management of the judiciary—including representation, independence, presence, scope of the judiciary, and the reform efforts undertaken in these areas. For the purpose of this paper, we do not involve all variables collected in the dataset—rather, we focus on those that are relevant for our analysis such as the existence of amnesty laws or other transitional justice mechanisms.

## Amnesty Laws after War in El Salvador and beyond: Promoting Peace—Impunity?

El Salvador has a long history of violence and impunity. Benjamin Cuéllar, former director of the Institute for Human Rights of the Central American University (IDEHUCA) emphasizes the continuous use of amnesties to secure impunity for the perpetrators. This happened in the 1930s after “La Matanza” when over 30,000 indigenous protesters were murdered by the armed forces as well as after the civil war between 1980 and 1992 (Interview, San Salvador 5/4/2017). El Salvador experienced an internal war between five guerrilla groups united in the FMLN against a military government first, a civilian-led, but military-dominated government later. The main drivers of war and mobilization were a lack of political and socio-economic participation of the marginalized rural and urban population as the so-called fourteen families—a conglomerate of fourteen influential families—controlled the society with support from the military and non-state armed actors such as death squads ([Montgomery 1995](#); [Peceny and Stanley 2010](#); [Cuellar 2016](#)). Violence against the population and prominent human rights advocates such as the massacre in El Mozote or the murder of Archbishop Romero, both in 1981, and the generalized impunity were central factors in the mobilization of armed and non-armed resistance in the

1980s. Even where actual perpetrators of the state security forces were sentenced, they were released under an amnesty law from 1987 (Betancur, Planchart, and Buergenthal 1993).<sup>2</sup> While the FMLN guerrilla was the strongest in Latin America, it could not win the war due to the high levels of political and military support for the Salvadorian government by the United States (Stanley 1996). Only after a hurting stalemate in 1989, both sides acknowledged that they could not win militarily and resumed negotiations mediated by the United Nations. The war ended with the comprehensive Chapultepec Peace Agreement signed in Mexico on January 16, 1992.

Besides the end of collective violence, the agreement intended to be a turning point for the country's political development due to a series of transformative provisions to prevent war recurrence. The end of impunity was central to this as provision 5 states: "The Parties recognize the need to clarify and put an end to any indication of impunity on the part of officers of the armed forces, particularly in cases where respect for human rights is jeopardised." (United Nations Security Council 1992, 8). The main instruments were a Truth Commission as well as major institutional reforms of the Armed Forces and the Judiciary, including the purification from personnel that had been involved in human rights violations.<sup>3</sup> The establishment of a new civilian police force for the provision of public security was another pillar of change. The peace agreement did neither include nor mention an amnesty although the topic was discussed at the negotiations (Valencia Caravantes and Peña 2014; Wade 2016). However, the Salvadorian parliament passed two amnesty laws, the first in 1992 and the second in 1993. Hence, what were the interests and underlying power relations that enabled the amnesties in the light of the provisions of the peace agreement outlined above, and which actors were favored?

The first amnesty a "Law of Reconciliation",<sup>4</sup> passed early in 1992, was uncontroversial because it enabled FMLN commanders to enter the country without being arrested and the government to release political prisoners. This law was directed specifically at FMLN commanders and combatants who had committed "political offenses and related crimes" before January 1, 1992. FMLN combatants had to prove with a certificate issued by ONUSAL (United Nations Mission to El Salvador) that they had demobilized and handed in their arms before they could apply for amnesty. This constituted an important turning point in setting the path toward war termination—confirming previous research, for example, by Dancy (2018) or Daniels (2020)—as it allowed one of the main conflict parties to lay down their arms and commit to an end to war. However, article 6 explicitly excluded the cases mentioned by the Truth Commission.

The second amnesty was passed just five days after the Truth Commission published its report on March 15, 1993 (Betancur, Planchart, and Buergenthal 1993). The mandate was to investigate "serious acts of violence that have occurred since 1980 and whose impact on society urgently demands that the public should know the truth" (United Nations Security Council 1992). The Truth Commission was headed by three internationally recognized experts and politicians, and no Salvadorians participated.<sup>5</sup> Based on more than 20,000 testimonies and reports by Salvadorian and international human rights organizations, the Commission found that 60 percent of the gross human rights violations had been committed by the regular armed forces, 25 percent by the governments' allies (military defense forces and civil defense units), 10 percent by death squads, and 5 percent by the FMLN (Betancur, Planchart, and Buergenthal 1993, 36). The Commission recommended profound changes in the state's security institutions such as the vetting and purge of the Supreme Court judges and the military high command. These were legally binding according to the peace agreement provisions. However, the right-wing Alianza Republicana Nacionalista (ARENA) government of President Alfredo Cristiani rejected the report immediately as "one-sided" and stated that the past had to be forgotten

2 This amnesty law was a result of the regional Esquipulas peace accord signed by the five presidents of Costa Rica, Honduras, El Salvador, Guatemala, and Nicaragua aiming at the termination of the wars in El Salvador, Guatemala, and Nicaragua through negotiations.

3 An Ad-hoc Commission was established to identify those members of the military that were involved in gross human rights violations and thus to be dismissed. Its five members—two Salvadorian politicians, two former defence ministers, and an international lawyer—assessed the participation in violence of 2,293 persons. The confidential report recommended the discharge of 103 officers (Popkin 2000, 106).

4 The law's text is available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2002/1840.pdf>.

5 The three lead investigators were former Colombian President Belisario Betancur, former president of the Inter-American Court of Human Rights Thomas Buergenthal, and former Venezuelan foreign minister Reinaldo Figueroa Planchart. They were supported by a team of around twenty investigators, all of them foreigners (Martínez-Barahona et al 2018, 6, fn 7).

to promote reconciliation (Popkin 2000, 150). This was not surprising, considering ARENA's close ties to the military and the death squads and the unequal distribution of responsibilities.

Only five days after the publication of the truth report, the Salvadorian parliament passed a "General Amnesty Law for the Consolidation of Peace"<sup>6</sup> proposed by the right-wing, military-related Partido de Conciliación Nacional (PCN). As the first post-war election with FMLN participation was only scheduled later for 1994, the parliament at that time was dominated by ARENA (thirty nine of eighty four seats) and the PCN (holding nine seats) (Artiga González 2016, 174). In the debate, it was argued that (1) the Law of Reconciliation from 1992 was not balanced as it did not apply to *all* actors responsible for violent acts; and (2) a "broad, absolute and unconditional amnesty" for all criminal, political and connected acts committed before January 1, 1992, was necessary for national reconciliation. This was evidently a political step by the ARENA government to avoid large-scale prosecution of those people and groups who were involved in gross human rights violations.

### Cui Bono?

In the light of the abovementioned findings of the Truth Commission, it is unclear why the FMLN did not contest the law. Former General Mauricio Vargas claims that there was at least an implicit agreement during the negotiations on a second, more comprehensive amnesty between the former conflict parties (Valencia Caravantes and Peña 2014). At the same time, the amnesty law was passed in a moment where the FMLN had limited negotiation power. It had disarmed, but in May 1993 several hidden arms caches were detected and the FMLN came under severe attack for not complying with the peace accord. Consequently, the amnesty was a clear mirror of the power relations between the military, the government, and the FMLN at that time, favoring the first two. The UN Secretary General criticized the amnesty (United Nations 1993), but the UN mission did not have sufficient leverage. Eventually, the United Nations did not fight the decision, but declared it "an internal affair of El Salvador".<sup>7</sup>

At the same time, power relations inside El Salvador favored the status quo. While some see the broad amnesty

as the price for the ARENA government's formal compliance with the peace agreement (Segovia 2009), thus being a necessity to end the war and break with the past; others see it as a decisive turning point in the peace process (Cuellar 2016, 14). It is evident that the amnesty law disempowered victims and local communities and obstructed legal ways to pursue a minimum of justice. Already in May 1993, human rights groups submitted a complaint against the constitutionality of the amnesty law, but the Constitutional Chamber of the Supreme Court declared itself incompetent and the amnesty a "political matter" (Popkin 2000, 150–9). A series of attempts by civil society organizations and the Human Right's Ombudsman Office failed over the following years. The case was only admitted in 2013, 4 years after independent judges established a majority in the Supreme Court.

### Undermining Institutional Change

Beyond impunity for war-related violence, the second amnesty law had direct consequences for the security sector reform envisioned in the peace agreement rendering major recommendations of the Truth Commission such as a vetting of the Supreme Court justices and high military officials irrelevant. The amnesty helped the ARENA government to protect the military leadership from dismissal for their involvement and responsibility in gross human rights violations. Most of officers were able to complete their regular terms and retired with all the related privileges. At the same time, a significant number of former military officers remained in state institutions mainly related to public security (Barahona et al. 2018, 45–6). An interviewee at the National Academy of Public Security (San Salvador 17/3/2017)—an institution designed for the education of the new civilian police—explains that in 1993 and 1994, significant numbers of former military policemen and militaries entered the Academy and the new police force. While the peace agreement established quotas of 30 percent for the state forces and the FMLN, and an additional 40 percent of independents, the former members of the police and the military were soon over proportionally included, mainly in leading positions. While ex-FMLN combatants seem to have had other plans for their post-war life, the military personnel brought and reproduced rites, manners, and behavior shaped by authoritarianism and war instead of citizen-oriented public security. Silva Ávalos (2014, 2) has called this the PNC's "original sin": "the inclusion of former soldiers and officers that worked with criminal groups and preserved a closed power structure that prevented any authority from investigating them for

6 "Ley de Amnistia General para la Consolidación de la Paz", Decreto No. 486; issued March 20, 1993; published March 22, 1993; available at: <http://www.acnur.org/fileadmin/Documentos/BDL/2002/1841.pdf?view=1>.

7 Interview, 8/3/2017, Bogotá.

over two decades. This original sin has allowed criminal bands formed in the 1980s as weapon or drug smugglers to forge connections with the PNC and to develop into sophisticated drug trafficking organizations (DTOs)."

Power relations between the main political actors help to explain why the reform processes envisioned by the peace agreement stalled early on. ARENA's control of the presidency and the parliament enabled them to slow down or avoid the reforms (Wade 2016, 187). Although the FMLN was the main opposition party, it saw serious infighting between its five groups and a fragmentation when organizations aiming to open the party to the center left and the orthodox Marxist factions dominated by former military commanders remained in control of the party (Allison and Alvarez 2012).

Despite the termination of war, violence continued to be widespread and political violence such as murder and intimidation of candidates or activists was quite common during the early post-war years, as the reports by the UN mission ONUSAL show (e.g. No. 2 16/2/1994). Nevertheless, the ARENA governments and media scandalized youth gangs—so called *maras*—as the main actors in violence. While lacking a political discourse, the mobilization and recruitment patterns of youth resembled those during war. Gang members were marginalized urban and—to a lesser extent—rural youth as well as youth deported from the United States (ERIC et al. 2001; Cruz 2010). The ARENA government publicly denounced increasing crime reproducing the wartime patterns of criminalization and repression used against the former guerilla (Kurtenbach and Reeder 2021). As early as 1993, the ARENA government used the discourse on crime to undermine reform in the security sector by sending the armed forces to secure the coffee harvest in clear violation of the new distribution of tasks between the armed forces and the police established in the peace agreement. The hard fist approaches were another mechanism undermining reforms in the military and the police and reproduced the traditional power relations between right-wing political and military elites.

When the FMLN won the presidential elections in 2009, president Mauricio Funes took an important step in recognizing the state's involvement and responsibility for serious crimes such as the massacre in El Mozote (Barahona and Gutiérrez Salazar 2016). However, power relations did not allow much change as the FMLN had no majority in the parliament, resistance from the political right and the military was fierce, and violence escalated in many communities where *maras* were the de facto political power. These undermined plans for public security, including prevention and gang members were legally de-

clared terrorists in 2015<sup>8</sup> reproducing the wartime framing of the guerilla (Kurtenbach and Reeder 2021). Neither the first nor the second FMLN government (2014–2019) changed the repressive public security approaches or promoted policies to address past and present impunity.

Comparing the gross human rights violations investigated by the Truth Commission (Betancur, Planchart, and Buergenthal 1993) and those recently documented by Salvadorian and international human rights groups (IACHR 2021; IDEHUCA 2021) some similarities are striking: Extrajudicial executions, enforced disappearances, death squad assassinations, and violence against journalists (although no murders) are a continuous pattern. The perpetrators are members of police and the armed forces as well as the youth gangs. Human rights violations have even increased after the current government declared the state of emergency in March 2022. Impunity continued to be widespread not only for war atrocities, but also for post-war human rights violations committed by police and military personnel participating in extrajudicial killings. In 2018, the United Nation's Special Rapporteur for extrajudicial, summary, or, arbitrary executions, Agnès Callamard, stated:

"The Special Rapporteur found a pattern of behavior among security personnel amounting to extrajudicial executions and excessive use of force, nurtured, and aggravated by very weak institutional responses. Elements of the legal framework, such as the Special Law against Acts of Terrorism and its application to gangs, elements of the 2013 reform of the Code of Criminal Procedure and the 2016 extraordinary security measures have contributed to this. The failure of State institutions to undertake professional and effective investigations constitutes a separate violation of the right to life. Breaking the cycle of impunity is an absolute necessity." (UN General Assembly 7/12/2018 A/HRC/38/44/Add.2)

Again, the majority of victims came from civil society as police actions to repress gangs rarely distinguished between gang members and community dwellers. Male youth are arrested without proof of being members of a youth gang and held under inhuman conditions in overcrowded prisons. The assessment of impunity resembles wartime polarizations. Interviewees with human rights background, victims, and a judge focus on and still criticize impunity for human rights violations during the war (San Salvador 17/3/2017; 24/3/2017; 28/3/2017; 5/4/2017; and 6/4/2017). On the other side right-wing politicians (San Salvador 13/3/2017 and 31/3/2017)

8 See <http://observatoriolegislativo.elsalvador.com/descargas/decretos/430.pdf>.

blame an excess in human rights guarantees for current violence and the impunity of youth.

### The Revocation of the Amnesty Law

Regarding wartime human rights violations, victims and human rights organizations eventually shifted their efforts to the Inter-American Human Rights Court, which emitted a series of important verdicts against the Salvadorian state over the years (Collins 2010, 175–7) that were rarely complied with. Only in 2016, advocacy work as well as slow-moving reforms in the judiciary bore fruit (Kurtenbach 2019): The Supreme Court of Justice declared the amnesty law unconstitutional. Civil society organizations pushed for trials against the perpetrators of the most violent crimes such as the massacre of El Mozote, where in 1981, the armed forces assassinated close to a thousand civilians, mostly children, women, and elderly. However, the elites soon tried to follow their historical trajectory. In the months following the Supreme Court verdict, not only ARENA and PCN, but also the FMLN, discussed a new “reconciliation law”, including another general amnesty. Contrary to the early 1990s, international and civil society pressure mounted to a successful prevention of the law in parliament (DPLF [Due Process of Law Foundation] 2020). In February 2020, a new version of the bill passed congress but was vetoed by president Nayib Bukele, stating that it was unconstitutional and would establish a de facto impunity for the perpetrators of gross human rights violations of the past (Arismendi and Rauda Zabiah 2019; DPLF [Due Process of Law Foundation] 2020).

Bukele’s initial policies against impunity were soon rendered hollow. In 2021, after his party (Nuevas Ideas, New Ideas) won a two-third majority in the parliamentary elections, one of his first moves was to pass a new law on judicial careers that sent a third of the country’s judges into retirement because they were either over age 60 or have served 30 years in the judiciary. Amongst these judges was Jorge Guzmán, who was in charge of the El Mozote investigation. While Bukele broke up the two-party system, he also favored impunity and is on a pathway to an authoritarian regime that has vast support not only in the population and the parliament, but also in the military. Like other Central America countries, El Salvador seems to be on the way full circle back to the authoritarian past.

### Amnesties as a Way To Undermine Change

The Salvadorian case contributes important insights into the short- and long-term impact of amnesty laws. After

the peace accord, the first law (“reconciliation law”) was an important instrument to facilitate implementation of the Chapultepec Peace Accord allowing FMLN members’ legal status. The second law (“amnesty law”) following the Truth Commission’s report was an insider “change of the game” by ARENA and PCN that would acquit the main perpetrators of violence during the war of charge. This second law covered atrocities and war crimes committed by the former warring parties as well as the variety of non-state actors such as death squads. The relation between the amnesty laws and impunity for wartime crime is direct, but what about the maintenance and reproduction of impunity until today? The indirect effect of the laws on impunity was three-fold: (1) they prevented any reconciliation of the society and any process of coming to terms with the past; (2) they were used to circumvent purge and vetting in the state security institutions, thus reproducing the continuous militarization of public security and impunity for post-war crimes; and (3) they promoted cycles of increasing violence by state and non-state armed actors as there was no persecution of atrocities against civilians. The perpetrators of war crimes and current violence benefit tremendously from the post-war political order that was so heavily influenced by the elite pact between former warring parties and the established political and economic elite. As one of the interviewees put it, “there is no peace in El Salvador, but 25 years of ceasefire”.<sup>9</sup>

In the following section, we generalize our qualitative findings with the help of a quantitative analysis on newly collected data on JSGR across forty different post-war countries from 1990 to 2016. In particular, we look at the correlation between amnesty provisions as independent variable and post-war impunity as dependent variable, controlling for a variety of other factors.

### Amnesty Laws’ Costs: Quantitative Evidence *Our Data*

The unit of observation of the JSGR dataset is a country-year. For any given variable, we capture the situation as it is at the end of a specific year. To determine the universe of cases and our case selection, we draw on existing data collections such as the Uppsala Conflict Data Program (UCDP). We included all post-war countries in the analysis that ended after a war or a culmination of a civil conflict, to more than 1,000 battle related deaths (BRD) (based on the UCDP dataset, cf. Gleditsch et al. 2002; Pettersson, Högladh, and Öberg 2019). This selection strategy results in a total of forty post-war episodes, with

9 Interview 20/3/2017, San Salvador.

407 country-year observations (see Supplemental table 1: Coded countries and years for further information).

For this study, we use two variables collected for the JSGR: First, we included information on the existence of amnesty provisions in a country. It is important to note here that we distinguish between *de jure* and *de facto* provision variables. We coded the existence of a legal provision such as legal documents or the constitution, laws, decrees (*de jure*), but also the implementation of the particular provisions separately. In the next step, we coded if the existing provisions were implemented (*de facto*). The second variable of interest is the impunity of certain individuals or groups, which is our dependent variable. We split this into three different variables depending on the type of group that is exempt from punishment or free from the injurious consequences of an action. First, “general impunity” means that citizens, regardless of ethnicity, religion, gender, place of residence, caste, and social status, are exempt from punishment. We code 0 as “widespread impunity for a certain group of individuals is in place”, 1 as “impunity occurs occasionally ( $n < 5$  reported)”, and 2 as “There is no impunity”. Secondly, “police impunity” means that “members of the police force are exempt from punishment or free from the injurious consequences of an action conducted in the line of duty (such as torture in detention centres) after the end of war”. The coding is similar to “general impunity”, with 0 as “widespread impunity for police officers is in place”, 1 as “impunity of police officers occurs occasionally ( $n < 5$  reported)”, and 2 as “there is no impunity for police officers”. Lastly, we also capture military impunity separately, which means that “members of the armed forces are exempt from punishment or free from the injurious consequences of an action conducted in the line of duty (such as human rights violations)”. The coding is, again, similar to “general impunity”, with 0 as “widespread impunity for members of armed forces is in place”, 1 as “impunity of members of armed forces occurs occasionally ( $n < 5$  reported)”, and 2 as “there is no impunity for members of armed forces”. Examples include Guatemala, a country that, according to UN officials, 10 years after the end of the war, had “a criminal justice system unable to achieve more than a single-digit conviction rate for murder” (United Nations General Assembly 2007). To determine the effect of amnesty provisions on impunity, we ran linear regressions with maximum likelihood estimation (MLE) with the three different impunity variables as our three dependent variables as these models were most fitting for this type of data.

We also included formal and informal transitional justice provisions as control variables in our analysis,

which are separate from amnesty laws. We define formal TJ mechanisms as follows: The constitution, peace accord, and/or other legal documents include provisions regulating transitional justice after war. Transitional justice refers to the ways post-war societies “address large scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response”. Formal TJ provisions can be, for example, trials, truth commissions, reparations, purges, or exiles during or after conflict (cf. Binningsbø et al. 2012).<sup>10</sup> We define informal TJ mechanisms as “Although no written legal provisions for transitional justice mechanisms exist, in practice some action is being taken with regards to transitional justice and national reconciliation. These actions are taken either by state or non-state actors.” For the purpose of this paper, we are particularly interested to see the effect of amnesty laws; which is why, we did not separate out the effect of other TJ measures.

For the main data collection procedures, our coders underwent extensive training. We ensured inter-coder reliability by double-checking every country case regularly during and following the coding process. Furthermore, coders were required to provide two or more sources for every variable coding in an attempt to enhance the validity of our results and to minimize potential political bias of individual sources. In some cases, the project team was required to make country-specific coding decisions based on special cases (see Supplemental table 2: General and country-specific coding decisions for further information).

We also controlled for whether the conflict was of ethnic origin with the ACD2EPR dataset (Wucherpfennig et al. 2012), the presence of democracy within the state before the peace period (Marshall and Jagers 2002), whether the conflict was over the incompatibility of government or territory (UCDP Armed Conflict Database; Pettersson, Högladh, and Öberg 2019), and the presence of a peace accord at the close of the conflict (Pettersson, Högladh, and Öberg 2019).

### Our Analysis

First, we examine the relationship between the presence of amnesty provisions in post-war countries and impunity of individuals or groups in a country, outlined in model 1. We also analyze the impunity of the police in a country (model 2) and the impunity of the military specifically (model 3). Drawing on data collected for the JSGR dataset, we ran a linear regression with MLE with

10 Please note that we specifically exclude amnesty laws under this variable.

**Table 1.** Ordinal regression of impunity levels in post-war countries, clustered by country

	Model 1—general impunity	Model 2—police impunity	Model 3—Military impunity
Amnesty	−4.648*** (0.847)	−2.603*** (0.258)	−0.578*** (0.166)
Transitional justice law	2.103* (0.906)	1.703*** (0.272)	−0.675* (0.338)
Informal transitional justice	21.365*** (1.025)	0.665+ (0.404)	0.222 (0.209)
Peace agreement	1.737** (0.624)	1.281*** (0.272)	1.362*** (0.202)
Ethnic conflict	21.652*** (1.020)	2.112*** (0.453)	0.188 (0.160)
Democracy at end of war	3.736*** (0.863)	2.153*** (0.329)	1.109*** (0.226)
Constitution	0.073 (0.505)	−0.586** (0.182)	−0.418* (0.171)
UN peacekeeping	−0.053 (1.283)	−0.602* (0.300)	0.998** (0.319)
Incompatibility	−3.539** (1.122)	−1.858*** (0.335)	−0.233 (0.190)
Number of observations	393	394	393
$R^2$	0.542	0.374	0.210
$R^2$ adj.	0.321	0.202	0.099
$R^2$ within	0.520	0.348	0.157
$R^2$ within adj.	0.458	0.302	0.127
AIC	158.6	273.3	517.3
BIC	194.4	309.1	553.1
RMSE	0.30	0.37	0.59
Std. errors	By: country	By: country	By: country
FE: year	X	X	X

\*\*\* $p < 0.001$ , \*\* $p < 0.01$ , \* $p < 0.05$ .

impunity as our dependent variable, including fixed effects for year and standard errors clustered by country. In the JSGR dataset, general impunity is coded as an ordinal variable from 0, widespread impunity, to 2, when there is nearly no impunity in the country. This means that the higher the value is, the more we can see criminal prosecution on a country.

Model 1 in [table 1](#) summarizes the findings with general societal impunity as a dependent variable. The independent variable, amnesty, is highly negatively significant, meaning that amnesty laws are correlated with more impunity in a country. The control variable incompatibility also has a negative significant effect on the dependent variable, meaning that wherever we have a war over government (rather than territory), impunity in a country is more likely. Model 1 also has a number of positively correlated control variables. First, if we see any informal transitional justice mechanisms, for example, implemented by civil society actors, then we see much less general societal impunity. This effect is highly

significant. Any formal transitional justice mechanisms have a similar, albeit not as large effect on societal impunity. Secondly, if the war ends with a peace agreement, then it is more likely that we see less impunity and more criminal prosecution in a country. The same goes for ethnic conflict: For those wars that were categorized as “ethnic”, criminal prosecution is more likely. Lastly, democracy at the end of war, as well as the existence of a UN peacekeeping force, are also correlated with more criminal prosecution in a country.

Model 2 analyzes the same variables with our second dependent variable, police impunity. We define this as: Members of the police force are exempt from punishment or free from the injurious consequences of an action conducted in the line of duty (such as torture in detention centers) after the end of war.<sup>11</sup> The overall trend of

11 Note: We consider severe human rights violations such as torture unlawful even if it is not explicitly prohibited by national law.

model 1 is confirmed in Model 2 as well. Amnesty laws are correlated with more impunity in the police force. Interestingly, formal transitional justice mechanisms have a more significant effect on police impunity, meaning that they are correlated with less impunity in a country. Informal transitional justice mechanisms have a much smaller effect on police impunity, unsurprisingly. They are usually targeted at the community level and only tackle police violations marginally. Incompatibility in the form of government rather than territory is also correlated with more widespread impunity in the police force. Regarding other control variables, peace agreement and democracy at the end of the war have a positive effect on the dependent variable, meaning that the criminal prosecution of the police force is more likely in cases where we see a peace agreement or some sort of democracy at the end of the war.

Model 3 looks at military impunity in particular. We define military impunity as: members of the armed forces are exempt from punishment or free from the injurious consequences of an action conducted in the line of duty (such as human rights violations).<sup>12</sup> Again, amnesty laws in a country have a negative effect on the dependent variable, which means that military impunity is more likely if the country also saw an amnesty law. As with models 1 and 2, a peace agreement and democracy at the end of the war have a positive effect on the dependent variable, meaning that the criminal prosecution of the military is more likely in cases where we see a peace agreement or some sort of democracy at the end of the war. The presence of a UN peacekeeping force also has a positive effect on the dependent variable, and is correlated with more criminal prosecution in a country. Unlike in models 1 and 2, informal transitional justice mechanisms have no significant effect on military impunity, which is not surprising given that these are targeted mainly at the community level and tend to not deal with military crimes. Formal transitional justice mechanisms have a small significant effect on the dependent variable, meaning that military impunity is more likely if we also see formal regulations. While this might be counterintuitive, it might be that reparations, purges, or exiles did not have the intended effect on the military.<sup>13</sup>

The coefficient plots in figures 1–3 show the estimates for each effect in our three models, including the

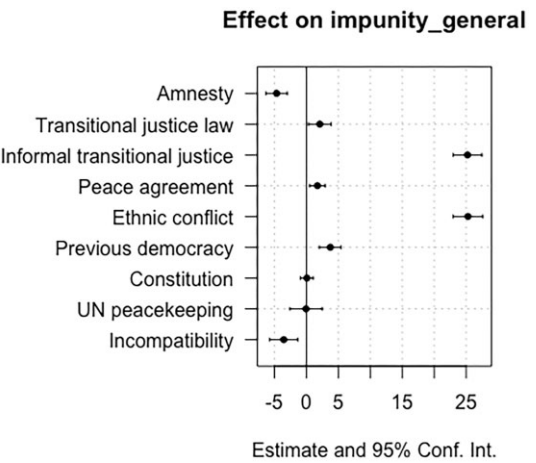


Figure 1. Coefficient plot for model 1 on general impunity

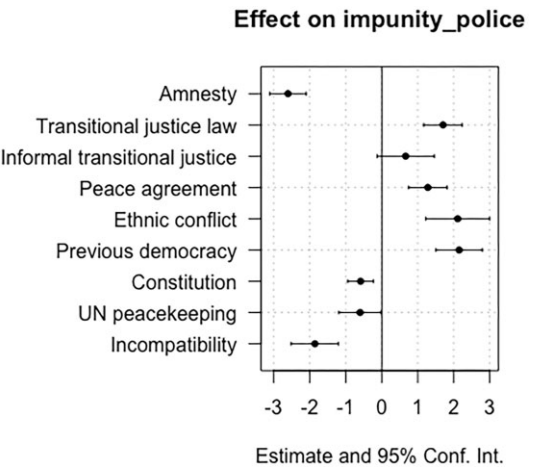


Figure 2. Coefficient plot for model 2 on police impunity

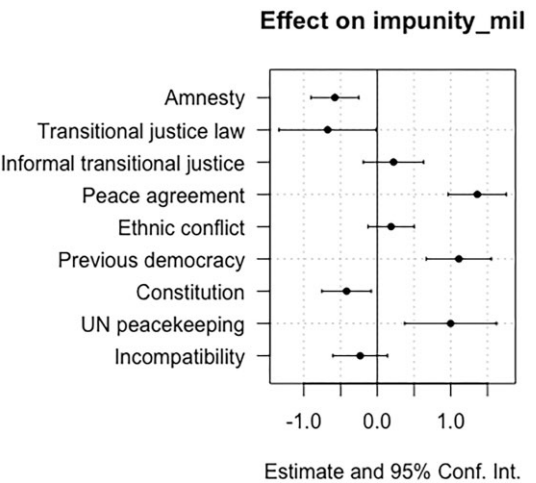


Figure 3. Coefficient plot for model 3 on military impunity

12 Note: We consider everyday practices of the armed forces after the war has ended. Cases of crimes throughout the war are captured by the transitional justice variables.

13 We did not disaggregate the different measures for different security institutions.

95 percent confidence interval. Note that we code 0 as “widespread impunity”, 1 as “impunity occurs occasionally ( $n < 5$  reported)”, and 2 as “There is no impunity”. The discussed results are illustrated and confirmed by the coefficient plots.

Our statistical analysis confirms the qualitative findings from our case study and generalizes them across cases from around the world. What is striking is that amnesty laws do have an effect on different kinds of post-war impunity, starting from societal over police to military impunity, while controlling for other factors that might be relevant for the post-war environment. Factors such as a peace agreement or democracy at the end of the war also play a significant role in correlation with impunity, meaning that they both contribute to a reduced risk of societal, police, and military impunity. Conflict over government (incompatibility) is correlated with higher societal and police impunity.

These findings show that amnesty laws have to be used very cautiously in post-war settings, as they can open the door to large-scale impunity in a country. They can be an important tool of credible commitment to bring warring parties to the negotiation table and eventually agree to a peace agreement. At the same time, they might entail that major perpetrators of violence go unpunished in the long run.

## Conclusion

Amnesty laws are highly political acts that are long-lasting with implications for decades to come. They are often of self-imposed nature and often a product of political alliances in a country. They can help bring conflict parties to the negotiation table and can serve as important mechanism of credible commitment in a time when warring parties do not trust each other enough. They can, under specific circumstances, be an important requirement for transformative peace. However, as becomes clear with our analysis, they can be highly political, and any debate about amnesty laws needs to tackle the questions of power at different levels that are so immanent to amnesty laws, and the ways in which such institutional arrangements advance the interests of particular political coalitions.

This paper dealt with the question of impact of amnesties on impunity. Applying a Historical Institutionalist approach to the study of amnesty laws, we took a specifically political focus on amnesties and examined power relations leading to the agreement on amnesty laws, and what implications these might have for the post-war environment.

Evidence from El Salvador shows that amnesty laws are not only a tool of credible commitment during peace negotiations, but often a highly political matter. If they are used in a post-war setting, power dynamics between involved actors should be acknowledged, and an institutional environment will be created that acts in the favor of involved parties for years, if not decades. The Salvadorian case demonstrated that powerful elites in the country issued an amnesty law first to end the war, and, secondly, to acquit the main perpetrators of violence during the war. While the report of the Truth Commission was important to reveal the structure of responsibilities for gross human rights violations during the war, until today there are no reconciliatory measures. The amnesty law ensured the retention of power of the ARENA government until 2009. Hopes for change soon vanished, as the FMLN governments elected in 2009 and re-elected in 2014 did not prosecute past human rights violations. Elected in 2019, President Bukele rather pursues his own political agenda against the old elites from the right and the left than addressing wartime atrocities. His public security policies resemble his predecessors' and are based on stark repression against gangs. During the Covid-19 lockdown, he even gave the armed forces and the police the right to shot potential suspects “in combat” without having to fear legal consequences.

The case study also provides important insights into the interaction between the local, the national, and the international level. Due to the blocked access to a minimum of justice at the national level, victims and human rights organizations in El Salvador pursued support by the Inter-American Human Rights system. However, up until now the Salvadorian state did not comply with the verdicts. This shows once again that international institutions tend to favor existing power relations either explicitly or due to a lack of sanctioning mechanisms. On the other side, the only conviction of one of the responsible army members for the murder of the Jesuits holding Spanish passports in 1989 was conducted by the Spanish National Court ([Amnesty International 2020](#)).

We probed findings from the qualitative case study with a statistical analysis on newly collected data on JSGR across forty different post-war countries from 1990 to 2016. In particular, we analyzed the correlation between amnesty provisions as independent variable and impunity (societal, police, and military) as dependent variable, controlling for a variety of other factors. We find that amnesty laws do have a significant effect on different kinds of impunity, meaning that the existence of amnesty laws is correlated with higher levels of societal, police, and military impunity. Additionally, conflict over government (incompatibility) is correlated

with higher societal and police but not with military impunity. Other variables such as the existence of a peace agreement or democracy at the end of the war also significantly correlates with impunity, meaning that they both contribute to a reduced risk of societal, police, and military impunity. Informal transitional mechanisms are also significantly correlated with less societal impunity.

Generally, the analysis shows that understanding amnesties as commitment tool during negotiations allows to identify the underlying power relations and their reproduction over time. Any amnesty law is strongly linked to the question of power, and how this institutional arrangement advances the interests of the involved warring parties for a long period of time. With regards to amnesty, this often means that there will be no prosecution of perpetrators for decades to come and that transformative reforms might be rendered unviable. If there are no additional measures of transitional justice such as, for example, local justice mechanisms, then the reconciliation of societal groups is at risk, as the case of El Salvador demonstrates. Then it is often the case that amnesty laws are mere elite pacts that serve the interests of a few leaders, but not society as a whole. But even in cases where affected communities are involved in the process of issuing an amnesty law, power politics are at play.

The analysis also shows that concepts such as justice and reconciliation cannot be seen independent of the power dynamics in a post-war environment. Instead, it needs to be acknowledged even if they have a normative connotation, they are in fact very political and dependent on the specific circumstances they are discussed and promoted in. The assessment needs to include the power relations at different levels to identify windows of opportunity. Amnesties might enable the creation of conditions for peace (cf. Daniels 2020), but they eventually come with political baggage that might backfire once the political pact that led to its creation breaks up or gets challenged. The academic as well as the political question thus is how and under what conditions windows of opportunities can promote transformative peacebuilding.

## Acknowledgments

We would like to thank our collaborators and research assistants for their valuable contributions to this project, in particular Drs. Julia Strasheim, Désirée Reder, Marina Ziemian, Ariam Macias, Indi Carolina Kryg, Charlotte Huch, Björn Bachmann, and Selman Almohamad. Our gratitude goes also to the two anonymous referees and the editors for their excellent comments that helped improve this article.

## Supplemental Information

Supplementary information is available at the *Journal of Global Security Studies* data archive.

## Funding

This research was funded by the German Research Foundation (Deutsche Forschungsgemeinschaft) [grant numbers KU 1106/4-1 and AN 1181/1-1].

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