

Women, Gender and Constitutionalism in Latin America Edited By Francisca Pou Giménez, Ruth Rubio Marín, Verónica Undurraga Valdés (Routledge, 2024).

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Introduction

The English-speaking world does not realise just how advanced the scholarship and jurisprudence in the Latin American region is. *Women, Gender and Constitutionalism in Latin America* provides an opportunity for the reader to encounter the history of constitution making and the resulting constitutions of 11 countries (Costa Rica; Colombia; Ecuador; Bolivia; Brazil; Mexico; Peru; Chile; Puerto Rico, Argentina and Uruguay).

Using feminist analyses, the editors situate the book, and the need for it, in silences and erasure in much of the published work on constitutions and constitutionalism:

"This volume is an attempt to help close this double gap: the lack of gender analyses in the field of Latin American constitutional law and the underrepresentation of Latin American case studies in the field of comparative gender constitutionalism." (Pou Gimenez, Rubio Marin, Undurraga Valdes 2024:2)

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While thematically coherent (a feat in itself), the editors have allowed each constitutional story to 'breathe.' However, they provide a basic template to allow for some standardisation and comparison. The structure is reminiscent of the guidelines for UN treaty reporting, so that each chapter provides a thumbnail sketch of the constitutional and political framework. Thereafter certain themes are explored. These include issues pertaining to "equality and non-discrimination, political rights, autonomy and identity related rights, sexual and reproductive rights the regulation and distribution of care responsibilities, socioeconomic citizenship and protection against gender-based violence." (Editors: 2025:3)

The editors map the different paths taken in the equality journey. I was surprised to learn that in Uruguay, it is the legislature rather than the somewhat timid courts, that has pushed the equality agenda. (Giudice Graña and Berro Pizzarosa 2024:326) Similarly, the chapter on Puerto Rico, reminded me of the story of colonialism and constitution making in African states colonised by Britain. For Puerto Rico, it is the United States that casts the colonial shadow. (Reyes Gil 2024: 256). Meanwhile the chapter on the plurinationalist makeup of Bolivia provides a timely reminder of the importance of focusing on intra-group differences. It is theoretically rich engaging intersectionality in the 'depatriarchalizing movement." Drafting the equality provisions in the Constitution factored in "plurinationality, pluralism, interculturality and decolonization." (Attard Bellido 2024: 142)¹

The collection also identifies the different pinch points in the various countries. We learn for example, that Costa Rica is a 'confessional' state where religion is included in its constitution as the guiding force. The result is seen in a more conservative approach to reproductive rights manifested through the contestation over the right to abortion. (Facio, Jimenez and Morgan 2024: 55) This can be contrasted with Argentina where the return to democracy also led to the disestablishment of Catholicism and the move towards secularism. (Beguerie and Bergallo 2024: 287).

In Colombia the Supreme Court held that while religion was protected in the Constitution, it could not trump the right to autonomy and decision making including on accessing terminations. Faced with a raft of challenges, the Court has noted the impact of 'the numerous recommendations by treaty supervising bodies relating to abortion had significantly transformed international law, which should be included in the contrasting exercise involved in the abstract constitutional review that was at stake.' (Jarramillo-Sierra 2024: 78-82 at 82).

From Danila Salazar Marín's chapter on Ecuador, we learn that it is 'constitutionally volatile' as "it is one of the four countries in the world with the most constitutions under its belt." (2024:95). Salazar Marín details the role played by the women's movement during the constitutional drafting processes for the 1998 and 2008 Constitutions, as well as in challenging gender stereotypes and utilising strategic litigation. Similarly, Zúñiga Anazco and Undurraga Valdes provide an insightful overview into the process that guided the drafting of Chile's 'feminist constitution' by the Constitutional Convention. Gender, they say, became the *leitmotif*, "reflected in the election of its authorities (the presidency was successfully occupied by two women...) its rules of proceedings, the use of inclusive language, and the large number of gender provisions contained in the Proposal for the Political Constitution..." (2024:252).

The Inter-American human rights system has long lit the path for courts in other juris-

¹ Compare Grana and Pizzarosa on Ecuador (2024:329)

² Velásquez Rodríguez Case, -, Inter-American Court of Human Rights (IACrTHR), 10 September 1996, <https://www.refworld.org/jurisprudence/caselaw/iacrthr/1996/46500>

dictions. [Most striking is the *Velasquez v. Honduras*² case which led to the recognition of the principle of state responsibility for the actions of non-state actors and an elaboration of due diligence. This greatly enriched the jurisprudence on gender-based violence. It was adopted by the UN Committee on the Elimination of all Forms of Discrimination against Women in its 1992 General Recommendation on Gender Based Violence³ and has been incorporated into subsequent normative developments in the international and regional frameworks. OMIT?] The region led adopting the first binding treaty on gender-based violence, the Belem do Para Convention. In their chapter on the Mexican Constitution, Pou Giménez and Treviño Fernandez show how the Inter American Court's findings/recommendation in the *Cotton Fields* case were implemented by the Supreme Court: "The court has funded training programmes and issued protocols to promote access to justice for disadvantaged groups, generally promoting human rights beyond its strict adjudication responsibilities." (2024:178).

Underpinning the collection are reflections on the impact of the case law of the Inter-American human rights system in domestic systems. This is far ahead of anything coming out of any of the UN or regional treaty bodies/ or just world leading. A pertinent example is that of care. The IACtHR 2025 decision recognising care work was anticipated in the many discussions of care as gendered within this collection.⁴ Significantly Latin America leads in LGBTQIA+ rights recognition. The chapter on Brazil explores the incremental evolution in the recognition of the rights of LGBTQIA+ culminating in the criminalisation of LGBTQIA+phobia. The *Hernandez v. Honduras* case⁵ recognising the rights of transgender people to protection from gender-based violence, was agenda setting. The Inter American Court's Advisory Opinion on Gender Identity, Equality, and Non-Discrimination of Same-Sex Couples is much cited and is central to most human rights equality courses.⁶ The collection roots these developments in coalition building and cooperation, so that women's and LGBTQIA+ social movements worked together harmoniously to challenge discrimination and to demand equality.

While rich in detail about the positive developments that have been made in the region, the collection is also honest, providing examples of good laws confronting resistance and patchy implementation. (Beguerie and Bergallo, 2024:288). Shocking is the high rate of intra-familial sexual abuse against the girl child in Peru. It also holds the dubious distinction of being the state that has been referred to three separate UN treaty bodies (CEDAW, ICCPR and more recently CRC) over the availability of abortion which is technically permitted for therapeutic reasons. Transformative equality remains elusive. (Valega Chipoco and Benavides Reverditto 2024: 203-204).

² CompCEDAW General Recommendation No. 19, U.N. Doc. A/47/38 (1992) para 9 read with CEDAW General Recommendation No. 35 updating CEDAW GR 19, CEDAW/C/GC/35 (2017) and CEDAW General Recommendation No. 28 on State Obligations, CEDAW/C/GC/28 (2010) para 19.

⁴ Inter American Court Advisory Opinion 31/25 (on care as an autonomous right). For press summary in English see Center for Reproductive Rights, "Landmark Decision: Inter-American Court Recognizes the Right to Care and Its Link to Reproductive Health" Center for Reproductive Rights, August 8, 2025.

⁵ IAHCR Report No. 15/18, Case 13.051 Merits Vicky Hernandez and Family v. Honduras, December 7, 2018. <https://www.oas.org/en/iachr/decisions/court/2019/13051FondoEn.pdf> Spanish case: https://www.corteidh.or.cr/docs/casos/articulos/resumen_422_esp.pdf. In the collection, see Falcio, Jimenez and Morgan (2024: 52-54) See also C. Zelada "Stepping Forward, with Caution: The Inter-American Court's Approach to Trans femicide in Leonela Zelaya," EJIL Talk, February 19, 2026.

⁶ Advisory Opinion on Gender Identity, Equality, and Non-Discrimination of Same-Sex Couples, (2017), OC-24 / 17. Decision on the Merits: *Transgender Europe and ILGA-Europe v. the Czech Republic*: Complaint No. 117/201, Fanny Gómez-Lugo and Michelle Jones Pérez "Progress and Challenges in Legal Gender Identity Recognition in Four Latin American Countries (Arcus Foundation, May 28, 2024). Lekgowe GR. A New Dawn for Gay Rights in Botswana: A Commentary on the Decision of the High Court and Court of Appeal in the Motshidiemang Cases. Journal of African Law. 2023;67(3):477-485. doi:10.1017/S0021855323000177

Maya Angelou's poem "Human Family" came to mind as I read the collection. She writes, "we are more alike my friend, than we are unlike."⁷ In the struggle of the women's right movement to achieve *de facto* equality, the Latin American region is not alone. However, this collection provides hope. It shows us that despite the best efforts of anti-rights activists, women have made significant progress in challenging discriminatory laws; achieving the recognition of gender-based violence as a human rights violation, reinforcing reproductive autonomy and the importance of valuing care work.

This is an excellent collection. It offers a cornucopia of riches. The collection is compelling with many moments of delight: "Ahh, I didn't know that; how amazing!" Many congratulations to the editors and to the authors for this exceptional achievement. The translators, Claudia Perez and Luigi Celentano are to be commended for their clear and accessible translations which have opened up developments in the region to a much wider audience. Your work is seen and appreciated enormously.

⁷ Maya Angelou "Human Family" available at: <https://allpoetry.com/Human-Family>.

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