

Latin American Criminal Law: A Review Of Present And Future Perspectives

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Abstract

A documentary review was conducted on the production of research papers published in high impact journals indexed in Scopus database regarding Latin American Criminal Law and its projection into the future based on current practices. The purpose of the bibliometric analysis is to identify the main characteristics in the volume of publications, which is analyzed through the elaboration of graphs and figures organized according to their Year of Publication, Country of Origin, Area of Knowledge and Type of Publication. Once the information was organized, different publications were identified and a qualitative analysis was carried out in order to know the position of some authors regarding the thematic proposed in this review. Among the findings identified, it is determined that, in Latin America, a total of 68 documents were published during the period 2015-2020, being this last year when more records were made, reaching 18 copies. Chile is the Latin American country with the highest scientific production reported in Scopus, reaching a total of 29 publications. The area of knowledge that made the greatest contribution to research on criminal law during the period was Social Sciences, with 65 documents. Finally, it was established that 87% of the total production corresponds to journal papers.

Keywords: Criminal Law, bibliometric analysis, Latina America, scientific production

1. Introduction

Criminal law is the set of rules that regulate the punishable acts and conducts of people in society. These norms are delimited by the establishment of Human Rights that establish the scope of criminal intervention (Baratta, 2004) . Currently in Latin America, there is a high number of criminal acts, leading society to live in environments with high danger for both physical integrity and for the family patrimony. One of the main purposes of Criminal Law is not only to condemn those who have committed criminal acts, but also to help in the prevention of recidivism (Zhao, 2018) . This has motivated researchers around the world to integrate two disciplines that at first glance do not seem to keep any kind of closeness, however, studies show how Criminal Law in the present supports many of its processes in Artificial Intelligence (AI) which is presented as an auxiliary science in terms of compliance with prevention as one of the principles of criminal law (Restrepo, Roldán, & Córdoba, 2021) . One of the main references in of Criminal Law in the world is the use of Artificial Intelligence in countries such as the United States and the United Kingdom, which helps in the prediction of recidivism of crime. In Latin America, it has begun to articulate the DP with auxiliary sciences such as AI, as in the case of Medellin, Colombia, a city that was considered the technological hub of the country aiming at innovation in preventive processes in the detection of recidivism in crimes such as drug trafficking, money laundering, among others (Restrepo, Roldán, & Córdoba, 2021) . However, there are positions that are controversial with the articulation of these areas, stating that there are still limitations in Latin America in terms of the correct processing of data and handling of large volumes of information, so a strong investment is imperative in technology and training to implement such interdisciplinary processes to the criminal system that regulates countries of the community (Llinares, 2018) . For all of the above, knowing the future of PD is of great importance in the execution of strategies for the implementation of new trends that streamline and optimize criminal proceedings in Latin America. The analysis will include a bibliometric and bibliographic analysis to answer the question How has been the production of scientific publications on Latin American Criminal Law during the period 2015-2020?

2. General Objective

To analyze from a bibliometric and bibliographic perspective, the production of high impact research papers on the variable Latin American Criminal Law during the period 2015-2020.

3. Methodology

Quantitative analysis of the information provided by Scopus under a bibliometric approach on the scientific production concerning the variable Latin American Criminal Law during the period 2015-2020 is performed. Also, examples of some research papers published in the area of study mentioned above are analyzed from a qualitative perspective with a bibliographic approach to describe the position of different authors on the proposed topic.

3.1 Methodological design

Table 1 shows the methodological design proposed for the development of this research.

	PHASE	DESCRIPTION	CLASSIFICATION
PHASE 1	DATA COLLECTION	The data collection is carried out by means of the Search tool in the Scopus web page, where a total of 68 published documents are identified.	Published documents whose study variables are related to Latin American Criminal Law Research papers published during the period 2015-2020. Without distinction of type of research. Limited to Latin American countries Without distinction of area of knowledge.
	CONSTRUCTION OF ANALYSIS MATERIAL	The information identified in the previous phase is organized. The classification will be done by means of graphs, figures and tables based on data provided by Scopus.	Year of publication Country of origin of the publication. Area of knowledge. Type of publication
	DRAFTING OF THE CONCLUSIONS AND FINAL DOCUMENT	After the analysis carried out in the previous phase, we proceed to the drafting of the conclusions and the elaboration of the final document.	

Table 1. Methodological design proposed

4. Results

4.1 Co-occurrence of words

Figure 1 shows the use and frequency of keywords in the research identified in Phase 1 of the methodological design.

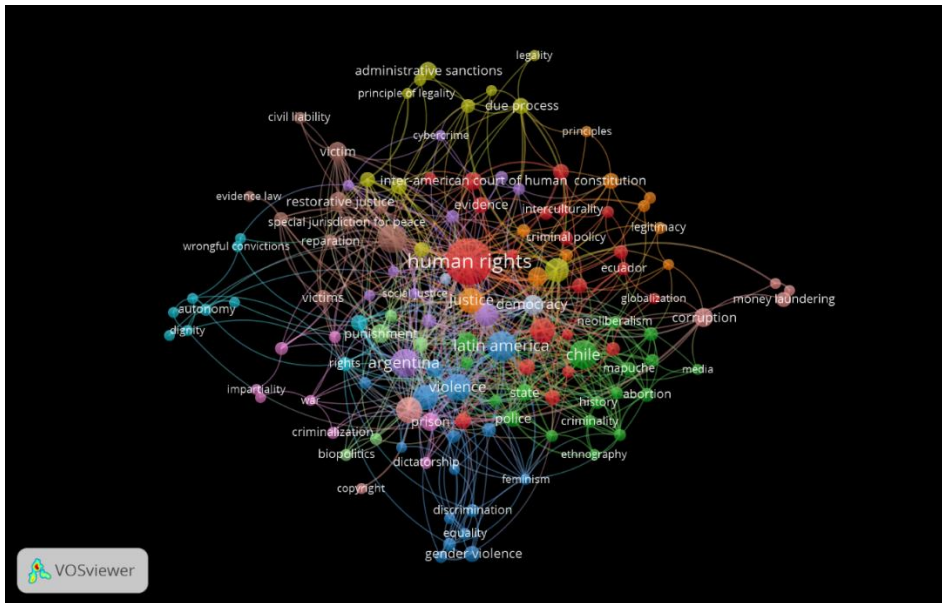


Figure 1. Co-occurrence of words

Source: Own elaboration (2021); based on data provided by Scopus.

Within the study carried out on Latin American Criminal Law, the most common keyword identified within the 68 publications analyzed is Human Rights. This is related to studies based on Justice, Social Justice, Evidence, Criminal Policy, Reparation, which allows inferring that what is related to Criminal Law is framed in the declaration of Human Rights and that none of these can be violated, that is to say that they are inalienable, since they cannot be suppressed unless concrete situations arise; for example, the right to freedom can be suppressed whenever a person has been found guilty of a crime by a court of justice (OHCHR, 2021) . In this case, the penal system allows for the deprivation of liberty under measures that are not detrimental to the minimum conditions for human well-being, i.e., other rights such as food, health, education, among others, are not suppressed.

4.2 Distribution of scientific production by year of publication.

Figure 1 shows the historical evolution of the volume of scientific production on the variable Latin American Criminal Law.

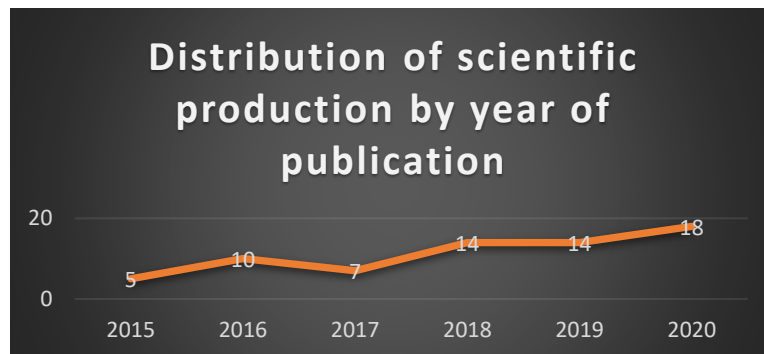


Figure 2. Distribution of scientific production by year of publication.

Source: Own elaboration (2021); based on data provided by Scopus.

The year in which the largest number of publications were identified was 2020, a total of 18 documents were published, including the article entitled "The dialogic nature of the process with recognition of responsibility before the Special Jurisdiction for Peace: Challenges of criminal law in contexts of transitional justice", which aims to contextualize the reader on the basis of the International Criminal Court and establish a reflection on the functioning of international punishment in the framework proposed by the ICC (Barco, 2020) which aims to contextualize the reader on the foundations of the International Criminal Court and establish a reflection on the functioning of international punishment in the framework proposed by the ICC (Barco, 2020).

In 2019, a total of 14 publications registered in Scopus were presented, among which is the one entitled "*The protection in international criminal jurisdiction of the right to culture: international crimes of destruction of cultural heritage*" (Perez, 2019) which aims to review the current state of jurisprudence that regulates the defense of cultural expressions among communities that have been exposed to repression for international crimes.

The same number of publications were presented in 2018 as in 2019. Of the 14 research papers published is the article "*Threats and coercion in Chilean criminal law*" (Fuentes, 2018) which aims to describe the problematic derived from the system of threats and coercion in Chilean law. The clarity regarding the specifications and context of threats, allows to typify the crimes within the Chilean legal framework, the identification of the same generates background with the purpose of facilitating the measurement of the crime in the future.

4.3 Distribution of scientific production by country of origin.

Figure 3 shows how the publication record is distributed according to the country of origin of the institutions through which the publication was made.

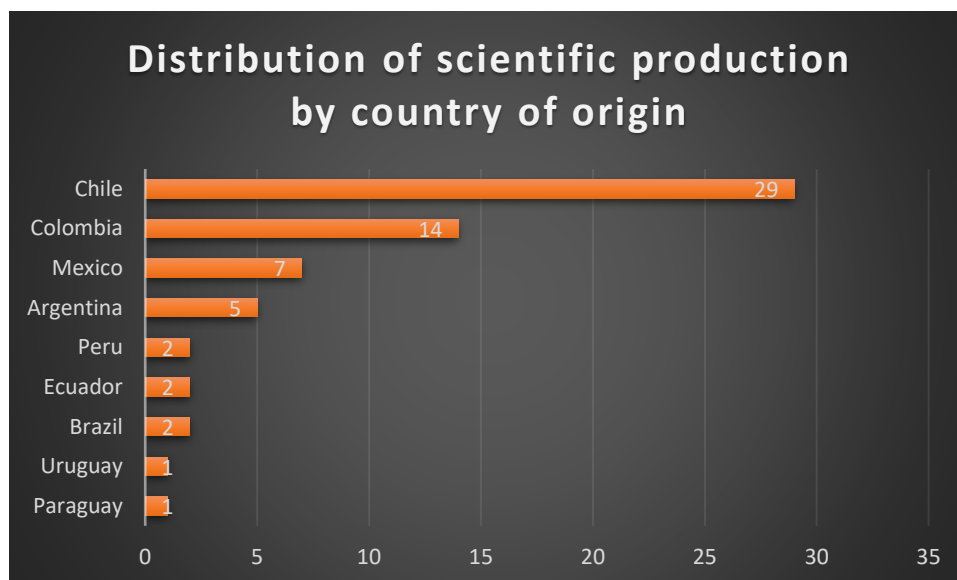


Figure 3. Distribution of scientific production by country of origin.

Source: Own elaboration (2021); based on data provided by Scopus.

Chile is the Latin American country with the highest scientific production published during the period 2015-2020 registering in Scopus a total of 29 papers within which is the article entitled "*Criminal risks of virtual currencies: New challenges for criminal law*" (Scholz, 2018) which analyzes the present challenges of criminal law and cybercrime through criminal actions around cryptocurrencies. This constitutes a complex situation for the different criminal systems in Latin American countries, due to the complexity and novelty regarding crimes of this type, as there is in many cases still a legal vacuum that does not efficiently regulate the management of this type of currencies.

Colombia is the country with the second largest scientific production on Criminal Law in Latin America with 14 publications, including the article entitled "*La historicidad del delito en la manualística del derecho penal colombiano*" (The historicity of crime in Colombian criminal law manuals), (Parada-García, 2018) whose objective is to analyze the references to the history of crime that appear in criminal law manuals published in Colombia from the nineteenth century to the present. This allows researchers, to locate the historical context and background that locate the current criminal system in Colombia.

At this point, it should be noted that the production of scientific publications, when classified by country of origin, presents a special characteristic and that is the collaboration between authors with different affiliations to both public and private institutions, and these institutions can be from the same country or from different nationalities, so that the production of an article co-authored by different authors from different countries of origin allows each of the countries to add up as a unit in the general publications. This is best explained in Figure 4 where the flow of collaborative works from different countries is observed.

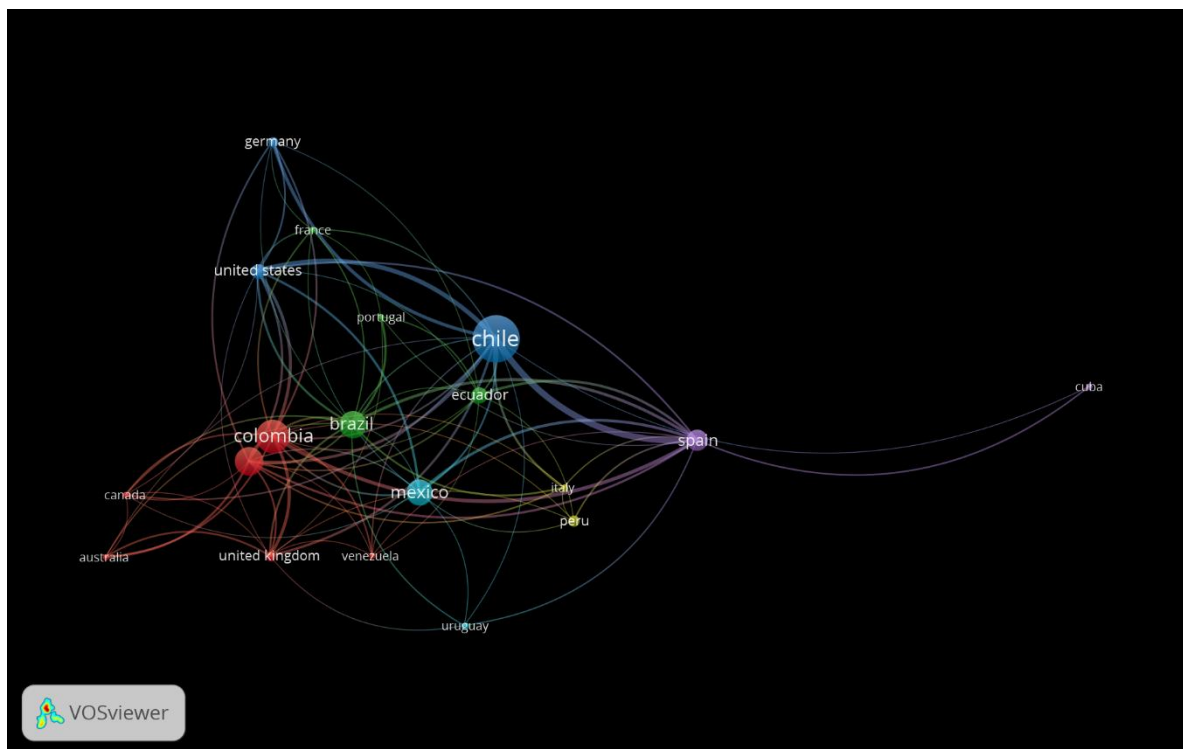


Figure 4. Co-authorship between countries in Latin America.

Source: Own elaboration (2021); based on data provided by Scopus.

Chile continues to represent the country with the highest number of research papers published by researchers affiliated with institutions of the same nationality. There is evidence of international co-authorship with researchers from the United States and Spain, as well as Ecuador and Portugal. Colombia, on the other hand, presents research with authors from the United Kingdom, Australia, Canada and Venezuela.

4.3 Distribution of scientific production by area of knowledge

Figure 5 shows the production of scientific publications distributed according to the area of knowledge through which the different research methodologies are executed.

Through the study of disciplines derived from the Social Sciences, most of the studies published in the field of Latin American Criminal Law during the period 2015-2020 is determined. A total of 65 documents were published following the research lines in this area. Within the total number of publications identified, the article entitled "*International framework of criminal law for minors*" stands out (Gomez, 2020) which establishes the characteristics of the charges brought against minors who have committed crimes and have been charged through the Minimum Standards for the Administration of Juvenile Justice, the Convention on the Rights of the Child, the Guidelines for the Prevention of Juvenile Delinquency and the Standards for the Protection of Juveniles Deprived of their Liberty Minimum Principles.

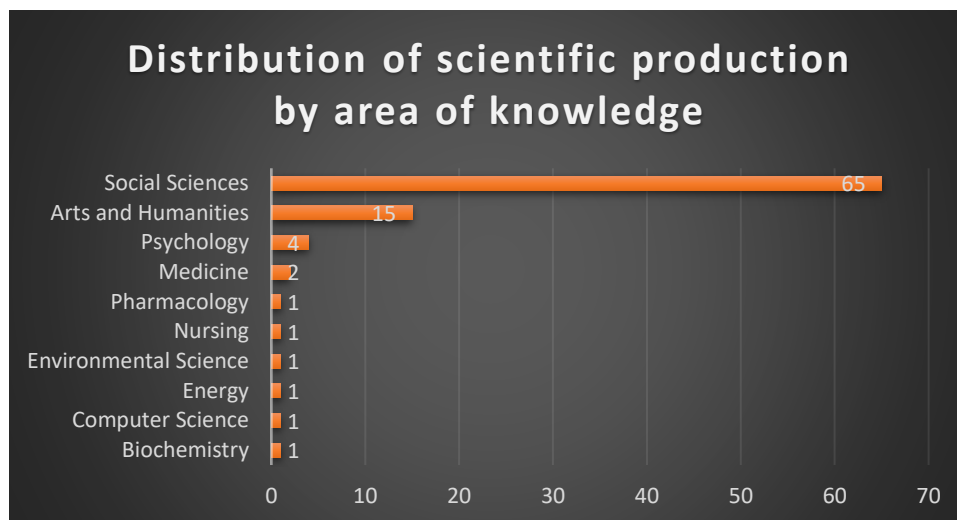


Figure 5. Distribution of scientific production by country of origin.

Source: Own elaboration (2021); based on data provided by Scopus.

Arts and Humanities occupy the second place with 15 publications, among which is the article entitled "*Controlling the results of the criminal system on the administrative law of criminal law*" (Wilennmann, 2020) whose objective is to analyze the complications that the Chilean penal system present in the exercise of controlling its results. This article is based on the juridical custom that anchors its decisions in a juridical culture fixed to individual judgments from an institutionality that misrepresents the power of decision between uncoordinated actors. Therefore, the article proposes the reconstruction of

administrative alternatives that can mean a control in the penal results and a support in the decision making.

4.3 Distribution of scientific production by area of knowledge

Figure 6 shows the trend among authors in the use of different types of publications to disseminate their scientific findings.

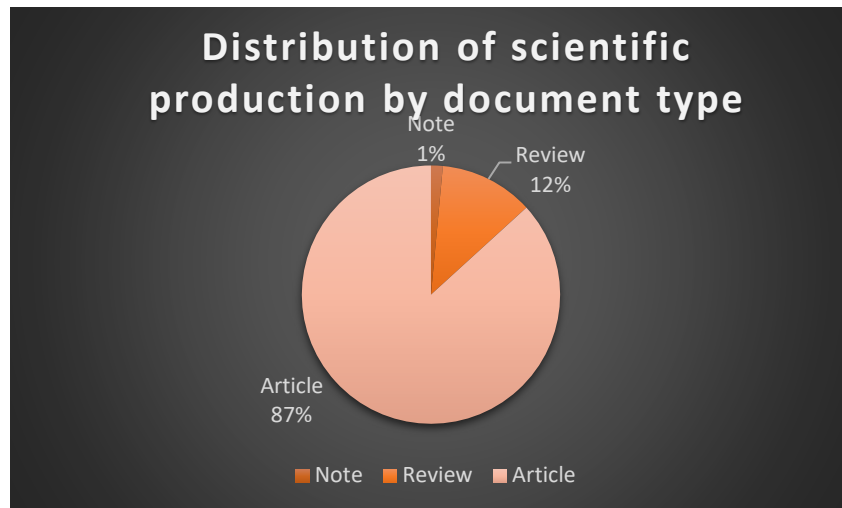


Figure 6. Type of publication.

Source: Own elaboration (2021); based on data provided by Scopus.

The Journal Article is the type of publication with the highest use among authors who have researched on Latin American Criminal Law during the period 2015-2020 representing 87% of the total production. Such as the article entitled "*La necesidad del análisis causal frente a la teoría de la imputación objetiva en el derecho penal*" (The need for causal analysis vs. the theory of objective imputation in criminal law) (Mejía, 2018) which seeks to explain the objective terms in the imputation of charges in the trial for a crime. This is achieved in the first instance by defining the scope and criteria to be taken into account within an objective imputation. Second, to have clarity on the competencies or tasks that must be strictly complied with by the objective indictment. And finally, to support such decisions in a theoretical framework consistent with the measure taken. In second place are Reviews with 12% followed by Notes with 1%.

5. Conclusions

Thanks to the bibliometric analysis proposed for this research, it can be concluded that, among the Latin American countries, Chile presents the largest number of scientific productions concerning the study of Criminal Law during the period 2015-2020 registering a total of 29 publications, followed by Colombia that registered in the same period 14 documents. This allows inferring that these countries have an important level of research to identify the characteristics of the current criminal system, making a tour of the background and history of the same, in order to design improvements to the identified shortcomings and legal gaps.

Due to the nature of the proposed topic, the area of knowledge that has the greatest impact on research in Latin American Criminal Law are those that make up the Social Sciences, since it measures the scope in the regulation of social issues when charges are brought when a crime has been committed, and the prevention of criminal recidivism. In fact, this is one of the aspects that most motivates research on the topic referenced above, since the prevention of recurrence or recidivism of criminal acts is one of the principles of Criminal Law, and is currently seeking articulation with disciplines such as Artificial Intelligence focused on identifying patterns of social behavior that are indicative of any criminal event. This opens an interesting debate considering the future of Latin American Criminal Law, aiming at the classification of computer crimes, an aspect in which even today there are regulatory gaps, absence of laws that configure this crime and allow a fair sentence for the same.

Among the computer crimes are impersonation, fraud, theft of confidential information, financial, espionage, among others. What awakens the interest of expert researchers in the field of criminal law, to design new measures for the control of processes and measurement of the scope of new laws that go in tune with the declaration of Human Rights. This article concludes, highlighting the importance of the proposed documentary review to establish the characteristics of the present of Criminal Law to know the main characteristics of the existing literature on the same subject from both qualitative and quantitative analysis that will be the basis for future research.

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