

Duve, Thomas and Herzog, Tamar (eds.): The Cambridge History of Latin American Law in Global Perspective. Cambridge: Cambridge University Press 2024. viii, 550 pp. ISBN 978-1-316-51804-5 (hardback), GBP 120.00; ISBN 978-1-009-05904-6 (eBook), US\$ 155.00; and Open Access DOI: <https://doi.org/10.1017/9781009049450.001>.

I. Introduction

Law in Latin America, contrary to recurrent prejudices, has been a transformative force that has influenced not only the internal development of the nations of the region but also global legal discourse. The work offers a thorough and sophisticated exploration of this legal evolution. The publication is the product of one of the research projects of the Max Planck Institute for Legal History and Legal Theory (Frankfurt).¹

The book uses an innovative approach to situate the history of Latin American law within a global framework. Duve and Herzog assembled a team of scholars from the Americas and Western Europe, who have contributed relevant analyses ranging from the pre-colonial period to contemporary challenges of the twenty-first century. Each section of the book draws on different perspectives to describe and analyse the region's historical developments. Likewise, the work's common thread describes how the law has interacted with social, political, and economic factors, and critically reflects on the changes in European influences and the rise of the United States as the region's hegemon.

The authors are aware of the Eurocentric prejudice and stigma and the preponderance of the dominant centres of thought with which the region has been treated and understood as the amphitheatre of failed legal transplants. If in previous centuries knowledge was defined by production and reception in a subjugated manner, the 21st century calls for a more collaborative approach on equal footing. A research book such as the one discussed here exemplifies how it is possible to reconfigure this toxic pattern of exchange. Therefore, this review describes the book's main strengths and weaknesses in relation to the legal history of Latin America, which, viewed from above, highlights its main contributions to the ideas of the colonial era and independence(s), as well as its contemporary projection.

¹ Research Project, The Cambridge History of Latin American Law in a Global Perspective, <<https://www.lhlt.mpg.de/joint-project/the-cambridge-history-of-latin-american-law-in-a-global-perspective>>, last access 21 June 2024.

II. The Size and Paradox of Studying Latin American History

Editing a book about a continent is not an easy task, especially when it deals with a region as paradoxical as Latin America. From a global perspective, it is the region with most similarities in the contemporary world despite the more than thirty countries that it comprises, whose similarities are ostensible: language, religion, and political and social structures, among others. Therefore, the risk of falling into imprecise generalisations, anachronisms or homogenisations is high.²

In *Storia dell'idea d'Europa*, Chabod reflects on the good and bad reasons why the idea of Europe is invoked and calls for careful thinking about what 'Europe' is: '[W]e immediately become conscious of the enormous confusion which reigns in the minds of those who talk about it [...]'.³ *Mutatis mutandis* happens with the idea of Latin America and the paradox that arises from so many similarities and such profound differences to create a work and a pan-Latin American reading inserted in a global perspective. Hence, the authors' method of emphasising questions more than answers is plausible, and it processes more than results. Generalisations in a work such as this are impossible to avoid, which is why their value lies in the approach – that is, the general overview rather than the detail.

As is the case when studying the past of a region colonised by Europe, it is difficult to escape the omnipotent and omnipresent Eurocentric perspective on institutions and methods of understanding history. More than being the authors' problem, it is everyone's problem. Consequently, the importance of the work is in reflecting on how to think in a decolonial way in a region whose European domination exceeded three hundred years and whose republican era has recently surpassed just two centuries.⁴

III. The Parts of the Book and Key Aspects of Its Contributions

The reader will notice accurate criticisms of the anachronism more common than can be expected in literature and the need for an evolution towards

² John Charles Chasteen, *Born in Blood and Fire: A Concise History of Latin America* (W. W. Norton & Company 2011).

³ Federico Chabod, Ernesto Sestan and Armando Saitta, *Storia dell'idea d'Europa* (Laterza 1984), 8.

⁴ On this point, see: Walter D. Mignolo, 'The Geopolitics of Knowledge and the Colonial Difference', *South Atlantic Quarterly* 101 (2002), 57-96.

a more critical and decolonising historiography. At the same time, the authors address the question of how law is produced and how it relates to other ways of making history. To answer this question, the authors point out aspects of intersection with other historical disciplines and the relevance of understanding the history of law as communicative processes of interaction with diverse cultures and normative values. The authors describe the key to understanding the way in which legal norms and practices circulate in the region according to the periods addressed.

As for the question of history's scope and how its study can be improved in the region, parochialism is strongly attacked by closing the very borders within which history constantly moves. Thus, the importance of a legal history that transcends the fiefdoms of study and goes further as a block to insert itself into a global dialogue.⁵

In the first part of the book, Petit, Herzog, Duve, and Dias answer the question: What is the history of Latin American law in a global perspective? Therefore, the reader will find an analysis of how writing the history of Latin American law has changed over time along with the influences of historiographical currents such as positivism, Marxism, and postcolonial historiography.

Cunill examines the historiography of indigenous law and suggests key-ways to approach it and addresses how difficult it is usually documented and studied. The author emphasises the important challenges and biases associated with working with historical records created by colonisers, which often reflect distorted and biased views. The chapter highlights the evolution of indigenous legal history through the involvement of multiple actors, global dynamics, and critiques of the Atlantic imperial influences. It emphasises the transformation of precolonial law via complex negotiations and indigenous participation in colonial structures, while acknowledging power asymmetries.

Zamora analyses how norms regulated life within the domestic unit in the colony and under the domination of the *pater familias* and reviews how European, indigenous, and Afro-descendants regulations interacted in everyday life. His approach demonstrates the complexity of domestic relations and power dynamics in the colonial context, showing how laws and norms attempted to control and structure family life.

On 'independences', with an emphasis on the plural, Herzog reflects on the characteristics of a revolutionary law, focusing on the laws and regulations that emerged during the independence processes in Latin America. His

⁵ See Tamar Herzog, 'Colonial Law and "Native Customs": Indigenous Land Rights in Colonial Spanish America', *Am. J. Legal Hist.* 43 (1999), 117-146.

chapter discusses how these laws reflected revolutionary enthusiasm and sought to establish new power structures and how to regulate that power. In addition, Herzog reviews how law contributed to the social and political transformation of colonies into independent nations, highlighting its crucial role in the struggles for independence.

Regarding the formation of states in the nineteenth century, Portillo analyses the appearance of the first Latin American constitutions, highlighting the influences of the Creoles⁶ and ideologies, as well as the impact of European hegemonic powers at the time of their creation. Parise discusses attempts to codify laws, highlighting European and local influences, and comparing them to processes in North America and Europe. Dantas and Saba focus on indigenous resistance and slavery in the formation of Latin American states.

Zimmerman addresses the omnipresence of the state in the twentieth century and examines the growth of the administrative state in Latin America, highlighting the expansion of bureaucracy and the centralisation of authority in response to economic and political changes. Paixão explores dictatorial regimes and their impacts on democratic institutions, and Teitel and Vegh discuss transitional justice and the role that the inter-american human rights system has played in the face of human rights violations.⁷

Finally, Bonilla ventures to ask whether state law will be able to survive in the twenty-first century. To do this, he examines how it has persisted and adapted to new situations. Through legal pluralism and interculturality, the author emphasises the coexistence and conflict between various normative systems and how state law interacts with community and indigenous norms.

Overall, *The Cambridge History of Latin American Law in Global Perspective* is an ambitious and necessary effort that undoubtedly represents a sophisticated reading of the history of law in Latin America from several points of view. As positive and negative aspects to highlight, it is a work written for academic peers, whose rigour may make it difficult, but not impossible, for a broader audience to understand. At the same time, from a visual point of view, there are no maps, archival images, illustrations, or timelines to help readers understand centuries of history.

The variety of methodological approaches proposed throughout the book can be overwhelming for readers and makes it difficult to harmonise and integrate different perspectives. In addition, the aim to offer a global vision

⁶ Matthew C. Mirow, *Latin American Constitutionalism: The Constitution of Cádiz and Its Legacy in Spanish America* (Cambridge University Press 2015).

⁷ Mauricio García Villegas, 'Law as Hope: Constitutions, Courts, and Social Change in Latin America', *Fla. J. Int'l. L. J.* 16 (2004), 133-154.

sometimes leads to an overgeneralisation of specific regional experiences, which dilutes the particularities and nuances of local contexts.

The persistence of Eurocentric approaches is palpable, despite efforts to adopt a postcolonial perspective. The appreciation of local innovations and adaptations in the history of Latin American law is limited by this bias, which, as already expressed above, is a latent problem when studying a continent.

In the Americas, there are multiple ‘Americas’: South, Central, and North, along with the Caribbean, each possessing distinct yet interconnected characteristics. In Europe, from a general or concrete perspective, can we similarly speak of multiple ‘Europes’ – Western, Central, and Eastern? Yet, these distinctions are frequently homogenised into a singular concept: ‘Europe’. This Eurocentric tendency toward homogenisation despite significant internal disparity and nationalism, driven by a history marked by savage violence, introduces biases that are often replicated when studying other systems.

On the other hand, the excessive focus on political elites and their ideological influences offers a vivid reflection of Latin American history from above in a top-down perspective, relegating the popular classes and other marginalised groups (indigenous peoples, Afro-descendants, women, peasants, etc.) to the background.

Some chapters contemplate an optimistic attitude of institutions that underestimate the historical as well as contemporary obstacles and limitations of normative systems to understand the past from the present and the challenges of the future. Another important aspect to consider is the idealisation of legal pluralism without adequately resolving the tensions and practical conflicts between various regulatory systems, both at the national and supranational levels, in a region that from its constitutional sources and international treaties has promised Latin American integration in the economic, political, and social spheres. This aspect of regional integration and the relevance of the Latin American *ius commune*, which has been there since the independence processes, is perhaps the greatest omission of the book.⁸

According to Carozza, four fundamental elements highlight Latin America’s contribution to global public law: (i) independence from Spanish colonisation; (ii) the discourse of rights in republican revolutions; (iii) the articulation of social and economic rights in the Mexican Constitution of 1917; and (iv) the contribution in the genesis of the Universal Declaration of Human

⁸ Among other works, see: Armin von Bogdandy, Eduardo Ferrer Mac-Gregor, Mariela Morales Antoniazzi, Flávia Piovesan and Ximena Soley (eds), *Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune* (Oxford University Press 2017).

Rights.⁹ A fifth element with the capacity to amalgamate these precedents has emerged during the second half of the twentieth century and lies precisely in the understanding that there is not only a *Latin American corpus iuris* but also a Latin American common law (*ius commune latinoamericanum*). This aspect is essential to understand Latin American law from local, national, regional and a global perspective.¹⁰

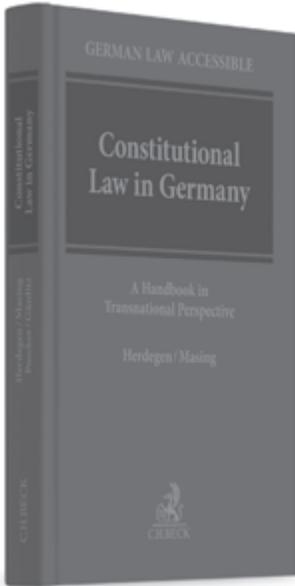
The publication of *The Cambridge History of Latin American Law in Global Perspective* is welcome, and I recommend the book for anyone who wants to understand the complexities and historical dynamics that have shaped the Latin American legal landscape. Translations into Latin American Spanish and Brazilian Portuguese would increase the work's impact and accessibility, allowing a wider audience in the region to benefit from its important contribution to the field of legal history.

Juan C. Herrera, Bogotá, Colombia / South America

⁹ See Pablo G. Carozza, 'From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights', HRQ 25 (2003), 281-313.

¹⁰ Juan C. Herrera, 'The Idea of a Common Law in Latin America in Light of its Critiques', I CON 19 (2021), 1385-1416, <https://doi.org/10.1093/icon/moab106>.

German constitutional law in Transnational Perspective



Herdegen/Masing/Poscher/Gärditz
Constitutional Law in Germany

2025. Approx. 2.000 pages.

Hardcover approx. € 249,-

ISBN 978-3-406-81608-6

New in November 2024

☰ www.beck-shop.de/36523810

The Handbook

presents German constitutional law in a transnational, comparative perspective that will enable foreign jurists to gain, in the space of a chapter, a solid understanding of both the bases and nuances as well as some of the complexities of German constitutional law. Already published in German, the Handbook will also appear in an English version. The German version focusses on the international, supranational, and comparative influences on German constitutional law.

Advantages at a glance

- a new perspective on German Constitutional Law
- incorporates several legal methods, particularly doctrinal analysis, the interdisciplinary integration of empirical findings from the social sciences, and various sub-methodologies of comparative law and theoretical analysis
- integrated into an analysis of historical developments and experiences

A helpful book

for both German and foreign specialist audiences open to cross-border legal thinking.



4 Wochen
kostenlos
testen!

bo.beck.de/0219310

Europarecht

Rechtssicheres Know-how garantiert

Schnell, sicher & smart – mit den Fachmodulen von beck-online gestalten Sie Ihre Fallbearbeitung noch rascher, effektiver und zuverlässiger. Einmal mit beck-online gearbeitet, wollen Sie nie mehr darauf verzichten – garantiert!

Europarecht PLUS

Die ideale Grundausrüstung für Ihre tägliche Arbeit: Führende aktuelle Kommentare zu den europäischen Verträgen, wie z.B. die große Sammlung von **Grabitz/Hilf/Nettesheim, Das Recht der Europäischen Union**, oder **Callies/Ruffert, EUV/AEUV**, maßgebende Kommentierungen zum Europäischen Sekundärrecht sowie zum Kartell- und Wettbewerbsrecht, zu Beihilfen, Grundrechten und Rechtsschutz, umfangreiche und aktuelle Rechtsprechung im Volltext, dazu EuZW, EuR, euvr und ZaöRV, aktuelle Vorschriften und vieles mehr, intelligent und komfortabel verlinkt.

€ 124,-/Monat* | Modulvergleich & Preise online: bo.beck.de/021931

Europarecht PREMIUM

Für komplexe Herausforderungen und ein breiteres Meinungsspektrum: Dieses PREMIUM-Modul kombiniert die aktuellen Kommentierungen mit weiterführender Literatur zum europäischen Primärrecht und ausgewählten Bereichen des Sekundärrechts. Mit Highlights wie **Schwarze/Becker/Hatje/Schoo (Hrsg.) EU-Kommentar (Nomos)**, **Geiger/Khan/Kotzur/Kirchmair, EUV/AEUV** oder **Ehlermann, Bieber, Haag, Handbuch des Europäischen Rechts – HER (Nomos)** u. a.m.

€ 194,-/Monat* | Modulvergleich & Preise online: bo.beck.de/109831

*Normalpreis für bis zu 3 Nutzer, Vorzugspreis verfügbar, zzgl. MwSt., 6-Monats-Abo

PLUS

PREMIUM