The Offense of Abuse of Authority and the Harm Principle

Astrid Daniela Vidal-Lasso[1], Duván Torres Quintero[2], Fernando Luna-Salas[3]

[1]Universidad de la Amazonia, Colombia, a.vidal@udla.edu.co. https://orcid.org/0000-0002-9257-2190
[2]Universidad de la Amazonia, Colombia, duvantorresq@gmail.com
[3]Universidad de Cartagena, Colombia, flunas@unicartagena.edu.co , https://orcid.org/0000-0003-4574-6335

Abstract

This article analyzes the criminal provision contained in Article 416 of Law 599 of 2000, the Colombian Criminal Code, concerning "abuse of authority through an arbitrary and unjust act." It argues that the nature and purpose of this provision do not correspond to sanctions proper to criminal law, because the legal interest it appears to protect acquires genuine relevance within administrative sanctioning law, particularly in its disciplinary dimension; for that reason, the provision should be excluded from substantive criminal law. To support this thesis, the study identifies the constitutional limits on legislative discretion in criminal policy, specifies the scope of the criminal-law program of the 1991 Constitution and of the harm principle or protection of legal interests, and finally examines the guiding principles of administrative sanctioning law

Keywords: Social And Democratic Rule Of Law; Criminal Law; Administrative Sanctioning Law; Harm Principle; Legal Interest; Abuse Of Authority.

1. INTRODUCTION

The criminal provisions governing abuse of authority through an arbitrary and unjust act and its corresponding sanction, as well as those developing the harm principle or principle of protection of legal interests as a limit on the State's punitive power, are rules of criminal law that initially display internal tensions because of the different dynamics each one has within the system. Nevertheless, these rules converge when the foundation and origin of the criminal provision are examined.

It is therefore necessary to determine whether abuse of authority through an arbitrary and unjust act could be regulated in a different area of the legal system, outside criminal law, without violating the constitutional guarantees protecting the accused person, who must endure the suffering inherent in criminal proceedings (Carnelutti, 1959).

Accordingly, the purpose of this research is to analyze the provision contained in Article 416 of Law 599 of 2000, the Colombian Criminal Code. To achieve this objective, the study identifies the constitutional foundations that delimit legislative discretion in criminal policy, clarifies the scope of the criminal-law program arising from the 1991 Constitution, defines the boundaries of the harm principle or principle of protection of legal interests, and finally examines the guiding principles of administrative sanctioning law.

The research adopts a legal-dogmatic methodology with a critical and constitutional approach. Through a systematic analysis of the offense established in Article 416 of the Criminal Code, its validity is assessed in light of the principles of modern criminal law, the criminal-law program of the 1991 Constitution, and the criteria of harm, necessity, and

proportionality. A functional comparison is also made between criminal law and administrative sanctioning law in order to determine which of these systems provides the more appropriate response to the regulated conduct. The study relies on normative, doctrinal, and criminal-policy foundations and does not use empirical techniques because its nature is conceptual and normative.
As a finding, the study concludes that the legal provision contained in Article 416 of Law 599 of 2000 is ineffective in protecting the legal interest of public administration, because it responds neither to the teleology nor to the proper purpose of criminal law within a model of social organization consistent with a social and democratic rule of law.

Constitutional Foundations of Criminal Law and Its Principles

Discussing the constitutional foundations of criminal law provides an appropriate avenue for examining the principles that limit the exercise of the State's punitive power. This invisible barrier seeks to contain or limit the State and subject it to the same rules previously established by criminal law. To address the different optimization requirements that converge in limiting punitive power, it must be recognized that Colombia adopts the model of a social and democratic rule of law. This section therefore reviews certain constitutional foundations that limit legislative freedom in criminal policy, the criminal-law program of the 1991 Constitution, and the scope of the harm principle or principle of protection of legal interests.
Criminal law, as a sector of the legal system, may be understood as a "set of legal rules that define certain conduct as a crime and provide for the imposition of penalties and security measures on those who commit it" (Berdugo Gómez de la Torre et al., 2016, p. 1). Accordingly, this branch of law regulates human conduct and imposes penalties and security measures on those who breach its prohibitions and commands. As a result of globalization, humanity confronts new questions concerning social phenomena, new forms of criminality, and the evolution of these problems. In response, when the legislature identifies new criminal conduct, it sets limits and creates rules of behavior intended to restore order and social functionality. In this context, society requires an instrument capable of controlling persons who engage in unlawful conduct and infringe the rights of others.
Beyond understanding "criminal law" as a body of legal rules (objective criminal law) or as a science (criminal-law dogmatics), the expression may also be understood as subjective criminal law or ius puniendi, that is, as the punitive relationship or subjectivization of the criminal rule. In this sense, it refers to the power vested in the State to declare certain conduct punishable by penalties or security measures. By virtue of this power, the State may create objective criminal law, establishing what is prohibited, what is permitted, and the corresponding sanction (Velásquez, 2025, p. 34). However, ius puniendi is not omnipotent: it is subject to limits applicable to the legislature, law-enforcement authorities, and judges, commonly referred to as the limiting principles of ius puniendi (Peláez, 2024, p. 32).
In any event, criminal law operates as a mechanism of social control, understood as the "set of means, specifically social or having social repercussions, used to order and regulate external human behavior in many different respects" (Velásquez, 2025, p. 5). Within the political system there are therefore means or instruments that help preserve order in society, including institutionalized punitive social control, which is composed of the criminal justice system and its subsystems, each performing functions determined by the legislature.
Numerous concepts and ideas recur throughout the evolution of law. In its most immediate sense, even the word law, associated with what is right or straight, suggests the regulation of the conduct of rational human beings, which enabled political organization. In the

twenty-first century, most States enjoy independence and international recognition and broadly conceive the State as a genuine system of social organization that enables society to function.

Legal theorists had already anticipated this issue. According to Hart (1961, pp. 3-4), a legal system must include: (i) rules prohibiting or requiring certain types of conduct under threat of sanction; (ii) rules requiring reparation for harm caused to others through compensation; (iii) rules determining the requirements for making wills, entering into contracts, or concluding other arrangements that create rights and obligations; (iv) courts responsible for identifying applicable rules, determining whether they have been breached, and establishing the corresponding sanction or compensation; and (v) a legislative body that creates new rules and repeals existing ones. This normative framework gives rise to different rights and guarantees for the person who is subject to criminal proceedings. In relation to rules backed by threats, doctrine refers to the principle of fragmentariness, a central concept in this analysis, understood as the idea that criminal law constitutes a discontinuous system of unlawful acts, so that the areas into which individuals may not enter because of prohibitions reinforced by punitive threats are like islands in a sea of freedom (Terragni, 2013, p. 50).

When addressing a subject such as this one, it is essential to remember that criminal law evolves continuously in response to the social reality of the territory in which its prohibitions and commands apply. Those prohibitions and commands are subject to the inviolable direction of the constitutional order, the supreme norm that establishes not only the mechanisms for creating and regulating positive law but also the methods for interpreting it. A system is thus formed that must advance with sufficient precision and systematic coherence in order to guarantee fundamental rights, because any structural dysfunction seriously compromises those guarantees.

Criminal law is therefore anchored in and subordinate to the essential postulates of the social and democratic rule-of-law model, and its legislative provisions must conform to the general principles that characterize that model. In other words, criminal law must respect the spirit of the Constitution and the rights and freedoms recognized in the Constitution or in international instruments that, through the principle of normative integration, form part of the constitutional block. Consequently, criminal law must take constitutional teleology into account and construct its prohibitions and commands in light of human dignity. It follows that its principal function is to protect legal interests through penalties proportionate to the degree of wrongfulness and culpability attributable to each perpetrator or participant.

The role played by the 1991 Constitution is so significant that it encompasses the entire field in which the State develops and creates criminal policy. Its organizational model directly affects the normative evolution of criminal law, beginning with the Preamble and the constitutional supremacy clause, as well as respect for constitutional duties. Consequently, the prevalence of substantive law and normative systematization in the processes of creating and interpreting legislation are unavoidable guidelines that the legislature cannot restrict by invoking the common good.

Criminal law - whether understood as ius poenale, ius puniendi, or legal dogmatics in its three fundamental meanings - must not be confused with criminal policy, conceived as the science directed toward shaping criminal law effectively so that it can fulfill its primary task of protecting society (Velásquez, 2025, p. 23). As an instrument of normative creation, criminal policy seeks to respond to new manifestations of criminality; however, its exercise is conditioned by the limits imposed by the model of State in which it operates.

In this sense, criminal law cannot be conceived without the permanent and close

collaboration of all disciplines that comprise the overall science of criminal law. Criminal-law dogmatics - built from the developments of criminal policy - must adopt a critical stance aimed at examining the justification and values underlying legal rules from a social perspective. It must also introduce evaluative judgments into the normative system through practical and cultural knowledge articulated by comprehensive and coherent interpretations that remain delimited by their respective spheres of validity (Velásquez, 2025).

The axiological universe embodied in the 1991 Constitution corresponds to this model of a social and democratic rule of law. The Preamble - which is binding - allows principles and rules oriented toward the realization of human dignity to be integrated into the legal order. Within this framework, power must be exercised within constitutional boundaries; failure to observe them entails a loss of legitimacy and turns the State into a form of coercive domination that may, in fact, resemble an unlawful organization imposing its power on the population.

For this reason, it has appropriately been stated that the only way to respect basic rights is to have an independent judiciary that, when interpreting the law, engages in criminal-law dogmatics (Donna, 2003, p. 115). In other words, a judge who respects the postulates of criminal-law dogmatics simultaneously guarantees fundamental rights and the procedural safeguards inherent in modern criminal law.

The Criminal-Law Program of the Constitution

Within the foregoing framework, a State organized according to the social and democratic rule-of-law model enshrines in its fundamental charter a genuine declaration of principles regarding what criminal law should be; this has been called the criminal-law program of the Constitution (Berdugo Gómez de la Torre et al., 2016, pp. 5, 117 et seq.). Principles are rules requiring that particular purposes be realized to the greatest extent possible within existing legal and factual possibilities. They are therefore optimization requirements whose distinctive feature is that they may be satisfied to different degrees (Alexy, 2007).

From the perspective of the system of legal sources, the Constitution is the norm of norms, and because it holds this supreme status, no institution or law may disregard it. The Constitution thus operates as a genuine guarantee filter for fundamental rights and freedoms and, at the same time, as a limit on the State's punitive power, whose origins go back to ancient times (García & Larenas, 2016). In the domestic legal order, international human-rights treaties prevail pursuant to Article 93 of the Constitution.

Accordingly, the guiding principles of the criminal justice system should not be conceived solely as limits on ius puniendi, but also as constitutive foundations of the right to punish. In other words, criminal law must be understood as constitutional criminal law insofar as the function of guaranteeing the values and rights recognized by the Constitution is inherent in it (Berdugo Gómez de la Torre et al., 2016).

The right to punish is determined and limited by the model of State. In Colombia, the social and democratic rule of law established by the 1991 Constitution imposes limits grounded in prevention, which requires reconsideration of the foundations of criminal law. This need is intensified by the improper use of theories of punishment and by poorly constructed criminal policy that has ignored human dignity as its point of departure. In this context, the concept of the social State legitimizes the preventive function of criminal law only to the extent that it is necessary for the effective protection of society (Mir, 1994, p. 80). Criminal intervention must therefore be guided by the principles of reasonableness, necessity, and legality.

Historical struggles for fundamental rights have produced significant advances embodied

in instruments such as the Declaration of the Rights of Man and of the Citizen (1789), the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the American Convention on Human Rights (1969), among others. These international instruments form the foundation of the guiding principles of sanctioning rules, placing human dignity at their core. Their incorporation into domestic law can be seen in the drafting of the Constitution, statutes incorporating international treaties, and the preliminary titles of the criminal and criminal-procedure codes, which establish what are known as guiding norms.

These guiding norms comprise the principles that orient a legal discipline. They are propositions accepted as conditions for the validity of rules within the system and constitute a common patrimony of civilized peoples. Their function is to direct criminal law toward justice and legal certainty (Velásquez, 2025). Consistently with this idea, Article 13 of Law 599 of 2000 provides that the guiding norms contained in the Code constitute the essence and orientation of the criminal justice system, prevail over the others, and inform their interpretation. Consequently, a State that criminalizes everything contrary to its interests, disregarding the moral prohibition against partiality, abuses criminal law as an instrument of power (Greco, 2015).

In Colombia, these principles are also enshrined in international treaties (Law 74/68; Law 16/72), the Constitution (Arts. 1 et seq.), and the Preliminary Title of the Criminal Code (Law 599/2000, Arts. 1-12), as noted in the literature (Fernández, 2011; Velásquez, 2025). These guiding norms define the material and formal limits of ius puniendi and are themselves the source of criminal law's legitimacy. Law 599 of 2000 and the 1991 Constitution together form what may be called a genuine constitutional criminal-law program, giving rise to applied constitutional criminal law. Consequently, conflicts should in principle be resolved through other mechanisms within the legal system; criminal law should intervene only after other social and legal controls have failed, because it constitutes the ultima ratio of the system (Velásquez, 2025).

Within this framework, positive law guarantees the principle of legality, which operates as the supreme limit on the State's punitive power. Interpreted through the social and democratic rule-of-law model, this principle requires observance of the inviolable boundaries represented by the fundamental rights and guarantees recognized in the Constitution and in international treaties ratified within the domestic legal order. Once those limits are exceeded, criminal law ceases to be rational and becomes an instrument inclined toward inquisitorialism and punitive expansionism.

In short, the Constitution's criminal-law program seeks to build a minimalist criminal law oriented toward protecting fundamental rights, preventing punitive expansionism, and ensuring the internal coherence of the legal system. Any departure from this program - for example, by creating criminal offenses based exclusively on morality - threatens the constitutional rule of law and the balance of powers.

The Harm Principle or Protection of Legal Interests: Scope

The harm principle, also known as the principle of protection of legal interests (Ferrajoli, 2004; Bustos, 2005; Velásquez, 2025), is one of the fundamental pillars of the Constitution's criminal-law program. This principle operates as a material limit on the State's exercise of ius puniendi and is closely connected with the other principles discussed above. Given its relevance to the research problem, it is examined here in greater depth.

This principle starts from the premise that the essential mission of criminal law is to protect legal interests rather than to impose ethical or social values. From a moderate functionalist perspective, the object of criminal law is precisely that protection. However, the emergence of new forms of criminality has created challenges for contemporary criminal policy and

has encouraged expansionist tendencies. As a result, certain radical functionalist positions - such as enemy criminal law - have prioritized the formal validity of the rule while relegating analysis of the protected legal interest. That argument is not sufficiently persuasive, because if it were accepted as a point of departure, criminal-law science would lose its purpose of systematically examining the coherence and rationality of the application of criminal law, and it would be illogical to attribute guilt to a person solely because conduct conflicts with a legal rule.

Criminal law does not punish every form of conduct affecting legal interests, but only conduct of significant seriousness. This selectivity prevents punitive inflation, a phenomenon that distorts the legitimate purpose of punishment, and thereby reaffirms the fragmentary character of criminal law (Ferrajoli, 2004; Velásquez, 2025). Under the social and democratic rule-of-law model, criminal legislation must focus on protecting relevant legal interests rather than punishing immoral conduct, which should be addressed through other branches of law or through social disapproval. This approach reinforces the fragmentary and subsidiary nature of criminal law: criminal intervention is justified only when alternative mechanisms are insufficient to protect social order and fundamental rights (Mir, 1994, 2016).

The harm principle holds that there is no crime without harm. In other words, there can be no punishable act without a concrete or real threat to the legally protected interest, and punitive intervention is therefore possible only with respect to conduct that has social significance and affects the spheres of freedom of others (Velásquez, 2025). Conduct such as sodomy and adultery, for example, is no longer considered harmful for purposes of criminal law. According to Mir (1993, 2004, 2016), within a social rule-of-law State the logic of criminal intervention requires obtaining the greatest possible social benefit at the lowest cost in terms of restrictions on rights. This rationale entails application of the principle of subsidiarity, according to which criminal law must be regarded as ultima ratio: an exceptional resource that should be used only after all alternative means have proven ineffective.

The fragmentary character of criminal law is directly related to its function as ultima ratio, and together these principles constitute what doctrine calls the principle of minimum intervention. In practical terms, criminal law should intervene only when the conduct under investigation causes real and significant harm to a legal interest and cannot be controlled through less restrictive mechanisms. Precisely because of their importance, legally protected interests - understood as values and principles of high social relevance - have been elevated to constitutional status by the legislature. This hierarchy provides them with stronger protection within the legal system and justifies their inclusion among the interests that may receive criminal protection.

Within the framework of the harm principle arises the concept of the legal interest (bien juridico), a central notion in liberal criminal law. It operates as a limit on the State's punitive power by requiring that only conduct that injures or endangers relevant social interests be punished. Historically, the concept appeared in the nineteenth century as a guarantee against authoritarian criminal law, linking criminalization to the protection of concrete values such as life, property, and liberty (Hormazábal, 1991, pp. 19 et seq.). In criminal-law dogmatics, the principle of the legal interest also prevents the criminalization of merely immoral or dissenting conduct and thereby promotes greater rationality and legitimacy in the punitive system. The legal interest thus remains a fundamental pillar of a guarantee-based criminal-law model.

The concept of the legal interest performs multiple functions within the criminal justice system. Its orienting function is interpreted on the basis of the teleological element because

it identifies the legal interest being protected and makes it possible to exclude conduct that may appear to satisfy the offense definition but does not actually harm a protected interest. Its delimiting function imposes limits both on the legislature - which may criminalize conduct only when strictly necessary to protect fundamental interests - and on the judge, who must calibrate the sanction according to the relevance of the affected interest. It also performs a guarantee function by giving citizens clarity about what the law protects through punishment and for what purpose; finally, its interpretive function guides the application of rules toward effective protection of the legal interest (Constitution, Art. 2; Law 599 of 2000, Arts. 11 and 61; Velásquez, 2025). Legitimate criminal law must therefore protect concrete legal interests rather than merely impose subjective moral values.

Historically, the harm principle has marked the transition from a merely formal concept of unlawfulness, consisting in a contradiction between conduct and criminal law, toward a concept of material unlawfulness in which actual or potential injury is expressed through the idea of social harm. This gives rise to two requirements: first, the conduct must affect collective needs; and second, its consequences must be verifiable in social reality. The harm principle thus helps establish a distinction between criminal law and morality (Díez, 2013). For this reason, deontological considerations are said to be necessary in addressing this subject: they can be grounded a priori and, precisely because they escape contingency, they may impose insurmountable limits on State power (Greco, 2015). A social and democratic rule-of-law State must protect as legal interests those conditions of social life that affect individuals' possibilities for participation in the social system; for such interests to deserve criminal protection and qualify as criminally protected legal interests, they must possess fundamental importance (Mir, 1994). Criminal law was not created to solve every social problem or conflict. Its task is to safeguard the most significant legally protected interests required for harmonious social coexistence. Conduct may be morally or socially reprehensible, but if it has not been established in a criminal rule as potentially harmful or injurious to a protected legal interest, no criminal legal consequence may be imposed on the person responsible.

In the current debate, the theory of the legal interest raises questions about the adequacy of the concept because of its alleged lack of clarity and vagueness (Silva, 2025, pp. 184 et seq.), particularly if injury must be considered from an individualistic perspective involving harm to concrete human beings. When structuring a criminal provision, the legislature therefore introduces a predominantly subjective element in the form of the final action it seeks to prevent, excluding other risky acts affecting the protected legal interest while, for social reasons, seeking to prevent a particular final action. Nevertheless, the legal interest remains indispensable as a benchmark for sound criminal policy (Roxin, 2000). A criminal legal system and criminal policy that do not respect the essential core and teleological foundation represented by the protected legal interest merely elevate to the status of crimes conduct that only apparently protects legal interests that may not in fact exist (Hefendehl, 2016; 2002).

For Norberto Bobbio (1987), the best way to approach legal experience is to identify its characteristic features and consider law as a system of norms or rules of conduct. Criminal law should therefore be minimalist rather than maximalist, even though many Western countries have promoted an expansive or maximalist construction of criminal law. The issue of the legal interest must also be approached from a constitutional perspective, recognizing the intrinsic relationship that must exist between the Constitution and criminal law, because the social and democratic rule-of-law State is not only subject to fundamental rights but is also their guardian. In this sense, neoconstitutionalist legal theory penetrates the dogmatics of the special part of criminal law by delimiting the scope of

protection of legal interests in accordance with the dogmatics of fundamental rights (Alonso, 2009, p. 62).

Turning specifically to legislative freedom of configuration, Alonso (2009, p. 67) observes that the concrete design of criminal offenses is, to a considerable degree, left to legislative discretion. Yet legislative discretion must respond not only to considerations of opportunity but also to standards of constitutional correctness, particularly the requirements arising from the principle of proportionality. Thus, in a State configured according to the social and democratic rule-of-law model, human dignity as a material limit, the other guarantees established in the Constitution, and the principle of the legal interest as a limitation on legislative excess constitute the backbone of criminal law.

For Kelsen, our conscience is not satisfied when we justify our conduct merely as an appropriate means to an end whose own justification is doubtful; it demands that conduct also be justified as an ultimate end, or, in other words, that it conform to an absolute value (1956, p. 353). Kai Ambos (2013), in turn, maintains that criminal law has the general functions of protecting legal interests and preventing harm. Starting from those ideas, the question remains how the legislature determines which legal interests deserve constitutional protection through criminal law by creating rules backed by punitive threats, particularly when their construction responds to a specific historical period in which certain conduct was regarded as harmful. Criminal law cannot be used to regulate immoral conduct or simply follow popular emotion, because its proper object is the protection of legal interests necessary to maintain peace and harmony in society.

From the standpoint of legal theory, law becomes an integral part of morality, which has only formal autonomy insofar as, by delegating to positive law the power to determine which conduct is morally good, morality effectively abdicates in favor of law and is reduced to providing ideological justification for positive law (Kelsen, 1979, p. 56). From this perspective, the criminally protected legal interest has become a question of primary importance and represents the heart of the offense and of the general theory of crime (De Pablo, 2018, p. 2). The theory of the legal interest remains valid and operates as a limit on legislative freedom of configuration. The State therefore cannot regulate human actions except where public order, public morality, or conduct harmful to third parties is at stake (Terragni, 2013, p. 50).

Abandoning the protection of legal interests as the object of criminal law would give free rein to the disvalue of action, that is, to the protection of ethical and social values. As Giuseppe Bettiol (1965, p. 162) observed, subjectivizing the concept of crime is a consequence of theories that deny recourse to the notion of the legal interest on the ground that crime does not always injure a social interest; such theories must therefore find some other element on which to ground crime. Under those conceptions, crime is essentially the violation of the trust that underlies relationships of peace and harmony in a civilized society, and criminal proceedings become the instrument through which a sanction or acquittal is reached with respect to the person who breached that socially regulated trust. By contrast, criminal law should begin from the premise that it protects legal interests. Consistent with the principle of minimum intervention, criminal law should intervene only in cases of serious attacks against highly important legal interests and only when less radical legal mechanisms are insufficient to address them (Muñoz, 2018, p. 66).

From the perspective of case law, the harm principle has been recognized as a matter of central importance and one with constitutional relevance. This follows from the Constitution's provision that public authorities are established to protect the life, honor, property, and other rights and freedoms of persons residing in Colombia (Constitution, Art. 2). In the exercise of the State's ius puniendi, such protection cannot entail an

unjustified restriction of fundamental rights, as could occur where personal liberty is unreasonably restricted despite the limited importance of the legal interest involved (Constitutional Court, Judgment C-070/1996, p. 9). Similarly, after examining a constitutional challenge to Articles 36, 39, 43, 44, and 476 of the Criminal Code, the Constitutional Court emphasized that criminal policy is subject to clear material limits imposed by the Constitution (Constitutional Court, Judgment C-581/2001).

The high courts have also addressed the issue in cases concerning drug trafficking and espionage, interpreting those offenses through what they share from the standpoint of criminal law, namely their character as abstract-endangerment offenses based on a presumption of danger (Supreme Court of Justice, Criminal Chamber, Case No. 27650). Legislative freedom in criminal matters has likewise been examined in order to identify the principles governing criminal law that derive from the Constitution. In that context, the principle of necessity of criminal intervention has been described as linked to the subsidiary and fragmentary character of criminal law and to its status as ultima ratio, alongside the principles of exclusive protection of legal interests, legality, culpability, reasonableness, and proportionality in criminal matters (Constitutional Court, Judgment C-365/2012).

Finally, the constitutional limits on the exercise of the State's punitive power may be explicit or implicit. Explicit limits include the prohibition of the death penalty (Art. 11); the prohibition of enforced disappearance, torture, and cruel, inhuman, or degrading treatment or punishment (Art. 12); and the prohibition of banishment, life imprisonment, and confiscation (Art. 34), among others. As to implicit limits, the criminal legislature must seek to fulfill the essential purposes of the State, including guaranteeing the effectiveness of constitutional principles, rights, and duties and ensuring peaceful coexistence and a just order (Constitutional Court, Judgment C-108/2017).

In short, it is clear that analysis of the harm principle must focus on actual injury to or endangerment of the protected legal interest. The next section therefore examines the legal treatment of abuse of authority in order to determine whether, under the current constitutional and statutory framework, this conduct should remain within the catalogue of criminal prohibitions or instead be removed from it, as this study proposes.

The Criminal-Law Treatment of Abuse of Authority through an Arbitrary and Unjust Act: Criminal Law or Administrative Sanctioning Law?

The Logical Structure of the Criminal Rule: General Aspects

The theory of the special part of criminal law provides the tools needed to study and identify common errors in the creation and analysis of criminal provisions that have no genuine protective purpose; specialized doctrine refers to these as problems of special criminal law, and the provision motivating this research is one example. This section addresses the legal treatment of abuse of authority through an arbitrary and unjust act. It is necessary to return to the general objective, specific objectives, and research question, namely whether the rule punishing abuse of authority through an arbitrary and unjust act can be dealt with within another branch of sanctioning law distinct from criminal law, given criminal law's fragmentary character. The section therefore identifies the logical structure of the criminal provision and the differences between criminal law and administrative sanctioning law, connecting these issues with a criminal policy aimed at humanizing punishment and using minimalist criminal law as a benchmark, in order to reach the conclusions of the study.

The legal system is governed by the 1991 Constitution, whose foundational norm is human dignity, as noted above. The Constitution is at the same time the supreme norm and the condition of validity of all other rules in the legal system. The creation, amendment, repeal,

and analysis of legal rules must therefore begin from the philosophy informing the Constitution, characterized by the coherence and completeness that the judicial system must provide when addressing disputes of criminal relevance (Devis, 2022, pp. 31 et seq.). The theory of legal norms is studied from three perspectives: their nature, their location within the legal system, and their genesis (Bustos, 2005, pp. 50 et seq.; Velásquez, 2025, pp. 140 et seq.). This approach seeks to determine the characteristics of legal norms generally and of criminal norms specifically, identifying prohibitive, enabling, and permissive rules because of their erga omnes effects. Through its logical structure, every criminal rule facilitates understanding and study; today this model rests on the tripartite theory of crime: typical, unlawful, and culpable conduct.

Against this background, the following analysis explains why the criminal provision defining abuse of authority through an arbitrary and unjust act should be dealt with in an area of the legal system other than criminal law. Its object of protection is symbolic or merely apparent, it serves no essential criminal-law purpose, the criminal sanction does not correspond to the purposes of punishment, and its underlying philosophy is inconsistent with the teleology of criminal law. When a criminal rule is created, constitutional filters or parameters make it possible to exercise control and to identify whether internal and external coherence exists. The incoherence in the creation of the provision examined here becomes apparent when its purported legal interest is studied: there is a disconnect in the structure that promotes an expansionist criminal law contrary to the criminal policy led by the 1991 Constitution.

It should therefore be emphasized that the criminal provision under study, because it is residual and internally inconsistent, produces ineffective application. It does not fit within a criminal law designed to control the State's punitive power and prevent the objectification of the human being through this instrument of social control. Criminal law, in this sense, must be minimalist. As Alexy (2007) would put it, the legislature is governed by optimization requirements that provide unity and logic to the dynamics of the system, including the concepts of legal interest, legitimacy, rationality, legality, and ultima ratio.

A complete criminal rule - alongside incomplete criminal rules and blanket criminal provisions (Larenz, 1980; Muñoz, 2001; Velásquez, 2025) - has a dual structure composed of a factual hypothesis and a sanction, under a logic consistent with the other elements of criminal-law dogmatics and with both descriptive and evaluative perspectives on the object of study according to the content of the criminal provision. Legal logic, whose ideal object consists of legal norms, thereby produces a systematic account of what ought to be (Maffia, 1945, pp. 56 et seq.).

Abuse of Authority: Dogmatic Analysis and the Harm Principle

As previously indicated, the dogmatic analysis of the criminal provision establishing abuse of authority through an arbitrary and unjust act lies at the center of this research problem. Its dogmatic anatomy must therefore be examined, which contributes to order and legal certainty for those who administer justice (Posada, 2019, p. 29). The special part of criminal law must be developed from the methodological foundations established in the general part so that the general and specific elements of the provision under study can be identified.

This legislative construction is located in Title XV, "Crimes against Public Administration," Chapter Eight, entitled "Abuses and Other Offenses," Article 416, which provides: "A public servant who, outside the cases specifically provided for as punishable conduct, on the occasion of his or her functions or by exceeding the exercise thereof, commits an arbitrary and unjust act, shall incur a fine and loss of public employment or office."

The factual hypothesis of this complete criminal provision - an intentional offense -

objectively describes conduct inferred from the governing verb "to commit," namely carrying out an arbitrary and unjust act. The action must occur in the exercise of the agent's official functions or through an excess in the exercise of those functions. A result must also occur because an arbitrary and unjust act must be carried out, and there must be both a causal nexus and objective imputation between the conduct and the result (Criminal Code, Art. 9).

The offense also requires an active subject (a "public servant"), meaning the person who carries out the typical conduct: a legally qualified and individual active subject (Criminal Code, Art. 20). The passive subject is the holder of the legal interest, namely the State through public administration, a simple passive subject; the legally protected interest is public administration itself. The material object is the person or thing upon which the punishable conduct falls, which in this case appears to be phenomenal (Zaffaroni, Slokar & Alagia, 2006; Zaffaroni, 2009). The subjective aspect of the offense further requires intent, understood as knowing and willing the objective elements of the offense (Art. 22 of the Criminal Code); in principle, direct intent is therefore required.

These elements may be descriptive or normative. Descriptive elements are those which, as Jescheck and Weigend (2002, p. 289) explain, may be drawn from legal language and describe objects in the real world; they are therefore susceptible to factual verification and can be regarded as descriptive components even where their precise content is determined only by reference to a legal rule and thus contains a degree of legal meaning. Such elements of an offense commonly refer to circumstances of time, manner, and place.

Normative elements, by contrast, are grammatical constructions inserted into the offense definition that require reference to other legal rules or to a sociocultural context for their evaluation or proper understanding. They may be legal or extra-legal normative elements. In the terminology of Jescheck and Weigend, drawing on Karl Engisch, they concern premises that can only be conceived under the logical presuppositions of a norm and may be classified as genuine legal concepts, evaluative concepts, and concepts defined by relational meaning (2002, p. 289). Here such elements arise from the expressions "public servant," as understood under Article 20 of the Criminal Code; "on the occasion of his or her functions or by exceeding the exercise thereof," meaning that the unlawful act occurs as part of the person's official duties or exceeds the limits of the authority or functions assigned to that person; and "arbitrary and unjust act," meaning an act that lacks valid legal justification and contravenes fundamental principles of the criminal and constitutional order.

Criminal offenses also contain subjective elements. These may consist of intent - the general subjective element of the offense, according to Jescheck and Weigend (2002, p. 339) - or subjective elements distinct from intent. The latter, also called special subjective elements of the offense, appear as modifications of the typical will to act that, like intent, exhibit a purposive structure and are related to the protected legal interest, the object of the action, and the manner and form of its injury (p. 340).

The complete criminal provision establishes two penalties: a fine (in this case, a progressive fine) and loss of public employment or office. In light of the purposes of punishment, these sanctions are not deontologically consistent with criminal law, particularly in relation to the provision under examination, because it protects the core of the legal interest of public administration only in an isolated manner while leaving genuine protection to other existing offenses. The provision therefore serves no real function and is inconsistent with the theory of the legally protected interest, especially because the conduct described in Article 416 neither endangers nor injures that interest. Administrative sanctioning law is therefore the more appropriate sector of the legal system in which to regulate it, as

explained below.

Criminal Law or Administrative Sanctioning Law?

Up to this point, it has been argued that the punitive system has a teleology that must be respected by the legislature, and administrative sanctioning law is no exception. This branch of the legal system is responsible for protecting the rights of persons subject to the administration, whether in their relations with one another or with the State, while always safeguarding the law and the 1991 Constitution. Nevertheless, a thin and controversial line creates difficulties when distinguishing a criminal offense from an administrative offense.

In this regard, it should be recalled that since the Enlightenment, crime had been regarded as an act of rebellion against God because the foundation of the legal system was religious in origin. Hegel, Kant, and Feuerbach (Cerezo, 1975, pp. 159 et seq.; Nieto, 2005, pp. 172 et seq.) began to distinguish the two types of wrongdoing on the basis of their structural elements. At first, administrative wrongdoing was understood as conduct contrary to rational order and morality, broadening the concept of the legal interest as an object of protection applicable to the legal system generally and not only to criminal law. With the emergence of the liberal State, the distinction gained force in both formal and material terms because of the different objects of each branch of the legal system. The administration was accordingly equipped with suitable mechanisms for exercising sanctioning administrative activity based on an administrative ius puniendi.

Qualitative differences are therefore drawn between criminal wrongdoing and administrative wrongdoing (Mattes & Mattes, 1979; Cerezo, 1979, pp. 159 et seq.; Mir, 2016; Gómez & Sanz, 2023; Nieto, 2005; Facenda, 2018; Mayo, 2021, pp. 189 et seq.; García, 2014, pp. 95 et seq.; Cárcamo, 2023, pp. 66 et seq.; Rojas, 2020). Harm is an essential element in both types of wrongdoing, and the relevant issue is to distinguish the nature of that harm. This is essential to answering the research question because administrative wrongdoing generally consists of an action or omission exhausted by the mere breach of positive rules of administrative conduct. The nature of the legal interest does not necessarily point to its injury or endangerment; rather, what is present is disregard for a relationship of duties. This is relevant to distinguishing an administrative sanction from punishment as the principal sanction of criminal law, since an administrative sanction does not have a retributive character (Cerezo, 1975).

Its purpose, moreover, is to remind the noncompliant person of duties arising from the substantive legal relationship within an autonomous disciplinary model of adjudication aimed at correction. This differs from criminal law, where the sanction seeks to prevent crime and reintegrate the convicted person into social life.

The foregoing is relevant because the conduct defined in the provision on abuse of authority through an arbitrary and unjust act - given its residual nature - does not generate harm warranting criminal protection and does not protect a genuine legal interest. It therefore amounts only to a form of disobedience that can be addressed through the administrative sanctioning regime. Its construction is also ambiguous because what is just for one person may be unjust for another, particularly because the normative elements "arbitrary" and "unjust" are framed cumulatively and acquire meaning only in relation to the normal functioning of public administration.

The guiding principles of administrative sanctioning proceedings support the administration's subjective power to sanction certain forms of conduct because their purpose is to protect the administration itself. The resulting legal consequences are sanctioning rather than judicial in nature, subject to judicial review of legality before the administrative courts through the appropriate means of control according to the claim

involved. This follows from the administration's possession of sanctions specifically designed for administrative wrongdoing, including fines and other corrective measures for conduct involving limited harmfulness or merely endangering a legal interest.

In a more specific context, administrative sanctioning proceedings under Article 3 of Law 1437 of 2011 share the same constitutional guarantees applicable in criminal law because of the punitive nature of sanctioning proceedings. This is readily explained by the social and democratic rule-of-law model, under which the exercise of public functions is carried out in light of the public interest and the relationship of trust between the State and public servants. In this context, ius puniendi is recognized in those who exercise public control and oversight functions when persons subject to discipline disregard applicable rules. The guiding principles of administrative sanctioning law therefore pursue the same guarantee-oriented purpose as those examined above under the heading of the Constitution's criminal-law program.

At this stage, it must therefore be maintained that the criminal provision establishing the offense of abuse of authority through an arbitrary and unjust act should not remain within the criminal normative framework, because its structure and purpose are characteristic of administrative sanctioning law. Its location in criminal legislation contradicts the basic postulates of the constitutional model adopted in Colombia and the previously discussed standards of minimalist criminal law.

Starting from the constitutional foundations of the Constitution's criminal-law program, the scope of the concept of the legal interest, and therefore the harm principle or principle of protection of legal interests, an internal inconsistency becomes apparent in relation to the essential element of the legal interest, which in this offense operates only symbolically or apparently. The study thus shows that this rule does not respect, and is not consistent with, the teleology of criminal law.

It is also important to note that abolishing the penalty of a fine from criminal law may appear prudent under current conditions if, as argued here, the fine is contrary to the values, principles, and fundamental rights enshrined in the 1991 Constitution, because it is characterized as an impersonal, unequal, discriminatory, and disproportionate sanction in relation to criminal offenses (Ferrajoli, 2004, pp. 416 et seq.). This argument returns to the research question and again invites reflection on the teleology of criminal law, which seeks to protect legal interests through criminal rules that prevent serious conduct and for which imprisonment is conceived as the characteristic criminal penalty, while fines are reserved for minor conduct. On this reasoning, abuse of authority through an arbitrary and unjust act should be decriminalized and sanctioned exclusively from an administrative perspective.

Because criminal law is severe in its impact on fundamental rights, it must preserve conceptual and dogmatic coherence regarding its sanctions. Under this reasoning, it is difficult to justify a system in which some crimes are punished by fines and others by deprivation of liberty. Within criminal law as applied in a social rule-of-law State - where clear protective limits exist and there is a direct criminal-policy relationship with a concrete object consistent with the purpose of ultima ratio - punishment constitutes the paradigmatic sanction, and a fine appears foreign to this branch of the legal system.

Treating a fine as a principal criminal penalty, under the argument developed here, disregards or derails the guiding principles of criminal law by transforming it from a differentiated punitive system into one that imposes fines for conduct disvalued on ethical or social grounds, or on the basis of general prevention without regard to the seriousness of the harm. The greatest difficulty arises when the sanction of a fine is connected with the dogmatic purposes of punishment, generating theoretical contradictions and replacing a

differentiated system with an interventionist model of limited rigor that promotes inequality and causes criminal law to become an appendage of administrative sanctioning law. Under a democratic criminal policy, the administrative sanctioning regime should be the sphere in which less serious conduct is punished.

It should not be overlooked that domestic law (Criminal Code, Art. 19) distinguishes between crimes and criminal contraventions. From a material perspective (Roxin, 2010, pp. 71 et seq.), this might suggest that sanctions such as fines should be directed to contraventions. Nevertheless, the legislature has neither introduced into the Criminal Code a separate book regulating criminal contraventions nor limited fines to minor offenses. Instead, fines are used to punish offenses of varying seriousness, from less serious to severe offenses, and are divided into accompanying fines and progressive fines (Velásquez, 2025, pp. 675 et seq.). The fine therefore ends up failing to fulfill the purposes for which it was designed. This study accordingly argues that the legislature, when creating criminal provisions, must remain consistent with the teleology and purpose assigned to criminal law and should reserve fines exclusively for minor forms of conduct within an administrative sanctioning regime.

The following section therefore emphasizes certain criminal-policy considerations that support the thesis of this research.

Criminal-Policy Considerations

The articulation between criminal law and criminal policy derives from their direct relationship with the values, principles, and guarantees enshrined in the Constitution. Criminal policy must not be confused with social policy.

Criminal policy may be defined as the comprehensive, systematic, and rational strategy designed, implemented, and evaluated by the State - together with various actors in civil society - for the prevention and control of crime, the organization of the institutional response to crime (Constitutional Court, Judgment C-646/2001), and the management of criminal justice and prison systems. It is not limited to the mere exercise of ius puniendi, but constitutes an autonomous and multidisciplinary discipline that coordinates formal and informal responses to criminal phenomena. Thus, criminal policy refers to the approach adopted by public authorities and the State to confront criminality (Borja, 2011, p. 19), or to the sector of State policy in which decisions are made regarding the prevention of and response to crimes (Sanz, 2019, p. 19).

Its field of action is multifaceted and includes: (1) substantive and procedural criminal legislation, including the definition of offenses and penalties and the procedures for applying them; (2) prison policy and social reintegration; (3) strategies of police control and citizen security; and (4), fundamentally, preventive social policies directed at the structural causes of criminality, such as inequality, exclusion, and lack of opportunity.

Contemporary debate contrasts two principal paradigms. On one side is the "tough on crime" model or punitive populism, which prioritizes increasing penalties, hardening prison conditions, and expanding police power, often on the basis of emotional reactions and with limited evidence of long-term effectiveness. Opposed to it is an integrated, evidence-based criminal-policy model which, without abandoning a proportionate criminal response, emphasizes prevention, rationalization of public expenditure on security, reintegration, and protection of human rights, with decisions based on empirical data and scientific impact assessments. In essence, criminal policy represents the master plan guiding the use of the State's punitive power. Its ultimate purpose is not merely the repression of crime but the construction of legitimate and sustainable citizen security that balances effective crime control with unwavering respect for fundamental guarantees.

In this context, criminal prevention as a purpose of sanctions is decisive within criminal policy because of the legal consequences contained in criminal rules. The penalty must therefore be real, effective, and certain in order to prevent recidivism. A penalty fulfills no function if severity alone is pursued; certainty of punishment is preferable because it generates an effective threat or psychological constraint. In addition, a person serving a sentence must experience the restriction of rights only after a final conviction, thereby guaranteeing a real and serious punishment. On this view, and recalling the 1863 Constitution of Rionegro, the maximum penalty should not exceed ten years of continuous deprivation of liberty.

The various tendencies of contemporary criminal policy have generated debate about the expansion of criminal law and its symbolic purposes, developments that affect criminal proceedings as well as business, technology, hate-related matters, and many other areas. The text also argues that the democratization of criminal law has been invoked to introduce phenomena such as so-called punitive populism (Velásquez, 2019, p. 1032) and, more recently, gender approaches, which the authors consider not to have demonstrated positive utility to date; in their view, the consequences for criminal law and criminal procedure have instead been serious. From the standpoint of criminal-policy analysis, the authors further emphasize that a twenty-first-century tendency is to use criminal law to resolve social problems and, as in Colombia, to resort to a criminal policy described as "reactive, without adequate empirical foundation, with inconsistencies and a lack of a clear human-rights perspective" (Criminal Policy Advisory Commission, 2012, pp. 27 et seq.).

The error arises from believing that law generally, and criminal law in particular, can transform society in an egalitarian manner. The consequences of a criminal policy that is not articulated with the Constitution's criminal-law program are therefore serious, particularly when it is forgotten that criminal law must remain minimalist and must be applied and interpreted restrictively (Ferrajoli, 1986, p. 35; Silva, 1999, pp. 15 et seq.).

At the opposite end of the debate lies maximalist criminal law, the setting in which discussions concerning life imprisonment (Velásquez, 2019) and institutional designs for investigating and enforcing punishment take place without the controls required by strict legality. In that context, the provision defining abuse of authority through an arbitrary and unjust act as a crime corresponds, according to this study, only to symbolic criminal law, if not to an enemy-criminal-law approach that seeks to punish mere noncompliance with legal rules.

The current tendency of Latin American States is therefore toward criminalization or expansion of criminal law, contrary to the State model and the criminal law inspired by it, which are grounded in human dignity and in a clear teleology aimed at protecting legal interests. This is incompatible with the dominance of maximalist criminal law, which appears to pursue the reinterpretation of criminal rules and the creation of aggravating circumstances for existing offenses, thereby relativizing the classical guarantees of substantive criminal law and criminal procedure (Silva, 1999, pp. 15 et seq.).

Accordingly, one may ask whether criminal policy in Colombia is coherent with the teleology required by the 1991 Constitution or whether, on the contrary, its practical dynamics reveal a criminal policy inconsistent with constitutional guarantees. According to the bodies responsible for developing criminal-policy guidelines, the answer is negative (Criminal Policy Advisory Commission, 2012). Criminal policy should therefore be the opposite of what defenders of penal maximalism propose: it should vigorously promote a guarantee-based approach in both its theoretical foundation and the construction of criminal rules, avoiding internal and external inconsistencies and grounding punitive policy in sound arguments even in times of uncertainty.

A reduction in the rigor of guarantees places those prosecuted through criminal law at serious risk. The ideas and criticisms of criminal-law dogmatics must operate at the boundaries of criminal policy, preventing the creation of criminal rules - such as the one examined here - that lack internal or external foundations and thereby introduce flexibility into the criminal-law system and its guarantees. Criminal law must prioritize its internal coherence, remain consistent with other branches of the legal system and with the disciplines that assist its operation, and ensure that the information used corresponds to scientific standards. A decision declaring criminal responsibility should meet the most demanding standards and should not result from mere suspicion or solely from the judge's inner conviction. Criminal law must therefore be predictable and controllable.

Public institutions must consequently be represented by appropriately qualified actors. Judges are the officials who engage in dialogue with society and, to a significant extent, may reproduce or reinforce populist terminology in their decisions (Silva, 1999, pp. 18 et seq.). Their task should be to safeguard fundamental rights and avoid sacrificing constitutional guarantees in the name of justice. It is unjust to convict on the basis of inner conviction where the aim should be knowledge produced through evidentiary debate without violating constitutional guarantees. Punishment should ultimately be justified by the seriousness of the harm, and doubt in the evaluation of evidence must always favor the accused, regardless of the seriousness of the offense.

Accordingly, when criminal legislation imposes criminal sanctions on conduct such as abuse of authority through failure to report, it reflects an expansionist criminal law that is inconsistent with minimalist criminal law. In the authors' view, only a regressive criminal policy can tolerate the current Criminal Code's treatment of the conduct contained in Article 416 as an offense against public administration. A genuine criminal policy should instead advocate for such conduct to be governed by administrative sanctioning law rather than criminal law.

Conclusions

This study demonstrates that the offense of abuse of authority through an arbitrary and unjust act, established in Article 416 of the Criminal Code, does not fulfill the purposes or teleology of modern criminal law, understood as a system for protecting legal interests of high social relevance and as the ultima ratio of the State's punitive power.

The research shows that this offense lacks a genuinely harmful legal interest capable of justifying criminal intervention because the conduct it describes produces, at most, a minimal or symbolic effect on public administration. This degree of harmfulness does not satisfy the requirements of necessity, proportionality, and reasonableness imposed by the 1991 Constitution and the criminal-law program derived from it.

The dogmatic analysis of the provision and its comparison with the constitutional foundations of criminal law lead to the conclusion that the offense infringes the material limits of ius puniendi by instrumentalizing criminal law for merely administrative or moral purposes. Its continued presence in criminal legislation therefore contributes to punitive expansionism, contrary to the social and democratic rule-of-law model, which prioritizes the protection of fundamental rights and the containment of sanctioning power.

The comparative analysis of criminal law and administrative sanctioning law demonstrates that the nature of the conduct examined corresponds to disciplinary responsibility rather than criminal wrongdoing. The appropriate legal treatment should therefore be transferred to administrative sanctioning law, which provides suitable and proportionate mechanisms - such as loss of employment or a fine - for sanctioning such conduct without compromising the guarantees specific to criminal law.

From a criminal-policy perspective, retaining this offense in the criminal catalogue

contributes neither to general nor special prevention and does not strengthen confidence in institutions. On the contrary, it weakens the rationality of the system and distorts its guarantee-based function.

Accordingly, consistent with the principles of minimalist criminal law, Article 416 of the Criminal Code should be removed from the criminal legal system and relocated to administrative sanctioning law, where its function of controlling public office can be preserved without violating the constitutional limits governing the legitimate exercise of the State's punitive power.

In sum, decriminalizing this offense does not imply impunity. Rather, it represents a refinement of the legal system that strengthens its internal coherence, reaffirms the supremacy of the Constitution, and restores the principle of minimum intervention as a core principle of criminal law in a genuinely democratic, guarantee-based State.

References

1. Aguado, T. (1999). El principio de proporcionalidad en Derecho penal. Edersa.
2. Alexy, R. (2007). Teoría de los derechos fundamentales (trad. C. Bernal). Centro de Estudios Constitucionales.
3. Alonso, M. (2009). Bien jurídico penal: más allá del constitucionalismo de los derechos. Estudios Penales y Criminológicos 29(1), 61-106.
4. Ambos, K. (2013). Bien jurídico y harm principle: bases teóricas para determinar la «función global» del derecho penal internacional. Una segunda contribución para una teoría coherente del Derecho penal Internacional. Revista de Derecho penal y Criminología 10, 343-378.
5. Atienza, M. (2023). Sobre la dignidad humana. Trotta.
6. Berdugo, I. et al. (2016). Curso de Derecho penal, Parte General (3ª ed.). Ediciones Experiencia.
7. Bernal, C. (2003). El principio de proporcionalidad y los derechos fundamentales. Centro de Estudios Constitucionales.
8. Bettiol, G. (1965). Derecho penal, Parte general. Temis.
9. Bobbio, N. (1987). Teoría general del derecho. Temis.
10. Bobbio, N. (1993). Igualdad y libertad (trad. P. Aragón). Ediciones Paidós.
11. Bodin, J. (1997). Los seis libros de la República. Tecnos.
12. Borja, E. (2011). Curso de Política Criminal (2ª ed.). Tirant lo Blanch.
13. Bustos, J. (2005). Introducción al Derecho penal (3ª ed.). Editorial Temis S. A.
14. Cárcamo, A. (2023). La frontera entre el delito penal y la infracción administrativa: una delimitación discrecional entregada a la política legislativa. Revista Ius et Praxis 29(1), 66-85.
15. Carnelutti, F. (1959). Las miserias del proceso penal (trad. S. Sentís). EJEA.
16. Cerezo, J. (1975). Límites entre el Derecho penal y el Derecho Administrativo. Anuario de Derecho penal y Ciencias Penales, 28(2), 159-175.
17. Comisión Asesora de Política Criminal (2012, junio). Informe Final. Diagnóstico y propuesta de lineamientos de política crimina para el Estado colombiano. Ministerio de Justicia y del Derecho/Agencia Presidencial de Cooperación internacional de Colombia/Unión Europea.
18. De Pablo, A. L. (2018). El debate sobre el bien jurídico-penal en Europa Continental y en España: del constitucionalismo de los derechos a los derechos humanos. Revista Paradigma

27(2), 2-46.

19. Declaración de los Derechos del Hombre y del Ciudadano de 1789. https://www.conseil - constitutionnel.fr/sites/default/files/as/root/bank_mm/espagnol/es_ddhc.pdf
20. Devis, H. (2022). Teoría general del proceso. Temis.
21. Díez, J. L. (2013). Política criminal y Derecho penal. Tirant lo Blanch.
22. Donna, E. A. (2003). Teoría del delito y de la pena. Fundamentación de las sanciones penales y la culpabilidad. Astrea.
23. Facenda, Ch. (2018). Posibles diferencias entre el ilícito penal y el ilícito administrativo en el ordenamiento jurídico brasileño. Cuadernos de Derecho penal 20, 194-205.
24. Fernández, J. (2011). Derecho penal: Parte General: Principios y categorías dogmáticas. Grupo Editorial Ibáñez.
25. Ferrajoli, L. (1986). Derecho penal mínimo. Revista Poder y Control. Prevención y Teoría de la pena, 0, 25-48.
26. Ferrajoli, L. (2004). Derecho y razón, Teoría del garantismo penal. Trotta.
27. Feuerbach, P. J. A. Ritter von (1989). Tratado de derecho penal: común vigente en Alemania. Hammurabi.
28. Fiandaca, G. & Musco, E. (2006). Derecho penal, Parte general. Temis.
29. García, R. J. & Larenas, M. (2016). Los albores del Derecho penal: la regulación del poder punitivo en los códigos sumerios, acadios y semitas. Revista Derecho penal y Criminología 37 (102), 69-82.
30. García, A. (2014). Introducción al Derecho penal (vol. I). Editorial Universitaria Ramón Areces.
31. Gimbernat, E. (1983). ¿Tiene futuro la Dogmática Jurídicopenal? Temis.
32. Gómez, M. & Sanz, I. (2023). Derecho administrativo sancionador. Parte General. Teoría general y práctica del derecho penal administrativo (5ª ed.). Aranzadi.
33. González, O. (2007). Modelo lógico del derecho penal. En: Panorama internacional sobre justicia penal: Política criminal, Derecho penal y Criminología. Culturas y sistemas jurídicos comparados. Séptimas jornadas sobre justicia penal (pp. 385-398). Universidad Nacional Autónoma de México http://biblioteca.corteidh.or.cr/tablas/a20468.pdf
34. Greco, L. (2015). Lo vivo y lo muerto en la Teoría de la pena de Feuerbach, una contribución al debate actual sobre los fundamentos del Derecho penal. Marcial Pons.
35. Hart, H. L. A. (1961). El concepto de Derecho. Abeledo-Perrot S. A. E.
36. Hefendehl, R. (2002). ¿Debe ocuparse el Derecho penal de riesgos futuros? Bienes jurídicos colectivos y delitos de peligro abstracto. Revista Electrónica de Ciencia Penal y Criminología, RECPC 04-14. www.crminet.ugr.es/recpc.
37. Hefendehl, R. (2016). El bien jurídico como eje material de la norma penal. En Hefendehl, R., von Hirsch, A. & Wohlers, W.: La Teoría del bien jurídico. ¿Fundamento de legitimación del Derecho penal o juego de abalorios dogmático? (pp. 173-190). Marcial Pons.
38. Hernández, R. & Mendoza, Ch. P. (2018). Metodología de la investigacón. Las rutas cuantitativa, cualitativa y mixta (18ª ed.). McGraw Hill.
39. Hernández, A. (2008). Las ideas políticas en la historia (2ª reimp.). Universidad Externado de Colombia.
40. Hobbes, Th. (2005). Leviatán. O la materia, forma y poder de una república, eclesiástica y civil. Fondo de Cultura Económica.

41. Hormazábal, H. (1991). Bien jurídico y Estado social y democrático de Derecho (el objeto protegido por la norma penal). PPU.
42. Jescheck, H. H. & Weigend, Th. (2002). Tratado de Derecho penal, Parte General (trad. M. Olmedo). Editorial Comares.
43. Kant. I. (2016). Fundamentación de la metafísica de las costumbres. Espasa.
44. Kelsen, H. (1956). ¿Qué es la justicia?. Universidad Nacional de Córdoba.
45. Kelsen, H. (1979). Teoría pura del Derecho. Editorial Universitaria de Buenos Aires.
46. Larenz, K. (1980). Metodología de la Ciencia del Derecho (trad., M. Rodríguez). Editorial Ariel.
47. Ley 74 (1968, diciembre 26) [C. de P.P.]. Por la cual se aprueban los «Pactos Internacionales de Derechos Económicos, Sociales y Culturales, de Derechos Civiles y Políticos, así como el Protocolo Facultativo de este último, aprobados por la Asamblea General de las Naciones Unidas en votación unánime, en Nueva York, el 16 de diciembre de 1966». Congreso de la República [Colombia]. Diario Oficial Nº 32.682 de 31 de diciembre de 1968. Imprenta Nacional.
48. Ley 16 (1972, diciembre 30). Por medio de la cual se aprueba la Convención Americana sobre Derechos Humanos «Pacto de San José de Costa Rica», firmado en San José, Costa Rica el 22 de noviembre de 1969. Congreso de la República [Colombia]. Diario Oficial Nº 33780 de cinco de febrero de 1973. Imprenta Nacional.
49. Ley 599 (2000, julio 24) [C. de P.]. Por la cual se expide el Código Penal. Congreso de la República [Colombia]. Diario Oficial Nº 44.097 de 24 de julio de 2000. Imprenta Nacional.
50. Ley 906 (2004, septiembre 1) [C. de P. P.]. Por la cual se expide el Código de Procedimiento Penal. Congreso de la República [Colombia]. Diario Oficial Nº 45.658 de 1 de septiembre de 2004. Imprenta Nacional.
51. López Oliva, J., Alarcón Peña, A., & Luna Salas, F. (2025). The research process in the area of law: Analysis of the methodological design intended for the researcher of legal sciences.Revista Jurídica Mario Alario D'Filippo, 17(35), 85–103. https://doi.org/10.32997/2256-2796-vol.17-num.35-2025-5241
52. Luna Salas, F. (2018). El mito del cientificismo en la valoración de la prueba científica. Jurídicas CUC, 14(1), 119–144. https://doi.org/10.17981/juridcuc.14.1.2018.06
53. Luna Salas, F. (2023). Epistemología de la prueba pericial y su valoración judicial. Grupo Editorial Ibáñez. Bogotá, Colombia.
54. Luna Salas, F. (2023). Controversias epistémicas en la valoración de la prueba pericial: Sesgos de los peritos y servilismo de los jueces. En Instituto Colombiano de Derecho Procesal & Universidad Libre (Coords.), Sostenibilidad y proceso: Memorias del XLIV congreso colombiano de derecho procesal (pp. 1141–1163). ICDP-Universidad Libre. https://drive.google.com/file/d/1BKibeuPaojXikjYuj_9zZtJN2AGe-Og0/view
55. Maffia, O. J. (1945). La estructura lógica de la norma jurídica. Universidad 17, 55-73.
56. Maquiavelo, N. (2011). El príncipe. El arte de la guerra. Discursos sobre la primera década de Tito Livio. Vida de Castruccio Castracani y Discursos sobre la situación de Florencia. Gredos.
57. Mattes, H. & Mattes, H. (1979). Problemas de Derecho penal Administrativo. Historia y derecho comparado (J. M. Rodríguez, trad. y notas). Edersa.
58. Mayo, B. (2021). Acerca de las diferencias entre el Derecho penal, el Derecho administrativo sancionador y el Derecho de policía. A la vez, una reflexión sobre el

concepto de sanción. Revista Aragonesa de Administración Pública, 56, 185-253.

59. Mir, S. (1994). El Derecho penal y el Estado Social y Democratico de Derecho. Ariel Derecho.
60. Mir, S. (2003). Introducción a las bases del Derecho penal (2ª ed.). B de F.
61. Mir, S. (2016). Derecho penal parte general (10ª ed.). Reppertor.
62. Muñoz, F. (2001). Introducción al Derecho penal. B de F.
63. Muñoz, F. (2018). Teoría General del Delito (3ª ed.). Temis.
64. Naranjo, V. (2018). Teoría constitucional e instituciones políticas (13ª ed.). Temis.
65. Nieto, A. (2005). Derecho Administrativo Sancionador (4ª ed.). Tecnos.
66. Orellana, O. A. (2004). Teoría del delito, sistemas causalista, finalista y funcionalista. Porrúa.
67. Peláez, J. M. (2024). Esquemas del delito. Requisitos para existencia de una conducta punible (3.ª ed.). Tirant lo Blanch.
68. Posada, R. (2008). Temas de derecho penal. Universidad de los Andes.
69. Posada, R. (2019). Delitos contra la vida y la integridad personal. Tomo I (2ª ed.). Universidad de los Andes.
70. Quinche, M. F. (2020). Derecho Constitucional Colombiano (7ª ed.). Temis.
71. Rodríguez, L. (2021). Derecho Administrativo General y Colombiano (21ª ed.). Temis.
72. Rojas, J. G. (2020). Derecho administrativo sancionador. Universidad Externado.
73. Rousseau, J. J. (2003). El contrato social. O principios de Derecho Político. Editorial La Página S.A/Editorial Losada.
74. Roxin, C. (1997). Derecho penal General, Tomo I, Fundamentos. La estructura de la Teoría del Delito. Civitas.
75. Roxin, C. (2000). La evolución de la Política Criminal, el Derecho penal y el Proceso penal. Ed. Tirant lo Blanch
76. Roxin, C. (2017). Problemas básicos del Derecho penal (2ª ed.). B de F.
77. Sánchez, M. (2011). La metodología en la investigación jurídica: características peculiares y pautas generales para investigar en el derecho. Revista Telemática de Filosofía del Derecho, 14, 317-358. http://www.rtfd.es/numero14/11-14.pdf
78. Sanz, N. (2019). Política Criminal. Instituto de Estudios e Investigación Jurídica (INEJ).
79. Sentencia C-070 (1996, febrero 22). M. P. Eduardo Cifuentes Muñoz. Corte Constitucional. [Colombia]. https://www.corteconstitucional.gov.co/relatoria/1996/c-070-96.htm
80. Sentencia C-581 (2001, junio 6). M. P. Jaime Araujo Rentería. Corte Constitucional [Colombia]. https://www.corteconstitucional.gov.co/relatoria/2001/c-581-01.htm
81. Sentencia C-646 (2001, junio 20). Acción de Constitucionalidad, M. P. Manuel José Cepeda Espinosa. Corte Constitucional [Colombia]. https://www.corteconstitucional.gov.co/relatoria/2001/ -01.htm
82. Sentencia, SP 28 (noviembre 2007). [Radicado Nº 27650] M. P. Sigifredo Espinosa Pérez. Corte Suprema de Justicia, Sala de Casación Penal. [Colombia].
83. Sentencia C-181 (2016, abril 13). M. P. Gloria Stella Ortiz Delgado. Corte Constitucional [Colombia] https://www.corteconstitucional.gov.co/relatoria/2016/c-181-16.htm
84. Sentencia C-108 (2017, febrero 23). M. P. Luis Ernesto Vargas Silva. Corte Constitucional [Colombia] https://www.corteconstitucional.gov.co/relatoria/2017/C-108-17.htm

85. Silva, J. M. (1999). La expansión del Derecho penal. Aspectos de la política criminal en las sociedades postindustriales. Civitas.
86. Silva, J. M. (2025). Derecho penal, Parte General. Civitas.
87. Terragni, M. A. (2013). Tratado de Derecho penal, tomo I parte general. La ley.
88. Velásquez, F. (2019). El populismo punitivo y la prsión perpetua revisable: un ejemplo concreto. Revista Criminalia. Academia Mexicana de Ciencias Penales, año XC, 1031-1062.
89. Velásquez, F. (2025). Fundamentos de Derecho penal, Parte General (7ª ed.). Tirant lo Blanch.
90. Zaffaroni, E. R. (2009). Estructura básica del Derecho penal. Ediar.
91. Zaffaroni, E. R., Slokar, A. & Alagia, A. (2006). Manual de Derecho penal, parte General. Ediar.
92. Zagrebelsky, G. (2011). El derecho dúctil. Ley, derechos, Justicia. Editorial Trotta.