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Astrid Liliana Sánchez-Mejía

Victims' Rights in Flux: Criminal Justice Reform in Colombia

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To Luis Orlando

Foreword

A prologue of a book by someone who is not the book's author can play different functions. One of these functions is explaining the main contributions and importance of the book and situating it within one or more bodies of literature. In this sense, this book by Astrid Liliana Sánchez Mejía is a very significant, original and insightful contribution to our understanding of two of the most important phenomena in global and regional criminal justice trends. The first phenomenon is the victims' rights movements that have led to substantial changes in criminal justice in many places around the world. The second phenomenon is the wave of adversarial criminal procedure reforms in Latin America, arguably the most important change that all Spanish-speaking Latin American countries underwent in the area of criminal procedure in the last 25 years—a trend that can also be considered part of a broader global trend toward adversarial reforms in other jurisdictions beyond Latin America.

This book describes and critically analyzes the role that victims' rights discourse played in the adoption and implementation of the adversarial criminal procedure reform in Colombia, and, in turn, the effects that this Colombian adversarial reform has had on the actual rights of victims of crime. The book argues that crime victims' discourses played a crucial role among the arguments and legitimizing discourses for the adoption of the adversarial criminal procedure code, but that the adversarial criminal process reform paid mostly lip-service and had mixed and problematic effects on the rights of victims of crime in Colombia. This is the main argument of the book and it constitutes a very significant and original contribution to our understanding of not only criminal justice in Colombia, but also the possible relationships between adversarial systems and crime victims' rights more generally.

The book develops this argument through a thorough, knowledgeable and insightful use of multiple theoretical and methodological approaches that enable Liliana Sánchez to make further original and independent contributions beyond the main argument of her book. Against simplistic notions that victims' rights are mainly about tough-on-crime or pro-mediation discourse and reform, the book distinguishes four different agendas on victims' rights that have co-existed and competed in the Colombian context: the human rights agenda and its concern for

the protection and vindication of victims of serious human rights violations; the women's rights agenda on criminal justice as a way to advance and protect the position of women in society; a tough-on-crime agenda that has used the figure of the victim to call for a faster and harsher criminal justice system; and an alternative dispute resolution agenda that has advocated for the creation of settings for interactions between alleged victims and crime participants as a way to advance non-punitive approaches to crime. The book thus clearly shows that the victims' rights discourses and movements are not homogeneous and that it is crucial to disentangle them to properly analyze them and their relationship with other phenomena, such as adversarial criminal procedure reforms and criminal justice more generally.

The book also provides an original account of the Colombian adversarial criminal procedure reform that sets a model for future studies. The existing literature on Latin American adversarial criminal procedure reforms has analyzed why the whole region adopted similar reforms in recent years (Langer 2007), what their main doctrinal innovations have been (Maier et al. 2000), and how the reforms are working in practice regarding the very promises they made in one or more jurisdictions in the region.[1] This book digs deeper by doing at once archival work on the debates in Congress and the drafting commission of the adversarial criminal procedure code in Colombia, a critical description and analysis of decisions by the Colombian constitutional court and a set of legal reforms on criminal justice and victims' rights in the context of the adversarial reform, and by gathering and analyzing data on the effect of the adversarial criminal procedure reforms on the different agendas on victims' rights in Colombia. In other words, we have in this book a more through, sustained and versatile analysis of a reform process than what we find in the rest of the literature on Latin American adversarial reforms. If other studies on Colombia or other jurisdictions on specific criminal justice topics or the adversarial reforms more generally took the approach followed by Liliana Sánchez's book, we would have a much richer understanding of Latin American criminal justice systems and their reforms.

Another possible function of a prologue is introducing the author of the book to a given audience. Astrid Liliana Sánchez Mejía does not need to be introduced to Spanish-speaking legal audiences in Colombia. However, for English-speaking audiences, it is worth mentioning that she obtained her law degree from Javeriana University School of Law, her masters in law from Los Andes University School of Law and NYU School of Law, and her S.J.D. under my supervision at UCLA School of Law. Even since before she pursued her graduate studies in the United States, she has been for several years a professor at Javeriana University School of Law, and has published two books and several articles in Spanish on criminal justice, human rights and legal theory. She is a very rigorous, hard-working, widely

[1] See, e.g., (Barreto Nieto and Rivera 2009; Baytelman and Duce 2003; Bergman and Langer 2015; Corporación Excelencia en la Justicia 2010; Duce and Riego 2011; Fondevila et al. 2016; Riego 2005; Tiede 2012).

read, creative and smart scholar, and this book is proof of it. As her doctoral supervisor, I cannot help but present this book to English-speaking audiences with deep pride and satisfaction. I am confident that readers will agree that this book is crucial for anyone interested in understanding and participating in criminal justice in Colombia, and adversarial criminal procedure reforms and crime victims' rights movements in Latin America and elsewhere.

Máximo Langer

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Abbreviations

ACHR	American Convention of Human Rights
AD-M-19	*Alianza Democrática M-19* (M-19 Democratic Alliance)
ADR	Alternative dispute resolution mechanisms
AUC	*Autodefensas Unidas de Colombia* (United Self-Defense Forces of Colombia)
CAIVAS	*Centro de Atención a Víctimas de Abuso Sexual* (Center for sexual violence investigation and victim support)
CAJAR	*Colectivo de Abogados José Alvear Restrepo* (José Alvear Restrepo Lawyers' Collective)
CAVIF	*Centro de Atención e Investigación Integral contra la Violencia Intrafamiliar* (Center for domestic violence investigation and victim support)
CCJ	*Comisión Colombiana de Juristas* (Colombian Commission of Jurists)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEJ	*Corporación Excelencia en la Justicia* (Corporation for Excellence in Justice)
CEJA	*Centro de Estudios de Justicia de las Américas (*Justice Studies Center of the Americas)
CEJIL	Center for Justice and International Law
CPC	*Código de Procedimiento Penal* (Criminal Procedure Code)
CPEM	*Consejería Presidencial para la Equidad de la Mujer* (Presidential Council for Women's Equity)
ELN	*Ejército de Liberación Nacional* (National Liberation Army)
ENDS	*Encuesta Nacional de Demografía y Salud* (National Demographic and Health Survey)
EPL	*Ejército Popular de Liberación* (Popular Liberation Army)
FARC	*Fuerzas Armadas Revolucionarias de Colombia* (Revolutionary Armed Forces of Colombia)

HRL	Human Rights Law
IACtHR	Inter-American Court of Human Rights
IACommHR	Inter-American Human Rights Commission
ICC	International Criminal Court
ICTR	International Tribunal for Rwanda
ICTY	International Tribunal for the former Yugoslavia
IDPs	Internally displaced persons
IHL	International Humanitarian Law
INML	*Instituto Nacional de Medicina Legal* (National Institute of Legal Medicine)
INPEC	*Instituto Nacional Penitenciario y Carcelario (*National Penitentiary Institute)
M-19	*Movimiento 19 de Abril* (April 19 Guerrilla Movement)
OPDAT	U.S. Department of Justice
UNCHR	United Nations High Commissioner for Refugees
UNIFEM	United Nations Development Fund for Women
UNODC	United Nations Office on Drugs and Crime
UP	*Unión Patriótica* (Patriotic Union Party)
USAID	U.S. Agency for International Development
VAW	Violence against women

Introduction

How have the role and rights of crime victims in the criminal process been transformed in Colombia from the 1990s to the present day? What are the processes that led to a significant position of crime victims in political and legal debates on criminal justice in the country? How have different actors used the symbols "victim" and "victims' rights" to promote their agendas? How has the adoption of an adversarial system affected victims' rights? These are the central issues that I will seek to address in this book. My purpose is to understand and explain how different legal and political agendas related to the rights of crime victims and the criminal process have competed in the context of the Colombian adversarial criminal justice reform of the early 2000s. I also seek to analyze the effects that this reform has had on the protection of victims' rights in Colombia.

Over the last three decades, victims of crime have come to play a more prominent role in discussions on criminal justice. In the international arena, the United Nations promotes a broad concept of victims and the protection of their rights in criminal proceedings. In addition, the Inter-American Human Rights System reinforces victims' rights to truth, justice, and reparation. At the regional level, expanding the victim's role and protection during the criminal process has also been a key concern of the criminal justice reforms (Langer 2007). In the past two decades, Latin America has experienced a wave of criminal justice reforms in order to adopt accusatorial or adversarial systems.[2] In general, local actors in the

---

[2]For an overview of inquisitorial and adversarial criminal justice systems, see, (Damaska 1986; Langer 2005, pp. 838–847; Vogler 2005).

The wave of criminal justice reforms in the region has been explained by the following factors: (i) the democratic transition and the expansion of human rights that supported not only claims on due process within criminal justice, but also demands on impunity of human rights abuses; (ii) public concerns on efficiency of the criminal justice system, which take into account the rising level of crime; (iii) the increasing interest of external agencies concerning the relationship between economic development and the administration of justice, etc. (Bhansali and Biesbesheimer 2006, p. 303, 304; Langer 2007, p. 632, 633).

The criminal justice reforms in Latin America have required some institutional changes, such as the creation or strengthening of the prosecutor's office. Moreover, the new codes have

region have agreed with the urgent need to respond to victims of crime. Therefore, many reforms have offered victims the right to information and the right to be protected from harm, as well as specialized services designed to attend to victims' needs (Riego and Vargas 2007, pp. 83–88). A few of these criminal procedure codes have adopted a broad concept of victim.[3] Several reforms have also established diverse mechanisms to ensure the participation of the victim: the right to intervene as a civil party[4]; a limited right to exercise private prosecution for certain crimes[5]; the right to request conversion of public prosecution to private prosecution under particular circumstances[6]; and the right to participate as a private accessory prosecutor within public prosecution (*querellante adhesivo*).[7]

It is in this context that Colombia has reformed the criminal justice system. The 1991 Constitution was a first step on the path to adopting an accusatorial system, as it created a quasi-accusatorial model. Furthermore, this Constitution reinforces the efficacy of constitutional rights and human rights, providing tools to the Constitutional Court to expand victims' rights and the role of victims in the criminal process.

During the 1990s and early 2000s, the Constitutional Court became a site of competition over the role of victims. Within efforts to bring individual criminal accountability for human rights violations, social organizations and activists sought to expand victim participation in criminal proceedings. Ultimately, in 2002, the Constitutional Court recognized the rights of victims to truth, justice, and reparation in accordance with the doctrine of the Inter-American Court of Human Rights. The Constitutional Court also expanded victim participation in criminal proceedings and extended victims' rights to include victims of all crimes, not just those who have suffered human rights violations.

(Footnote 2 continued)
introduced common changes like oral and public trials, the strengthening of defendants' rights, the principle of prosecutorial discretion, plea bargaining, alternative dispute resolution mechanisms (ADR), and the expansion of the victim's role and rights within the criminal process (Bhansali and Biesbesheimer 2006; Langer 2007, p. 618).

[3]See, for example, article 117(4) Criminal Procedure Code (CPC) of Guatemala; article 70 CPC of Costa Rica; article 108 CPC of Chile; articles 76 CPC of Bolivia; article 132 CPC of Colombia.

[4]See, for example, num. 87–99 Model Criminal Procedure Code for Iberian America; articles 91, 382 CPC of Argentina; articles 37, 40 and 41 CPC of Costa Rica; articles 157, 158, 273 and 324 CPC of Chile; articles 36, 261(d) CPC of Bolivia.

[5]See, for example, article 19 CPC of Costa Rica; articles 53, 55, 56, 400 and 405 CPC of Chile; articles18, 20, 27 and 270 CPC of Bolivia.

[6]See, for example, articles 20, 62 and 75 CPC of Costa Rica; articles 26 CPC of Bolivia; articles 26, 96 and 116 CPC of Guatemala.

[7]See, for example, num. 78-85 Model Criminal Procedure Code for Iberian America; articles 76, 292, 293, 307, 315, 316, 341, 347, 349, 356 and 358 CPC of Costa Rica; articles 82 CPC of Argentina; articles 235, 261, 325 and 338 CPC of Chile; articles 317, 318, 320, 322, 327, 329, 342, 348, 353, 356, 386, 387 and 395 CPC of Paraguay; articles 116, 306, 307, 340, 341, 348, 349, 356 and 373 CPC of Bolivia.

In 2002, the Colombian Attorney General promoted a criminal justice reform that had two pillars: the adoption of an adversarial criminal process and the protection of both victims' rights and defendants' rights. Significantly, advocates of the reform claimed that this change was necessary to observe international human rights standards and the doctrine of the Constitutional Court on victims' rights. According to this logic, the 2002 constitutional reform promised broad protection of victims as active protagonists in the criminal process.

The drafting, adoption, and implementation of the 2004 Criminal Procedure Code (hereinafter 2004 CPC) also became sites of competition over the relationship between crime victims and the criminal justice system. This book identifies at least five major agendas that have competed in this process of reform. I have titled them as follows: *(i) adversarial system; (ii) punitive; (iii) restorative justice; (iv) victims' rights to truth, justice, and reparation; and (v) rights of women victims of violence.* Actors promoting these projects have all mobilized the figure of the victim as symbolic resource. They have often disagreed, however, about the definition of victim, the content of victims' rights, and the extent of participation of victims in criminal proceedings. Each agenda has used the terms victims and victims' rights in accordance with its own objectives. These agendas have also suggested different interpretations of "what victims want" or "what is good for victims". Table 1 summarizes the main features of each of these agendas.

This book argues that during the drafting of the 2004 CPC, actors promoting a stronger role for victims in the criminal process competed with actors promoting the agenda on the adversarial system. In the end, the adversarial model—which conceived the criminal process as a dichotomous competition between public prosecution and defense—prevailed, marginalizing the victim in the criminal process. While the 2004 CPC incorporated principles of restorative justice, it established few rules regarding restorative justice programs. Also, while the 2004 CPC recognized an extensive charter of victims' rights, it set few specific mechanisms to enforce those rights, resulting in a very limited direct participation of victims in the criminal process. Overall, the 2004 CPC reallocated power among participants in criminal proceedings by limiting the participatory rights of victims and assuming that prosecutors represent the interests and rights of victims. Therefore, the 2004 CPC presented a startling and sudden reversal of the doctrine of the Colombian Constitutional Court on victim participation.

Actors promoting more participation or protection for crime victims later reacted against the 2004 CPC. These reactions led towards substantial modifications of the Code. First, in order to expand the participation of victims in criminal proceedings and the protection of their rights, there were constitutional challenges against many rules of the 2004 CPC. In response to these challenges, the Constitutional Court extended the participation of victims in all criminal proceedings, but excluded the intervention of victims at trial to preserve the adversarial structure of the system. In addition, the Attorney General's Office and National government promoted adjustments to the adopted adversarial criminal process and amendments were passed to improve efficiency of the criminal justice system. Their proposals and reforms included small claims procedures, private prosecution, and the allocation

Table 1 Agendas in the criminal justice reform in Colombia

Agendas			Concept of victim	Victims' rights and what victims want	Participation of victims	Objectives
Marginalization of victims	**Adversarial system**		Limited: The passive subject of a crime	Justice and economic compensation or restitution	Victims have no active participation in criminal proceedings	Preserving public interest and maintaining balance between parties (prosecution and defense)
More protection or participation for crime victims	**Punitive**		Includes crime victims and potential victims	Security and justice	Victims participate only to support prosecution	Punitive: punishing crime and preventing future victimizations through criminal sanction
	Restorative Justice		Broad: A person who has been harmed directly or indirectly	Reparation, truth, and empowerment	Victims have the right to participate in decisions related to their conflict; they should have a direct voice in the criminal process and other proceedings or interventions	Non-punitive: Restoring victims, offenders, and community. In the Recreative Justice approach, reconstructing the relationship and re-creating a future social order
	Victims' rights to truth, justice, and reparation	*Inter-American Human Rights System*	Broad: Persons whose human rights have been violated directly or indirectly	Truth, justice, and reparation	The right to effective judicial protection implies the right to participate. Yet, the IACtHR has not developed a specific role for victims.	Primarily punitive: preventing, investigating, and punishing human rights violations. Ensuring social justice
		Colombian Constitutional Court	Broad: A person who has been harmed directly or indirectly by a crime	Truth, justice, and reparation	Extensive participation of victims in criminal proceedings, except at trial within an adversarial system	Punitive and non-punitive
	Rights of women victims of violence		Women who have experienced gender violence (public or domestic)	Truth, justice, reparation, and gender equality	Women victims have the right to participate in criminal proceedings, but when a woman do not support prosecution, the state should intervene and take away the conflict from the victim (e.g. domestic violence)	Primarily punitive: preventing and punishing gender violence Promoting changes in the legal system and the broader society to eradicate the subordination of women

of the power to prosecute minor crimes to state representatives not affiliated with the Attorney General's Office. A number of civil society actors, practitioners, and state representatives encouraged punitive counterreforms of the 2004 CPC. As a consequence, Congress adopted tougher measures to strengthen crime control, public security, and protection of victims and potential victims. Finally, women's advocates successfully lobbied for a punitive backlash against the 2004 CPC primarily regarding the prosecution and punishment of domestic violence. In addition, women's defenders have proposed implementation adjustments to the 2004 CPC to ensure the rights of women victims of violence to assistance and protection.

This book examines the Colombian criminal justice reform in the early 2000s and its effects on victim's rights. I claim that the adoption of an adversarial system contributed to the limiting of the participation of victims in the criminal process. The essentialized notions of the adversarial system based on a dichotomous structure (prosecution vs. defense) leave no room for significant intervention of victims. The mobilization of a dichotomous interpretation of the adversarial model has enabled and legitimized restrictions on the right of victims to participate in the criminal process.

Crime victims face various obstacles to participating in the criminal process under the 2004 CPC. This includes the imprecision of rules regarding victims' rights, inadequate and insufficient victim assistance and protection programs, and the inaccurate assumption that prosecutors represent the interests of victims. The interests of victims of human rights violations and historically discriminated victims often come into conflict with the interests or case theories of prosecutors. Thus, the lack of participatory rights especially affects the rights of these victims.

Furthermore, my results suggest that due process decisions under the 2004 CPC produced crime control and punitive legal responses in an attempt to ensure citizen security and to protect victims and potential victims. Thus, the criminal justice system has become more punitive, but this does not mean more protection for victims of the most serious crimes. While imprisonment is being used predominantly for certain crimes such as weapon possession and drug possession, there are high levels of impunity for the most serious crimes.

In the implementation of the 2004 CPC and its amendments, punitive approaches to victims' rights have prevailed over restorative justice agendas. Non-punitive and restorative justice approaches are at risk of being ignored or neglected, since state representatives and practitioners lack a conceptual framework for restorative justice to guide their actions. Advocacy groups have criticized the application of restorative justice programs for some crimes. Domestic violence is a good case study to examine the tensions between the punitive agenda and the restorative justice agenda. Available data strongly suggest that punitive legal reforms designed to deal with domestic violence have brought mixed results. Although the rate of imprisonment for domestic violence sharply increased, the prison population for domestic violence is relatively small compared to the number of persons incarcerated for other crimes such as weapon possession. Additionally, punitive legal reforms may have had the unintended result of alienating some victims from the

criminal process. Thus, the ability of crime control measures to protect women who experience domestic violence has been limited.

Goals of this Book

A central aim of this book is to develop an account of the Colombian criminal justice reform in the early 2000s and its effects on victim's rights. It is important to note that a significant body of literature has analyzed the performance of the criminal justice systems after the reforms in Latin America (Baytelman and Duce 2003; Bhansali and Biebesheimer 2006; Centro de Estudios de Justicia de las Americas (CEJA) 2003; Riego 2005, 2006), and in Colombia (Barreto Nieto and Rivera 2009; Corporación Excelencia en la Justicia 2010, 2012). Some studies have focused on the impact of the reforms on defendants' rights, particularly the right to personal liberty awaiting trial (Bhansali and Biebesheimer 2006; Duce et al. 2009; Hartmann Arboleda 2009). Other analysts have examined the ability of the criminal justice systems to process complex and serious crimes (Alcaíno Arellano 2013; Hartmann Arboleda 2010; La Rota and Bernal Uribe 2014). However, less is known about the protection of the rights of victims in the criminal justice systems after the reforms in the region. Such analysis is critical to understanding the larger effects of these criminal justice reforms on victims' rights. Contributing to the literature on comparative criminal procedure and Latin American law, this book provides elements for discussion on the protection and role of victims in the criminal process by specifically analyzing the Colombian criminal justice reform.

Colombia offers a relevant case to study the rights of victims in criminal justice reforms that adopt accusatorial systems. The first reason is the extensive incorporation of human rights at the domestic level and of victims' rights in the criminal process, primarily because of the progressive jurisprudence of the Constitutional Court and the vigorous human rights activism. The second reason is that Colombia is a prime example of the effect of U.S. foreign aid on criminal justice reform because Colombia has received a significant amount of aid and is a top priority of the U.S. Department of Justice (Breuer, May 18, 2010, p. 4, 11). Moreover, Colombia is considered a successful case of rule of law reinforcement, and thus, legal ideas and institutions tested in this country are suggested for transference to other states (Marcella 2009, p. 34). Similarly, other countries in the region, such as Panama and Peru, have looked to the 2004 CPC as a model.

This book aims to make the following contributions to the literature: (i) a comprehensive history of the role of victims in the Colombian criminal justice reform, (ii) a mapping of the multiple meanings of victim and victims' rights in the agendas involved in this process of reform, and (iii) an empirical assessment of the rights of victims in the implementation of the reform.

A comprehensive “history of the present” of the role of victims in the Colombian criminal justice reform has yet to be written. To address this gap, I analyze the present role of victims from a critical perspective instead of only understanding the past. My historical inquiry aims to study critically how the role of victims in criminal proceedings came to acquire its current characteristics and how this role could be otherwise.[8] This research provides tools to examine the impact of the mobilization of an adversarial system on the victims’ rights law critically. This analysis also identifies the processes that led to a significant position of victims in political and legal debates on criminal justice in the country.

In order to understand social, legal, and symbolic capitals of key actors in debates on the criminal justice system and victims’ rights, I examine the biographies of justices of the Constitutional Court and advocates of the criminal justice reform of the early 2000s. Biographies provide information about their positions in the field, strategies, goals, allies, and competitors. In addition, I conducted thirteen semi-structured personal interviews with actors in the Constitutional Court, the criminal justice reform, nongovernmental human rights organizations, and women’s organizations.

The second contribution of this book will be mapping the multiple meanings that victim and victims’ rights have in the five major agendas involved in the Colombian criminal justice reform.[9] My research identifies key agents who have—since the 1990s—mobilized their capital in struggles for determining victims’ rights in criminal proceedings and the role victims should play in them. In particular, I examine the actors and forces that have promoted, resisted, or disputed the criminal justice reform of the early 2000s.

I analyze the production and interpretation of the rules on victims in the Colombian criminal process as a competition among actors promoting various agendas.[10] I argue that the current role and rights of victims in the criminal process

[8]According to Bourdieu, the best way to understand rules and institutions is to explore their genesis. He emphasizes that “there is no more potent rule for rupture than the reconstruction of genesis: by bringing back into view the conflicts and confrontations of the early beginnings and therefore all the discarded possibilities it retrieves the possibility that things could have been (and still could be) otherwise” (Bourdieu 1999, p. 57).

[9]See pages 3 and 4 for discussion of the five agendas: *(i) adversarial system; (ii) punitive; (iii) restorative justice; (iv) victims’ rights to truth, justice, and reparation,* and *(v) rights of women victims of violence.*

[10]According to Bourdieu, the law is a site of competition for the creation of meanings:

> The juridical field is the site of a competition for monopoly of the right to determine the law. Within this field there occurs a confrontation among actors possessing a technical competence which is inevitably social and which consists essentially in the socially recognized capacity to interpret a corpus of texts sanctifying a correct or legitimized vision of the social world. It is essential to recognize this in order to take account both of the relative autonomy of the law and of the properly symbolic effect of “miscognition” that results from the illusion of the law’s absolute autonomy in relation to external pressures” (1986, p. 817).

“

are the result of the competition among actors promoting the five agendas. The analysis of this competition, thus, uncovers tensions and contradictions in the current regulation of the role and rights of victims. Importantly, the circumstances of competition and the production of law contribute to the likelihood that rules will be implemented or ignored (Dezalay and Garth 2002, p. 307).

The third contribution of this research will be to provide an empirical assessment of the rights of victims within the criminal justice reform of the early 2000s. This book examines whether the five agendas have actually been put into action and how their different goals have interplayed in practice. I will explore which agendas and actors prevailed in the implementation of the 2004 CPC, and in subsequent amendments and constitutionality reviews.

My empirical analysis includes quantitative and qualitative data. It is based on fieldwork I conducted in Bogotá between May and August 2014. I collected official statistical information on the criminal justice system to conduct a quantitative analysis and consulted reports on the criminal justice system published by NGOs and state institutions. I also conducted 25 semi-structured interviews with lawyers, human rights activists, women's advocates, state officials, prosecutors, judges, and justices of the Supreme Court and the Constitutional Court. In conducting the interviews, I chose actors with different, and sometimes competing, approaches using snowball sampling. I did not interview victims, which reflects my choice in defining the scope of my research. My study is not about experiences of victims of violence and the criminal justice system. Instead, my research focuses on the production, interpretation, and implementation of rules and institutions, by exploring how different actors have mobilized the figure of victim and victims' rights to promote their agendas within criminal justice reforms, and how the goals of these agendas have interplayed in practice.

Organization of this Book

This book is organized as follows. Chapter 1 focuses on the background of the Colombian criminal justice reform of the early 2000s. This chapter seeks to explain how the figure of the victim came to play a prominent role in legal and political debates on criminal justice in the country. In addition, this chapter analyzes the extended role and rights of victims recognized by the Constitutional Court before the criminal justice reform in the early 2000s.

Chapter 2 examines the history of the criminal justice reform of the early 2000s. In this chapter, I explore the domestic context of the reform, focusing on the key actors and their legal and symbolic capital. I also explore the discussions over victims of crime within the debates for the 2002 constitutional reform and the 2004 CPC.

Chapters 3 and 4 explore the period after the criminal justice reform of the early 2000s. Chapter 3 discusses some of the reactions to the 2004 CPC: (i)

constitutionality challenges and the jurisprudence of the Constitutional Court; (ii) implementation adjustments to improve efficiency of the accusatorial system, (iii) a punitive backlash against the 2004 CPC, and (iv) reactions of the women's movement.

Chapter 4 seeks to assess the Colombian criminal justice reform of the early 2000s. This chapter examines whether the core goals of the five agendas (*adversarial system; punitive; restorative justice; victims' rights to truth, justice, and reparation; and rights of women victims of violence*) have actually been put into action, and how their different goals have interplayed in the implementation of the 2004 CPC, its amendments, and its constitutionality reviews. A central goal is to examine effects of the criminal justice reform that adopted an adversarial system on the other four agendas (*punitive; restorative justice; victims' rights to truth, justice, and reparation; and rights of women victims of violence*).

Chapter 1
The Expansion of Rights of Crime Victims in the Context of the 1991 Constitution

Abstract This chapter outlines key elements of Colombian history to locate debates over rights of victims in the history of violence and human rights activism. This chapter identifies the main factors that may explain how the figure of the victim came to play a prominent role in legal and political debates on criminal justice in the 1990s and early 2000s. These include: i) the armed conflict and the high number of victims of human rights violations, ii) the increasing human rights activism, iii) the growing acceptance of human rights, iv) the 1991 Constitution, and v) the progressive jurisprudence of the Constitutional Court. The first section of this chapter explores the history of the 1991 Constitution. The second section describes the mixed or "quasi-accusatorial" criminal justice system adopted in the 1991 criminal justice reform. This section also analyzes the figure of the civil party (*partie civile*) that allowed victims to participate in criminal proceedings as civil actors to seek compensation, as in many civil law jurisdictions. The final section examines the jurisprudence of the Constitutional Court on victims' rights and the civil party, emphasizing the expansion of the role and rights of victims in criminal proceedings in 2002. Since victims' rights in international law were a crucial factor in the development of this doctrine by the Constitutional Court, this section includes a brief review of relevant international instruments and jurisprudence.

Over the last three decades, victims of crime have come to play a more prominent role in discussions on criminal justice at the domestic and international levels. In the international context, there has been an active movement towards the recognition of victims' rights. In Colombia, in the 1990s and early 2000s, the victim became a protagonist in discussions on criminal justice.

A fundamental concern in the criminal justice reform of the early 2000s was the role and rights of victims of crime. Promoters of the reform claimed that this was necessary to observe international human rights standards and the doctrine of the Constitutional Court on victims' rights. In fact, one of the pillars of the reform was "a preferential option for victims in the criminal process;" in other words, a broad protection of the rights of victims.

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To understand this promise of the criminal justice reform of the early 2000s, this chapter explores the factors that led to the significant role of victims in legal and political debates in the country: (i) the armed conflict and the high number of victims of human rights violations, (ii) the increasing human rights activism, (iii) the growing acceptance of human rights, (iv) the 1991 Constitution, and (v) the progressive jurisprudence of the Constitutional Court.

The role and rights of victims in the criminal process is not a new issue in Colombia. The Code of Criminal Procedure traditionally allowed victims to participate as civil actors for compensation purposes. However, victims of crime lacked a significant role in criminal proceedings, and their participatory rights were linked only to obtaining financial compensation. In the 1990s and early 2000s, many domestic actors challenged this traditional role of victims in the criminal process and the limited conception of their rights. They invoked the human rights framework in efforts to expand victim participation in order to establish individual accountability for gross violations of human rights.

In the early constitutionality challenges, the Constitutional Court upheld the traditional conception of the civil party. In the judgment C-228 of 2002, the Court overruled its precedent and reconceptualized the civil party, expanding the role and rights of victims in criminal proceedings. The Court embraced the international human rights standards on victims' rights to truth, justice, and reparation. Above all, the Court granted victims broad participation in all stages of the criminal process to seek not only reparation but also truth and justice. The Court also extended the recognition of such rights to all victims of crime, including victims of minor offenses.

A central concern in this chapter is to explain the social and historical processes that led to this significant position of victims in criminal justice debates in the country. Another relevant issue is why the Constitutional Court changed its previous precedent and adopted its doctrine in favor of broad victims' rights in 2002. In this chapter, therefore, I outline key elements of Colombian history in order to locate debates over rights of victims in the history of violence, human rights activism, the 1991 Constitution, and the criminal justice reform of 1991.

Section 1.1 explores the background and history of the 1991 Constitution, focusing on violence, human rights activism, and social mobilization. This history exposes how the constitutional reform was considered a tool to face violence, achieve peace, and ensure the efficacy of fundamental rights and human rights. As a result, the Constitution provided legal resources and institutional sites to demand the protection of rights.

Section 1.2 describes the mixed or "quasi-accusatorial" criminal justice system adopted in the 1991 Constitution. This chapter also considers the civil party (*partie civile*) in the 1991 Criminal Procedure Code. This Code maintained certain traditional rights of victims that allow them to participate as civil actors for restitution or compensation purposes.

Section 1.3 examines the jurisprudence of the Constitutional Court on victims' rights and the civil party in the ordinary criminal justice system. This analysis focuses on the transformations in the Court's doctrine of rights of victims, and the

expansion of the role and rights of victims in criminal proceedings in 2002. International standards on rights of victims were a key factor in the development of the doctrine of the Constitutional Court, so Section 1.3 begins with a brief review of victims' rights in international law.

1.1 The 1991 Constitution: Responding to Violence and Reinforcing Human Rights

Multiple forms of violence have coexisted in Colombia: insurgency, counterinsurgency, ordinary crime, and organized crime. Colombia's internal conflict is the longest armed conflict in the Western hemisphere. Over decades, the country has experienced high levels of political violence and high levels of organized crime, particularly related to illicit drug trade. In fact, the armed conflict became more complex because of the relationship between armed actors and drug trafficking.[1]

During the 1960s and 1970s, guerrilla movements (FARC, ELN, M-19, EPL) emerged with goals of social change and political reform (Bushnell 1997; Pécaut 2006). In 1978, the government of President Turbay approved the Security Statute (*Estatuto de Seguridad*—Decree 1923), which declared a state of siege to fight against guerrilla groups. Following the National Security Doctrine of the U.S., the Security Statute adopted repressive security measures in Colombia.[2] These measures led to human rights violations, including massive detentions, tortures, and unfair trials of civilians before military courts (Dudley 2008, p. 70; Gallón Giraldo 1979, p. 132; Grupo de Memoria Histórica 2013, p. 200; Leal Buitrago 1994, p. 20).

In the late 1970s and 1980s, some activists and social organizations began to use the human rights framework to mobilize support and raise international awareness of the situation in the country. Leftist activism was the basis of the vast majority of early human rights groups. They shared a view of the state as the enemy and the primary source of political violence. Thus, human rights discourse was used to establish the accountability of state agents and confront the state. The focus of most

[1]Some scholars argued that the origin of the current armed conflict is the period of violence between the liberal and conservative political parties ("La Violencia" 1948–1958). In 1958, democracy was restored through "National Front," which was an agreement between those two political parties to share the state power excluding minorities and other political groups (Bushnell 1997; Grupo de Memoria Histórica 2013; Pécaut 2006).

[2]During the Cold war, the core of the American national security doctrine was to fight against communism, so the United States government promoted strong security measures and policies against enemies like leftists and communists after the passing of the National Security Act of 1947. The primary means they used to deal with the communist threat was military force. Following the National Security Doctrine, most of the Latin American governments focused on the internal dissident as the enemy, so they adopted repressive security measures within an anti-subversive plan. This context favored the establishment of authoritarian governments in Latin America through the rise of military regimes (e.g. Chile, Argentina, Peru) or the declaration of states of emergency (e.g. Colombia) (Gallón Giraldo 1979; Medina Quiroga 1988; Taffet 2007).

of this activism was on bringing the perpetrators of human rights violations to justice in order to prevent future abuses (Tate 2007, pp. 60, 65, 73, 82, 104, 105).

Domestic NGOs developed strategies for transnational activism. They sought the support from international organizations and institutions. In 1977, the Committee in Solidarity with Political Prisoners sent the first urgent action about a political detention to Amnesty International. Also, domestic NGOs and human rights defenders took some cases on violations of human rights perpetrated by Colombian state agents to the Inter-American Commission on Human Rights (IACommHR)[3] and the United Nations Human Rights Committee.[4] As a result, Amnesty International published a report on human rights violations in Colombia on April 1,

[3]The IACommHR received, in 1978 and 1979, several complaints regarding mistreatment and torture at detention centers during interrogations by Colombian public agents. In 1979, the IACommHR also received several claims related to violations of the right of personal liberty such as abuses of authority in arrests and massive arrests of citizens. In addition, the IACommHR received information about numerous violations by state agents of the right to life (e.g. Case 4667: Arango and Pabón Vega, Case 7348: Luis Arcesio Ramírez, Case 7547: Fabio Vasquez Villalba, Case 7348: Zambrano Torres, Case 7756: Rubio Alfonso, Case 7757: Camelo Forero, and Case 7758: Contador). Furthermore, the IACommHR received complaints about violations of the right to fair trial and due process, particularly in trials of civilians by military courts (IACommHR, Report on the situation of human rights in the Republic of Colombia, June 30, 1981).

[4]In 1979, the following complaints were submitted to the Human Rights Committee in relation to violations of human rights in the context of the Security Statute.

On February 5, 1979, Pedro Pablo Camargo, professor of International Law at the National University, submitted a communication on behalf of the husband of María Fanny Suarez de Guerrero based on the following facts. On 13 April 1978, a military judge ordered a raid to be carried out at a house in Bogotá. Authorities believed that Miguel de Germán Ribon, former Ambassador of Colombia to France, was being held captive by a guerrilla group in that house. Miguel de Germán Ribon was not found and police officers decided to hide in the house to await the arrival of the suspected kidnappers. The police killed seven people, including María Fanny Suarez de Guerrero, when the victims entered the house. Although the police stated initially that the victims had died while resisting arrest, the National Institute of Legal Medicine and Forensic Science demonstrated that none of the victims fired a shot and that they were killed at point-blank range (Pedro Pablo Camargo v. Colombia, Communication No. 45/1979, U.N. Doc. CCPR/C/OP/1 at 112, 1985).

On February 6, 1979, Pedro Pablo Camargo submitted a communication on behalf of Orlando Fals Borda, his wife, Maria Cristina Salazar de Fals Borda, Justo Germán Bermúdez and Martha Isabel Valderrama Becerra. The communication argues that they all were victims of violations of Article 14 of the International Covenant on Civil and Political Rights because they were brought before military tribunals that were not competent, independent, and impartial, and because they were deprived of procedural rights and guarantees (Orlando Fals Borda et al. represented by Pedro Pablo Camargo v. Colombia, Communication No. 46/1979, U.N. Doc. CCPR/C/OP/1 at 139, 1985).

On December 18, 1979, Consuelo Salgar Montejo, Director of the Colombian newspaper El Bogotano, submitted a communication on her own behalf. She claimed that the Security Statute breached Articles 9 and 14 of the Covenant. A military court sentenced her for the alleged offense of having sold a gun. She argued that Articles 9 and 14 of the Covenant were violated because she was denied the right to appeal to a higher tribunal; military tribunals are not competent, independent, and impartial; and she was arbitrarily detained and imprisoned (Consuelo Salgar de Montejo v. Colombia, Communication No. 64/1979, U.N. Doc. CCPR/C/OP/1 at 127, 1985).