

EL DERECHO INTERNACIONAL Y LA COMUNIDAD

Paul W. Kahn

Imagínese que un seminario como este ocurre en la primera década del siglo XX. Nadie hubiera podido imaginar los eventos políticos de los próximos 100 años. Esta primera década fue un tiempo de esperanza sustancial para la élite jurídica global. Europa estaba en paz, habiendo alcanzado una cierta estabilidad política entre los poderes en contienda. El derecho internacional parecía emerger como una fuerza vital para la resolución pacífica de las disputas. La Corte Permanente de Arbitramento había sido establecida en la Haya en 1899. La Conferencia de Paz de la Haya en 1899, seguida por la realizada en 1907, había establecido un cuerpo de derecho humanitario para la regulación del comportamiento en la guerra. El control de armas a través de la regulación jurídica había sido establecido como un principio en la Convención de San Petersburgo de 1868, seguido por otras prohibiciones de armas específicas en las Declaraciones de 1899. El resto del mundo estaba entrando en la órbita de los valores europeos y por tanto del liderazgo europeo. El comercio mundial estaba en su más alto nivel en todos los tiempos y constituía un porcentaje creciente de las economías, aún de las de los países desarrollados. El colonialismo procedía a extender hacia el resto del mundo los valores europeos del derecho, el cristianismo y la eventual independencia política. El mundo se estaba volviendo seguro para la globalización en tanto el proyecto imperial había tenido tanto éxito.

Unase todo esto a una revolución en las comunicaciones y el transporte, así como a los movimientos de derecho nacional en busca de una reforma política basados en principios de igualdad y responsabilidad democrática y tenemos el escenario para la confianza suprema en la visión ilustrada de progreso. Los elementos que caracterizaban a este punto de vista eran la fé en la

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**Sergio Gamonal Contreras, Caterina
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Derechos económicos, sociales y culturales en América Latina Alicia Ely Yamin, 2006 América Latina es la región de mayor desigualdad económica del mundo en términos de ingresos. A pesar del crecimiento de la región, esta desigualdad aumentó durante los últimos cincuenta años y, sobre todo, los últimos veinte años, con resultados previsibles: disminución del salario real, aumento del desempleo y compresión de la clase social media. A la vez, hubo una abrupta reducción del gasto público en salud, educación y otros servicios sociales. Sin embargo, frente a la violación sistemática de los derechos sociales, el movimiento latinoamericano por los derechos humanos forjado en muchos casos.

Los derechos de la infancia entre el tutelarismo y la política García Méndez, Emilio, Rodríguez, Laura, Núñez, Jimena, 2015-01-01. Nos encontramos ante un texto que intenta practicar un análisis lo más objetivo posible de todas las sentencias que en materia de infancia ha proferido la Corte Suprema de Justicia de la Nación entre los años 2003 y 2013. El objetivo inicial consistió en extraer algunas conclusiones para tratar de comprender las tendencias y los motivos de las decisiones de nuestro máximo tribunal de justicia en un campo específico de la vida jurídica y la vida social: los derechos de la infancia. Se ha incluido también en esta investigación el análisis de los fallos de la Corte Interamericana de Derechos Humanos contra el Estado argentino. Estos fallos de gran riqueza y rigurosidad técnica, producto del análisis jurídico y no del eclecticismo inmediateista, cumplen ulteriormente la función pedagógica de mostrar lo que sería una jurisprudencia nacional que sin alardes ni gestos grandilocuentes se tomara simplemente en serio los derechos de la infancia. El carácter explícitamente contradictorio de los fallos de la Corte, si se consideran especialmente los temas de infancia como aspecto fundamental, pareciera verificar una hipótesis fuerte que puede ser descripta como la existencia de una profunda asimetría entre infancia y democracia.

Beyond the Binary Sánchez, Nelson Camilo, Uprimny, Rodrigo, Varney, Howard, Schwarz, Michael, Rincón-Covelli, Tatiana, Nash, Claudio, Van Ho, Tara, Parra, Oscar, 2018-11-30. The main objective of *Beyond the Binary* is to place on record the need to formulate answers to the question of the role that criminal action and punishment should play in negotiated political transitions from war to peace. Discussions on the meaning and scope of concepts such as justice accountability and victim satisfaction continue to be fervent topics in specialized circles of what is now known as the transitional justice field and in societies suffering from mass violence. Instead of solving the practical and theoretical dilemmas of these interpretative disputes, the experience and knowledge accumulated over the more than three decades that this field has been in existence have served only to deepen the debates and to adapt more of these discussions to new and constantly changing scenarios and contexts. The main objective of *Beyond the Binary* is to place on record the need to formulate answers to the question of the role that criminal action and punishment should play in negotiated political transitions from war to peace. There are two reasons for our making this observation. On one hand, given the institutional legal and political challenges facing societies that nowadays attempt to take this step, there is a need for the issue to be analyzed. On the other hand, the conclusion reached from an initial analysis is that the academic and practical discussion seems to be

trapped into a polarizing discussion between those who defend a legal interpretation of the duty to investigate prosecute and punish which appears to threaten the possibility of achieving negotiated transitions and those who in order to prevent that risk deny or resent the existence or consolidation of such a principle The central purpose of this book is to initiate a conversation on how to resolve difficult dilemmas We appreciate that some of the proposals may come across as controversial but what we are looking for is precisely to open up the possibility of thinking in innovative ways about how to confront these challenges Una discusi n similar se da en el libro Justicia para la paz Cr menes atroces derecho a la justicia y paz negociada en espa ol *Constitucionalizaci3n del derecho privado: actas del tercer congreso Internacional de la Association Andr3s Bello des juristes franco-latino-am3ricains* Varios autores, 2021-01-01 La creciente influencia de las constituciones sobre el derecho privado se ha hecho sentir notablemente desde hace cincuenta a os en especial gracias al reforzamiento de los controles de conformidad de las leyes a constituci3n y a los tratados internacionales Hoy en d a parece que ninguna pregunta importante de derecho privado pueda recibir una respuesta que escapar a a una determinaci3n o al menos a una influencia constitucional Sin embargo el rol reconocido a la Constituci3n difiere de un estado al otro Las diferencias se relacionan con m ltiples y relevantes aspectos como la existencia o no de un control de constitucionalidad y las modalidades de dicho control la mayor o menor atracci3n que ejercen los recursos conferidos por la constituci3n en relaci3n con los remedios cl sicos del derecho privado cuyo anquilosamiento contrasta con la eficacia y la rapidez de ciertos remedios de derecho constitucional o las consecuencias del fen meno sobre el m todo de evoluci3n del derecho Bajo la direcci3n del profesor Christian Larroumet y con la coordinaci3n acad mica de Sebasti3n R os Labb el Tercer Congreso Internacional de la Association Andr s Bello des Juristes franco latino am ricains que tuvo lugar los d as 5 y 6 de septiembre de 2006 en las Universidades Externado de Colombia y del Rosario se dedic al an lisis de todas estas importantes materias El congreso cont con la participaci3n de cuarenta connotados profesores venidos de Francia y de diez pa ses de Latinoam rica Esta obra recoge las contribuciones presentadas en dichas jornadas Sin embargo el rol reconocido a la Constituci3n difiere de un estado al otro Las diferencias se relacionan con m ltiples y relevantes aspectos como la existencia o no de un control de constitucionalidad y las modalidades de dicho control la mayor o menor atracci3n que ejercen los recursos conferidos por la constituci3n en relaci3n con los remedios cl sicos del derecho privado cuyo anquilosamiento contrasta con la eficacia y la rapidez de ciertos remedios de derecho constitucional o las consecuencias del fen meno sobre el m todo de evoluci3n del derecho Bajo la direcci3n del profesor Christian Larroumet y con la coordinaci3n acad mica de Sebasti3n R os Labb el Tercer Congreso Internacional de la Association Andr s Bello des Juristes franco latino am ricains que tuvo lugar los d as 5 y 6 de septiembre de 2006 en las Universidades Externado de Colombia y del Rosario se dedic al an lisis de todas estas importantes materias El congreso cont con la participaci3n de cuarenta connotados profesores venidos de Francia y de diez pa ses de Latinoam rica Esta obra recoge las contribuciones presentadas en dichas jornadas Bajo la direcci3n del profesor Christian Larroumet y con la coordinaci3n

académica de Sebastián Ros Labb el Tercer Congreso Internacional de la Association André Bello des Juristes franco latino américains que tuvo lugar los días 5 y 6 de septiembre de 2006 en las Universidades Externado de Colombia y del Rosario se dedicó al análisis de todas estas importantes materias El congreso contó con la participación de cuarenta connotados profesores venidos de Francia y de diez países de Latinoamérica Esta obra recoge las contribuciones presentadas en dichas jornadas

Derechos fundamentales de la persona y relación de trabajo Carlos Blancas Bustamante, 2016-06-01 Reflexión sobre la legislación laboral peruana en la que se analiza los derechos del trabajador y su constitucionalidad Cúen eficaces son los derechos fundamentales del trabajador en su relación laboral Cúel es el límite en el que aquellos se ven interrumpidos ante las demandas del empleador de la empresa Desde qué perspectiva aborda la jurisprudencia peruana dicha relación A la luz de una Constitución como la nuestra que percibe la defensa y el respeto de la persona como fin supremo del Estado estas preguntas podrán parecer redundantes Sin embargo en la práctica las relaciones laborales en nuestro país suelen involucrar desigualdad pues ahí colisionan dos sujetos estructuralmente dispares el empleador dotado de poder económico social y el trabajador apremiado por una necesidad económica y profesional En constante diálogo con las Constituciones peruanas con las legislaciones europeas y con los planteamientos de los principales pensadores del derecho laboral Carlos Blancas Bustamante el autor de este libro reflexiona acerca de la función y la eficacia de los derechos fundamentales del trabajador Su investigación analítica y minuciosa representa un excelente acercamiento a esta importante rama de la jurisprudencia que paradójicamente ha recibido escasa atención

Reformar sin mayorías. La dinámica del cambio constitucional en México: 1997-201 María Amparo Casar, 2014-02-02 Como se han conseguido los cambios constitucionales que México necesita durante la etapa de los gobiernos sin mayoría en el Congreso Reformar sin mayoría es producto de una investigación colectiva auspiciada por el Programa de las Naciones Unidas para el Desarrollo PNUD México que analiza los cambios constitucionales en México durante la etapa de los gobiernos sin mayoría en el Congreso A partir de una documentación puntual de la evolución contenido y sentido del reformismo constitucional María Amparo Casar e Ignacio Marván coordinadores de este libro refutan la tesis de que durante los años de gobiernos sin mayoría México ha caído en una parálisis legislativa producto de la imposibilidad de llegar a acuerdos Asimismo ponen en claro que la frecuencia y el número de reformas a la Constitución mexicana no son tan excepcionales cuando se las compara con las de otras latitudes que la política del cambio constitucional ha sido fruto de la colaboración entre las tres principales fuerzas políticas del país y que de ninguna manera los cambios negociados durante estos últimos quince años pueden calificarse como insignificantes o triviales Por el contrario los estudios que forman parte de este libro muestran que sobre todo en aspectos como los derechos humanos el sistema penal o la rendición de cuentas han modificado en forma significativa el régimen constitucional de México Otra cosa es desafortunadamente que los profundos cambios constitucionales muchas veces queden sólo en el papel

Tutela de derechos fundamentales en el derecho del trabajo Sergio Gamonal Contreras, Caterina Guidi Moggia, 2022-03-31 En esta obra de síntesis se aborda uno

de los temas más relevantes del derecho del trabajo la tutela de derechos fundamentales en el contexto del contrato de trabajo Se examinan tres grandes materias a saber algunos aspectos generales referidos a los derechos fundamentales la relación de trabajo y los conflictos de derechos fundamentales y los temas relevantes del procedimiento y acción de tutela de derechos fundamentales Respecto de la panorámica general sobre los derechos fundamentales se analiza su estructura desde la distinción entre reglas y principios Asimismo se estudian las posibles soluciones a los conflictos de derechos fundamentales En este contexto los autores revisan las críticas y eventuales peligros que una eficacia de los derechos fundamentales entre particulares pueden conllevar para la certeza del derecho privado y para el aumento de la discrecionalidad judicial lo cual advierten no afecta al derecho del trabajo En lo relativo a la relación de trabajo y los conflictos de derechos fundamentales se divide el estudio en tres secciones la ciudadana en la empresa y los derechos fundamentales del trabajador el contrato de trabajo como relación de poder y la autonomía colectiva y el conflicto constitucional Al examinar el contrato de trabajo como relación de poder se centra la atención en las potestades empresariales en los medios tecnológicos y en los mecanismos de control del empleador así como los límites jurídicos y jurisprudenciales a estos límites Por último en cuanto a los temas relevantes del procedimiento y acción de tutela de derechos fundamentales el estudio se centra en el esencial de los derechos fundamentales protegidos a través de la tutela poniendo especial atención en el despido atentatorio de derechos fundamentales y en la garantía de indemnidad Se aborda el ámbito material espacial y temporal de aplicación de la acción de tutela la prueba indiciaria el daño moral tanto en la ejecución del contrato como en su término la sentencia de derechos fundamentales y los remedios sistémicos haciendo referencia al rol del juez en estas materias es decir cómo evitar la discrecionalidad judicial y cómo dar certeza a los actores del derecho En la parte final se concentran preguntas y casos que emplean al lector aplicar las materias tratadas en este libro

Los otros derechos Nelson Pozo Silva, 2008 **Estudios internacionales**, 2005 **Derechos sociales, constitucionales y democracia** Morales, Leticia, 2015-12-23 La presente obra examina el estatus jurídico y moral de los derechos sociales en las sociedades contemporáneas La autora sostiene que estos derechos deben ser tomados en serio y protegidos de manera robusta por las instituciones jurídicas como precondiciones de la democracia A la pregunta sobre si la protección constitucional robusta de los derechos sociales está justificada en una democracia ordinariamente se sostiene que hay que elegir entre la supremacía de los tribunales o la superioridad de la asamblea legislativa pero si se adopta la primera posición habrá que cargar con una disminución en la legitimidad del sistema político por permitir que sean los jueces quienes aseguren los derechos sociales en última instancia y si se adopta la segunda el coste consistir en una mengua en la justicia de las decisiones adoptadas por una mayoría que eventualmente fracasar en la protección de los derechos sociales de todos La autora considera que este planteamiento en forma de dilema es incorrecto estar de acuerdo con la importancia de las consideraciones democráticas no implica el rechazo de la protección robusta de los derechos sociales constitucionales En el libro se argumenta que es viable reconciliar ambas

posiciones y aprovechar las fortalezas de cada una para justificar los derechos sociales constitucionales desde la legitimidad democrática. Por ello incluso para quienes toman en serio los desacuerdos sobre las cuestiones de justicia social consideran que ellas deberían ser decididas por el órgano legislativo. Hay razones para asegurar constitucionalmente los derechos sociales y garantizarlos a través de un mecanismo robusto de control de constitucionalidad.

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