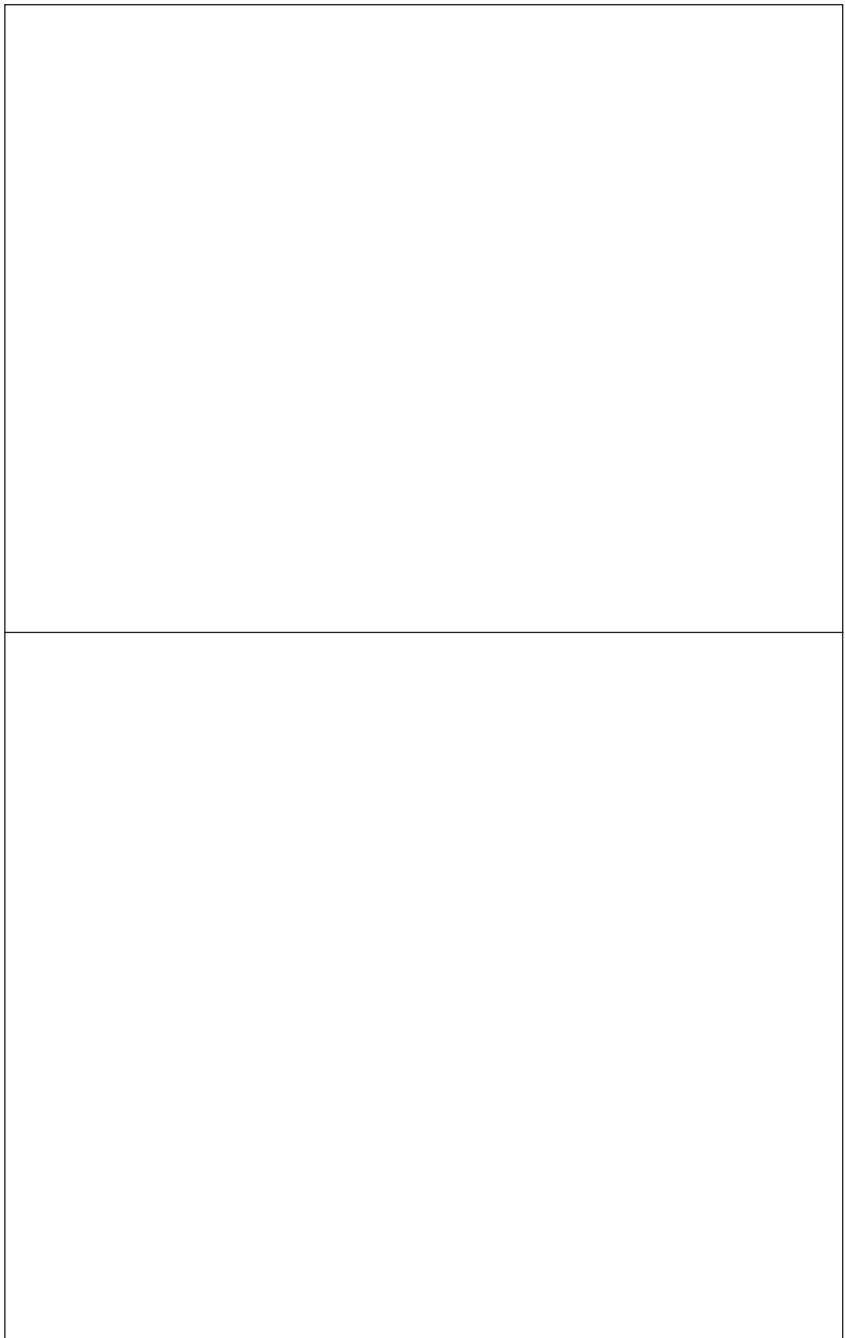


Kai Ambos | José Martínez (Eds.)

Göttingen Handbook on Latin American Public Law and Criminal Justice



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Table of Contents

List of Authors	9
Abbreviations	19
Preface	25
I. CONSTITUTIONAL LAW	
<i>Bernd Marquardt</i>	
Lines of Development of the Modern Constitutional State in Hispanic America since 1810	33
<i>Anna Kiermeier & José Martinez</i>	
Federalism and Decentralisation in Latin America	61
<i>Sonia Patricia Cortés Zambrano</i>	
Balance of powers in Latin American presidentialism Government-Congress relations	87
<i>Juan Pablo Pampillo Baliño</i>	
Constitutionalism and constitutional change in Latin America: accomplishments and challenges	109
<i>Antonio Gasparetto Júnior</i>	
State of Exception and its Derivations in Latin America	173
<i>María Rosalba Buitrago</i>	
The Social State in Latin America	
Two approaches to labour and social security law: Colombia and Peru	195
<i>Natalia Ruiz Morato</i>	
Limited statehood in Latin America: The rights of rural populations	
The Colombian case	231

Table of Contents

II. CRIMINAL LAW AND CRIMINAL JUSTICE

1. FOUNDATIONS

<i>Alejandro Agüero</i>	
Latin American Criminal Law: A Historical Perspective	255
<i>Faustino García de la Torre García</i>	
Criminal law and constitution	281
<i>Laura Clérigo</i>	
Proportionality and criminal law in the Interamerican-System	303
<i>Gustavo Emilio Cote Barco</i>	
The Principle of Legality of Crimes in Colombia and Germany: Difference in Similarity?	325
<i>Leo Zaibert</i>	
The Justifications of Punishment	349
<i>Luís Greco & Adriano Teixeira</i>	
The theory of crime in Latin America and the influence of the European theoretical tradition	369
2. GENERAL PRINCIPLES AND OFFENCES	
<i>Leandro Dias & Marcelo Lerman</i>	
Criminal Liability for Omissions in Latin America	393
<i>Alejandro Chehtman</i>	
Gender Bias in Justification of Lethal Force in Latin America	415
<i>Ezequiel Vacchelli</i>	
Culpability	437
<i>Susann Aboueldahab & María Camila Correa Flórez</i>	
Sexual violence in armed conflict and transitional (criminal) justice: The Colombian case	457

<i>Orlando De-La-Vega</i>	
Crimes against property and net wealth in the Colombian Penal Code	479
<i>José Luis Guzmán Dalbora</i>	
The Crime of Bribery in Ibero-America: A comparative synopsis	495
3. PROCEDURE AND CRIMINAL JUSTICE	
<i>Mauricio Duce J. & Claudio Fuentes M.</i>	
Trials and trial by jury in Latin America	517
<i>Cristian Riego</i>	
The expansion of plea bargaining in Chile	543
<i>Federico Montero</i>	
Post-offence Conduct and Deserved Mitigation: Confession as a Funcitonal Equivalent of Retributive Punishment	557
<i>Kai Ambos & Susann Aboueldahab</i>	
Criminal Justice and Impunity in Latin America	585
<i>Astrid Liliana Sánchez-Mejía</i>	
Gender and the criminal justice system: Comparing forcible rape law in Colombia and Chile	605
<i>Hernán Darío Orozco López</i>	
Social exclusion and criminal law	631
<i>Jean Pierre Matus Acuña</i>	
Penal populism	649

Table of Contents

III. International Law

<i>Luis G. González Alvo & Jorge A. Núñez</i>	
Latin American prisons throughout history	
From a region without penitentiaries to a mass imprisonment area	661
<i>Juan Pablo Scarfi</i>	
Reception and Disciplinary Formation of International Law in	
Latin America	687
<i>Alonso Gurmendi Dunkelberg</i>	
The Inter-American Human Rights System	709
<i>Manuel J. Ventura & Ezequiel Heffes</i>	
‘Genocide’ Against Political Groups in Latin America in light of the	
Travaux Préparatoires of the Genocide Convention (1948):	
The Case of Argentina	735
<i>Kai Ambos & Gustavo Urquiza</i>	
Prosecution of international crimes in Latin America	
A case study of Argentina, Colombia and Peru	759
<i>Jaime Tijmes-Ihl</i>	
International Economic Integration in Latin America	775
<i>David E. Llinás-Alfaro</i>	
Mother Earth rights in Latin America and the integration	
of traditional indigenous thinking into Cosmopolitan	
Constitutionalism	805
<i>Figari Layús</i>	
Engendering Transitional Justice in Latin America: the long road of	
gender inclusion	833

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Abbreviations

ABC countries	Argentine, Brazil and Chile
ACC	Argentine's Criminal Code
ACHR	American Convention on Human Rights
ADPCP	Anuario de Derecho penal y Ciencias Penales
AHRC	American Convention on Human Rights
AIIL	American Institute of International Law
Akt	Act
alic	actio libera in causa
ALR	Allgemeines Landrecht für die Preußischen Staaten
Art	Article
ASIL	American Society of International Law
Asocoba	Asociación de Consejos Comunitarios del Bajo Atrato
BVerfG	Bundesverfassungsgericht
CABA	Ciudad Autónoma de Buenos Aires (Autonomous city of Buenos Aires)
CC	Criminal Code
CCC	Colombian Criminal Code
CDSES	Constitutional, democratic, social and environmental State
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEDPAL	Center for Latin American Criminal and Criminal Procedural Law
CEH	Comisión para el Esclarecimiento Histórico (Commission for Historical Clarification)
CEIP	Carnegie Endowment for International Peace

Abbreviations

CEJA	Centro de Estudios de Justicia de las Americas (Justices Studies Center of the Americas)
CEV	Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No repetición (Colombia's Truth Clarification Commission)
CEVI	Committee of Experts
Chap/ Chaps	Chapter/Chapters
ChiPC	Chilean Penal Code
CID	Centro de Investigaciones para el Desarrollo
CIJS	Centro de Investigaciones Jurídicas y Sociales
CLACSO	Consejo Latinoamericano de Ciencias Sociales
CNMH	Centro Nacional de Memoria Histórica (Colombia's National Center for Historical Memory)
CNV	Comissão Nacional da Verdade (Brazil's National Truth Commission)
Cocomacia	Consejo Comunitario Mayor de la Asociación Campesina Integral del Atrato
Cocomopoca	Consejo Comunitario Mayor de la Organización Popular Campesina del Alto Atrato
CONADEP	Comisión Nacional sobre la Desaparición de Personas (National Commission on the Disappearance of Persons)
CONAIE	Council of the Confederation of Indigenous Nationalities of Ecuador
CONICET	Consejo Nacional de Investigaciones Científicas y Técnicas (Argentina)
CoPC	Colombian Penal Code
CPP	Código Procesal Penal de Chile (Chile's Code of criminal procedure)
CSJN	Supreme Court of the Argentinian Nation
CUP	Cambridge University Press
CVE	Comisión de la Verdad Ecuador (Ecuador's Truth Commission)

CVR	Comisión de la Verdad y Reconciliación Nacional
Dirs	Directors
Ed/ Eds	editor
Ed/ Edn	Edition
e.g.	Exempli gratia (lat. “for example”)
ELN	Ejército de Liberación Nacional (National Liberation Army)
et al	and others
etc	et cetera
FARC - EP	Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (Colombian Revolutionary Armed Forces – People’s Army)
ff	Following
FISCH	Foro Inter-étnico Solidaridad Chocó
FS	Festschrift
GA	Goltdammer’s Archiv für Strafrecht
GJ	Gaceta Judicial
GUP	Göttingen University Press
Hg/ Hrsg	Herausgeber
HRL	Human Rights Law
IAComHR	Inter-American Commission on Human Rights
IACtHR/	Inter-American Court of Human Rights
IACourtHR	
Ibid	Ibidem
ICC	International Criminal Court
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICL	International Criminal Law
ICTJ	International Center for Transitional Justice
ICTY	International Criminal Tribunal for the Former Yugoslavia

Abbreviations

i. e.	Id. Est; that is
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILANUD	Instituto Latinoamericano de las Naciones Unidas para la Prevención del Delito y el Tratamiento del Delincuente
ILO	The International Labour Organization
IPPF	International Penal and Penitentiary Foundation
Isr.L.Rev.	Israel Law Review
JEP	Jurisdicción Especial para la Paz (Special Jurisdiction for Peace - SJP)
JZ	Juristenzeitung
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Intersex and Queer
MESECVI	Follow-up Mechanism to the Belém do Pará Convention
Mex. law rev	Mexican Law Review
MJP	Marco Jurídico para la Paz
n	Note
No	Number
OAS	Organization of American States
ÖStGB	Österreichisches Strafgesetzbuch
OTP	Office of the Prosecutor
OUP	Oxford University Press
ÖZSt	Österreichische Zeitschrift für Strafrecht
p	Page
PC	Penal Code
PCC	Paraguayan Criminal Code
PIR	Plan Integral de Reparaciones (Comprehensive Reparations Plan)
POC	Post-Offense Conduct
Polít. crim.	Política Criminal
pp	Pages

RECPc	Revista Electrónica de Ciencia Penal y Criminología
REMHI	Proyecto Interdiocesano de Recuperación de la Memoria Histórica (Inter-Diocesan Project of Recovery of Historical Memory)
RUv	Registro Único de Víctima (Single Victims Registry)
SPC	Spanish Penal Code
STC	Sentence of the Spanish Constitutional Court
StGB	German Penal Code (Strafgesetzbuch)
SwPC	Swiss Penal Code
TJ	Transitional Justice
tr	Translator
TRDD	Themis Revista de Derecho
TS	Spanish Superior Court
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN GA	United Nations General Assembly
UN SC	United Nations Security Council
UNC	Universidad Nacional de Córdoba (Argentina)
USP	University of São Paulo
vs	Versus
VAW	violence against women
vol	Volume
VRAEM	Valley of the Apurímac, Ene, and Madero rivers
WHO	World Health Organization
ZStW	Zeitschrift für die gesamte Strafrechtswissenschaft

Preface

Latin America enriches the legal landscape through its contradictions. It is a region known for its rich cultural and socio-economic diversity and its law is shaped by this diversity as legal systems have evolved to reflect the unique social, economic and political realities of each State in the region. Contrasting with this diversity is a commonality, an Iberian heritage in language and culture and above all, from a legal perspective, the common roots of the law that today's Latin American States have drawn upon.

This handbook necessarily reflects only a part of this contradictory diversity. As such, the content presented here is focused on criminal law, constitutional law and international law, the three areas to which Latin American law makes a particular contribution.

Criminal Law

Latin American criminal law is strongly influenced by the German *Dogmatik*, originally transmitted by intermediaries like the great Jimenez de Asúa and traditionally received (selectively) by Spanish and (less so) Portuguese translations. This absorptive process is now increasingly driven by Latin American scholars themselves studying German criminal law in German, often in Germany. This new generation of scholars, many of which have received their postgraduate training in common law jurisdictions, especially the U.S.A. and the U.K., have brought about an emancipation of Latin American criminal law doctrine from its German/Spanish roots, developing what could be called a proper 'Latin American doctrine' nuanced to the region's socioeconomic and cultural realities. While the emancipation from German doctrine is still incipient, making it perhaps too early to speak of a Latin American *Dogmatik* proper, one obvious evolution seems to be the increasing importance of a more holistic approach to criminal justice. This development has been heavily influenced by the criminal procedure reforms of the 1990s introducing in practically all Latin American States – albeit at different times and with different intensities – an adversarial procedure (commonly labelled as '*proceso acusatorio*'), largely in line with U.S. criminal procedure.

We have tried to do justice to these new developments that represent a broader criminal justice approach with several papers in this volume focusing on 'procedure and criminal justice' without however ignoring the important theoretical work done in the area of 'foundations' and 'general principles and offences'. Naturally, the practical limitations regarding the content in a handbook of this type result in there being various blind spots, for example, the lack of consideration of prison systems and specific areas of crime (e.g. drug control). These areas are important in their own right and could perhaps be covered in a second edition with different focal points. In other words, we are well aware that what is presented here is a selection of topics that needs to be complemented one way or another to paint a more complete picture of Latin American criminal law and justice.

Constitutional Law

Each nation has its unique constitutional system that reflects its history, political system and societal context. Nevertheless, there are common themes and principles in constitutional law across Latin America:

- **Recognition of Human Rights:** Constitutional law in Latin America places significant emphasis on the protection of human rights. Many constitutions in the region incorporate international human rights norms and treaties as well as indigenous rights. These constitutional provisions safeguard fundamental rights and liberties, such as the right to life, freedom of expression, equality, due process and protection against torture and cruel treatment. Particularly notable is the partial recognition of nature as a subject of fundamental rights.
- **Social Rights and Economic Justice:** Latin American constitutions often go beyond traditional civil and political rights by including provisions for social rights and economic justice. These provisions may address issues such as the right to education, healthcare, housing and social security. They reflect the region's commitment to addressing social and economic inequalities and improving the living conditions of its citizens.
- **Indigenous Rights and Multiculturalism:** Given the rich cultural diversity and substantial indigenous populations in Latin America, constitutional law often includes provisions recognising and protecting the rights of indigenous peoples. This includes recognising their traditional territories, preserving their cultural heritage and granting them political representation and participation.

- Constitutional Courts and Judicial Review: Many Latin American States have established constitutional courts or similar bodies responsible for interpreting and applying their respective constitutions. These courts play a vital role in safeguarding constitutional principles, resolving constitutional disputes and ensuring the protection of individual rights. They often have the power of judicial review, allowing them to strike down laws or actions that violate their governing constitution.
- Constitutional Amendments and Reform: Latin American constitutions usually include provisions for their amendment or reform. Constitutional amendments can be used to adapt a given constitution to changing circumstances and address perceived shortcomings. The process for amending a constitution varies among States and often requires a super-majority vote or special procedures to ensure the stability and legitimacy of the constitutional framework.

International Law

International law plays a crucial role in Latin America, as it does in other regions of the world. Latin American States are bound by a network of international treaties, agreements and customary practices that govern their relations with other States and international organisations. Below are some key aspects of international law that impact the legal landscape in Latin America:

- International Human Rights Law: Latin American States have been actively involved in promoting and protecting human rights at the international level. They have ratified various human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights (ACHR), both of which establish legal obligations for States to respect and ensure human rights within their territories.
- Inter-American System: Latin America has its own regional human rights system, known as the Inter-American System, which operates under the auspices of the Organization of American States (OAS). The system includes the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). Both bodies play a crucial role in adjudicating human rights violations and monitoring compliance with international standards throughout the region.

- International Criminal Law: Latin American States have actively participated in international efforts to combat impunity for international crimes. For example, they supported the establishment of the International Criminal Court (ICC) and the great majority of them are State Parties to the Rome Statute of the ICC (Nicaragua being the lone outlier). Latin American States have also contributed to the prosecution of individuals accused of war crimes, crimes against humanity and genocide.
- International Trade Law: Latin American States are increasingly active participants in international trade and are bound by various agreements and organisations that govern such endeavours, the World Trade Organization (WTO) being the most prominent. The region's States also engage in establishing regional trade agreements, this has given rise to the Union of South American Nations (UNASUR), the Mercado Común del Sur (MERCOSUR) and the Central American Integration System (SICA), among others.
- Law of the Sea: Given their extensive coastlines and maritime territories, Latin American States are concerned with the law of the sea. They are parties to the United Nations Convention on the Law of the Sea (UNCLOS) as well as having rights and responsibilities regarding territorial waters, exclusive economic zones and the conservation and management of marine resources.
- Environmental Law: Latin American States face various environmental challenges, including deforestation, biodiversity loss and climate change. They are parties to various international environmental agreements, such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD), which require them to take measures to address these issues.
- Dispute Settlement: Latin American States resort to international dispute settlement mechanisms to resolve conflicts with other States. This can include negotiations, mediation, arbitration and/or adjudication before international tribunals. For example, Latin American States have used such mechanisms to resolve territorial disputes, trade conflicts and disputes related to investment protection. One specific example of this is how Bolivia and Chile recently settled their dispute on access to the Pacific Ocean before the ICJ.

This rich regional diversity has allowed us to draw from past and present developments in many Latin American States. We are grateful to the authors who contributed to this volume despite their multiple obligations.

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