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DOI:
10.1353/hrq.2023.0015

Document Version
Peer reviewed version

Citation for published version (Harvard):
Torres , FE 2023, 'On Deserving Victims and the Undeserving Poor: Exploring the Scope of Distributive Justice in Transitional Justice Theory and Practice', *Human Rights Quarterly*, vol. 45, no. 2, pp. 306-334. https://doi.org/10.1353/hrq.2023.0015

On Deserving Victims and the Undeserving Poor: Exploring the Scope of Distributive Justice in Transitional Justice Theory and Practice

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ABSTRACT

This article explores the relationship between distributive justice and transitional justice in post-conflict societies with challenging socioeconomic demands. It revisits the main philosophical debate on distributive justice in the Anglo-American tradition and traces its reception by academics and practitioners in the fields of development, human rights, and transitional justice. The article shows that transitional justice often sets in motion an *opportunity* conception of distributive justice that revolves around individual responsibility and deservingness, which entails three negative consequences affecting victims and non-victims alike. First, it justifies an unequal guarantee of their economic and social rights; second, it undermines their self-respect; third, it exhausts public support for victim-oriented policies. In so doing, this article distances itself from the existing consensus that transitional justice and distributive justice are different spheres of justice and argues that it is necessary to develop theoretical frameworks that recognize their intimate connection to overcome the pitfalls identified.

I. INTRODUCTION

Transitional justice mechanisms are now widely used in post-conflict societies facing gross inequality, marginalization, and poverty.[1] While academics and practitioners agree that in these

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settings state authorities cannot leave the guarantee of economic and social rights (ESR) and the implementation of development programs unattended, they disagree on how much distributive justice can and should be expected from the application of transitional justice measures.[2] This situation must be understood in the context of an ongoing debate about how to connect these two spheres of justice, which are assumed to be separate and autonomous from each other.[3] In what appears to be a dead end between two extremes that require transitional justice to be "maximalist" or "minimalist" on distributive justice issues,[4] scholarly work has neither anticipated nor discussed the possibility that transitional justice *already* incorporates specific distributive justice notions.

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[1] Roger Duthie, *Introduction*, *in* JUSTICE MOSAICS: HOW CONTEXT SHAPES TRANSITIONAL JUSTICE IN FRACTURED SOCIETIES 16, 24 (Roger Duthie & Paul Seils eds., 2017); Pádraig McAuliffe, *The Prospects for Transitional Justice in Catalyzing Socioeconomic Justice in Postconflict States: A Critical Assessment in Light of Somalia's Transition*, 14 NORTHEAST AFR. STUD. 77, 78-81 (2014).

[2] *See*, *e.g.*, Dustin Sharp, *Addressing Economic Violence in Times of Transition: Towards a Positive-Peace Paradigm for Transitional Justice*, 35 FORDHAM INT. LAW J. 780, 804-5 (2012); René Urueña & María Angélica Prada-Uribe, *Transitional Justice and Economic Policy*, 14 ANNU. REV. LAW SOC. SCI. 397, 407 (2018); Clara Sandoval, *Reflections on the Transformative Potential of Transitional Justice and the Nature of Social Change in Times of Transition*, *in* JUSTICE MOSAICS, *supra* note 1, at 168-177.

[3] *See*, *e.g.*, Pablo de Greiff, *Articulating the Links Between Transitional Justice and Development: Justice and Social Integration*, *in* TRANSITIONAL JUSTICE AND DEVELOPMENT: MAKING CONNECTIONS 63 (Pablo de Greiff & Roger Duthie eds., 2009); Rodrigo Uprimny, *Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice*, 27 NETH. Q. HUM. RIGHTS 625, 635 (2009).

[4] "Maximalist" positions include, *e.g.*, Rama Mani, *Balancing Peace with Justice in the Aftermath of Violent Conflict*, 48 DEVELOPMENT 25, 25-27 (2005); Louise Arbour, *Economic and Social Justice for Societies in Transition* 40 N.Y.U. J. INT'L L. & POL. 1, 20 (2007); *See*, *e.g.*, Ismael Muvingi, *Sitting on Powder Kegs: Socioeconomic Rights in Transitional Societies* 2 INT. J. TRANSITIONAL JUSTICE 163, 178-9 (2009); Amanda Cahill-Ripley, *Foregrounding Socio-Economic Rights in Transitional Justice: Realising Justice for Violations of Economic and Social Rights*' 32 NETH. Q. HUM. RIGHTS 183, 189 (2014); Alexander Jane, *A Scoping Study of Transitional Justice and Poverty Reduction*, UK DEPARTMENT FOR INTERNATIONAL DEVELOPMENT (2003), *available at* https://perma.cc/J4WZ-8E5P, 48. "Minimalist" positions include, *e.g.*, Lars Waldorf, *Anticipating the Past: Transitional Justice and Socio-Economic Wrongs*, 21 SOC. LEG. STUD. 171, 179 (2012); Naomi Roht-Arriaza, *The New Landscape of Transitional Justice, in* TRANSITIONAL JUSTICE IN THE TWENTY-FIRST CENTURY 2 (Naomi Roht-Arriaza & Javier Mariezcurrena eds., 2006); de Greiff, *supra* note 3, at 32, 38-41.

Because of this, the negative consequences that may derive from the application of these notions in post-conflict settings have not been explored.

This Article contends that transitional justice often presupposes and sets in motion an *opportunity* conception of distributive justice. Based on notions of individual responsibility and on the dichotomy between "choices" and "circumstances," this conception of justice lays the groundwork for establishing neat distinctions between "victims" of violence and the "ordinary poor" and for prioritizing the former in access to social policy and in the guarantee of ESR as a means of reparation. It also justifies treating victims differently depending on whether they fit ideal standards of victimization, creating protection gaps in terms of their access to socioeconomic goods. Ultimately, it will be argued here, this opportunity conception of justice may allow already rejected conceptions of victimization to enter the transitional justice framework through the back door, undermining public support for victim-oriented policies. It can also propagate demeaning and unacceptable understandings of poverty that have yet to be explored and discussed in post-conflict settings—understandings that portray poor people as blameworthy for their plight and undeserving of distributive justice measures, as opposed to victims of violence, whose innocence renders them morally deserving of society's support.

To substantiate these claims, this piece will focus on certain key concepts, lines of reasoning, and practices that inform transitional justice without attempting to systematically address a specific theoretical corpus. This is the case because behind increasingly accepted and relatively unproblematic definitions of transitional justice lies a multidisciplinary and heavily contested field of study and practice that is difficult, if not totally inappropriate to refer to in the

singular. [5] The key concept to be addressed is that of victim-centricity. The line of reasoning is the differentiation between victims' reparation claims and citizens' ESR claims. The practice to be examined is the prioritization of victims over non-victims in access to social policy and in the guarantee of ESR as a means of redress. These aspects will be explored in the work of the UN Special Rapporteur on truth, justice, reparation and guarantees of non-repetition, and in the jurisprudence of judicial and semi-judicial bodies at the inter-American and domestic levels, in Colombia and to a lesser extent Peru.

This Article is organized as follows. Section II revisits the current discussion on the relationship between distributive justice and transitional justice and explains some of the reasons for the dead end faced by the latter when addressing development and ESR issues. To overcome it, this section draws upon critical literature that asserts that transitional justice is entrenched in political and economic liberalism, laying the groundwork to address unexplored connections between transitional justice and distributive justice. Section III unpacks the content of the opportunity conception of distributive justice discussed in the Anglo-American philosophical tradition, shows the extent to which this conception of justice has informed the fields of development and human rights, and explains how it can be applied to post-conflict societies.

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[5] Transitional justice is now commonly understood as comprising "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation". UN Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Report of the Secretary-General*, UN Doc. S/2004/616 (2004), ¶ 8. On the lack of clear boundaries that has affected the field from its birth *see* Christine Bell, *Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'*, 3 INT. J. TRANSITIONAL JUSTICE 5 (2009); BEYOND TRANSITIONAL JUSTICE. TRANSFORMATIVE JUSTICE AND THE STATE OF THE FIELD (OR NON-FIELD) (Matthew Evans ed., 2022). On transitional justice as a contested space, *see* Kieran McEvoy & Lorna McGregor, *Transitional Justice from Below: An Agenda for Research, Policy and Praxis*, *in* TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE (Kieran McEvoy & Lorna McGregor Hart eds., 2008).

Section IV delves into the key concepts, lines of reasoning, and practices of transitional justice that presuppose and set in motion an opportunity conception of distributive justice. Section V explores some of the negative effects that derive from this conception when state authorities define post-conflict prioritization strategies in the field of ESR and seek to implement victim-oriented policies in the long run. The (re)production of inaccurate and demeaning understandings of victimization and poverty are discussed from a *relational justice* perspective.

Throughout a conceptual journey that goes from John Rawls' *Theory of Justice* to land restitution judges in contemporary Colombia, the Article will demonstrate that the central issue is not how to connect transitional justice and distributive justice understood as separate and autonomous spheres of justice; rather, the issue involves acknowledging that they are often conceptually and practically embedded and reimagining transitional justice in such a way that it can *successfully* set in motion distributive justice, avoiding the difficulties identified in this Article and without imposing on authorities responsibilities impossible to fulfill.

II. PROBLEMATIZING THE RELATIONSHIP BETWEEN TRANSITIONAL JUSTICE AND DISTRIBUTIVE JUSTICE

A. Reaching a Dead End: Transitional Justice and Distributive Justice as Two Different Spheres of Justice

The relationship between transitional justice and issues related to distributive justice, such as development and ESR, is not a new topic in scholarship. Already in 2008, the *International Journal of Transitional Justice* devoted its second special issue to this topic, with the guest editor stressing that transitional justice practitioners cannot ignore social injustices such as poverty,

discrimination and marginalization affecting post-conflict societies.[6] Just a year later, the *International Center for Transitional Justice* published a volume dedicated to the same subject.[7] Despite the similarity of theme, contributors to each publication offered different approaches on how to make connections between the two spheres of justice. While some advocated that the range of transitional justice mechanisms should include measures such as affirmative action and other policies aimed at the redistribution of resources and power,[8] others were more cautious and considered that the expected contribution of transitional justice in delivering distributive outcomes should be, at best, indirect.[9] Otherwise, they argued, there is a risk of overwhelming transitional justice with goals impossible to fulfill, risking doing less in the very attempt to do more. [10] These positions exemplify well the two extremes of an ongoing debate on how to establish connections between the two forms of justice, with scholars arguing for more or less transitional justice for socioeconomic injustices.[11]

Yet the field seems to have reached a dead end on this issue. Doctor Dustin Sharp wrote in 2012 that, after much thought, supporters of transitional justice have yet to come to terms with where to draw the line between doing too much or too little with respect to socioeconomic matters.[12] In 2014, Professor Padraig McAuliffe introduced a pinch of realism to the discussion,

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[6] Rama Mani, *Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development*, 2 INT. J. TRANSITIONAL JUSTICE 253, 254 (2008).
[7] TRANSITIONAL JUSTICE AND DEVELOPMENT, *supra* note 3.
[8] Zinaida Miller, *Effects of Invisibility: In Search of the 'Economic' in Transitional Justice*, 2 INT. J. TRANSITIONAL JUSTICE 266, 272, 284 (2008); Lisa Laplante, *Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework*, 2 INT. J. TRANSITIONAL JUSTICE 331, 333 (2008).
[9] De Greiff, *supra* note 3, at 55.
[10] De Greiff, *supra* note 3, at 32, 38-41; Roht-Arriaza, *supra* note 4, at 2.
[11] Roht-Arriaza, *supra* note 4.
[12] Sharp, *supra* note 2, at 804-5.

by recalling that well-intended calls for distributive justice that ignore realpolitik limitations facing post-conflict settings run the risk of "degenerating into the simplistic rhetoric and sloganeering advice that mar debates on the protection of socioeconomic rights".[13] In 2017, Professor Clara Sandoval explained that scholarly work has not provided concrete tools to fulfill the ambition of enlarging the field to include development and ESR matters with a view to transforming social conditions, despite acknowledging that socioeconomic concerns cannot be ignored.[14] A similar conclusion was reached by Professor René Urueña and María Angélica Prada-Uribe a year later, after surveying the latest developments in the literature.[15]

At least two reasons help explain the impasse facing the field. The first is that scholars have not thoroughly unpacked what lies behind "distributive justice" and similar notions such as "social justice." Although these are concepts that have gained prominence since 2008, the field has not taken significant steps beyond the mere reproduction of the seemingly perennial Aristotelian definition of distributive justice, or the adoption of very broad definitions according to which distributive justice deals with the fair distribution of goods and opportunities.[16] More concrete proposals that link transitional justice with ESR and defend that it must achieve "equal access to resources,"[17] "social justice" or "substantive equality,"[18] or "substantive social justice"[19] have not unpacked these ideas either. To be fair, transitional justice scholars are not the only ones lagging

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[13] McAuliffe, *supra* note 1, at 98.
[14] Sandoval, *supra* note 2, at 176-7.
[15] Urueña & Prada-Uribe, *supra* note 2, at 407.
[16] *See respectively*, Uprimny, *supra* note 3, at 626; de Greiff, *supra* note 3, at 63; Roger Duthie, *Transitional Justice, Development, and Economic Violence*, *in* JUSTICE AND ECONOMIC VIOLENCE IN TRANSITION 170-1 (Dustin Sharp ed., 2014).
[17] Jane, *supra* note 4, at 8.
[18] Arbour, *supra* note 4, at 5, 20.
[19] Cahill-Ripley, *supra* note 4, at 189.

behind distributive justice debates, but are joined by academics and practitioners working on ESR, as Professor Philip Alston himself and other authors have insisted for years.[20] This lack of theorization leads to a swift identification of "distributive justice" with radical calls for redistribution in post-conflict settings, making distributive justice claims easy prey for those skeptical voices who criticize broadening the field because of the risk of overwhelming transitional justice mechanisms with unattainable goals. As a result, the possibility that "weaker" or more conservative conceptions of distributive justice may have a role to play in transitional justice arrangements is ruled out by default, including a critical examination of the suitability of these conceptions in addressing the challenges facing war-torn societies.

The second reason for the current dead end is that transitional justice and distributive justice are considered different spheres of justice. It is commonly accepted that transitional justice is primarily past-oriented, short-term, and provisional, focusing on accountability measures (i.e., trials and reparations) and laying the groundwork for the non-recurrence of abuses. In turn, transitional justice scholars tend to associate distributive justice with the prospective distribution of goods and opportunities, seeking to remedy socioeconomic injustices through social policy and development programs.[21] While transitional justice remains on the formal side of the law and the politically and economically neutral application of human rights, distributive justice is on the side of politics, deliberation and democratic accountability.[22] Certainly, these differentiations tend to

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[20] Philip Alston, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, UN Doc. A/HRC/29/31 27 (2015), ¶ 5; Allen Buchanan, *Equality and Human Rights*, 4 POLIT. PHILOS. ECON. 69, 70 (2005).

[21] *See*, *e.g.*, Waldorf, *supra* note 4, at 179; Uprimny, *supra* note 3, at 635-637.

[22] *See*, *e.g.*, Waldorf, *supra* note 4, at 179 (conceiving distributive justice as a political phenomenon); Kieran McEvoy, *Letting Go of Legalism: Developing a "Thicker" Version of Transitional Justice*, *in* TRANSITIONAL JUSTICE FROM BELOW, *supra* note 5, at 18, 21-5; Patricia

be made cautiously and without drawing rigid distinctions, with academics stressing, for instance, that development must address how distributive patterns came about, or that certain transitional justice policies, such as reparations, can produce positive outcomes in terms of distribution and in the guarantee of ESR.[23] Having said that, there seems to be little disagreement that the two forms of justice must not be conflated and that any discussion of their relationship should be conducted with recognition of both their "proximity and distinctness."[24] Given that transitional justice appears to be a self-standing sphere of justice, neutral regarding ESR and development, it is difficult to conceive the possibility that some of its ramifications presuppose and set in motion specific distributive justice notions.

These reasons indicate the steps that need to be taken to overcome the current impasse facing the field. The first is to critically address the position that transitional justice is an independent sphere of justice, distinct from development and ESR issues. This is not a far-fetched line of inquiry. For years, critical scholarship has highlighted the influence of political and economic liberalism on the transitional justice agenda, suggesting that by adopting liberalism, societies in transition may also be embracing liberal interpretations of development and human rights—including the distributive justice theories that underpin them. The second step is to undertake a thorough examination of the "distributive justice" notion and its relationship with ESR and development, exploring "weak" or conservative conceptions of distributive justice that cannot be set aside by skeptic scholars under the argument of their unworkability. In the end, these steps

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Lundy & Mark McGovern, *The Role of Community in Participatory Transitional Justice*, *in* TRANSITIONAL JUSTICE FROM BELOW, *supra* note 5, at 104-5 (the two pieces criticizing the apparent neutrality of the law).

[23] *See respectively* de Greiff, *supra* note 3, at 63; Uprimny, *supra* note 3, at 639.

[24] de Greiff, *supra* note 3, at 63; Uprimny, *supra* note 3, at 635-7.

are related to each other. If it is true that economic and political liberalism influences transitional justice, it becomes necessary to unearth theories of distributive justice in the liberal tradition—theories that, failing to meet radical expectations of redistribution, may sit well with transitional justice arrangements currently in place that require critical examination.

B. Untying the Gordian Knot: Addressing Transitional Justice's Links with Political and Economic Liberalism

There is already enough evidence to argue that transitional justice is deeply embedded somewhere in-between political and economic liberalism. Although things have slightly changed in the last decade, it remains true that transitional justice has traditionally focused on the protection of civil and political rights[25]—the set of rights that have been championed internationally by liberal western democracies since the adoption of the two main international human rights covenants during the 1960s.[26] The focus on civil and political rights has been accompanied by a liberal understanding of violence that tends to reduce it to direct and physical harm perpetuated against the individual typically in contexts of state repression.[27] As explained elsewhere in relation to human rights law,[28] this understanding of violence presupposes that the state's negative duties are stricter than positive duties, meaning that for state authorities is more important "to avoid doing

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[25] Sharp, *supra* note 2, at 791.
[26] MATTHEW CRAVEN, THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A PERSPECTIVE OF ITS DEVELOPMENT 9 (1995).
[27] Sharp, *supra* note 2, at 813.
[28] Felix E. Torres, *Economic and Social Rights, Reparations, and the Aftermath of Widespread Violence: The African Human Rights System and Beyond*, 21 HUM. RIGHTS LAW REV. 935, 938-941 (2021); Felix E. Torres, *Reparations: To What End? Developing the State's Positive Duties to Address Socio-economic Harms in Post-conflict Settings through the European Court of Human Rights*, 32 EUR. J. INT. LAW 807, 820-2 (2021).

certain sorts of things to people than to prevent unwelcome occurrences from befalling them or to provide them with positive benefit."[29] Owing to this, institutional reform and lustration proceedings that remove those responsible for abuses from positions of authority become central in transitional justice praxis, as well as accountability measures and reparations for civil and political rights violations. Thus, the pursuit of collective goals is boiled down to strengthening the rule of law and promoting democratization post-conflict, sidelining the state's positive duties to fulfill ESR.[30]

With the consolidation of a liberal understanding of human rights as "the lingua franca of global moral thought" after the Cold War,[31] societies in transition have experienced a "justice cascade"[32] that has often turned a blind eye to social justice and redistribution. For instance, Doctor Paige Arthur explains that the very term "transition" was adopted with so much fascination by pro-free market ruling elites in the Southern Cone of Latin America during the 1980s and early-1990s because it managed to square the circle; it justified the adoption of short-term legalistic measures to overcome authoritarian rule without having to adopt deeper socioeconomic reforms.[33] The adoption of these reforms requires that state authorities abandon the dominant model of economic transition that has its roots in the Washington Consensus, which encourages the adoption of structural adjustment programs and austerity measures in a context of privatization and economic

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[29] SAMUEL SCHEFFLER, BOUNDARIES AND ALLEGIANCES: PROBLEMS OF JUSTICE AND RESPONSIBILITY IN LIBERAL THOUGHT 36 (2002).
[30] McEvoy, *supra* note 5, at 16, 20.
[31] MICHAEL IGNATIEFF, HUMAN RIGHTS AS POLITICS AND IDOLATRY 53 (2001). *See also*, SAMUEL MOYN, NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD *ix-xii* (2018).
[32] Ellen Lutz & Kathryn Sikkink, *The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America*, 2 CHIC. J. INT. LAW 1, 3-5 (2001).
[33] Paige Arthur, *How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice*, 31 HUM. RIGHTS Q. 321, 337-8 (2009).

liberalization.[34] However, post-conflict authorities found it impossible to abandon this economic model throughout the 1990s, as they were bound by the terms imposed by the World Bank and the International Monetary Fund, as well as donors such as United States Agency for International Development (USAID), to access funding that is crucial to boost reconstruction.[35] Likewise, the implementation of transitional justice measures in countries such as Peru and Colombia during the early-2000s was preceded by privatization and economic liberalization.[36] In short, in this international landscape, the way to deliver on development and ESR goals presupposes, when it is not reduced to, converting post-conflict societies into "stable market democracies."[37]

These brief considerations are enough to question the idea that transitional justice has been an autonomous agenda, neutral regarding development and ESR matters. More precisely, the above analysis shows that while it contributes to the strengthening of the rule of law, transitional justice tends to operate comfortably within a free-market framework and often transfers the bulk of the responsibility to address socioeconomic issues to the market by excluding them from its main mechanisms. For example, under a non-liberal framework it is perfectly possible to contemplate reparations for ESR violations resulting from economic and social policy failures,[38] as well as "commissions on material deprivations and renegotiation of socioeconomic power

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[34] Kora Andrieu, *Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm*, 41 SECUR. DIALOGUE 537, 544 (2010); Roland Paris, *Peacebuilding and the Limits of Liberal Internationalism*, 22 INT. SECUR. 54, 76-8, 89 (1997).
[35] Lundy & McGovern, *supra* note 22, at 104 (criticizing the dependence of countries emerging from conflict on international financial institutions); Paris, *supra* note 33, at 65-70 (discussing the cases of Cambodia, El Salvador, Nicaragua and Mozambique); Muvingi, *supra* note 4, at 169-174 (discussing the possibility of implementing transitional justice measures in Zimbabwe).
[36] Laplante, *supra* note 8, at 339-340 (discussing the case of Peru).
[37] Paris, *supra* note 33, at 89.
[38] See, *e.g.*, CESCR, *General Comment No 14: The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4 (11 August 2000), ¶¶ 50-2, 59.

relations."[39] However, measures like these and the like tend to remain on the sidelines of transitional justice given its strong link with political and economic liberalism.[40] That being said, it is time to examine which (liberal) conception of distributive justice underlies transitional justice. As Doctor Amanda Cahill-Ripley anticipates, what is at stake here is a conception of justice deeply rooted in ideas of individual responsibility and deservingness.[41]

III. DISTRIBUTIVE JUSTICE, DEVELOPMENT AND HUMAN RIGHTS, AND POST-CONFLICT SETTINGS

A. The Philosophical Discussion

To unpack the content of "distributive justice" it is necessary to revisit Rawls' ground-breaking *A Theory of Justice*.[42] Here, distributive justice strictly speaking, that is, a narrower and perhaps marginal notion compared to the core idea of "social justice" explored throughout the book, gains prominence when Rawls formulates the second principle of justice.[43] According to him, in a just society "social and economic inequalities are to be arranged so that they are reasonably expected

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[39] Muvingi, *supra* note 4, at 178-9.
[40] Among transitional justice mechanisms, truth and reconciliation commissions (TRCs) are usually the only place where the economic model and ESR violations are occasionally discussed, especially in recent experiences (i.e., Timor-Leste, Kenya, Tunisia). *See* Laplante, *supra* note 8, at 334-8; Sandoval, *supra* note 2, at 174. However, the skeptical voices that warn against broadening the field criticize this practice given the alleged lack of expertise and scarce resources affecting TRCs, as well as the alleged lack of clear criteria to establish when particular socioeconomic states of affairs entail wrongdoing. *See* de Greiff, *supra* note 3, at 40.
[41] Amanda Cahill-Ripley, *Challenging Neoliberalism: Making Economic and Social Rights Matter in the Peacebuilding Agenda*, *in* ECONOMIC AND SOCIAL RIGHTS IN A NEOLIBERAL WORLD 203 (Gillian MacNaughton and Diane Frey eds., 2018).
[42] JOHN RAWLS, A THEORY OF JUSTICE (1971).
[43] ROBERTO GARGARELLA, LAS TEORÍAS DE LA JUSTICIA DESPUÉS DE RAWLS 39 (1999).

to be to everyone's advantage." "Injustice," Rawls continues, is the unequal distribution of social and economic advantages "that are not to the benefit of all."[44] This statement implies that research on distributive justice deals with inequalities in access to social advantages such as income, wealth, and other material goods, and examines whether such inequalities should be considered just or unjust.

Literature on distributive justice has identified different sources of social inequalities.[45] The first is conventional discrimination, which puts individuals or groups at a disadvantage based on characteristics such as gender, ethnicity, or religion. The second source of inequality can be traced to sheer luck, understood in the ordinary sense, like being crippled by accident or illness, or being unemployed through no fault of the employee. The third source of inequality includes a range of factors that, to some extent, can be tracked to individual responsibility, such as class, talent or personal effort. Against this background, distributive justice scholars do not focus on disparities that arise from direct discrimination and other forms of subordination, as these practices are already widely condemned by public morality and do not require further normative scrutiny.[46] However, Professor Thomas Nagel argues that gains and losses due to effort, class, or talent are not rejected in the same way, since people who benefit from the social and educational opportunities reaped by the hard work of past generations may see that these opportunities, when used with effort or talent, bring just advantages and rewards.[47] The extent to which these socioeconomic inequalities are legitimate or need to be addressed by society is the primary concern

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[44] Rawls, *supra* note 42, at 53-4.
[45] JOHN RAWLS & ERIN KELLY, JUSTICE AS FAIRNESS: A RESTATEMENT 55-7 (2001); THOMAS NAGEL, EQUALITY AND PARTIALITY, at Ch. 10 (1995) (elaborating on the sources of inequalities).
[46] Rawls, *supra* note 42, at 129-130; Nagel, *id*., at 66.
[47] Nagel, *supra* note 45, at 67.

of distributive justice scholars.

During the 1980s and 1990s there were lively debates about whether class and personal endowments (i.e., effort, talent, tastes, preferences) should be considered as belonging to the realm of "free choices" or "imposed circumstances" to determine whether the inequalities that derive from them should be corrected.[48] Taking for granted that redistribution was required to some degree, scholars also discussed what exactly needed to be *equalized*, be it resources (i.e., Rawls, Ronald Dworkin), opportunity for welfare (i.e., Professor Richard Arneson), access to advantage (i.e., Gerald Cohen), or capabilities (i.e., Professor Amartya Sen).[49] Theorists who explore and develop these insights are often labeled "luck egalitarians."[50] Professor Jonathan Wolff interprets them as endorsing an *opportunity* conception of justice or equality, according to which society needs "to equalize people's circumstances while allowing them to reap the benefits, but also pay the costs, of their freely made choices."[51] Professor Elizabeth Anderson describes it as a starting-gate theory: as long as people enjoy fair opportunities at the start of life, this theory "does not much concern itself with the suffering and subjection generated by people's voluntary agreements in free markets."[52]

This approach to distributive justice is not without risks. Referring to Dworkin with a pinch of irony, Cohen famously wrote that he had "performed for egalitarianism the considerable service

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[48] *See*, *e.g.*, the discussion in Ronald Dworkin, *What is Equality? Part 2: Equality of Resources*, 10 PHILOS. PUBLIC AFF. 283, 301-4 (1981); Gerard Cohen, *On the Currency of Egalitarian Justice*, 99 ETHICS 906, 922-4 (1989); Richard Arneson, *Equality and Equality of Opportunity for Welfare*, 55 PHILOS. STUD. 77, 78-82 (1989); Nagel, *supra* note 45, at 71.
[49] *See respectively* Rawls, *supra* note 42, at 54-6; Dworkin, *id.*, at 283- 290; Arneson, *id*., at 86-90; Cohen, *id*, at 916-934; AMARTYA SEN, INEQUALITY REEXAMINED 33-5 (1992).
[50] Elizabeth Anderson, *What is the Point of Equality?*,109 ETHICS 287, 289 (1999).
[51] Jonathan Wolff, *Fairness, Respect, and the Egalitarian Ethos*, 27 PHILOS. PUBLIC AFF. 97, 100-01 (1998).
[52] Anderson, *supra* note 50, at 308.

of incorporating the most powerful idea in the arsenal of the anti-egalitarian right: the idea of choice and responsibility."[53] In this context, Cohen's critical position can be interpreted to include those conservative views that oppose egalitarian policies because they allegedly violate the principle of individual responsibility by penalizing those who work hard and rewarding those who are lazy, and by placing on society the cost of poor decision-making and lack of effort by individuals.[54]

The reasons to play on the same ground as conservatives were many. First, luck egalitarians wanted to show that individual responsibility and merit do not by themselves exclude redistribution claims, since favorable social circumstances or natural talents are not necessarily chosen by individuals or the result of their hard work, so the inequalities they produce must be redressed.[55] Second, faced with a marked increase in income and wealth inequalities and an escalating trend towards privatization in certain Western societies since the 1980s, luck egalitarians wanted to show that calls for redistribution need not "be hostile to markets and must indeed rely upon them in important ways."[56]

Yet despite their egalitarian ethos, luck egalitarians ended up embracing a conservative approach to social policy, an approach that warrants deep and moralizing scrutiny of decision-making to identify whether the individual is responsible for their misfortune—and therefore, *deserving* or *undeserving* of social support.[57] Commenting on this distributive paradigm, Iris Young criticized that it ended-up encompassing the broader reflection on social justice for decades

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[53] Cohen, *supra* note 48, at 933.
[54] Samuel Scheffler, *Choice, Circumstance, and the Value of Equality*, 4 POLIT. PHILOS. ECON. 5, 7 (2005).
[55] Scheffler, *supra* note 53, at 14-5.
[56] Samuel Scheffler, *What is Egalitarianism?*, 31 PHILOS. PUBLIC AFF. 5, 14 (2003).
[57] Anderson, *supra* note 50, at 311. Similarly, see Wolff, *supra* note 51, at 112.

in the Anglo-American context.[58] As will be explained next, the development field and certain voices within human rights positioned themselves somewhere between these egalitarian and individualistic visions of social policy.

B. An Opportunity Conception of Justice/Equality in the International Forum: Development and Human Rights

The 1986 UN Declaration on the Right to Development culminated more than a decade of debates among state representatives on the adoption of a human rights-based approach to development, reaching commitments that albeit not binding have the "force" and "moral legitimacy" granted by international consensus.[59] This international consensus seems to support Nagel's view that, while common morality at least pays lip service to the rejection of overt discrimination and similar practices of subordination, inequalities in access to social advantages such as income and socioeconomic goods, which can be attributed to individual responsibility, are not equally condemned. For instance, while Article 5 of the Declaration is imperative in that states "shall take resolute steps to eliminate massive and flagrant violations of human rights" resulting from racism, apartheid or colonialism, Article 8 stipulates that states shall only ensure "*equality of opportunity* for all in their access to basic resources, education, health services, food, housing [and] employment" (emphasis added). Responsibility for the realization of the right to "enjoy economic [and] social development" (i.e., Article 1) rests with the individual since, according to the first Independent Expert on the right to development Arjun Sengupta, "only the individuals themselves

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[58] IRIS YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE 15-9 (2011).
[59] Arjun K. Sengupta, *Study on the Current State of Progress in the Implementation of the Right to Development*, ¶ 6, U.N. Doc., E/CN.4/1999/WG.18/2 (July 1999).

can do this."[60]

Perhaps it is former World Bank senior adviser Paul Streeten who voiced the importance of individual responsibility most forcefully within the development field, when he emphasized that states should not actually satisfy basic needs but only provide for the possibility of their satisfaction.[61] According to him, contemporary morality rejects the idea that every individual, "irrespective of merit, ability or available resources [has] the right to adequate food, education and medical attention."[62] Such a right, he contends, should not exist because it "would not take into account… interpersonal choices."[63] Even supporters of more egalitarian versions of development who see state authorities as responsible for equalizing opportunities, following Sen's capabilities theory, emphasize individual responsibility by adopting a starting-gate approach. Once each individual enjoys "a just opportunity to make the best use of his or her potential capabilities," they argue, the individual is fully responsible for "how they actually use these opportunities, and the results they achieve."[64]

It is within this framework that an opportunity conception of justice/equality was introduced in the field of human rights. In permanent dialogue with the development field,[65] senior ESR scholar Asbjørn Eide addressed the "broad consensus" over distributive equality and ESR. According to him, state duties in this field include the traditional human rights obligation to tackle

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[60] *Id*. ¶ 41.
[61] Paul Streeten, *Basic Needs and Human Rights*, 8 WORLD DEV. 107, 108 (1980).
[62] *Id*. at 109.
[63] *Id*. at 111.
[64] UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 13 (1994).
[65] Asbjørn Eide, *The Relationship Between the Enjoyment of Human Rights, in Particular ESCR, and Income Distribution: Preparatory Document*, ¶ 13, U.N. Doc., E/CN.4/Sub.2/1994/21 (July 1994).

discrimination and with respect to income inequality to provide "equality of opportunity for all."[66] In a statement that bears a striking resemblance to the starting-gate approach of luck egalitarians, Eide defines equality of opportunity as:

> The provision of equal chances, from the outset of life, for human beings to manage their own future, and of arrangements to eliminate the negative consequences of accidental misfortune, such as serious illness, disability and structural unemployment, that otherwise could destroy the efforts made in goodwill by the human being concerned.[67]

Although Eide did not pay much attention to the escalating trend towards privatization and the retreat of the welfare state in defining the scope of distributive justice obligations in 1994, as Anglo-American philosophers did a decade earlier, the UN Special Rapporteur that took over Eide's role did. Indeed, José Bengoa considered that due to the reduction of the state's role in society, state authorities cannot be expected to fully guarantee the rights enshrined in the International Covenant on Economic, Social and Cultural Rights. Adopting a position that resembles Streeten's views on development, Bengoa considered that the best that can be expected from authorities is to ensure "equality of opportunity,"[68] not "to satisfy the needs of the population" or "provid[e] the means necessary to do so."[69] Echoing the dichotomy between choices and circumstances, Bengoa considered that an ESR violation only takes place in the face of "objective circumstances" that prevent people from having the opportunity to enjoy ESR for themselves, basically boiling down the extent of state responsibility in this field to "sweeping away" such

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[66] *Id.* ¶ 83 (c)
[67] *Id.* ¶ 91.
[68] José Bengoa, *The Relationship Between the Enjoyment of Human Rights, in Particular ESCR, and Income Distribution: Preliminary Report*, ¶ 10-13, U.N. Doc., E/CN.4/Sub.2/1995/14 (1995).
[69] *Id.*

external barriers.[70]

Contemporary philosophers working on human rights law defend similar positions. Professor Allen Buchanan advocates for a "modest view", where commitment to ESR only requires states to ensure that everyone enjoys "the opportunity" to have a minimally good life. Like Bengoa, he considers that the proper role of ESR is to remove any undue burden that prevents people from ensuring a minimally good life for themselves, such as practices of overt discrimination, exploitation and domination, as well as any other practice or circumstance that can make "life really awful."[71] The more ambitious goal of making basic socioeconomic goods available to all is, according to Buchanan, excessive because it would ignore "the role of the individual's *choice* in determining her opportunities and the costs of realizing them" (emphasis added).[72]

C. Sketching an Opportunity Conception of Justice/Equality in Post-conflict Settings

The conception of justice discussed above offers a narrative of why and to what extent the consequences of armed conflict are relevant from a distributive justice perspective. Accordingly, the great evil of armed conflict is that it unsettles citizens' equal opportunities to provide for themselves *free from violence*. After all, following Bengoa and Buchanan, being subject to serious bodily injury, as well as other "blatant [violations] involving physical attack, war, [or] violence," undermines people's opportunities of leading a decent life.[73] In a broader context, the World Bank

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[70] *Id*. ¶ 11.
[71] Allen Buchanan, *The Egalitarianism of Human Rights*, 120 ETHICS 679, 705 (2010).
[72] Buchanan, *supra* note 20, at 75.
[73] Bengoa, *supra* note 68, ¶ 19; *Id*. at 72, 77.

expresses concern over the diminished opportunities faced by members of communities and economies exposed to high levels of violence, including fewer chances to fare better than their parents and fulfill life plans regardless of their parents' social position than people untouched by violence.[74] In these cases, distributive justice aims to level the playing field so that everyone has an equal opportunity to exercise their rights post-conflict. Expressing this principle, the Word Bank tends to recommend measures such as cash transfers and employment programs for people affected by violence, as well as health and education services—the latter also aimed at traditionally discriminated groups, such as women and girls.[75] These measures seek to counteract the impact of widespread violence, understood as an external *shock* similar to other accidental misfortune, such as "natural disasters, ill health, [or] disability" which, as per Eide and luck egalitarians, belong to the realm of circumstances for which individuals should not be held to account.[76] These actions must be complemented with "market-friendly reforms" that strengthen monetary and fiscal policy and facilitate the opening of economies to international trade, without undermining efficiency and growth for the sake of equality.[77]

Therefore, according to this account, victims of direct and physical violence are at the forefront of the group of beneficiaries who *deserve* access to distributive justice measures, since society is only expected to step in and rectify the circumstances imposed on the individual that unsettle equality of opportunity and destroy people's efforts to fend for themselves. While this

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[74] PAUL CORRAL ET. AL., FRAGILITY AND CONFLICT: ON THE FRONT LINES OF THE FIGHT AGAINST POVERTY 41-42 (2020).
[75] *Id*. at 45, 73.
[76] WORLD BANK, POVERTY REDUCTION AND THE WORLD BANK. PROGRESS IN OPERATIONALIZING THE WDR 2000/2001, 40 (2002). These shocks are considered as "external and largely uncontrollable events" in WORLD BANK, WORLD DEVELOPMENT REPORT 2000/2001: ATTACKING POVERTY 3 (2001).
[77] *See* WORLD BANK, WORLD DEVELOPMENT REPORT 2000/2001, *supra* note 76, at 38, 56, 80.

liberal framework provides victims with a solid foundation to seek reparation for life plans that were lost to violence, it also comes at the cost of undermining the more robust role of the state with respect to the effective guarantee of the ESR of the population. It is within this liberal framework, anchored in the process of increased privatization and reliance on the market that took hold internationally after the Cold War, that the justice cascade in societies in transition took place.

IV. TRANSITIONAL JUSTICE AND DISTRIBUTIVE JUSTICE

As mentioned in the introduction, this Article does not attempt to address all possible meanings of transitional justice or focus on a particular theoretical corpus. Rather, the evaluation of the interplay between transitional justice and distributive justice will be carried out by focusing on certain key concepts, lines of reasoning, and practices that can be taken together and coherently understood as embodying an opportunity conception of distributive justice.

A. Victim-centricity

The concept of victim-centricity can be considered to include a particular understanding of victimization and the normative nature of victims' claims for justice. From the very beginning, in his first report submitted to the UN Human Rights Council, Pablo de Greiff stressed that the situation of victims is relevant from a transitional justice perspective not so much because they are *badly off*, but because they were *wronged*.[78] He explains this distinction by arguing that other

[78] Pablo de Greiff, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence*, ¶ 29, U.N. Doc. A/HRC/21/46 (2012)

vulnerable people may experience hardships like those of victims. Their plight, however, only represents a setback to their interests—it is not the product of wrongdoing, typically understood as violations of the handful of civil and political rights that protect "basic freedoms and physical integrity."[79] This victim-centered approach accommodates an opportunity conception of justice, as it sanctions violence understood as an external interference in people's lives (i.e., in their basic freedoms and physical integrity) that unsettles their equal opportunity to provide for themselves. This is further exemplified by the two main bodies that make up the Inter-American human rights system, which have led the transitional justice agenda for decades.[80] According to the Inter-American Court of Human Rights (IACtHR), victims of serious abuses face "hostile circumstances" "extraneous" to the individual, which are "unfairly and arbitrarily thrust[ed] upon him."[81] As such, these circumstances undermine victims' "opportunities for personal development" and destroy goodwill efforts to manage their own future.[82] The Inter-American Commission on Human Rights (IACHR) elaborates on this idea by adding that widespread violence undermines people's equal opportunities by preventing victims from pursuing their life project on equal terms with other citizens.[83]

The emphasis on *wrongdoing*, narrowly understood, has led the two bodies to address ESR-related concerns after episodes of widespread violence only when they are the direct result of the

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[79] *Id.*, at ¶ 29; *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence*, ¶ 26, U.N. Doc. A/69/518 (2014).
[80] Clara Sandoval, *Two Steps Forward, One Step Back: Reflections on the Jurisprudential Turn of the Inter-American Court of Human Rights on Domestic Reparation Programmes*, 22 INT. J. HUM. RIGHTS 1192, 1192 (2017).
[81] *Loayza Tamayo v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 42, ¶ 149-50 (27 November 1998).
[82] *Id.* ¶ 149.
[83] *Derechos humanos de migrantes, refugiados, apátridas, víctimas de trata de personas y desplazados internos: Normas y Estándares del Sistema Interamericano de Derechos Humanos*, COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, ¶ 234, OEA/Ser. L/V/II. Doc. 46/15 (2015).

authorities' non-compliance with duties to respect and protect civil and political rights, not as breaches of the self-standing duty to fulfill ESR. As a result, the IACtHR and IACHR have failed to develop a state responsibility framework that reflects the robust and active role that authorities must play in guaranteeing ESR in these contexts.[84] In so doing, they contribute to sustaining a sharp distinction between those who are badly off because their life projects and opportunities were curtailed by violence, and those who are equally badly off but for other reasons, such as "ordinary" poverty.

B. Differentiating Victims' Reparations Claims from Citizens' ESR Claims

Victim-centricity goes hand in hand with the position that transitional justice policies, especially those that have a direct impact on victims such as reparations, should focus solely on victims. As first argued in the 2003 Final Report of the Peruvian Truth and Reconciliation Commission (TRC)[85] and almost a decade later by de Greiff in the first report to the UN Human Rights Council,[86] reparations are expected to address *wrongdoing* rather than simply making beneficiaries *better off*; they contribute, together with truth seeking initiatives, accountability and guarantees of non-recurrence, to the recognition of victims qua victims of serious abuses. This understanding of reparations has raised the question whether measures related to distributive justice that benefit victims and non-victims alike, such as development programs or the guarantee of ESR, can be

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[84] Felix E. Torres, *The State, the assailant? Guaranteeing economic and social rights after widespread violence through the Inter-American Court of Human Rights*, 40 NETH. Q. HUM. RIGHTS 12, 17-32 (2022); Torres, *supra* note 28, at 938-943, 955.
[85] *Informe Final*, COMISIÓN DE LA VERDAD Y RECONCILIACIÓN 147-49 (2003) (Peru).
[86] de Greiff, *supra* note 78 (2012), ¶¶ 29-31.

considered reparatory.[87] This question has been answered in the negative under the argument that such programs and services end up distributing goods victims are entitled to as *citizens*, not *victims*. More precisely, de Greiff contends in a later report that these measures do not retain victims' distinctiveness and cannot be considered reparatory because they can be consumed by victims and non-victims alike.[88]

This line of reasoning has deep roots in the inter-American region. Participants in the discussions sparked by the Peruvian TRC considered that reparation measures are intended to address unlawful interferences with "personal liberty" and thereby must be differentiated from state services that directly deal with existing socioeconomic shortcomings, which victims and other poor people often share.[89] Because of this, there was agreement that access to ESR should not be considered as a means of redress since victims' distinctiveness would be watered down.[90] In other words, the differentiation between reparation claims and general socioeconomic claims is based on the assumption that the economic hardships victims often experience are the result of interference with personal liberty. What authorities have to redress is the course of life and opportunities that were lost to violence, not this or that socioeconomic shortcoming.

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[87] Naomi Roht-Arriaza, *Reparations Decisions and Dilemmas*, 27 HASTINGS. INT. & COMP. L. REV. 157, 186-192 (2004); Lisa Magarrell, *Reparations for Massive or Widespread Human Rights Violations: Sorting out Claims for Reparations and the Struggle for Social Justice*, 22 WINDSOR Y.B. ACCESS JUST. 85, 93 (2003).
[88] de Greiff, *supra* note 79, ¶¶ 40-42.
[89] Magarrell, *supra* note 87, at 94.
[90] *Id*.

C. Prioritizing Victims Over Non-victims in the Guarantee of ESR

A way to uphold victim-centricity and the distinctive character of victims' demands for justice is to grant them *special* treatment as a means of redress.[91] According to Nussio, Rettberg and Ugarriza, transitional justice operates "on the assumption that victims and nonvictims are fundamentally different social groups." "This assumption," they continue, "is partially derived from a normative consensus that victims *deserve* special attention for the wrongs they have suffered" (emphasis added).[92] The IACtHR interprets "special attention" as the prerogative of victims to receive "preferential treatment" or "priority access" to socioeconomic goods and public institutions.[93] In contexts of widespread poverty, this treatment can be understood as a call to prioritize or privilege the interests of victims *over* those of the "ordinary poor," who stand last in the queue for social policy. Indeed, comparative studies by Roht-Arriaza, Sandoval, and Correa suggest that this prioritization strategy is a practice widely accepted by domestic authorities.[94]

The rationale for this practice can found in the jurisprudence of the Colombian Constitutional Court, a court that has been at the forefront of the enforceability of victims' ESR in

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[91] de Greiff, *supra* note 3, at 40.
[92] Enzo Nussio, Angelika Rettberg & Juan E. Ugarriza, *Victims, Nonvictims, and Their Opinions on Transitional Justice: Findings from the Colombian Case*, 9 INT. J. TRANSITIONAL JUSTICE 336, 353-54 (2015).
[93] *Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal v. Guatemala*, Inter-Am. Ct. H.R. (ser. C) No. 328, ¶ 303 (30 November 2016); *See also Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 453 (2013); *Yarce and Others v. Colombia*, Inter-Am. Ct. H.R. (ser. C) No. 325, ¶ 340 (22 November 2016).
[94] Roht-Arriaza, *supra* note 87, at 198-200; PRIORITISING VICTIMS TO PROVIDE REPARATIONS: RELEVANT EXPERIENCES, ETJN Briefing Paper No 3, ¶¶ 19-22, 55 (Clara Sandoval ed., 2011); Cristian Correa, *Integrating Development and Reparations for Victims of Massive Crimes*, INT'L. CENTER FOR TRANSITIONAL JUST. 9 (2014).

contexts of transition.[95] To be clear, the following observations are not intended to exhaust the different positions adopted by the Court on this issue. The Court's jurisprudence is vast, and it is possible to identify different understandings of the authorities' duties towards people affected by violence.[96] That said, the Court's reasoning often fully encapsulates the opportunity conception of justice discussed so far, as exemplified by a 2000 landmark case, where it ruled that public spending for Internally Displaced Persons (IDPs) should have priority over ordinary social spending.[97] In a 2003 ruling, it considered that victims of forced displacement are entitled to priority treatment even when this may imply an unequal distribution of resources to the detriment of the "historically poor."[98] In a 2009 decision it went further to say that victims must rise out of poverty faster than the historically poor.[99]

It is possible to identity three main reasons to justify this prioritization strategy. The first is the high level of vulnerability that often affects victims, especially IDPs. The second is that state authorities owe "specific obligations" towards them,[100] obligations which:

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[95] UNITED NATIONS, HIGH COMMISSIONER FOR HUMAN RIGHTS, TRANSITIONAL JUSTICE AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS 29-31 (2014).

[96] Felix E. Torres Penagos, *¿De "desplazados" a "víctimas"? Una genealogía de la justicia transicional en Colombia desde la perspectiva de la Corte Constitucional*, *in* JUSTICIA TRANSICIONAL EN COLOMBIA: UNA MIRADA RETROSPECTIVA 277-351 (Juana Acosta-Lopez & Maria del Rosario Acosta Lopez eds., 2023) (analyzing different conceptual frameworks used by the Court to address the situation of victims). *See also*, Félix Eduardo Torres Penagos, *Estudio Preliminar. Justicia Transicional en Perspectiva: Posibilidades, Retos y Nuevas Paradojas en Escenarios de (Post)Conflicto*, *in* JUSTICIA TRANSICIONAL Y POSTCONFLICTO 13-96 (Félix Eduardo Torres Penagos, Dustin N. Sharp, Louise Arbour, Lars Waldorf eds., 2019).

[97] Corte Constitucional [C.C.] [Constitutional Court] agosto 30, 2000, Sentencia SU-1150/00 Sala Plena (¶ 41) (Colom.); Corte Constitucional [C.C.] [Constitutional Court] mayo 26, 2005, Sentencia T-563/05, Sala Tercera de Revisión (p. 8) (Colom.).

[98] Corte Constitucional [C.C.] [Constitutional Court] julio 23, 2003, Sentencia T-602/03, (p. 20-22) (Colom.).

[99] Corte Constitucional [C.C.] [Constitutional Court] enero 26, 2009, A-008/09, Sala Segunda de Revisión (¶ 90) (Colom.).

[100] *Id.*

> Have their ultimate foundation in the inability of the state to comply with its basic duty to preserve the minimum conditions of public order to guarantee the personal security of associates; [if the state] was not able to prevent its associates from being expelled from their places of origin, it has at least to guarantee the necessary care so they can rebuild their lives.[101]

This position is in tune with victim-centricity, as the Court considers that it is the authorities' failure to respect victims' rights and protect them from illegal interference (*wrongdoing*), more than the fact that they are *badly off*, what justifies priority treatment. It also supports the distinctiveness of victims' claims for justice, as the authorities are giving them special treatment as a means of redress, different from general access to social policy. In sum, the Court is stressing the importance of rebuilding the life projects lost to violence more than the socioeconomic shortcomings faced by victims. This leads to the third reason that justifies this prioritization strategy, namely the "special and differentiated condition" of victims,[102] which allows the Court to introduce the luck egalitarian distinction between choices and circumstances, as well as Buchanan's minimalist approach to ESR. According to the Court, victims are in a situation that "without being chosen" by them, prevents them "from accessing those minimum guarantees that allow [them] to realize [their] economic, social and cultural rights and the adoption of a life project."[103] Throughout these considerations, the Court considered that state action must be understood in the context of its duties to "guarantee equality of opportunity and level social

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[101] Corte Constitucional [C.C.] [Constitutional Court] abril 18, 2007, Sentencia C-278/07, Sala Plena (p. 31) (Colom.).
[102] *Supra* note 97.
[103] Corte Constitucional [C.C.] [Constitutional Court] julio 27, 2006, Sentencia T-585/06, Sala Sexta de Revisión (p. 39) (Colom.).

disadvantages."[104]

To sum up this section, the practice of prioritizing victims over non-victims in the guarantee of ESR is consistent with transitional justice's commitment to the centrality of victims and the distinctive status of their claims for justice. It is also consistent with the conception of distributive justice discussed, as it justifies the correction of socioeconomic wrongs due to causes beyond the control of people, in this context, generalized violence that disturbs their equal opportunities to provide for themselves. So far, this Article has shown that the question whether transitional justice should deliver distributive justice is misplaced, since certain key concepts, lines of reasoning, and practices of transitional justice *already* set in motion a particular conception of distributive justice. What remains to be examined is whether this liberal conception of justice is adequate in post-conflict settings. This is an issue that can be approached from many directions, emphasizing, for example, the inadequacy of an "agent-oriented" and "fault-oriented" moral vision that ignores the structural dimension of injustice[105]—a view that is increasingly accepted in the "new" field that is arguably emerging from the now traditional transitional justice paradigm, namely *transformative* justice.[106]

As important as these approaches are, these final considerations will address two other issues that have received little attention in scholarly work. The first is the possibility that the conception of justice discussed thus far might lead to differential access to distributive justice policies among certain groups of victims, including the risk of excluding some of them from access

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[104] Corte Constitucional [C.C.] [Constitutional Court] julio 23, 2003, Sentencia T-602/03, Sala Primera de Revisión (p. 21) (Colom.).
[105] Young, *supra* note 58, at 195-6.
[106] *See, e.g.,* FROM TRANSITIONAL TO TRANSFORMATIVE JUSTICE (Paul Gready & Simon Robins eds., 2019); Evans, *supra* note 5.

to monetary resources that are crucial to fulfill ESR. The second is the introduction and reinforcement of inaccurate and demeaning understandings of poverty and victimization that can affect citizens' self-respect and undermine support for victim-oriented policies. This last aspect will be examined from a *relational justice* perspective, which pays special attention to the "implicit *attitudes* of social institutions" and the message they convey to people, addressing the impact of these attitudes on people's self-respect and not only the distribution of what is owed to them.[107]

V. FLAWS OF AN OPPORTUNITY CONCEPTION OF JUSTICE IN POST-CONFLICT SETTINGS

A. Feeding Misconceptions of Poverty and Passing Demeaning Judgments on Poor People

A conception of justice that highlights individual responsibility and the choices/circumstances dichotomy easily accommodates an understanding of poverty that is harmful to poor people's self-respect. Within certain narratives there is an opinion that poor people are blameworthy for their misfortune, as policy writer Mead argued in claiming that society should not shoulder responsibility for the circumstances surrounding poverty and disadvantage.[108] Others suggested that poverty "is the consequence of indolence or vice" and the "just deserts of people who did not try hard enough."[109] These views are not uncommon in post-conflict societies, as exemplified by

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[107] THOMAS POGGE, WORLD POVERTY AND HUMAN RIGHTS 48 (2013); Christian Schemmel, *Distributive and Relational Equality*, 11 POLIT. PHILOS. ECON. 124, 125 (2012) (elaborating on Pogge's insights).
[108] LAWRENCE MEAD, BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP 46, 55 (2006).
[109] CHARLES MURRAY, LOSING GROUND: AMERICAN SOCIAL POLICY (1950–1980) 29 (1984).

the following statement from a poor victim in reference to the Peruvian authorities and other social elites:

> They look at us poor people like dogs, as they say, "how much you have is how worthy you are, and if you have nothing you are worth nothing." But they blame us for becoming poor. But in our villages, we had cows, goats, potatoes…but we had to escape the violence and they forced us to become poor.[110]

It is important to note that the problem for this victim is not the harsh judgment that undermines poor people's self-respect by comparing them to dogs and making them feel guilty about their plight; rather, the issue is that the interviewee was placed on the wrong side of the dichotomy, that of the poor who are to blame instead of that of victims who were *thrown* into poverty. In sum, this testimony expresses the view that in the absence of violence poor people are blameworthy for their misfortune.

This understanding of poverty plays an important role in the prioritization strategy that puts victims at the forefront of access to social policy at the expense of the "ordinary poor," becoming especially relevant in contexts where poor people falsely claim to be victims to access social benefits to which only victims are entitled.[111] If state authorities are concerned that resources are not reaching genuine and deserving victims, moral scrutiny of potential beneficiaries is required, whereby the state passes judgments on its citizens' worth by classifying them as responsible and not responsible for their misfortune, attaching an official stamp of recognition on their individual merits.[112] In carrying out this exercise, state authorities express the message that the "ordinary

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[110] Lisa Laplante, *On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development*, 10 YALE HUM. RTS. & DEV. L. J. 141, 157 (2007).
[111] Juan Prieto, *Together after War While the War Goes On: Victims, Ex-Combatants and Communities in Three Colombian Cities*, 6 INT. J. TRANSITIONAL JUSTICE 525, 538 (2012); Nussio, Rettberg & Ugarriza, *supra* note 92, at 352.
[112] Anderson, *supra* note 50, at 305.

poor" do not deserve privileged access to social policy because, unlike victims who found their opportunities and quality of life lost to violence, the poor are responsible for making good choices in determining their opportunities and for the costs of realizing them. Clearly, members of a poor family will have difficulty understanding why they are treated differently from victims if they have similar needs. They may internalize the message that they "must bleed first" to receive the social services available to victims, or that they must impersonate "genuine sufferers" to access them—carrying the double guilt of being poor and impersonators. Therefore, behind this prioritization strategy lies an institutional attitude that expresses *contempt* for poor people, as authorities are regarding those who did not suffer "at the hands of perpetrators" as not deserving of the social services they so badly need.[113]

The point here is not to affirm that transitional justice scholars and practitioners *actually believe* in the idea of the undeserving poor. The argument is rather revealing in the sense that the plausibility of construing the "victim" category in stark contrast to that of the "ordinary poor" to justify the priority given to the former may implicitly depend on an opportunity conception of justice that rewards the deserving at the expense of the undeserving based on notions of individual responsibility and deservingness. If the plight of victims and poor people is equally considered the result of circumstances for which they cannot be held responsible, they should access social policy on an equal footing and the two groups should be equally eligible for reparations for socioeconomic wrongs. If poverty and conflict-induced poverty have the same status, guaranteeing ESR and making all disadvantaged people *better off* should be the post-conflict priority, not

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[113] Pamina Firchow, *Must our Communities Bleed to Receive Social Services? Development Projects and Collective Reparations Schemes in Colombia*, 8 J. PEACEBUILDING DEV. 50, 52-54 (2013).

redressing the life prospects that were torn apart by violence. This stance does not weaken the duty of state authorities to adopt positive measures tailored to the specific needs of victims; it only justifies it on how badly off victims currently are, not on the fact that they have been wronged.[114] Crucially, this opportunity conception of justice is not only deficient and insulting in dealing with poor people, but it also falls short in addressing the concerns of that very heterogeneous group of victims which cannot be properly captured under the dichotomy of choices and circumstances.

B. Reproducing Misleading Perceptions of Victimization

The "victim" notion is difficult to grasp due to the variety of meanings and uses that accompany it. While certain victims question it because it is associated with ideas of passivity and lack of agency, preferring alternative categories (e.g., "survivors"), others reinterpret it and strategically appropriate it.[115] The following reflections do not intend to encompass all these possible meanings. Rather, they will explore the extent to which the choices/circumstances dichotomy inherited from luck egalitarians opens the back door for both the introduction of now discredited views of victimhood and passing insulting judgments on victims.

Claiming that victims are entitled to priority access to state services due to the forced reduction of their opportunities implies overestimating the weight of circumstances to the point of rendering victims' decision-making capacity hollow, bordering on those understandings of

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[114] Torres, *supra* note 28, at 941-43.
[115] *See generally*, Adriana Rudling, "*I'm Not that Chained-Up Little Person": Four Paragons of Victimhood in Transitional Justice Discourse'*, 41 HUM. RIGHTS Q. 421 (2019); *See also* Huma Saeed, *Victims and Victimhood: Individuals of Inaction or Active Agents of Change? Reflections on Fieldwork in Afghanistan*, 10 INT. J. TRANSITIONAL JUSTICE 168, 176 (2016) (exemplifying how victims strategically use the notion).

victimization that deny their agency. It is not to forget that victims are often associated with innocence and defenseless, conceived as diminished agents incapable of altering their fate, or "passive objects who have been acted upon by other forces."[116] To some extent, these insights transpire from the IACtHR, when it emphasizes that the lives of victims are altered by extraneous circumstances arbitrarily thrusted upon them.[117] Likewise, when the Colombian Constitutional Court highlights that victims of forced displacement "lack minimal opportunities that allow them to develop as autonomous human beings,"[118] it is defining them by "the mark that has been made on them rather than the mark that they have made on the wider world."[119] The Court also portrays victims as agents with diminished agency when it equates victims with other "subjects of special protection" such as children, persons with disabilities, or the elderly.[120] Given this heavy conceptual baggage, certain people affected by violence tend to reject the "victim" category because they oppose having their agency questioned.[121] Since women and children are usually associated to victimization given the social imaginary that portrays them with reduced agency, male victims are also likely to avoid the notion as they may find it detrimental to their self-respect.[122]

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[116] Tessa Lacerda, *"Victim": What is Hidden behind this Word?*, 10 INT. J. TRANSITIONAL JUSTICE 179, 182 (2016); Chris Gilligan, *Constant Crisis/Permanent Process: Diminished Agency and Weak Structures in the Northern Ireland Peace Process*, 3 ETHNOPOLITICS 22, 30 (2003).
[117] Inter-Am. Ct. H.R., *supra* note 81.
[118] Corte Constitucional [C.C.] [Constitutional Court] febrero 15, 2010, Sentencia T-099/10, Sala Tercera de Revisión (p. 8) (Colom.).
[119] Gilligan, *supra* note 116, at 30.
[120] Corte Constitucional [C.C.] [Constitutional Court] mayo 20, 2015, Sentencia T-293, Sala Quinta de Revisión (p. 19-21) (Colom.).
[121] Lacerda, *supra* note 116, at 184-85. *Similarly*, *see* Saeed, *supra* note 115, at 172-73.
[122] Sandesh Sivakumaran, *Sexual Violence Against Men in Armed Conflict*, 18 EUR. J. INT. LAW 253-270 (2007).

An opportunity conception of distributive justice allows demeaning judgments to be passed on victims in a similar way as is done with poor people. Since priority access to ESR is reserved for victims, people affected by violence must adopt a category with which they may feel uncomfortable and must "display evidence of personal inferiority in order to get aid from the state."[123] Basically, victims must make a convincing case to state authorities that they are not autonomous subjects. Therefore, in justifying priority access to social policy in the fact that people were victimized, authorities can plausibly express another face of institutional contempt and transmit a message that undermines the self-respect of people affected by violence. This message is that it is their putative defenselessness and diminished agency that entitles them to benefits that are denied to full-fledged agents. Special benefits are thus granted under considerations of pity and compassion, by virtue of the *inferiority* of recipients and not their equality with fellow citizens.

C. Undermining Support for Policies in Favor of People Affected by Violence

Understanding victimization through the lens of compassion also risks contradicting a valuable goal of transitional justice and undermining long-term strategies to address the situation of people affected by armed conflict, which require broad public support. Transitional justice policies seek to contribute to the affirmation of the status of victims as agents who have the right to make claims to authorities on equal terms with other citizens and not as a matter of empathy or compassion.[124] Framing victims as citizens with equal rights builds public support for policies that serve their

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[123] Anderson, *supra* note 50, at 305 (referring to vulnerable people who deserve distributive justice measures and must make insulting value judgments about themselves to access them)
[124] de Greiff, *supra* note 78, ¶ 29.

interests, since state authorities do not act out of solidarity and goodwill but rather in compliance with the obligations they owe to victims as to any other citizen. However, the discussed rationale behind victim prioritization may bring about exactly the opposite result by expressing a compassionate institutional attitude towards victims. This is not the most stable ground to underpin long-term strategies, since according to psychologists, empathy and compassion are not infinite attitudes but can be exhausted when there is constant exposure to suffering, a large number of people in bad condition, or presence of bystanders exposed to the same situation.[125] These findings allow for the hypothesis that, at the social level, exposure to the plight of victims over time risks depleting the social stock of compassion and empathy. In a country like Colombia, where victims represent around 17 percent of the population and their cause has been at the center of the public spotlight for almost 20 years, surveys conducted at a single point in time[126] and over a decade[127] show a decline in civil society's willingness to pay taxes to finance victim-oriented policies, to the point of lacking majority approval.

This lack of support is compounded by a similar lack of enthusiasm among poor people, who may not only run out of empathy and compassion, but may also resent that by prioritizing victims state authorities are neglecting their own needs.[128] For instance, this situation may occur,

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[125] Marcus Butts et al., *Helping one or Helping Many? A Theoretical Integration and Meta-analytic Review of the Compassion Fade Literatur*e, 151 ORGAN. BEHAV. HUM. DECIS. PROCESS. 16 (2019).

[126] GONZALO SÁNCHEZ ET AL, ENCUESTA NACIONAL ¿QUÉ PIENSAN LOS COLOMBIANOS DESPUÉS DE SIETE AÑOS DE JUSTICIA Y PAZ? 89-90 (2012).

[127] Invamer Poll 2022, at 113, https://www.eltiempo.com/uploads/files/2022/02/17/2022-02%20Invamer%20Poll.pdf. [https://perma.cc/3CMF-BMLN]. (Last Access, February 6 2023)

[128] Firchow, *supra* note 113, at 54; *See also* Clara Inés Aramburo, *El Urabá antioqueño*, *in* GEOGRAFÍAS DE LA GUERRA, EL PODER Y LA RESISTENCIA: ORIENTE Y URABÁ ANTIOQUEÑOS (1990- 2008) 455-6 (Clara Inés Aramburo & Clara Inés García de la Torres eds., 2011); Liliani Barreto et al., COMMUNITY BUILDING FOR DISPLACED POPULATION RETURNING HOME. ANALYSIS

although not necessarily, if poor people suffer greater poverty than victims due to the absence of special measures that the latter receive, such as housing and certain education allowances.[129] Basset argues that feelings of resentment may have led community members in the poorest neighborhoods of Bogotá to decide not to support the transitional justice measures of the Peace Agreement, decisively contributing to its defeat in the 2016 plebiscite.[130]

D. Creating Hierarchies Among Victims and Placing Certain Victims at the Margins of State Response

There is a second problematic idealization of the "victim" notion that has its roots in the dichotomy between choices and circumstances, although this time emphasis is placed on victims' immaculate ability to choose despite the circumstances. Victims are often deemed to be fully diligent and well-intended agents whose fall into disgrace cannot be attributed to their recklessness or bad faith. According to Doctor Adriana Rudling, a victim "[who] is shown to have acted improperly by either stupidity or ill will . . . falls short of the "ideal" victim standard."[131] Just as the emphasis on individual responsibility led peacetime societies to reward the deserving poor and punish the undeserving, post-conflict authorities face the task of "determining who is a *deserving* victim and who is not,"[132] in this case, depending on which victim is more diligent. This is exemplified by the

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OF THE CASE LAS PALMAS, SAN JACINTO BOLÍVAR 114-15 (Universidad Nacional de Colombia 2016).

[129] Barreto et al., *supra* note 128, at 115, 120-21.

[130] Yann Basset, *Claves del rechazo del plebiscito para la paz en Colombia*, 52 ESTUDIOS POLÍTICOS 241, 260-63 (2018).

[131] Rudling, *supra* note 115, at 426.

[132] Lisa Laplante, *The Law of Remedies and the Clean Hands Doctrine: Exclusionary Reparation Policies in Peru's Political Transition*, 23 AM. U. INT'L L. REV. 51, 79 (2007).

dichotomy between acting in *good faith*/*bad faith* that underpins the land restitution policy implemented in Colombia following the 2011 Victims Law, "the broadest and most comprehensive" transitional justice arrangement in the world.[133]

The Victims Law introduced an adversarial process in which specialized judges in land restitution decide over restitution claims made by people who allegedly lost their lands. In reaching a conclusion, judges must consider the claims of people opposing restitution, who must demonstrate that they acted in *good faith* and *without fault* to access compensation if the plot of land is returned to the claimants. The first term—*good faith*—requires from opponents "consciousness of having acted honestly," while the second—*without fault*—entails "certainty of having acted honestly," that is, certainty that "conduct was carried out with sufficient caution to the extent that any possibility of taint affecting conduct is wiped out."[134] The adoption of this high standard of conduct relied upon the assumption that people opposing restitution were perpetrators of displacement or somehow participated in displacement, namely big land owners or other powerful economic and political actors.[135] However, the implementation of the law swiftly revealed that many opponents were also victims of displacement, or other vulnerable and landless people who occupied the parcel under dispute and derived their means of subsistence from it. These people participate in the restitution process as *second occupants*.

During the early application of the Victims Law, judges who ruled in favor of the claimants

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[133] KATHRYN SIKKINK ET AL., EVALUATION OF INTEGRAL REPARATIONS MEASURES IN COLOMBIA: EXECUTIVE SUMMARY 4 (2015).
[134] Tribunal Superior Distrito Judicial de Santiago de Cali [T. Sup.] [Appellate Court of the Saint James of Cali Judicial District], junio 23, 2015, Sala Civil Fija de Decisión Especializada en Restitución de Tierras (p. 18) (Colom.).
[135] Corte Constitucional [C.C.] [Constitutional Court], agosto 23, 2016, A-373, Sala Especial de Seguimiento a la Sentencia T-025/04 (p. 70, 75) (Colom.).

and ordered the restitution of their lands did not recognize any compensation to these second occupants. For instance, improvements made over years of hard work, such as building or improving a modest house or making the land exploitable, went unrecognized because these victims acted recklessly or in bad faith.[136] Reinforcing the idea that victims need to be immaculate to be deserving of state measures, compensation was denied because victims acquired the parcel knowing that: it was previously owned by other victims who were forced to flee many years ago;[137] the owner sold it because family members suffered serious human rights abuses;[138] or the seller was in dire socioeconomic conditions and needed the money.[139] In this context, the lack of compensation negatively affects the ability of low-income victims to cope with daily concerns, as monetary resources are usually spent in the short term covering basic socioeconomic expenses (i.e., housing).[140]

Given the increase in the number of second occupants, the government issued different agreements that granted them access to different socioeconomic measures, seeking to address

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[136] Tribunal Superior del Distrito Judicial de Bogotá [T. Sup.] [Appellate Court of the Bogotá Judicial District], julio 22, 2015, Sala Civil Fija de Decisión Especializada en Restitución de Tierras (p. 23-24) (Colom.); Tribunal Superior del Distrito Judicial de Cúcuta [T. Sup.] [Appellate Court of the Cúcuta Judicial District], abril 16, 2015, Sala Civil Fija de Decisión Especializada en Restitución de Tierras (p. 55-59) (Colom.).
[137] Tribunal de Cúcuta, *supra* note 136, at 58.
[138] Tribunal Superior del Distrito de Judicial de Cartagena [T. Sup.] [Appellate Court of the Cartagena Judicial District], mayo 19, 2015, Sala Especializada en Restitución de Tierras (p. 21-22) (Colom.).
[139] Tribunal Superior del Distrito Judicial de Cartagena [T. Sup.] [Appellate Court of the Cartagena Judicial District], julio 10, 2014, Sala Civil Especializada en Restitución de Tierras (p. 30-31) (Colom.).
[140] Barreto et al., *supra* note 128, at 144; *Similarly*, Félix Eduardo Torres, *El desplazamiento forzado en los intersticios de la justicia transicional: oportunidades y riesgos*, 69 REV. ESTUD. SOC. 28, 35 (2019).

"historical conditions of vulnerability facing the communities involved."[141] These measures were interpreted by land restitution judges and the Constitutional Court as embodying the distributive justice mandate to democratize access to land enshrined in Articles 58 and 64 of the Constitution.[142] Faced with this new regulation, judges who regard second occupants as acting in bad faith have only considered the adoption of palliative measures to avoid violations of fundamental rights resulting from eviction.[143] When judges identify good faith, on the contrary, they require authorities to provide second occupants with priority treatment to guarantee the *full* enjoyment of the rights to land and housing. In a 2015 decision, the Cartagena Tribunal justified this reasoning by reproducing the transitional justice argument that it is the authorities' failure to respect victims' rights and protect them from illegal interference, more than the fact that victims are *badly off*, what justifies special treatment.[144]

The foregoing considerations have shown that the dichotomy between choices and circumstances inherited from luck-egalitarian philosophy feeds idealizations of the "victim" category that end up justifying unequal access to distributive justice measures among victims and denying some of them access to monetary resources that are crucial to fulfill ESR. In classifying citizens as deserving and undeserving, this rationale is also seriously flawed from a relational justice perspective. The previous analysis has shown that authorities express contempt for victims

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[141] UNIDAD ADMINISTRATIVA ESPECIAL PARA LA GESTIÓN Y RESTITUCIÓN DE TIERRAS DESPOJADAS, ACUERDO 18 (17 October 2014).
[142] Corte Constitucional [C.C.] [Constitutional Court], *supra* note 135 [Auto 373] (p. 72-74)
[143] Tribunal Superior del Distrito Judicial de Cartagena [T. Sup.] [Appellate Court of the Cartagena Judicial District], julio 17, 2015, Sala Civil Especializada en Restitución de Tierras (p. 31-32) (Colom.).
[144] Tribunal Superior del Distrito Judicial de Cartagena [T. Sup.] [Appellate Court of the Cartagena Judicial District], junio 16, 2015, Sala Civil Especializada en Restitución de Tierras (p. 43-48) (Colom.).

whether by emphasizing the weight of circumstances and their power to stifle victims' decision-making capacity, or by requiring that victims always choose righteously regardless of the circumstances. This dichotomy also leads to neglecting the needs of poor people and feeds insulting institutional attitudes that portray them as blameworthy for their plight. It is no wonder why this conception of justice undermines the long-term implementation of policies for people affected by armed conflict, as it fails to win over poor people and provides no stronger foundation than compassion and empathy among the general public.

VI. CONCLUDING REMARKS

This Article has shown that transitional justice and distributive justice, rather than being separate spheres of justice, are often conceptually and practically embedded. The opportunity conception of justice that emerged from the consolidation of liberalism since the 1980s and gained ground among scholars and practitioners of development and human rights, explains thoroughly certain key concepts, lines of reasonings, and practices of transitional justice in the UN and the inter-American region from the early 2000s to the present. In the face of an escalating trend towards privatization, this conception of justice is anchored in the notion of individual responsibility and the idea that state authorities should reward deserving people and punish the undeserving. In post-conflict settings, the result of this rationale is the reproduction of inaccurate and demeaning understandings of poverty and victimization that undermine citizens' self-respect, as well as the exclusion of entire groups of people from access to socioeconomic goods and monetary resources key to fulfill ESR. This liberal conception of justice also undermines public support for long-term policies in favor of those affected by violence in contexts where the needs of other segments of

the population have not been met. That being the case, scholarly work should overcome the prevailing question of how best to connect these apparently autonomous spheres of justice, to the point of acknowledging their intimate relationship and reimagining transitional justice in such a way that it can *successfully* set in motion distributive justice, avoiding the pitfalls discussed here and without imposing unrealistic burdens on post-conflict authorities.