

## CRIMINAL LAW, PRESENT AND FUTURE PERSPECTIVES: A DOCUMENTARY REVIEW FOR IBERO-AMERICA

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### **Abstract**

*A documentary review was carried out on the production and publication of research papers related to the study of the variable Criminal Law, its present and future prospects. The purpose of the bibliometric analysis proposed in this document is to know the main characteristics of the volume of publications registered in Scopus database during the period between 2016 and 2021, achieving the identification of 1032 publications in total. The information provided by said platform was organized by means of tables and figures categorizing the information by Year of Publication, Country of Origin, Area of Knowledge and Type of Publication. Once these characteristics were described, the position of different authors regarding the proposed topic was referenced by means of a qualitative analysis. Among the main findings of this research, it is found that Spain is the country with the highest production, with 339 publications. The area of knowledge that made the greatest contribution to the construction of bibliographic material referring to the study of criminal law, its present and future perspectives was the area of Social Sciences with 814 published documents, and the type of publication that was most used during the period indicated above was the journal article, which represents 75% of the total scientific production.*

**key:** *Criminal Law, Ibero-America, Scopus*

### 1. INTRODUCTION

Throughout the ages, society has always been in dire need of a political and social order, which helps to regulate the different groups that make up the same, a system that allows the imposition of measures and sanctions, supported by the threat of criminal coercion, which determines the limits in the behaviors of the individual: this judicial system operated through legal rules, is known as Criminal Law (Maier, 1992). In the behavior of man, there are infinite possible behaviors, but only some are considered “Crimes”, in accordance with the provisions of each of the legal systems, corresponding to each social group and the nature of their laws (Penal & Caldeira).

The commission of such conducts generates in the different societies, what can be called “Conflicts” and with these the need to create an order is born through the solution of the same that, from the material point of view, tends the reestablishment of the affected right, caused by the conflicting action and ultimately the corresponding sanction to the author. With the birth of the State, the burden of conflict resolution no longer falls on the subjects that were part of the



facts that originated the crime, as it was handled in the beginning, but is transferred to the social administration regime. In this case, the State, through centralized political powers in order to impart measures of social control and characterized by the exclusion of the particular will, in pursuit of criminal prosecution. The America lacked any organization to regulate the conduct of the population, in any case, because they were undiscovered lands without contact with other civilizations that allowed them to broaden their spectrums, in terms of forms of organization. Colonization marked the beginning of the political and social schemes today in Latin America, so these systems are the continuation of Continental Europe (Maier J. , 1994).

Indeed, the historical analysis of criminal law in Ibero-America involves an in-depth study of previous systems and their impact on the implementation of current schemes, taking into account the challenges of today and the feasibility of the need for reform, where the causes of the current problems are identified, the recognition of a failed system is achieved, and the search for a comprehensive improvement of the criminal system is sought. Therefore, it is important to know through bibliographic resources the measures adopted in criminal law, its present and future perspectives, through a bibliometric analysis of the scientific production registered in the Scopus database during the period 20-202116 that allows to answer the question: How has been the production and publication of research papers related to the study of the variable criminal law, its present and future perspectives during the period of time between the year 2016 and 2021?

### 2. GENERAL OBJECTIVE

To analyze from a bibliometric and bibliographic perspective, the production of high impact research papers on the variable Criminal Law, present and future prospects, during the period from 2016 to 2021.

### 3. METHODOLOGY

Quantitative analysis of the information provided by Scopus is performed under a bibliometric approach on the scientific production regarding Criminal Law, present and future perspective. Also, from a qualitative perspective, examples of some research papers published in the area of study mentioned above are analyzed from a bibliographic approach to describe the position of different authors on the proposed topic.

The search is performed through the tool provided by Scopus and the parameters referenced in Table 1 are established.

#### 3.1 Methodological design

	PHASE	DESCRIPTION	CLASSIFICATION
PHASE 1	DATA COLLECTION	Data was collected using the Scopus web page search tool, through which a total of 1,032 publications were identified.	Published documents whose variables of study are related to Criminal Law, present and future perspectives. Research papers published during the 2016-2021 period. Limited to Latin American and Ibero-American countries. Without distinction of area of knowledge. Without distinction of type of publication.
PHASE 2	CONSTRUCTION	The information	

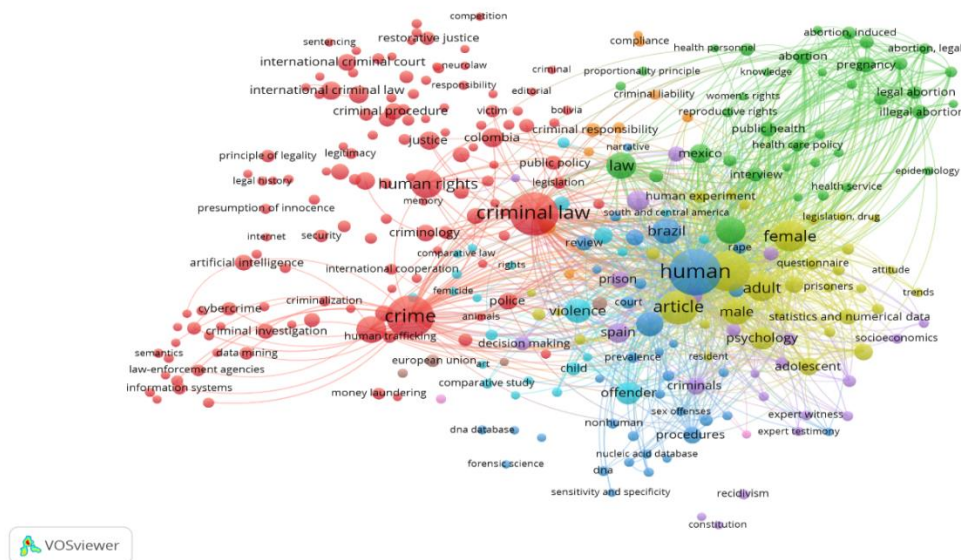
	OF ANALYSIS MATERIAL	identified in the previous phase is organized. The classification will be made by means of graphs, figures and tables based on data provided by Scopus.	Word Co-occurrence. Year of publication Country of origin of the publication. Area of knowledge. Type of publication
PHASE 3	DRAFTING OF CONCLUSIONS AND FINAL DOCUMENT	After the analysis carried out in the previous phase, the study proceeds to the drafting of the conclusions and the preparation of the final document.	

**Table 1.** Methodological design.  
**Source:** Own elaboration (2022)

#### 4. RESULTS

##### 4.1 Co-occurrence of words

Figure 1 shows the co-occurrence of keywords within the publications identified in the Scopus database.



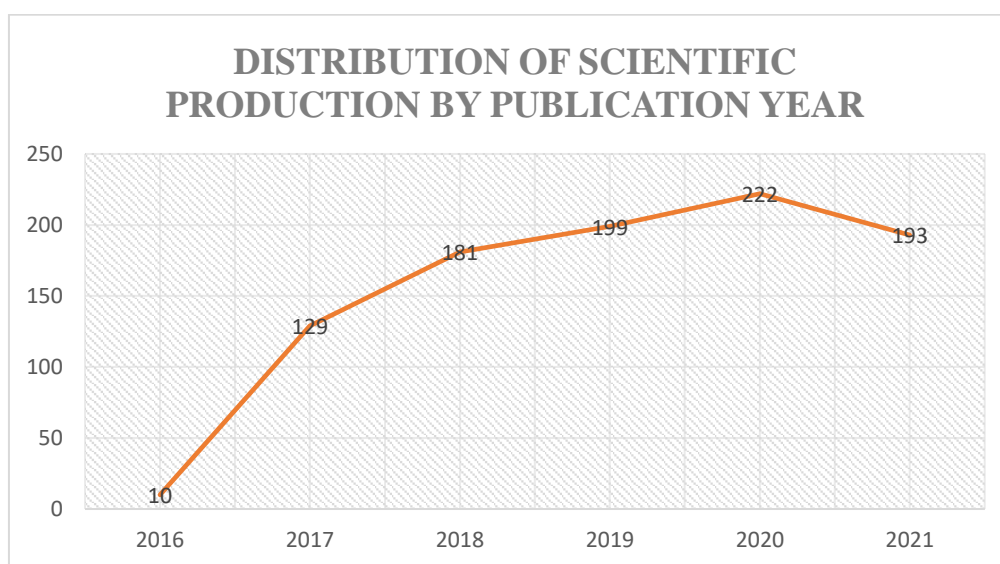
**Figure 1.** Word Co-occurrence  
**Source:** Own elaboration (2022); based on data provided by Scopus.

In Figure 1, as can be seen, words such as: Criminal Law, Law, Human Rights and Humanity are strongly evidenced: Criminal Law, Law, Human Rights and Humanity, since the regulation and determination in the force of criminal law are of a purely human nature, the exercise of the imposition of measures and penalties involves a matter of guarantees and rights that are not alien

to international human rights and constitutional treaties. This is the reason why in the figure and throughout the development of this study, the use of these words will be strongly present in the realization of this investigative work. On the other hand, the words such as Public Policies, Criminal Responsibility and Decision Making are also evidenced, since, as it was exposed in an introductory way, Criminal Law, has been changing in the last years. Criminal Law has been changing and has been in progressive evolution, according to the behaviors and customs of each social group, so it is inevitable to infer that each society, in order to establish parameters of behavior, has been in the imminent need to determine levels of power, depending on the particular case, likewise, we observe words such as Justice, Presumption of Innocence and Victims, aspects that become very relevant at the time of the analysis, since they comprise the penal system that is being executed in the territory known as Ibero-America and which is the object of study of this research and of which we intend to establish the pros and cons of the same.

#### 4.2 Distribution of scientific production by year of publication.

Figure 2 shows how the scientific production is distributed according to the year of publication, taking into account that the period from 2016 to 2021 is taken.



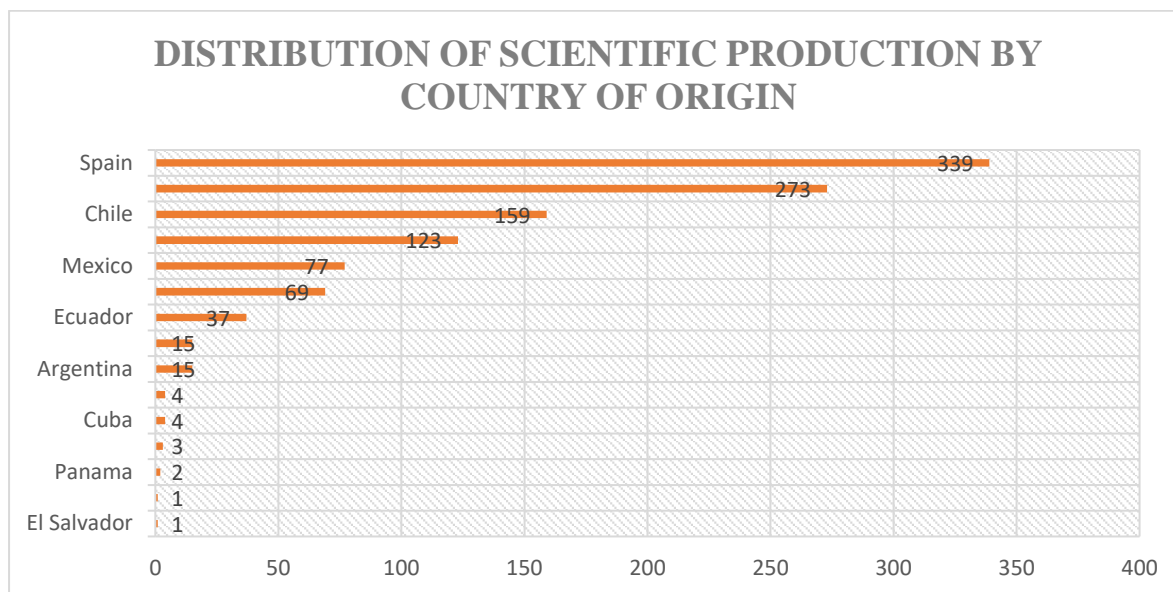
**Figure 2.** Distribution of scientific production by year of publication.  
**Source:** Own elaboration (2022); based on data provided by Scopus.

Figure 2, shows the growth in scientific production registered in the Scopus database, in relation to the variable Criminal Law, present and future perspectives, from the period between 2016 and 2021, where the period of 2020, has the highest production with a total of 222 publications, within which the article entitled “Towards the creation of an international criminal law of the environment” stands out (Garcia, 2020), a study that reflects the shortcomings of a criminal system that does not cover behavioral actions that threaten a legal asset as important as the environment, a conclusion derived from a thorough analysis of International Criminal Law and International Humanitarian Law and the shortcomings that threaten the environment and that would lead to the possible future construction of a statute of international crimes against the environment, within the framework of the Rome Statute and the International Criminal Court. On the other hand, it is equally important the one entitled “Critical-legal analysis of the penalties: Function and assumptions” (Arrias et al., 2021), through which a complete interpretation of the function of punishment is achieved, the result of an investigation under a qualitative approach of analytical cut and the use of a legal hermeneutics, which allowed to reach the conclusion that the penalty is nothing more than the legal consequence imposed on the perpetrator of the commission of what is called crime against a legal property entitled, in order to impart a condemnatory and exemplary sanction, to fulfill the resocializing function of criminal law and the preventive component that it also carries. The analysis of this production is nothing more than the construction of a critical-legal analysis, to determine the scope of criminal law in Latin American and Ibero-American countries.



### 4.3 Distribution of scientific production by country of origin.

Figure 3 shows the distribution of scientific production according to the nationality of the authors.



**Figure 3.** Distribution of scientific production by country of origin.  
**Source:** Own elaboration (2022); based on data provided by Scopus.

Spain is the country with the highest scientific production registered in Scopus Database, with a total of 339 publications, as evidenced in Figure 3, followed by countries such as Brazil, Chile and Colombia, with a total of 273,159 and 123 publications, so it is worth highlighting the article entitled “*Cybercrimes as a legal phenomenon: A procedural approach*”(Ruiz, 2021). This study gave room to the interpretation of the criminal law in the new behaviors of society in front of cyberspace, its massive use and the new forms that have been found for the commission of criminal actions. These crimes escape from the way in which criminal law had been performing procedurally, a fact that generates new challenges, for the treatment and prosecution of due processes on these and also the establishment of guarantees that should be kept from the particular to the general.

It is pertinent to establish a radiology of the current society, the phenomena that occur, their incidence, effects and consequences, with the clear objective of framing an efficient criminal law that does not blur the international treaties, human rights, but at the same time limits the behaviors that attempt against the legal system, society and the dignity of the individual. The state has the complex task of drawing a sketch that leaves no room for impunity, corruption and acts of bad faith that tarnish the processes in society, whether from the political, economic and social life. Likewise, Figure 3 shows countries such as Mexico, Portugal and Ecuador with important production that address the variable under study with a total of 77, 69 and 37 publications, respectively.

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

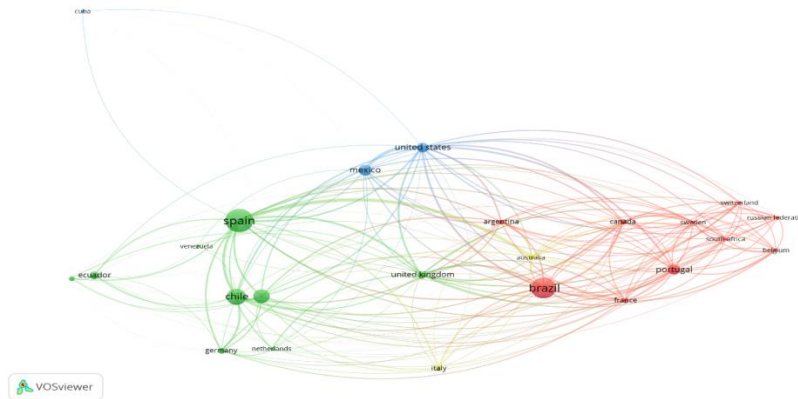


Figure 4. Co-citations between countries.

Source: Own elaboration (2022); based on data provided by Scopus.

The figure shows Spain as the Ibero-American country, as the country with the highest scientific production regarding the variable Criminal Law, present and future perspectives, with authors affiliated to countries such as Chile, Mexico and the United Kingdom, from the Mexican country stand out articles of great relevance, within which it is necessary to mention the one entitled “*International Criminal Law or International Criminal Law: an idle discussion, in the light of the principles established in the Rome Statute*” (Elizarrarás, 2021). This study is framed in the *a priori* discussion on the differentiation that is presented in the world of academia on International Criminal Law and International Criminal Law, due to the processes of internationalization of criminal law and criminalization and that through the analysis of reflections, facing the principles of the Rome Statute of 1998, it is determined the narrow gap that in the light of the practice would be almost impossible. It is necessary the substantial revision of the Internationalization of criminal law in the XXI Century, taking into account of course the phenomenon of Globalization that allows in every instance the achievement of actions that arise in contravention of the principles, statutes and regulations of each State. The countries that make up Ibero-America have clear precedents of corruption that permeate the criminal systems and somehow contaminate the processes of transparency, justice and objectivity, so it corresponds a retrospective look, in order to meet the challenges of an internationalization of law.

#### 4.4 Distribution of scientific production by area of knowledge

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

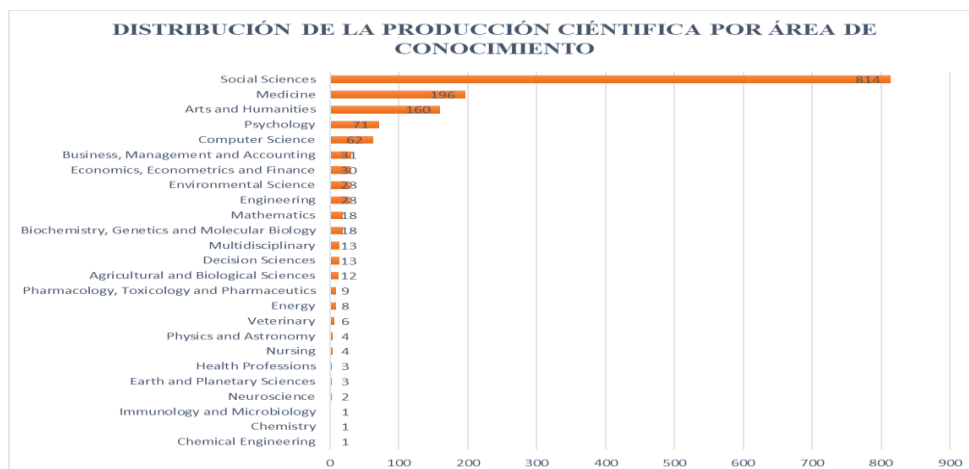


Figure 5. Distribution of scientific production by area of knowledge.

Source: Own elaboration (2022); based on data provided by Scopus.



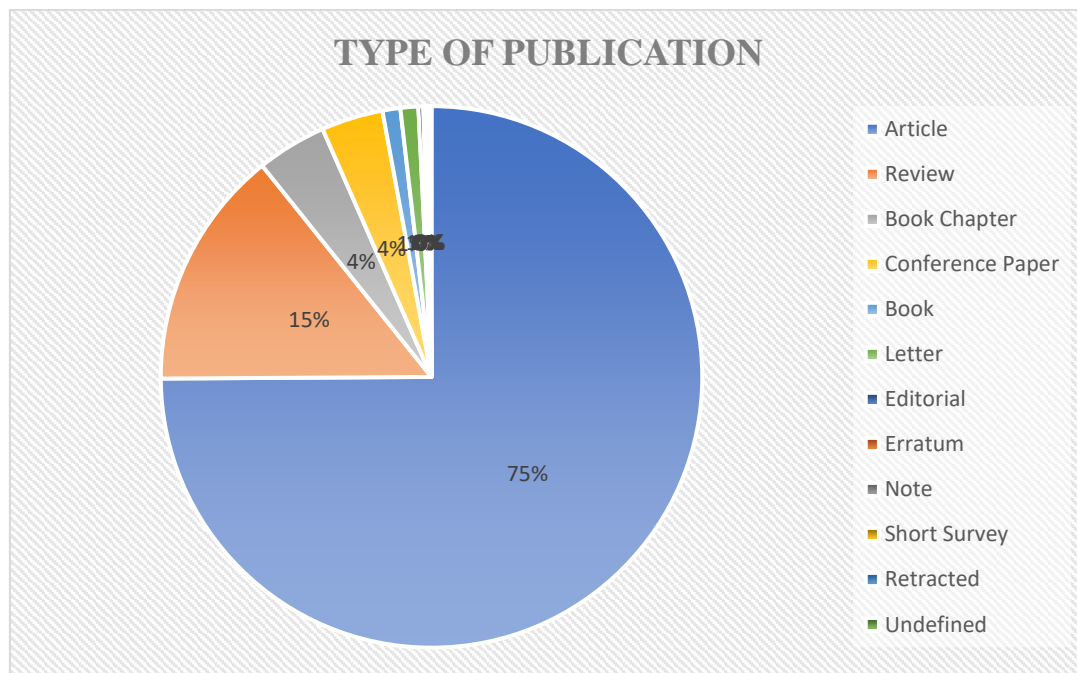


As can be seen in the figure, different areas of knowledge have been of great contribution in the research on the variable Criminal Law: present and future perspectives, which makes evident the relevance of the study on this topic of legal nature, which is why the area of Social Sciences has the largest number of contributions, with a total of 814 documents registered in the Scopus database, as well as the area of Medicine with 196 records in the same database and Arts and Humanities, Considering the data provided and the great importance of these contributions. It is important to highlight, from the area of social sciences, the article of 2021 entitled “*Dynamics of criminal acts during the pandemic covid-19 in the municipality of Santiago de Cuba*” (Alarcón et al., 2021). This study had the purpose of diagnosing the behavior of criminal offenses in the territory that is configured as Santiago de Cuba, limited by the phenomenon of the sanitary emergency called COVID-19. This diagnosis was carried out through the use of trend analysis methods, the exploratory-descriptive research design, which led to establish the dynamics used for punishability measures, during the pandemic period. This article provides a glimpse of the objective of this research work, since the discovery of a large-scale phenomenon, such as the declaration of Pandemic, had effects on the penal and punitive exercise, taking into account that human behaviors and the way people were developing in society, were really impacted in all areas of it.

Likewise, areas of knowledge such as Psychology, Computer Science and Mathematics are of vital importance for the interpretation in the different perspectives of the study of the variable Criminal Law, present and future perspectives.

#### 4.5 Type of publication

Figure 6 shows how the bibliographic production is distributed according to the type of publication chosen by the authors.



**Figure 6.** Type of publication  
 Source: Own elaboration (2022); based on data provided by Scopus.

Figure 6 shows that the Journal Article is the type of publication with the highest number of records in the Scopus Database, represented by 75% with a total of 773 documents. The reviews have an important participation with a total of 148 documents, representing 15% of the total, used in the Data Collection of phase I of the Methodological Design of this research and within which we can highlight the review called “*Pathways for the responsibility of multinationals for serious violations of human rights*(from Morales Romero, 2020), which focused its research on the study of the incidence of large multinationals with a worldwide presence and the impact they generate on

themselves and third parties in relation to human rights, its analysis also focuses on the ways used for the prosecution of such actions that violate good faith, the determination of the capacity of the different penal systems, the efficiency in the face of the phenomena that occur in a globalized world and the relevance of organizations of great importance such as the United Nations and the guiding principles that they regulate. This study established that many countries of the European Union have binding systems that provide mechanisms for the resolution of such conflicts, however, countries belonging to Latin America, must implement actions to meet more complex and much more effective systems against the commission of human rights crimes committed by these corporations.

## 5. CONCLUSIONS


Through the bibliometric analysis carried out in this research work, it could be established that Spain is the country with the largest number of published records regarding the variable Criminal Law, present and future perspectives, with a total of 339 publications in the Scopus database, a ranking followed by Latin American countries such as Brazil, Chile and Colombia. Similarly, within the period under study from 2016 to 2021, it is found that the production obtained a definite growth of importance from 10 records in 2016 to 193 publications in 2021, however, the highest production is concentrated in the year 2020 with a total of 222 publications. This increase allows inferring the acquired relevance of the study of criminal law in the countries that make up Ibero-America, the importance of establishing a judicial system of a criminal nature according to the needs and at the forefront of current phenomena and above all with the ability to face challenges of events of great impact such as the health emergency called "COVID-19".

The penal systems that are part of the Latin American population, not only have a backwardness from the legislative point of view, but above all culturally, the society is affected by imminent poverty and marginalized from every point of view. There are still no actions that lead to the resocialization of the law; these problems are ignored by the bulk of Latin America and most of all excluded from the political point of view, who ultimately have the duty to enter a modern, inclusive, guarantor and globalized penal system. The updating of this system is not only necessary but imperative, in order to obtain practical results in line with the principles of the State. It is not a matter of introducing a new criminal policy, but of setting its course for the future. It is of utmost importance that the bibliographic production analyzed in this research work be of general knowledge for the actors of this society and taken into account for future research.

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