

**The Hidden Face of Justice:
Fairness, Discrimination and Distribution in Transitional Justice Processes¹**

Juan Camilo Cárdenas², Andrés Casas-Casas³, Nathalie Méndez Méndez⁴.

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² Facultad de Economía, Universidad de Los Andes, Colombia. Email: jccarden@uniandes.edu.co.

³ Independent researcher and principal investigator for the World Values Survey in Colombia. Email: andrescasascasas@gmail.com.

⁴ Departamento de Ciencia Política, Universidad Javeriana, Colombia. Advisor for the Centro de Memoria Histórica. Email: nathaliemendez1@gmail.com.

I. Introduction

During the last several decades, a great deal of attention has focused on transitional justice, defined as "the full range of processes and mechanisms associated with a society's attempts to solve the problems of past abuses on a large scale, so that those responsible are held accountable, serve justice and achieve reconciliation."⁵ Inasmuch as they focus on normative issues, most approaches to these processes and mechanisms have emphasized formal elements (macro-political mechanisms), while ignoring the importance of the informal dynamics (meso-political and micro-political) that shape final outcomes (e.g., demobilization, reintegration, recognition of the truth, the provision of justice, reparations, forgiveness and reconciliation).⁶

Furthermore, there is little empirical evidence concerning the effects of transitional justice policies (Backer, 2009; Thoms, 2010; and Cuevas & Rojas, 2009). In particular, there is a gap in the literature concerning the consequences of these policies on individual perceptions and social norms. Individual and social preferences regarding these processes matter, given that they are likely to scale up likely to either undermine or increase public support for transitional justice programs (Thoms, 2010; and Cuevas & Rojas, 2009).

This article seeks to contribute to the literature on the impact of transitional justice measures using microfoundational⁷ evidence from experimental research. We

⁵ United Nations (2004).

⁶ See Casas-Casas & Herrera (2008, p. 199); Rettberg (2008); Caruso (2011); and Fletcher et al. (2009, p. 210).

⁷ In economics, the term "microfoundation" refers to the microeconomic analysis of the behavior of individual agents. As Janssen (2006) observes, the quest to understand microfoundations is an effort to understand aggregate economic phenomena in terms of the behavior of individual economic entities and their interactions. These interactions can involve both market and non-market interactions. The quest for microfoundations grew out of the widely felt, but rarely explicitly stated, desire to stick to the position of methodological individualism and also out of a growing uneasiness among economists in the late-1950s and 1960s about the co-existence of microeconomics and macroeconomics, both of which are aimed at explaining features of the economy as a whole. Methodological individualism, as explained in the entry on the topic, is the view whereby proper explanations in the social sciences are grounded in individual motivations and behavior. The urge to make microeconomics and macroeconomics compatible with each other can be understood from

argue that there is a distributional dilemma at the heart of transitional justice programs, given that the state must allocate goods and services both to victims (via reparations and the restoration of rights) and excombatants (so as to incentivize demobilization and remaining demobilized). We offer evidence from the Colombian case to show what we call *the hidden face of justice effect*, which occurs during the transition from war to peace when distributional dilemmas arise such that people tend to favor allocations aimed at protecting victims and are less empathetic towards perpetrators. Under these kinds of settings, a tendency to pursue fairness generates a social sanction function that in turn can negatively impact the reintegration of former combatants and jeopardize the maintenance of peace.

In order to explore the microfoundations underlying the differences between allocations to victims and those to excombatants, we use the database built by Cárdenas et al., (2008). In 2006, a large experimental study was conducted to explore society's social preferences towards vulnerable groups receiving social assistance from the government (Cardenas et al., 2008). To study this issue, the original research invited more than 500 people to participate from different vulnerable groups in the city of Bogotá, as well as public officers working in agencies that provide the kinds of social services—education, nutrition, healthcare and childcare—typically offered to the city's poorest. Because many of these programs have been oriented towards victims (i.e., displaced families) as well as former combatants, it is possible to observe behavior towards these groups within the context of a controlled experimental setting.

We select our variables by population type (both for victims and excombatants), while positing a dependent variable defined by the amount of distribution in previously conducted experimental games. Among the five games played were the "Distributive Dictator Game," the "Dictator Game", the "Ultimatum Game," the "Trust Game" and the "Third-Party Punishment Game". In every one of these games, a first player makes a decision regarding a transfer of cash to a recipient, in this case, one of two possible beneficiaries of social programs—former combatants and displaced persons. We focus on the "Third-Party Punishment Game," where a third player has to decide whether or not to spend money to punish unfair offers by the first player.

the perspective of the "unity of science" discussion initiated by the Vienna Circle in the Philosophy of Science at the beginning of the 20th century (Janssen, 2006). For some of the seminal papers on microfoundations, see Schelling (1978) and Weintraub (1979).

Subsequently, we build multivariate regression models between assignments and types of population, along with control variables for such factors as gender, age, socioeconomic level, employment, marital status and number of dependent children. This design tends to establish significant differences between respective allocations to the two different targeted populations.

In order to achieve its goal, the following paper is divided into three sections. The first section explores the microfoundations that underlie the process of distributional justice among citizens in processes of transition from war to peace. The second section presents the experimental results, the multivariate regression results, an analysis of significant differences between the distributions, and the probability of punishment by third parties when judging that first players are behaving unfairly towards displaced or excombatants. Also considered are the social conditions influencing the distribution of benefits among participants. In the third section, we stress the effect referred to here as the “hidden face of justice,” and suggest some public policy implications of transitional justice policies.

II. An Overview of the Microfoundations of Transitional Justice Processes

In this section, we describe certain general aspects that should be taken into account in order to propose an approach for analyzing the microfoundations of transitional justice.⁸ Such an approach should focus on the importance of individual decision-making, and moreover could prove beneficial by: i) going beyond the formal aspects and macro-dynamics traditionally ignored in the transitional justice literature; ii) taking into account the micro-level and the importance of variables reflective of individual and group dimensions such as the performance of the processes and mechanisms implemented to achieve a transition from war to peace; iii) accounting for the distributive nature of transitional justice; and iv) offering a better understanding of how people and communities adopt policies and face social dilemmas that must be solved in order to achieve a stable peace.

Additionally, an approach based on microfoundations assumes that transitions, as decision-making based processes, rely on cognitive bases—inclusive of neuronal dynamics that are mediated by the complex interplay of social, economic and

⁸ By microfoundations of transitional justice, we refer to the underlying mechanisms derived of the individual preferences that drive decisions related to the implementation of a transitional justice social program. Concerns about altruism, fairness, inequity aversion, envy and discrimination are all reflected in the social preferences shaping decisions related to the implementation of a transitional justice program.

political contextual aspects that mold the preferences of the people involved. These preferences matter, as they play a crucial role in the transition to peace. Individual and social preferences determine the perceptions held by stakeholders and ordinary people regarding any given measure's fairness or its inclusiveness vis-à-vis the affected populations, and thus affect the legitimacy and effectiveness of transitional justice policies and programs (vanZyl, 2005).

From this perspective, what happens at the micro-social level affects in a bottom-up process the other dimensions involved in transitions. Far from being a one-way (top-down) and one-dimensional (eminently macro-political) phenomenon, the study of transitional justice requires perspectives that understand the interdependence of variables in a multidimensional, complex manner.

Given the absence of a theoretical framework, we briefly refer to some ideas that should help illustrate and shape an alternative approach to transitional justice.

Multidimensionality and the Microfoundations of Transitional Justice

Transitional justice is a multidimensional phenomenon that simultaneously affects at least three levels of human experience: An *institutional dimension* defined by the political, administrative and judicial rules that enable a transition from war to peace (Elster, 2004; and Casas-Casas & Herrera, 2008). An *interpersonal dimension*, related to the way groups interpret and solve shared problems. In this dimension, the interplay between a group's conventions, moral norms and social norms define key aspects of a program, such as its legitimacy, the motivations for compliance, and the appropriation (use) of the rules defined in order to facilitate the transition. Finally, an *intrapersonal dimension*, wherein preferences towards the transitional process are molded, updated, appropriated or transformed.⁹ As was previously mentioned, this article focuses on the intrapersonal and interpersonal levels involved in the development of mechanisms and processes related to transitional justice.

The emerging area of behavioral sciences and its use of experimental methods provide a valuable source for tackling the challenge of understanding the micro-behavioral foundations underlying human attitudes and decisions vis-à-vis justice, fairness and redistribution. During the last few decades, psychologists, anthropologists, political scientists and economists have come together to design

⁹ For Elster (2006a, p. 195-227) there are three types of preferences evident in transitional justice processes: preferences based on emotion; preferences based on reason; and interest-based preferences.

and develop better theories, methods and models aimed at explaining why humans are capable of pursuing fairness in society, often at great personal cost (Camerer & Fehr, 2004).

Large systematic studies have been conducted on how culture shapes human behavior with respect to altruism, cooperation, trust and social sanctioning, even from the perspective of third parties (Henrich et al., 2006; and Henrich et al., 2012). New behavioral models have emerged in the theoretical literature for explaining related behavior in the field and laboratory (Camerer 2003; Bowles, 2004; and Bowles & Gintis, 2011). This literature can be useful for understanding the mechanisms operating when victims, perpetrators and non-affected citizens interact with one another and express preferences.

In this context, the notion of justice with respect to distributions includes not only distributions initiated by the state in terms of public policy, but also includes the participation of individuals in allocations, whether directly (e.g., when a citizen is also a public official) or indirectly (e.g., when a citizen accepts, supports, complies with or undermines a given policy in the context of his or her daily life). From this perspective, preferences toward transitional policies are based on the motivations, desires and beliefs of individuals, and can also be explained by the fluctuations of human interactions, and subsequently by the impact of feedback related to decision-making processes on the implementation of public policies.

From our perspective, transitional justice implies human decision-making processes that share the same neuro-economic bases of choices related to fairness. This is why understanding the mechanisms underlying preferences and choices related to transitional justice processes is crucial.

Several experiments using the Ultimatum Game and performed across different cultures around the world show striking behavioral patterns. On only a few occasions did the people who must decide how to distribute the money in the game offer a minimum amount and keep most of it. The rate of rejection of a second player in the game is triggered substantially when the proposed offers are close to or below 30%. These two patterns converge in a socially efficient and more egalitarian outcome, one that simply consists of first players making fair offers and second players accepting them.

Recent findings in neuroscientific research offer interesting insights for the analysis of the microfoundations of transitional justice. Sanfey et al. (2003) studied the neural activity of individuals participating in the Ultimatum Game. In assessing the

flow of oxygen to regions of the brain associated with specific functions, they used Functional Magnetic Resonance Imaging (fMRI), and found that unfair offers simultaneously activated regions associated with emotion (the Anterior Insula or AI) and with cognitive tasks (the Dorsolateral Prefrontal Cortex or DLPFC). The DLPFC is the brain region that helps humans solve complex tasks such as entail calculating and planning, as well as anticipating future situations. The Insular Cortex region is responsible for strong emotions. Humans share this region with other mammals; it is what allows us to respond quickly to risks and threats. It is this area of the brain where, among other emotional feelings, pain and disgust is manifested.¹⁰

In this sense the ability to decide between right and wrong when compensating victims or allocating resources for the reintegration of former combatants into civilian life entails a decision-making process mediated by emotions and rational calculation. In fact, one does not need a functional magnetic resonator to check the level of emotionality potentially aroused by discussions over such issues in everyday conversation, on social networks, or in the news and media.

Sanfey et al. (Ibid.) and his colleagues, also show that when the Ultimatum Game was played between two human beings acting of their own accord, the activation of the emotional and calculative zones of the brain was much higher than when an individual was facing a computer. Added to that, participants in the experiment were more likely to accept unfair offers generated by the computer than when initiated by an actual person.

The relational character of preference formation towards fairness is also an important part of the equation when evaluating and discussing reparation and redistribution to victims, and incentives and benefits being offered excombatants. For hundreds of thousands of years, humans have developed a set of cognitive and emotional abilities for perceiving injustice. At the group level, a central issue concerns notions of social justice within a group. In distribution and redistribution processes, the punitive aspect of altruistic behavior and the type of social reciprocity aimed at punishing those who committed abuses becomes central to a social group's dynamics. In such situations, the reinforcement of social norms becomes imperative. People punish not for what the offender did, but for what he or she did to another (Hall, 2010, p. 160).¹¹

¹⁰ For an approach that accounts for the role of emotions in transitions, see Petersen (2009; and 2007), and Elster (2003).

¹¹ "When people engage in altruistic punishment, the same part of the brain that becomes aroused by cooperation (the reward center of the Dorsal Striatum) is activated. We get a neural kick from both cooperation and punishment" (Hall, 2010, p. 60).

As stated above, the transition from war to peace involves the distribution or redistribution of values, resources and burdens in order to establish a sustainable equilibrium from the point-of-view of all stakeholders. This requires the reallocation of resources, sometimes public, sometimes private: 1) to victimized groups in order to protect, support and/or repair them; and 2) to combatants in order to prevent their returning to armed groups or reengaging in violent activities, likewise, to facilitate their reintegration into civilian life. In this sense, and given their distributive nature, transitional processes generate various tensions and paradoxes that challenge the potential success of peacebuilding at the micro-level.

In the relationship between justice, discrimination and distribution, from the perspective of the microfoundations of individuals and social behavior, it becomes evident how the transitional justice process in its distributive component resembles a balance between two claims—the need for reparations and the restoration of victims' rights, versus the need to establish the conditions that will allow demobilized combatants to remain within an equilibrium that embraces the construction and stabilization of peace.

The problem becomes even more complex if we consider that, when sharing or assigning resources among individuals, the attitudes of people towards injustice can influence policy in a bottom-up process. So, what happens when perceptions regarding distribution are biased in favor of victims and against excombatants and as a consequence generate negative incentives for demobilization that may affect reintegration and the maintenance of peace?

III. An Experimental Design in the Field for Studying Distributional Justice in Post-Conflict Societies.

The Colombian case offers an exceptional opportunity for understanding a very unorthodox kind of transitional justice. Colombia is the only country in the world where transition measures have been designed and implemented in the midst of an ongoing, internal armed conflict. During the past five decades, hostilities have been almost continuous, although beginning in late-2003, under the presidency of Uribe (2002-2010), a process of demobilization, disarmament and reintegration was undertaken by Colombian paramilitary groups.¹²

¹² For insights on the DDR process as it relates to Colombia's paramilitary groups, see Herrera and Gonzalez (2013), Kalmanovitz (2009), Petersen, & Zukerman (2009) and Theidon (2007).

This demobilization process was a result of negotiations between the Colombian government and the leaders of these groups.¹³ During the same period, leftist guerrilla combatants were also demobilizing, surrendering their weapons to the government, and entering programs for reinsertion into civilian life. Meanwhile, the number of displaced families continued to grow as a consequence of the armed conflict; most came from rural areas and moved to the cities. More recently, a new attempt at peace negotiations—without a truce—was initiated with the largest guerrilla group, FARC, in Havana, Cuba.

The process related to the paramilitaries has involved the development of post-conflict legal and political mechanisms even as hostilities have continued (Ciurlizza, 2012). The Colombian government has adapted to the complex challenges confronting it by creating new institutions,—specifically, so as to meet the legal difficulties raised by the resulting tension between justice and peace. It also continues to face the security dilemma generated by the incipient processes of demobilizing combatants, and the challenges inherent in implementing policies aimed at providing assistance and reparation to the almost five million victims of the Colombian armed conflict.

In the context described above, a large experimental study was conducted to explore societal preferences with regards to the various vulnerable groups receiving social assistance from the government (Cárdenas et al., 2008). The fieldwork was funded by the Latin American and Caribbean Research Network Project, “Discrimination and Economic Outcomes,” together with the Inter-American Development Bank, from 2006 to 2007.

The study invited more than 500 people from different vulnerable groups in the city of Bogotá, as well as public officers working in agencies providing education, nutrition, healthcare and childcare, social services typically offered to the city’s poorest inhabitants. Because many of these programs are oriented towards victims (displaced families) and excombatants, it is possible to observe behavior towards these groups within the context of a controlled experimental setting.

The general approach of the experimental design is based on a set of different strategic interactions between player 1, the provider, and player 2, the recipient. The details for each of these experiments are described below. In general, the

¹³ For an analysis of the negotiations between the Colombian government and paramilitary groups, see Kalmanovitz (2009) and Gutierrez (2009). An assessment of the DDR processes in Colombia can be found in Palou & Méndez (2012).

experimenter endows player 1 with a sum of money from which he or she is expected to transfer a certain amount to player 2, regarding whom, certain characteristics are known. By asking each player 1 to transfer amounts of his or her own determination to different players 2, one is able to observe and quantify the former's social preferences for certain groups vis-à-vis others.

The study develops classical economic experiments for these interactions, such as the Dictator and Ultimatum Games, which allows the experimenters to observe not only the preferences of the providers (players 1) towards different groups (players 2), but also to ask players 2 regarding their willingness to reject offers by players 1, as well as their expectations as to how much they anticipate receiving.

Furthermore, a Third-Party Punishment Game (TPP) was conducted with the same sample, wherein a third player, acting as an observer, is endowed with an amount of money that he or she can use to reduce the earnings of player 1 after learning the amount that player 1 transferred to player 2.

Of the sample that participated as players 2, a particular subset of people included actual displaced people and actual excombatants, since these two groups have also been targeted for social assistance programs set up by the government. Among the players 1 were actual public officers working for social assistance agencies, along with a control group of citizens not working in these organizations or programs—all were recruited by these agencies' offices in the city of Bogotá.

The null hypothesis is that public officers allocating scarce resources should target all players 2 participating in the social programs, and should therefore show equal preference towards displaced persons and former combatants—both groups were explicitly targeted by these social programs. In the case of the TPP, the behavior of players 3—i.e., in terms of their willingness to spend money to punish players 1—should reflect the social preferences of third-party observers not directly involved in the interaction between donors and recipients. The latter thus constitutes a way of measuring the social preferences of the participants, public officials in particular, through an experiment wherein we are able to control for other related factors. As far as we know, this is the first study to measure these preferences with representatives of the two stipulated groups in a country experiencing a political conflict such as is found in Colombia, and during a controversial period in terms of the demobilization of illegal armed groups.

Going into more detail, five different games were carried out to study these social preferences; for all of them, we gather data about the participating displaced persons and excombatants:

- Game 1: “Distributive Dictator Game” (Cárdenas & Sethi, 2010). In this game player 1 receives a fixed amount as his or her salary (~USD\$10) for the purposes of conducting the following distributive task: to sort in descending order five potential beneficiaries. After making such an ordering, the experimenter chooses a random number N between 1 and 5; that is the number of USD\$10 vouchers to be distributed among the N first players by ranking. In order to determine the ordering of beneficiaries, player 1 observes the cards of the five persons, inclusive of their photos, and information regarding certain attributes such as age, educational level, marital status, occupation, and whether the person is a displaced person or an excombatant.¹⁴
- Game 2: “Dictator Game” (Kahneman, Knetsch & Thaler 1986; and Forsythe et al., 1994). Player 1 receives an endowment (~US\$20) to be divided between two players strictly on the basis of player 1’s decision. Any amount sent by player 1 is transferred to the selected player 2. Player 1’s decision provides information about the pure altruism dimension of social preferences towards players 2.
- Game 3: “Ultimatum Game” (Guth et al., 1982). Much as with the Dictator Game, here player 1 also receives an endowment to be divided between two players. However, player 1’s offer needs first to be evaluated by player 2, who can accept or reject it. If accepted, the allocation is made; if rejected, both players receive \$0. In this game, one is able to evaluate the importance of social norms such as fairness and expectations of fairness by player 2, who can punish an unfair offer by rejecting it, albeit at a personal cost. Also, this game allows for identifying preferences based on conformism, wherein players 2 are willing to accept unfair offers.
- Game 4: “Trust Game” (Berg. et al., 1995). In this case, each player receives an endowment of ~USD \$8. Player 1 decides how much to allocate to player 2. The amount sent is tripled and handed over to player 2, who now has the possibility of keeping any portion of the amount received and sending the rest back to player 1. In this game, one can measure the level of trust exhibited by player 1 and the level of trustworthiness demonstrated by player 2. Both know that the maximum amount to be produced is USD \$32 when player 1 transfers all of his or her endowment. However, there is no binding contract guaranteeing that player 2 will return any particular amount to player 1.

¹⁴ The results of this game are reported in greater detail in Cárdenas & Sethi (2010), and is not part of the analysis that follows.

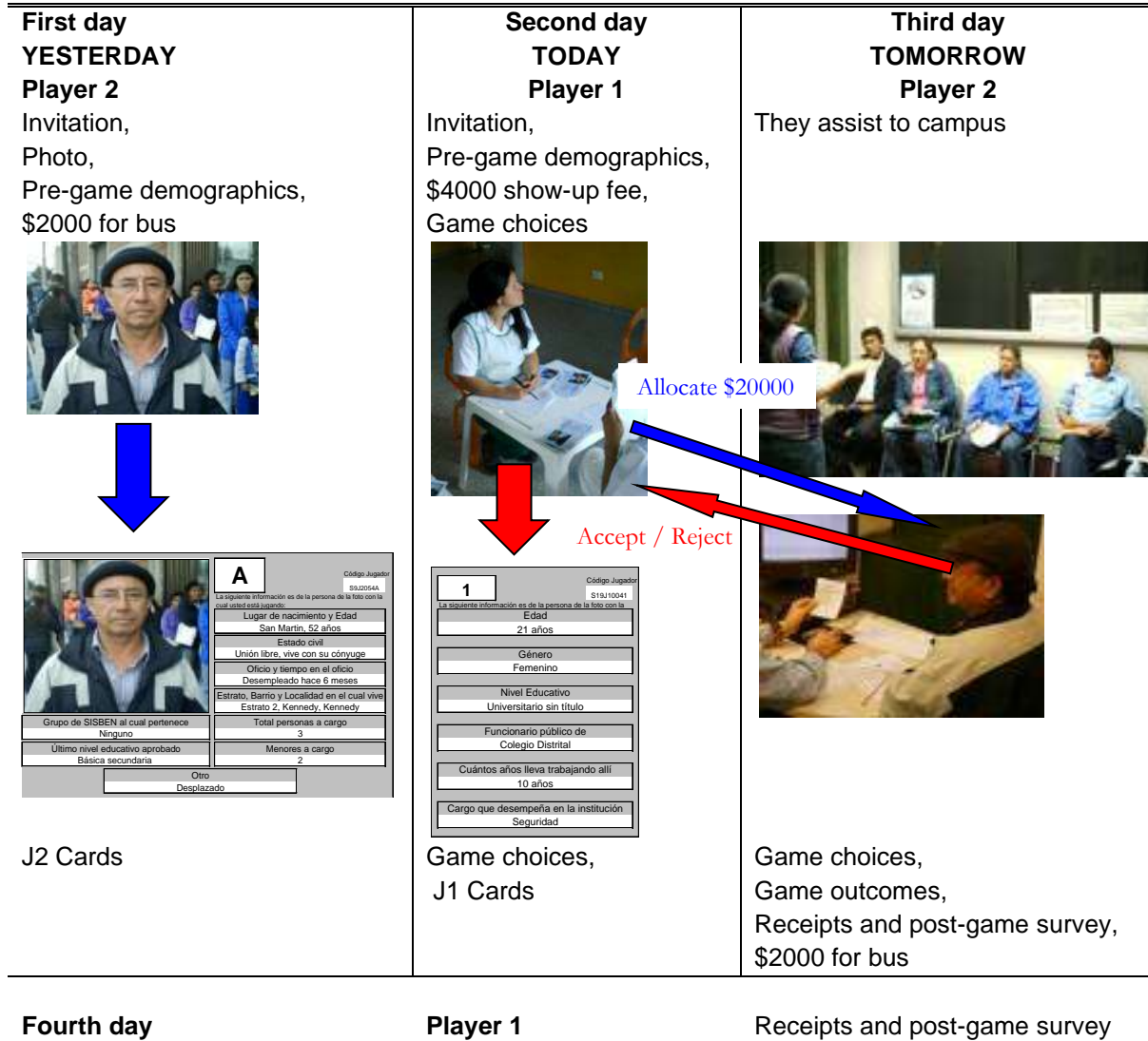
- Game 5: “Third-Party Punishment Game” (Fehr & Fischbacher, 2004). This game has the same modus operandi and players as the Dictator Game, but there is now a third player who receives an endowment of ~USD \$5 and observes the offer player 1 makes to player 2. Player 3 can use a portion of his or her endowment to punish player 1 by withdrawing a part of player 1’s earnings once he or she has made an offer to player 2. Since all information in this game is shared by all three players, we can expect norms of fairness to be enforced by player 3, and that this is anticipated by player 1 when making his or her offer.

Every player 2 participated in each game for one round. Every player 1—public officers and non-officers—also participated in each game, but had to make offers to different players 2 once having observed the characteristics on the cards that were shown to them. After the games were concluded, all of the participants had to provide information regarding their demographic and socio-economic conditions.

In the lab setting, players 1 never encountered players 2 face-to-face, and it was only after they made all of their decisions that one of the games was selected randomly for payment.

The following figure shows the steps taken over a complete session, from day 1 when the team recruited people from the streets, to day 4 when players 1 are paid according to their decisions and those of players 2.

Figure 1. Lab Setting for an Experimental Session (Ultimatum Game Example)



Source: Cárdenas, et al. (2008).

Players invited to be recipients (players 2) were recruited in the offices and waiting lines of the social programs of which they were beneficiaries. These included programs related to daycare, nutrition, public health and public primary education. In total, 568 people were recruited, 513 of which ended up following up on the invitation. More details about the overall results can be found in Cardenas et al. (2008).

Displaced Persons and Excombatants as Beneficiaries of Social Programs

Among the group of 195 people who participated as players 2, 43 were registered as displaced persons due to violence, and 34 as excombatants who also received

different kinds of social assistance. The rest of our analysis focuses on these two groups in order to make inferences about social preferences vis-à-vis victims and perpetrators of violence on the basis of these experimental games.

During the recruitment process all beneficiaries of social programs were informed that the study would collect personal information that was to be used solely for academic purposes, including the photographs. The experimental team clearly stated that the other participants who were to observe the photographs would not have any other personal information that would allow them to be identified. Given the size of these social programs, the number of beneficiaries and the number of public officers working in the respective agencies, it was quite unlikely that an officer would be able to personally identify a beneficiary. The participants and the experimenter signed a consent form, after it was explained how the experiments would be conducted; it was explicitly stated that the information collected in the study would not be released and was going to be used only for academic purposes.

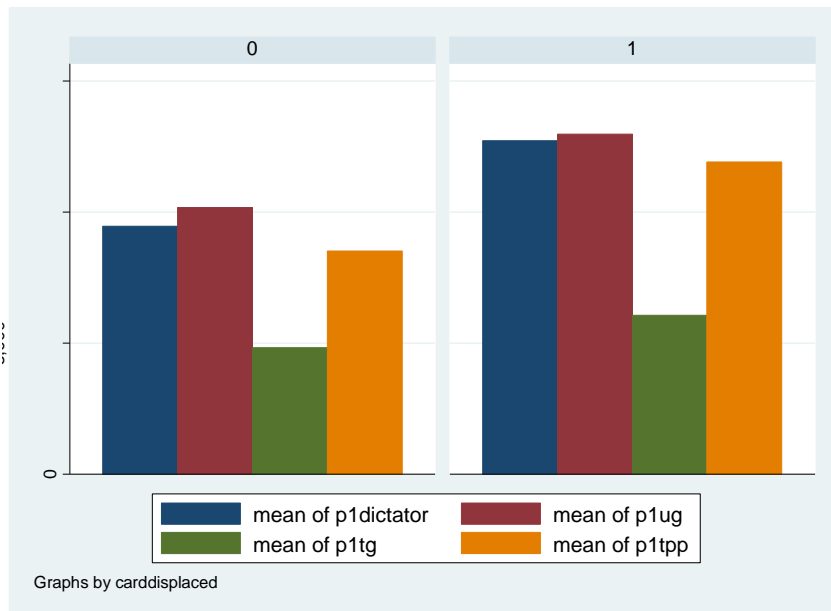
In addition to the characteristics shown on the cards for these players, a word was included at the bottom of each card indicating either “Displaced” or “Excombatant.” For the rest of the sample, other attributes were included in that cell, such as “Street vendor” or “Street recycler.”

The analysis that follows is based on the amounts offered in the games to the two types of players mentioned, displaced persons and excombatants, and the expectations and decisions made by them. We show first the average decisions and then conduct a multivariate analysis controlling for the demographics of the participants in order to estimate more accurately the differences in behavior.

In the next figure we observe the average amounts sent to both types of players for each of the four games considered here (Dictator, Ultimatum, Trust and Third-Party Punishment). In the left panel we indicate the means offered to excombatants and in the right panel the amounts sent to displaced players. The initial endowment for the Dictator, Ultimatum and TPP games was COP \$20,000; that for the Trust Game was COP \$8,000.¹⁵

¹⁵ In 2006, the exchange rate was around COP 1,036 per USD. At the time, the daily minimum wage was around COP 13,600.

Figure 2. Offers Made to Excombatants (Left) and Displaced Persons (Right) in COP\$.



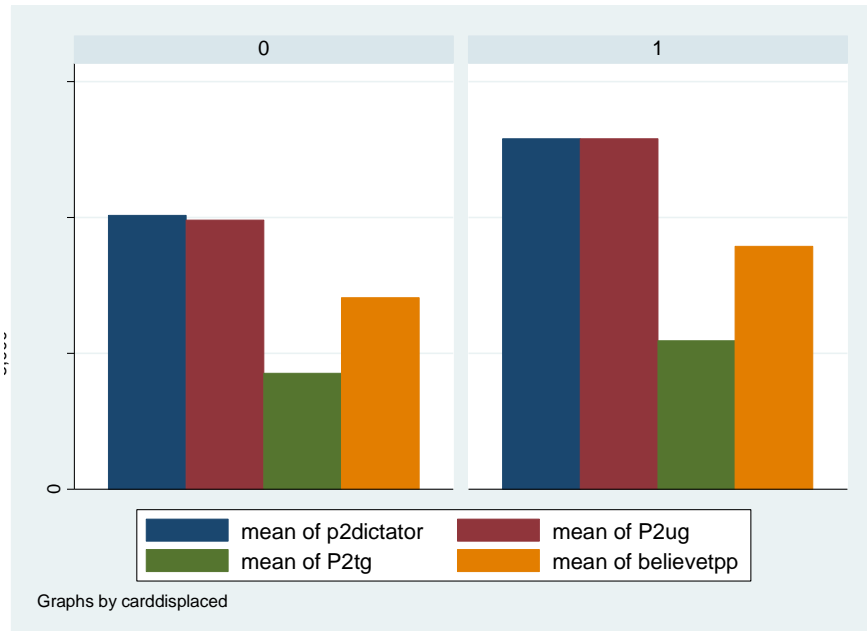
Based on Cárdenas, et al. (2008).

All offers were statistically different across the two groups.¹⁶ Furthermore, all offers to displaced persons were greater than 50% of the initial endowments, while offers to excombatants were below the 50% level, except in the Ultimatum Game, where the mean offer was exactly at the 50% level. Note that even in the Third-Party Punishment Game (TPP), the offers were substantially lower for excombatants, most likely because players 1 expected players 3 to be less punishing when this group was the target of transfers. We will come back to this observation later on.

In addition, the study also asked players 2 regarding their expectations about the offers made by players 1. Here too, we observed a significant difference between the two groups, and consistent with the actual offers made to them; as mentioned in the footnote, these differences were also statistically significant using non-parametric tests of equality. Apart from what transpired in the Third Party Punishment Game, displaced persons expected higher offers, higher than the 50% split; conversely, former combatants always had lower expectations, somehow anticipating harsher treatment from players 1.

¹⁶ The p-values for the offers made by players 1 in all four games using a Wilcoxon rank-sum test are: Dictator Game (p-value=0.0000); Ultimatum Game (p-value=0.0000); Trust Game (p-value=0.0000); Third-Party Punishment Game (p-value=0.0000). These same values were found for the expectations elicited from players 2, except for those in the TPP Game (p-value=0.0011).

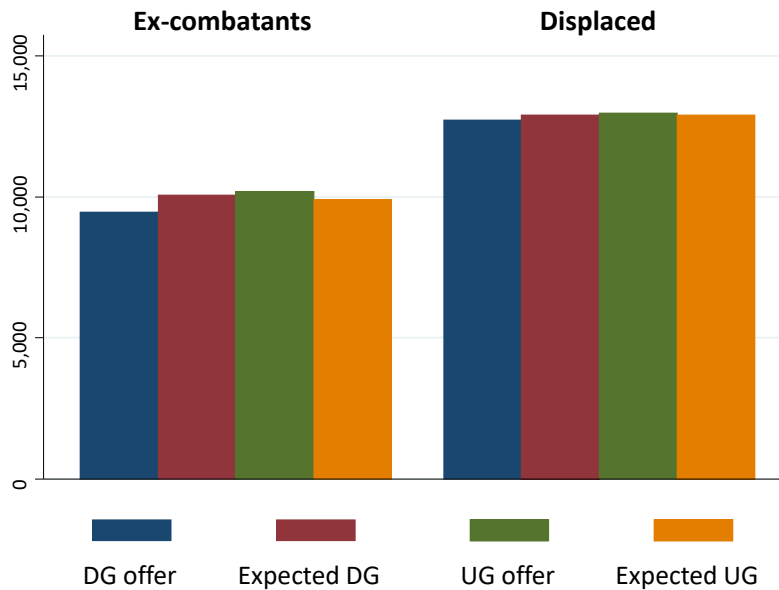
Figure 3. Amounts Expected by Displaced Persons and Excombatants



Based on Cárdenas, et al. (2008).

If we compare the amounts sent with the amounts expected in the Dictator and Ultimatum games, we find clear indication of mapping between the actions of players 1 and the expectations of players 2, suggesting an implicit norm in terms of the distribution of punishment and reparation among victims and perpetrators.

Figure 4. Offers versus Expectations in the Dictator and Ultimatum Games.



Based on Cárdenas, et al. (2008).

A third piece of evidence reinforces our analysis of preferences in society regarding fairness towards displaced persons and former combatants. Here we analyze the data from the Third-Party Punishment Game, focusing on the offers made by players 1 as donors.¹⁷

Our next step is to confirm these trends with a multivariate analysis so that we can control for other factors that might play an important role in determining the amounts transferred by players 1 to players 2. For instance, excombatants are more likely to be younger, appear stronger and healthier in their photos, and have achieved higher levels of education than displaced persons, possibly triggering less pro-social preferences in players 1, not necessarily related to the fact of their being perpetrators of violence but simply because they appear less vulnerable. Additionally, many displaced families are headed by women, sometimes widows or single mothers, which may trigger greater levels of sympathy and altruism by players 1.

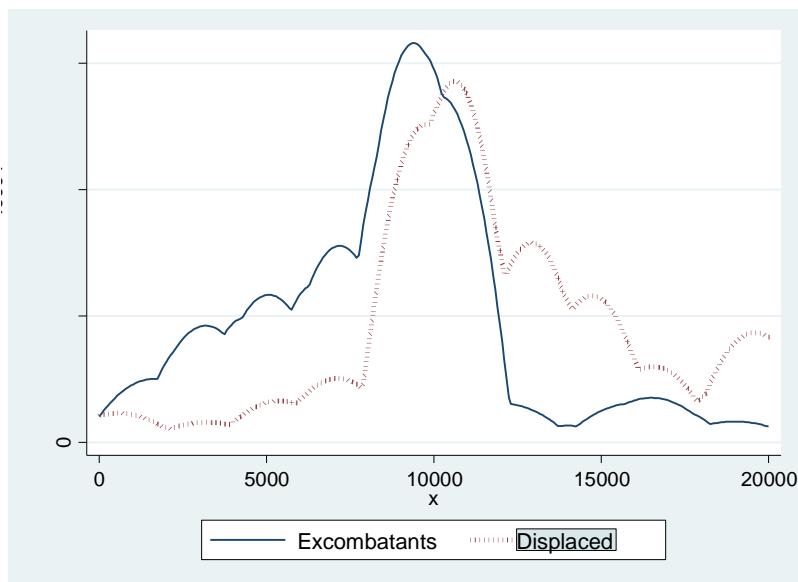
With respect to the Third-Party Punishment Game, we analyze the amounts offered by players 1 to players 2, and to what extent the attributes of players 2—

¹⁷ Although we find that the likelihood of punishing unfair offers--those below the 50/50 split--by players 3 is slightly lower when the beneficiary is an excombatant (see the appendix), the difference is not statistically significant.

observed by players 1 and players 3—are relevant to explaining variations in the offers.

Let us begin with our dependent variable, the amount offered by players 1 to players 2. As seen in other studies using this design (Fischbacher & Fehr, 2004), the modal offer for players 1 is around the 50% of the initial endowment. This can be seen in the following figure, where we present the Kernel Density Functions for the offers towards former combatants and displaced persons. In both cases, we find confirmation of the modal offer as an equal split. However, the density function shows a thicker tail on the left side (more selfish offers) when the recipient was an excombatant and a thicker tail when the recipient was a victim of violence.

Figure 5. Kernel Density Functions for the Offers towards Excombatants and Displaced Persons.



Based on Cárdenas, et al. (2008).

Using this as a dependent variable in a multivariate regression model, we now present the results of different regressions models. The following table shows different models estimating the offers by players 1 as a function of the attributes of players 2 (the recipients)—including whether it was a displaced person or an excombatant—along with the other vulnerable groups. We used an ordered probit model, as the offers options were presented to players 1 in eleven discrete incremental steps of COP\$2,000.¹⁸

¹⁸ The regression results using OLS estimators yield similar results, allowing for some interpretations for the coefficients—these are added in the appendix. The non-parametric regression was conducted following a suggestion made by one of our reviewers requesting more demanding non-parametric tests.

The regression analysis includes the rest of the sample as controls—that is, those beneficiaries and non-beneficiaries of social assistance that were not displaced persons or a former combatant. Using ordinary least squares, we find that being a displaced person increased the amount offered by player 1 by about COP \$1,800, roughly 9.5% of the initial endowment, while being an excombatant reduced the amount offered by about 4% of the initial endowment, after controlling for other factors such as education, which seems to reduce the amount offered.

TABLE NO. 1 RESULTS OF THE REGRESSIONS			
Dependent Variable: The Amount of Money Sent by Player 1 to Player 2 in the Third-Party Punishment Game			
Ordered Probit - Fixed effects for 28 sessions			
Regressor	1	2	3
Player 2 is a displaced person	0.5349***	0.4740***	0.4673***
Player 2 is an excombatant	-0.2885**	-0.4180*	-0.3797*
Sex (1=woman)		0.1166	0.1129
Socioeconomic Level		0.0404	0.0364
Age		0.0012	0.0020
Years of education		-0.0281*	-0.0271*
Player 2 is single		0.0178	-0.0114
1 if player 1 is a public officer			-0.2029
Protestant Work Ethic of player 1			-0.0926*
Summary statistics			
LR chi2 (2)	156.84	162.99	168.80
Prob > chi2	0.0000	0.0000	0.0000
Pseudo R2	0.0630	0.0655	0.0679
Log likelihood	-1166.27	-1162.18	-1159.27
<i>n</i>	600	599	599
The individual coefficient is statistically significant at the *10% **5% or ***1% significance level using a two-sided test			

IV. The Hidden Face of Justice

Given the empirical evidence presented above and the importance of the microsocial dimension of distributive justice in processes of reparation and reintegration into civilian life, we test the following hypothesis:

H1: Given the social preferences of society towards redistribution, we expect transfers to favor victims and punish perpetrators.

Although the hypothesis is supported by the evidence presented, it is incomplete, as the negative incentives produced by the "hidden face of justice effect" apply not just to former combatants, but entail negative outcomes for society as a whole in terms of the social optimum associated with overcoming conflict and achieving peace. If these preferences are shared by victims, perpetrators and bystanders—and the experimental data seems to suggest that this is so—this will create negative incentives for excombatants pursuing reintegration into civilian life as well as for peacekeeping.

To analyze the implications that may arise from confirmation of this hypothesis, we attempt a multidimensional interpretation of the results in order to better understand the mechanisms underlying the type of attitudes displayed in the experimental games.

At the *intrapersonal level*, taking into account the previous results and the need to identify the distribution mechanisms considering the two types of targeted populations, we found that the notion of justice in this case favors positive allocation toward victims, and limited ones for excombatants, with participants tending to punish the latter in terms of distribution. Additionally, experimental evidence shows that more years of education seems to reduce the amounts offered.

A further question arises in attempting to understand the differentiated distribution to victims and excombatants if we take into account the fact that allocations were made by completely anonymous volunteers and without the possibility of future penalization outside the games. Recent fieldwork shows that at the core of this type of decision is a notion of justice that shapes variations in allocation.¹⁹

In their theory of inequity aversion, Fehr and Schmidt (1999) warn that the effects of justice can be applied to many kinds of games, and posit a main assumption:

¹⁹ See Camerer (2003) Fehr & Schmidt (2003), Cárdenas & Sethi (2010) and Rabin (1993).

certain people not only care about the direct payments they receive, but also about the fairness conditions of payment allocation, such that they will attempt to reduce inequality even at the expense of their own direct benefit.

This individual bias—what one might call "discretionality"—manifested itself in the final payments of the experimental games. It should be noted, however, that on its own, such differentiated distribution does not imply injustice. This means that judgment prior to allocation is not synonymous with unfair behavior on the part of an official or citizen. On the contrary, discretionality seems to work as a corrective measure founded on sympathy (Sally, 2001), to favor vulnerable people (Cárdenas & Sethi, 2010) and punish alleged wrongdoers.

Another key issue that needs to be acknowledged reflects the social and psychological factors underlying people's motivations and preferences. It is important to realize that these factors are not only defined by the existence of traumas caused by violence. In this sense, it is logical to recognize that among ordinary citizens, emotions such as anger, indignation, and even the desire for revenge against former combatants can affect their choices in the games, such that excombatants are not necessarily treated the same with respect to distributions. There is evidence that the participation of former combatants in Disarmament, Demobilization and Reintegration (DDR) programs has had a positive effect in terms of increasing the degree of acceptance by their families and communities (Humphreys & Weinstein, 2007, p. 549).²⁰

A recent survey, for example, shows that 40% of Colombians, mostly high-income respondents, are not willing to forgive former combatants under any circumstances. 20% indicated that they could forgive excombatants if they showed true repentance, had not committed serious crimes, and if the victims were adequately compensated (López, et al., 2012; and Gibson, 2002). These results are consistent with research that has found that the willingness to forgive is low when the related events were recent and when the participants were direct victims (Kira et al., 2009).

In Colombia, the evidence suggests that these situations have serious implications and raise important questions regarding the legitimacy and feasibility of transitional justice processes in terms of their ideal performance. According to Sánchez &

²⁰ Disarmament, Demobilization and Reintegration processes are threatened by the mechanism known as the "Security Dilemma," which characterizes the dissolution of armed organizations in weak institutional contexts, given the uncertainty and mistrust regarding the willingness of the counterparty to fulfill its promises (see Walter, 1997; and Roe, 1999, cited by Humphreys & Weinstein, 2007).

Uprimny (2010, p. 193) reparation programs "must be conceived as an inclusive political project." Yet how sustainable is a process when former combatants are not perceived as part of the political project, and where citizens have a persistently negative perception of them? Evidence from the "National Survey," developed by the Colombian Center for Historical Memory (2012), shows that there is no agreement among respondents concerning the treatment of the demobilized. This implies important variations based on the region in question and the organization to which excombatants belong.²¹

From the *Interpersonal Dimension*, according to our analytical framework and the experimental results, the process of social transformation involved in transitional justice requires acknowledging that there are cognitive changes that affect how people relate to others in post-conflict situations, something that can enhance conflict resolution strategies at the local level.

Policy instruments can generate indirect effects over shared norms, values, trust, attitudes and beliefs (Duthie, 2009, p. 18). It is also important to take into account that the notion of distributive justice may act as a social norm, because it involves unspoken rules when it comes to defining allocations.

However, distributions depend on several variables, such as explicit or implicit incentives²² and their relationship with political processes that take place at the institutional level, what is understood as "the rules of the game in a society or, in another sense, [the] restrictions [...] that shape human interaction" (North, 1990).²³ This draws attention to the importance of understanding the relationship between moral rules, justice as a social norm, and formal justice, as studied by Sullivan (1975).²⁴

Understanding distributive justice as a social norm involves the shaping of preferences that may positively affect allocations to victims while having negative consequences for excombatants. Even though we do not assess how our experimental evidence affects the *institutional level*, our intuition is that social

²¹ For insights concerning the challenges and expectations faced by demobilized excombatants, see Nussio (2012); Prieto (2012); and Casas & Guzman (2010).

²² For an experimental example demonstrating the role of incentives and its relationship with fairness, see Fehr & Schmidt (2004).

²³ Nasi (2012) elaborates on an examination of postconflict political institutions and their problems in the Colombian case.

²⁴ It is important to reflect on how the relationship between formal and informal institutions shapes the transition process (Gibson, 2002); also how certain individuals and organizations can be more or less successful in exercising influence and creating rules under the resulting political dynamics (Elster, 2004; De Greiff, 2006; Naranjo & Casas-Casas, 2009; and Casas-Casas & Herrera, 2007).

preferences posit an additional challenge to institutional design: How to ensure conditions of fairness for both sides?

Beyond the economic debate as to how best to prioritize a criteria of equity and efficiency when it comes to designing public policies, we could argue that all policies, including those not immediately connected with distributional objectives, have distributional implications (Musgrave, 1991, p. 128).

In this sense, with respect to the institutional dimension, there is an inevitable relationship between the state's role and how individual and social preferences are formed. This relationship does not operate in one direction; while regulatory provisions certainly impact citizens' perceptions, these perceptions in turn can shape programs and policies, particularly those that correct (or exacerbate) inequalities. This happens because the individuals in question can act in defense of (or reject) targeted social programs and redistribution measures.

One notable example relates to "positive discrimination" actions developed in order to protect and recognize the rights of minorities and most vulnerable sectors of society.²⁵ This proves that even within the state, programs include approaches to distributive justice that do not necessarily guarantee equal conditions for all citizens. Those same differentiated actions could probably explain why citizens also show differential treatment for other populations.

It is precisely this "hidden face of justice effect" that can impact the public's perception about transitional justice processes, even to the extent of affecting the symbolic effect of the state's actions, and ultimately, the long-awaited reconciliation between victims, excombatants and citizens.

V. Conclusion

Although transitional justice is a dynamic field that is being developed at great speed, one of the major challenges confronting societies in transition is related to the question of how to solve the tensions generated by the need to be fair to all of the populations involved (victims and excombatants). As we show in this paper, resolving this problem requires a debate about redistribution and how individuals'

²⁵ For example, judicial decisions made by Colombia's Constitutional Court with respect to social issues have generated debate about their impact, not only on economic factors, but on the principle of equality for all sectors of the population. In this way, the T-025 of 2004 sentence affirmed the vulnerability of displaced persons in Colombia and the absence of a differential approach in the existing policies. Judicial decisions are oriented towards specific programs aimed at women, children, and indigenous and Afro-Colombian communities (Rodríguez & Rodríguez, 2010, p. 204).

social preferences impact the allocation from public social programs of material and symbolic values, such as justice or trust.

The results of our experimental games demonstrate the existence of a social sanction function that favors victims and punishes perpetrators, creating disincentives for excombatants that could negatively impact the achievement of reintegration and maintenance of peace at the micro-level.

This social function is also related to the respective levels of expectations of displaced persons and former combatants; this is higher for the former group and illustrates the consistency between expectations and actions, which correspondingly achieves a balance and defines a very particular social norm in the Colombian case.

Public policies should account for the fact that the relationship between resource allocation and its impact on citizens' perceptions is mediated by psychological and emotional mechanisms. These motivations can result in an aversion to injustice, which can positively affect the reparation of victims, but also produce moral biases against excombatants, who also constitute a key element of the transition process. This indicates that there is a dissonance between social programs and pro-social preferences for redistribution with respect to the victims and perpetrators of violence.

If we consider citizen preferences vis-à-vis the implementation of redistributive policies (which are also not so clear), it could be concluded that former combatants do not experience the same conditions of distribution; this can affect the legitimacy and feasibility of the transition. The premise underlying the data is how the configuration of citizens' social preferences may be in dissonance with the distributive actions taken by the state.

This shows that legal regulations do not necessarily guarantee conditions of justice and are not necessarily synchronized with citizens' preferences. Although fairness and equality are principles of the constitutional mandate in democratic societies, the processes of justice, truth, reparation and forgiveness in many countries demonstrate the importance of the emotional filter when citizens make decisions about compensating victims and supporting the processes of reintegrating former combatants.

Regarding the imbalance between the amount of resources allocated to these policies and the preferences for distributive justice found in the above experiments, there are at this point more questions than answers:

- How to overcome the dissonance between social programs and pro-social preferences for redistribution to victims and perpetrators of violence?
- How to avoid the effect of the social sanction function (informal) on the transitional justice process (encouraging a return to war)? Additionally, how to solve the security dilemma that may emerge from this situation?
- How interventions deal (if they do at all) with unintended effects related to the social sanction function of citizens?

Beyond positing recommendations for the leaders and public authorities responsible for such actions, the message of this paper is that it is useful to consider distributive justice as a social norm that impacts and shapes both positively and negatively the preferences of different types of populations—as the data shows. The implications of allocations matter, given that perceptions of fairness or unfairness regarding the state and its policies can affect the legitimacy and effectiveness of its actions.

Thinking about mechanisms that ensure transitional justice without violating equality must explore a middle ground between normative and empirical issues (Goodin, 2003). Beyond the laws, adjustment programs could be useful both in promoting the wellbeing of victims and excombatants, and in effecting a positive and corrective transformation with respect to the interaction between the two.

The transformation of idiosyncrasies may be achieved through the restoration of political participation, the adequate training of officials, the reconstruction of social capital and the strengthening of cooperation networks, especially at the local level. Positive transformations may occur because justice, truth and reparation programs have both a cognitive and emotional impact; by taking into account social learning, policy instruments can generate indirect effects on shared norms, values, trust relationships, attitudes and beliefs.²⁶

Ongoing and future transitional justice or regime processes may benefit from a different approach where outcomes are not necessarily ideal (e.g., in terms of forgiveness and reconciliation), but the assurance of sustainable actions in terms of rebuilding social networks between victims, excombatants, non-affected citizens and the state so as to achieve the goal of building new scenarios and alternatives that could help "transit" towards new shared life projects.

²⁶ See Duthie (2009, p. 18) and Chaux (2012).

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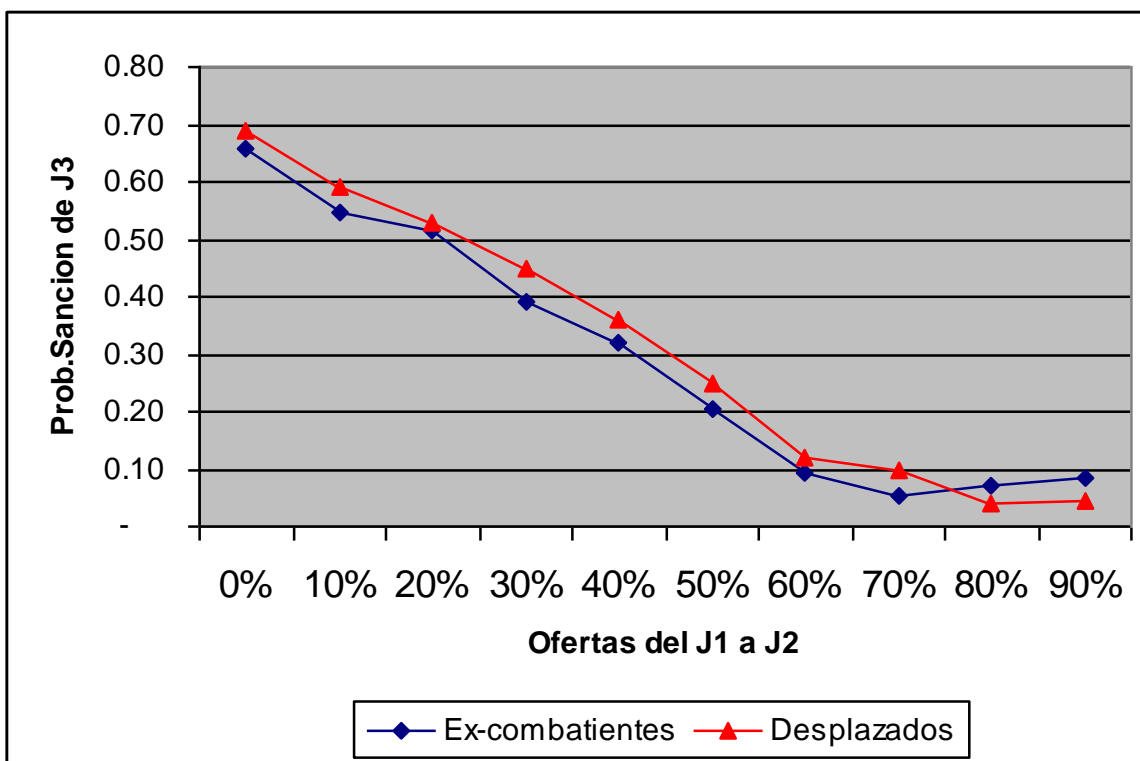
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Appendix.

Although these two schedules of punishment by player 3 suggest a lower willingness to punish unfairness towards excombatants, the difference is not statistically significant. The two curves, however, confirm similar findings in the literature, where the degree of punishment decreases as offers approach an equal split.

The likelihood of sanctioning by player 3 for each of the possible offers by player 1



OLS REGRESSIONS												
Dependent variable: The amount of money sent by player 1 to player 2 in third-party punishment games												
Regressor	1		2		3		4		5		6	
	No FE	FE	No FE	FE	No FE	FE	No FE	FE	No FE	FE	No FE	FE
Card displaced	2033.63**	2022.83**	2197.74**	2099.18**	1885.65**	2115.03**	1825.48**	1929.00**	2074.23**	2218.10**	1793.39**	2065.58**
Card excombatant	-1370.28**	-1.087.19	-800.23	-837.45	-1149.36*	-1155.83	-198.79	-571.14	-606.31	-914.34	-139.83	-668.38
Género			1528.23**	508.65			1658.36**	585.12	1529.86**	533.76	1657.38**	613.21
Estrato					-144.42	61.79			-126.39	79.27	-51.78	99.70
Edad							44.07*	22.23			42.49*	22.64
Intercept	9885.90	12600	8957.68	12142.21	10211.11	12513.48	7534.79	11081.98	9241.28	12008.62	7700.33	10898.76
Summary statistics												
F	21.34	5.67	19.73	5.53	14.51	5.48	16.47	5.39	15.01	5.35	13.19	5.22
Root MSE	4609.5	4301.8	4554.6	4300.4	4613.7	4308.1	4535.1	4300.2	4558.7	4306.3	4541.7	4306
Adj R-squared	0.0636	0.1845	0.0858	0.185	0.0635	0.1834	0.0936	0.1851	0.0857	0.1841	0.0925	0.1842
N	600	600	600	600	599	599	600	600	599	599	599	599
The individual coefficient is statistically significant at the *5% level or **1% significance level using a two-sided test. FE = Fixed effects / No FE = No fixed effects.												