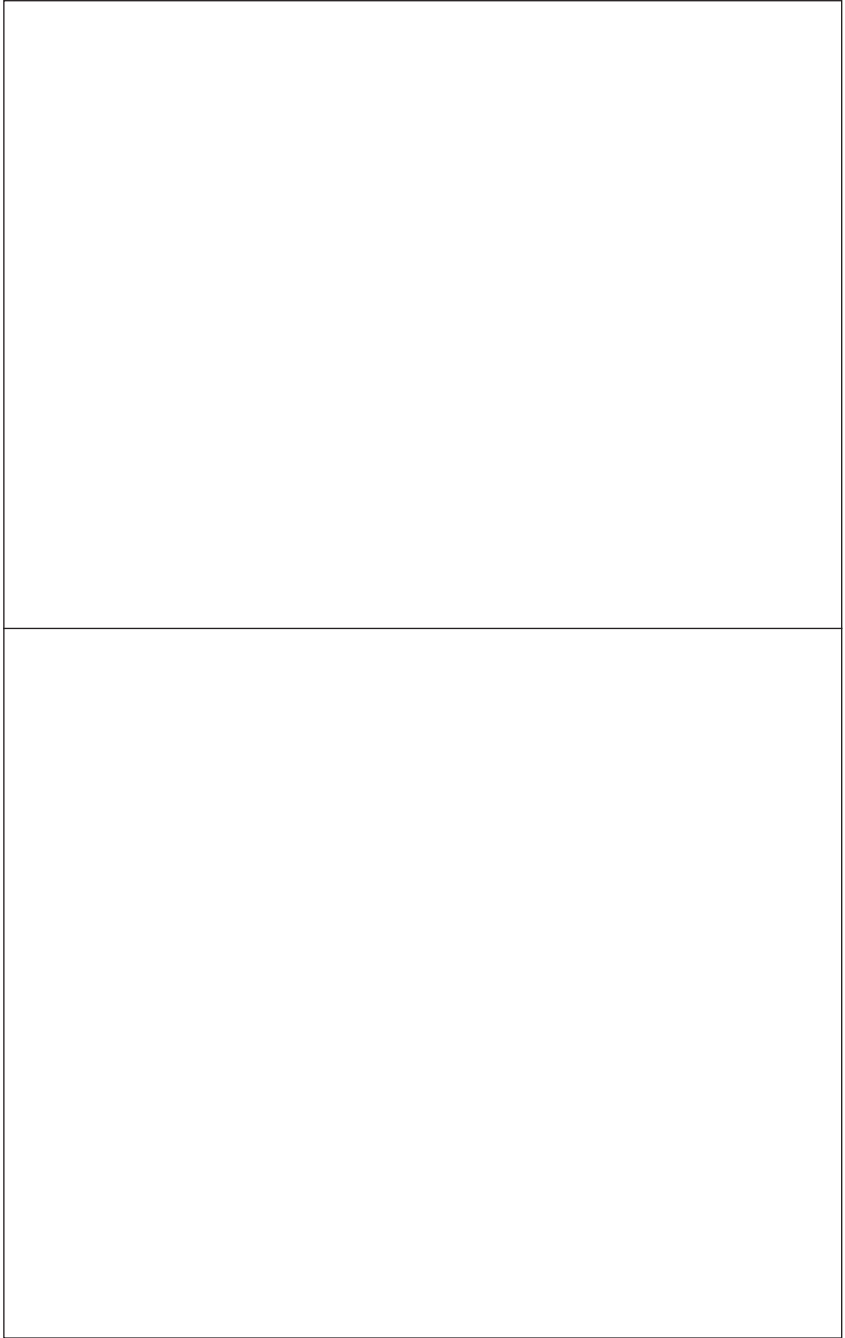


Kai Ambos | José Martínez (Eds.)

Göttingen Handbook on Latin American Public Law and Criminal Justice



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List of Authors

Aboueldahab, Susann

Doctoral researcher at the Law Faculty of the Georg-August-Universität Göttingen (GAU) and at the Study Center for Latin American Criminal and Criminal Procedural Law (Centro de Estudios de Derecho Penal y Procesal Penal Latinoamericano, CEDPAL).

Agüero, Alejandro

Professor of Legal History at the Faculty of Law, National University of Córdoba (UNC), Argentina. Scientific Researcher of the National Council for Scientific and Technical Research (CONICET). Director of *Revista de Historia del Derecho* (Journal of Legal History) and Member of the Institute for Research in Legal History (INHIDE), Buenos Aires, Argentina.

Ambos, Kai

Chair for Criminal Law, Criminal Procedure, Comparative Law and International Criminal Law and Public International Law at the Georg-August-Universität Göttingen (GAU), Germany and Judge at the Kosovo Specialist Chambers, The Hague as well as Advisor (*Amicus Curiae*) of the Colombian Special Jurisdiction for Peace, Bogotá; Director of the Study Center for Latin American Criminal and Criminal Procedural Law (Centro de Estudios de Derecho Penal y Procesal Penal Latinoamericano, CEDPAL).

Buitrago, María Rosalba

Professor of Law at the National University of Colombia, Lawyer at the National University of Colombia, Specialist in Social Security Law at the Pontificia Universidad Javerina, Specialist in Labour Law at the National University of Colombia, Master in Law at the University of Colombia, PhD Candidate in Law at the University of Paris IX.

Chehtman, Alejandro

Dean of the Law School at Universidad Torcuato Di Tella (Argentina), and Fellow at the Argentine National Research Council (CONICET).

Clérico, Laura

Professor at the University of Buenos Aires, Senior Researcher at the National Scientific and Technical Research Council of Argentina (CONICET) and Honorary Professor at the University of Erlangen-Nuremberg in Germany. She has been an expert witness before the Inter-American Court of Human Rights in cases on judicial guarantees, the principle of equality and non-discrimination based on gender, sexual orientation, gender expression and poverty.

Correa Flórez, María Camila

Professor and coordinator of the criminal law department at the School of Law of the Universidad del Rosario, Bogotá, Colombia. Coordinator of the Observatory of the Special Jurisdiction for Peace (ObservaJEP) and member of the Latin American Network of Law Academics (RED ALAS). Co-editor of the journal *Ius Género América Latina* - IGAL.

Cortés Zambrano, Sonia Patricia

Lawyer Universidad Santo Tomás (2002), Specialist in Constitutional Law and Parliamentary Law from the Externado de Colombia and Autónoma de Madrid Spain Universities (2006), Master in Public Law from the University of Konstanz Germany (2010), Doctor of Law from the University Externado de Colombia (2019), Research Professor of the Francisco de Vitoria Center for Legal and Political Research, Leader of the Research Group "Doctor Angélico: Iure et Realitas" Associate Judge for the Magistracy of the Administrative Court of Meta. Colombia, Dean of the Faculty of Law of the Santo Tomás Villavicencio University (2014-2022), Director of the Legal Clinic and Conciliation Center of the Santo Tomás University. His academic production has been oriented to document the Colombian and Latin American reality, in the context of political transformations, the internal armed conflict and its consequences, the characterization of the serious problems of access to justice in territories, which have generated systematic violation and of fundamental rights and human rights to citizens in conditions of vulnerability, who lack the means of access to justice. She has been an international speaker and academic visitor at universities in Mexico, Peru, Spain and Germany.

Cote Barco, Gustavo Emilio

Dr. jur. and LLM (Göttingen), Director of the Doctorate Programme in legal sciences and Associate professor, Department of Criminal Law, at the Javeriana University (Pontificia Universidad Javeriana), Bogota, Colombia.

De-La-Vega, Orlando

Chair for Criminal Law at the Pontificia Universidad Javeriana, Bogotá, Colombia; Head of the research group “Justicia Social”.

Dias, Leandro

PhD Candidate and Research Assistant at the Julius-Maximilians-Universität Würzburg, Germany; Teaching Assistant at the Universidad de Buenos Aires, Argentina; and Visiting Scholar at the Universidad Torcuato Di Tella, Argentina.

Duce, Mauricio

Lawyer from Universidad Diego Portales (1992) and master’s degree in juridical sciences from Stanford University (1999). Professor and researcher at Diego Portales School of Law (tenure since 1996). Director of the Procedural Reforms and Litigation Program at the same Law School. He has more than hundred academic publications on criminal procedure, police work, juvenile criminal justice, and criminal justice reform published in 13 countries. He has been visiting scholar and teaching fellow in several Law Schools in US, Latin America, and Europe.

Figari Layús, Rosario

Post-doctoral researcher and lecturer at the Chair of Peace Studies at the Justus Liebig University of Giessen in Germany. She also collaborates as a researcher with the German-Colombian Peace Institute – Capaz in Colombia. She holds a PhD in Political Science from the Phillips University of Marburg. Previously she earned a Master degree in Social Sciences from Humboldt University of Berlin and a degree in sociology from the University of Buenos Aires. Her areas of work and research focus on human rights protection, political and gender-based violence, transitional justice and peace and conflict studies.

Fuentes Maureira, Claudio

Professor of Procedural Law and Member of the Procedural reforms and Litigation Program at Diego Portales Law School, Chile. Lawyer and LLM

in Criminal Procedure from Diego Portales School of Law and Doctor of the Science of Law (J.S.D.), Stanford Law School.

García de la Torre, Faustino

Ph.D assistant professor of Criminal Law. University of Castilla-La Mancha, Faculty of Law (Toledo-Spain).

Gasparetto Júnior, Antonio

Historian and Public Manager from Universidade Federal de Juiz de Fora (UFJF, 2010/2016) and PhD in history from Universidade Federal de Juiz de Fora (2018) with an internship at Université Paris IV - Sorbonne (2015-2016) and a post doc at Universidade de São Paulo (USP, 2022). Professor and researcher at Public Administration Master 's Degree at Universidade Federal de Juiz de Fora (since 2021). He has many academic publications on public administration, legal history and states of exception.

González Alvo, Luis G.

Professor of Latin-American History at the National University of Tucumán, Argentina (UNT), Assistant Researcher at the National Scientific and Technical Research Council (CONICET, Argentina), Editor of the Revista de Historia de las Prisiones, Director of the Research Institute on Popular Culture (Faculty of Arts, UNT).

Greco, Luís

Chair for Criminal Law, Criminal Procedure, Theory of Criminal Law and Foreign Criminal Law at the Humboldt-Universität zu Berlin, Germany.

Gurmendi Dunkelberg, Alonso

Departmental Lecturer in International Relations at Oxford University, in association with Somerville College. Visiting Professor at Michigan University (Ann Arbor).

Guzmán Dalbora, José Luis

Professor of Criminal Law and Introduction to the Philosophy of Law, University of Valparaíso, Chile. CIDFE-UV Researcher. Member of the International Penal and Penitentiary Foundation.

Heffes, Ezequiel

Director of Watchlist on Children and Armed Conflict in New York. Prior to joining Watchlist, he worked for Geneva Call and the International Committee of the Red Cross in various positions and locations. Ezequiel holds a PhD from the University of Leiden (Grotius Centre for International Legal Studies), an LL.M. in IHL and Human Rights from the Geneva Academy and a law degree from the University of Buenos Aires, school of Law. He is the author of *Detention by Non-State Armed Groups under International Law* and the co-editor of *International Humanitarian Law and Non-State Actors. Debates, Law and Practice* (T.M.C. Asser/Springer, 2020) and of *Armed Groups and International Law. In the Shadowland of Legality and Illegality* (Edward Elgar, Forthcoming 2023).

Kiermeier, Anna

Studied law at the LMU Munich, legal clerkship in the OLG district of Munich and St. Julian's Malta, lawyer and specialist in agricultural law in Munich, lecturer at the Faculty of Law of the University of Göttingen and visiting professor at the Universidad Santo Tomás, Bucaramanga, Colombia.

Lerman, Marcelo

PhD, University of Buenos Aires. LL.M., University of Regensburg. Alumnus of the Alexander von Humboldt Foundation (Georg Forster). Alumnus of the German Academic Exchange Service. Assistant Professor ("Profesor adjunto interino") at the University of Buenos Aires. Professor (San Andrés University).

Llinás Alfaro, David E.

Lawyer (2007), master's degree in Law (2012), and PhD in Law from Universidad Nacional de Colombia (2022). He is a professor of constitutional theory and history of law at the same university, and professor of civil liability and administrative law at Universidad El Bosque, in Bogotá. He is the author and editor of several books and research articles on legal history, legal theory, constitutional history and administrative law.

Marquardt, Bernd

Lawyer from Göttingen University (1995), doctoral degree (summa cum laude) in juridical sciences (1999) and habilitation (2003), both from St. Gallen University in Switzerland. Full Professor and researcher at Colombian National University in Bogotá (since 2006). Director of the research

group for Comparative Constitutional Studies at the same Law School. He has more than 240 academic publications on state theory and history, constitutional theory and history, comparative public law and legal history, published in 10 countries. He has been visiting scholar and teaching fellow in several Law Schools in Austria, Germany, Switzerland, Argentina and Mexico.

Martinez, José

Law studies at the University Göttingen (Germany) and National Distance Education University, Madrid (Spain), Doctor of Laws and Habilitation at the University Göttingen (Germany). He is Professor of Public Law and Rural Law and Director of the Institute of Public Law, Department of International and Comparative Law, University of Göttingen. Furthermore he is Director of the Sino-German Institute for Legal Studies, University of Göttingen and Director of the Institute of Agricultural Law, University of Göttingen. He is also distinguished research professor at Guangdong University of Foreign Languages and Foreign Trade, Guangzhou (PR China) and a member of the scientific advisory board of the journal "Revista Española de Estudios Agrosociales". He also holds visiting professorships at the University of Macerata (Italy) and at the University of Santo Tomás in Bogotá, Colombia (International and European Economic Administrative Law and Agricultural Law) and at Nanjing University, China (European Economic Law).

Matus Acuña, Jean Pierre

A Justice at the Chilean Supreme Court and a former professor of Criminal Law at the Universidad de Chile and the Universidad de Talca.

Montero, Federico

PhD, Young Doctor Researcher and Professor at Pompeu Fabra University and International University of Catalunya. Academic Coordinator of the Master in Criminal Law (National University of Cuyo, Mendoza, Argentina). Currently working as State Supreme Court Law Clerk (Mendoza, Argentina).

Núñez, Jorge Alberto

Professor of Argentine Social History at the University of Buenos Aires, Argentina (UBA), Assistant Researcher at the National Scientific and Technical Research Council (CONICET, Argentina), co-director of the Revista

de Historia de las Prisiones, Associate Researcher at the Max Planck Institute for Legal History and Legal Theory, Frankfurt.

Orozco López, Hernán Darío

Ph.D. (Albert-Ludwigs-Universität Freiburg, Germany), Professor at the Research Centre for Philosophy and Law and Co-Director of the Journal of Criminal Law and Criminology (Universidad Externado de Colombia).

Pampillo Baliño, Juan Pablo

Juris Doctor from the Escuela Libre de Derecho (Mexico) and Doctor of Juridical Science by the Universidad Complutense (Spain). Professor and researcher in the fields of Integration Law, Comparative Law, History of Law and Jurisprudence. Lecturer, visiting professor and published author at several institutions in Europe, Latin America and the United States. Appointed as National Researcher of the highest level by the Mexican Government. Individual author of 11 books and more than 120 academic publications.

Riego, Cristian

Law Professor at Diego Portales University.

Ruiz Morato, Natalia

Natalia Ruiz Morato is a Lawyer from National University of Colombia (2004) and a master's degree in International Development from Korea University (2008) and Doctor of Law from National University of Colombia (2015). Postdoctoral Fellow of the Alexander von Humboldt Foundation (2020-2022) at the Institute of Agrarian Law of the Georg-August-Universität Göttingen, Wilson Fellow (2018-2019) at the Wilson Center in Washington DC, USA. In Colombia she is Consultant and Lecturer in topics of Law and Development, ethnic rights and environmental justice. She has several publications in topics of agrarian jurisdiction, ethnic rights, women rights and improvement of rule of law. She has been a visiting professor in Colorado State University, USA and Beijing Foreign Studies University, China.

Sánchez-Mejía, Astrid Liliana

Vice-president for Research and Professor of Law at Pontificia Universidad Javeriana, Bogotá, Colombia. Doctor of Juridical Science (S.J.D.) from University of California, Los Angeles (UCLA), LL.M. in Legal Theory from

New York University (NYU), Master of Laws from Universidad de Los Andes (Colombia), and Law degree (LL.B.) from Universidad Javeriana. Her research focuses on criminal justice, access to justice, and women and justice. She has lectured at various universities and training centers for state representatives in Colombia and abroad.

Scarfi, Juan Pablo

Assistant Professor of International Relations at the Catholic University of Chile. He is the author of *The Hidden History of International Law in the Americas: Empire and Legal Networks* (Oxford University Press, 2017), *El imperio de la ley: James Brown Scott y la construcción de un orden jurídico interamericano* (Fondo de Cultura Económica, 2014), and co-editor of *Cooperation and Hegemony in US-Latin American Relations: Revisiting the Western Hemisphere Idea* (Palgrave Macmillan, 2016) and *The New Pan-Americanism and the Structuring of Inter-American Relations* (Routledge, 2022).

Teixeira, Adriano

PhD Ludwig Maximilians University, Munich, Germany. Professor at FGV Sao Paulo Law School (São Paulo, Brazil).

Tijmes, Jaime

Tenured Associate Professor at Universidad de La Frontera. Dr. iur. from Tübingen University. Law degree from Universidad de Chile. Head researcher of several research projects. Former grant holder of the German Academic Exchange Service (DAAD). Co-editor of the journal "En las Fronteras del Derecho". Member of the board of the Chilean Society of International Law. Arbitrator. Working experience at the World Trade Organization. Designated by the European Union on the list of candidates suitable for appointment as chairpersons for arbitrations and trade and sustainable development expert panel proceedings.

Urquiza, Gustavo

Doctoral researcher at the Law Faculty of the Georg-August-Universität Göttingen (GAU) and at the Study Center for Latin American Criminal and Criminal Procedural Law (Centro de Estudios de Derecho Penal y Procesal Penal Latinoamericano, CEDPAL).

Vacchelli, Ezequiel

PhD (Pompeu Fabra University, Barcelona, Spain); criminal intervention specialist and author of numerous publications; Academic Coordinator of the Master in Criminal Law (National University of Cuyo, Mendoza, Argentina); Professor of Criminal Law at the National University of Cuyo and the Champagnat University (Mendoza, Argentina); former German Academic Exchange Service scholarship holder; currently working as State Supreme Court Law Clerk (Mendoza, Argentina).

Ventura, Manuel J.

Assistant Director in the National Security Information Branch of the Security and Counter-Terrorism Division of the Attorney-General's Department of Australia and an Adjunct Fellow/Lecturer at the School of Law at Western Sydney University. He has previously served at the Constitutional Court of South Africa, the International Criminal Tribunal for the former Yugoslavia, the Special Tribunal for Lebanon, The Hague Conference on Private International Law, the International Residual Mechanism for Criminal Tribunals and the Organisation for the Prohibition of Chemical Weapons. He publishes regularly on topics related to international criminal/ humanitarian law and justice.

Zaibert, Leo

Andreas von Hirsch Professor of Penal Theory and Ethics, University of Cambridge.

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
CDSSES	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	Goldammer’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/ IACourtHR	Inter-American Court of Human Rights
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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