

CONTENTS

Part I	Courts, Constitutionalism and the Inter-American System	1
1	Brazilian ‘Supremocracy’ and the Inter-American Court of Human Rights: Unpicking an Unclear Relationship	3
	<i>Tom Gerald Daly</i>	
1	<i>From Dictatorship to ‘Supremocracy’ in 30 Years</i>	5
2	<i>State Policy and the Inter-American Court</i>	7
	<i>Brazil and the Inter-American System before Acceptance of the Inter-American Court’s Jurisdiction</i>	7
	<i>Brazil and the Inter-American Court</i>	8
	<i>General Signs of Greater Openness to International Human Rights Norms</i>	10
	<i>A Qualified Openness</i>	10
3	<i>The Supreme Federal Court and the Inter-American Court</i>	11
	<i>The Recent Nature of the Relationship</i>	11
	<i>The Constitutional Status Accorded to Inter-American Norms and Jurisprudence</i>	11
	<i>Rare References to Inter-American Court Jurisprudence</i>	12
	<i>Divergence from Settled Inter-American Court Case Law</i>	13
4	<i>Conclusion: Key Questions Raised by this Inter-Court Relationship</i>	15
	<i>Notes</i>	16

2	Transnational Legal Process and Fundamental Rights in Latin America: How Does the Inter-American Human Rights System Reshape Domestic Constitutional Rights?	21
	<i>Marcelo Torelly</i>	
1	<i>The Movement of International Law Towards Judicialisation</i>	22
2	<i>Latin American Cases of Transnational Legal Process</i>	24
	<i>Transnational Legal Process at the Inter-American Commission</i>	24
	<i>Transnational Legal Process in the Inter-American Court</i>	26
3	<i>Does Constitutional Architecture Matter?</i>	29
4	<i>Transversal Human Rights Governance and New Constitutional Actors</i>	32
5	<i>Conclusions</i>	34
	<i>Notes</i>	34
3	Complying (Partially) with the Compulsory Judgments of the Inter-American Court of Human Rights	39
	<i>Damián González-Salzberg</i>	
1	<i>The Method Used for Measuring Compliance</i>	40
2	<i>Measuring Compliance with 330 Measures</i>	42
	<i>Paying Compensation</i>	42
	<i>Acknowledging Human Rights Violations</i>	47
	<i>Prosecuting Human Rights Violators</i>	47
	<i>Adapting Domestic Legislation</i>	48
3	<i>Possible Paths for Improving Compliance</i>	48
4	<i>Conclusion</i>	50
	<i>Notes</i>	51
4	Media Representations of the Inter-American System of Human Rights	57
	<i>Diego Gil, Rolando Garcia, and Lawrence M. Friedman</i>	
1	<i>Background</i>	59
	<i>Brief Description of the Inter-American System</i>	59
	<i>Media Coverage as a Proxy for Legal Culture</i>	61
2	<i>Method</i>	62
3	<i>Findings and Discussion</i>	63
4	<i>Conclusion</i>	69
	<i>Notes</i>	71

Part II	Institutional Development: Policy Implementation and Change	75
5	The Evolving Relationship Between Law and Development: Proposing New Tools	77
	<i>Helena Alviar</i>	
1	<i>The Purely Instrumentalist Approach: Law in the Margins</i>	79
2	<i>Instrumentalist Law-Centred Approach</i>	83
	<i>The 1960s Wave</i>	83
	<i>The 1990s Wave</i>	84
3	<i>The Elements of the Dynamic Approach</i>	86
4	<i>Final Thoughts</i>	89
	<i>Notes</i>	89
6	Transnational Legal Indicators: The Missing Link in a New Era of Law and Development	95
	<i>David Restrepo Amariles</i>	
1	<i>Transnational Legal Indicators and the Law and Development Moments</i>	96
	<i>The First Moment of Law and Development: USAID and SLADE</i>	97
	<i>The Second Moment: The World Bank and the CPIA</i>	98
2	<i>Law and Performance Measures: A New Era in Law and Development Policy</i>	99
	<i>A New Development Rhetoric: Governance and the Rule of Law</i>	100
	<i>The Third Moment: World Governance Indicators</i>	101
3	<i>Evidence-Based Policy: The Way Ahead?</i>	102
	<i>Legal Indicators and Legal Reform in Business Law</i>	103
	<i>Evidence-Based Reform and the Mathematical Turn in Development Policy</i>	104
	<i>Evidence-Based Law and Development Policies</i>	104
	<i>Indicators and the Mathematical Proceduralisation of Law</i>	106
4	<i>Concluding Remarks</i>	108
	<i>Notes</i>	108

7	Institutional Bypasses in Brazil: Overcoming Ex-Ante Resistance to Institutional Reforms	113
	<i>Mariana Mota Prado</i>	
1	<i>What Is an Institutional Bypass?</i>	114
2	<i>Institutional Bypasses in Brazil</i>	115
3	<i>Overcoming Ex-Ante Resistance to Reforms</i>	116
	<i>Self-Interested Resistance</i>	117
	<i>Overcoming Cognitive Resistance</i>	119
4	<i>Conclusion</i>	123
	<i>Notes</i>	125
 Part III Institutional Challenges: Integrating Markets and Regulation		 129
8	Convergence, Coordination and Collusion in Securities Regulation: The Latin American Integrated Market	131
	<i>Jose Miguel Mendoza</i>	
1	<i>Convergence, Coordination and Collusion</i>	133
	<i>Regulatory Convergence</i>	134
	<i>Regional Coordination of Enforcement Policies</i>	136
	<i>Collusive Delegation and the Political Economy</i>	
	<i>Benefits of MILA</i>	138
2	<i>Conclusion</i>	142
	<i>Notes</i>	142
9	Using Judicial Actions to Address Corporate Human Rights Abuses: Colombia, 2000–2014	149
	<i>Laura Bernal-Bermudez</i>	
1	<i>Global Regulatory Framework</i>	150
2	<i>Factors Influencing Judicial Outcomes</i>	152
	<i>Political Opportunities</i>	152
	<i>Global Pressure</i>	152
	<i>Profile of the Firm</i>	153
	<i>The Role of Civil Society</i>	153
	<i>Type of Abuse</i>	153
3	<i>Colombia's Conflict and Political Economy</i>	154

4	<i>Preliminary Findings</i>	156
5	<i>Conclusions</i>	162
	<i>Notes</i>	163
10	Multiple Strategies of Financial Regulation Adopted in the Colombian Securities Market: The Case of Over-the-Counter Derivatives	167
	<i>Ligia Catherine Arias Barrera</i>	
1	<i>Brief Description of the Colombian OTCDM</i>	168
2	<i>Strategies of Regulation Adopted in the Colombian Securities Market</i>	169
	<i>Risk-Based Regulation: The Colombian Approach</i>	169
	<i>Risk-Based Regulation in the Institutional Context</i>	171
3	<i>What Hinders the Growth of OTCDMs in Colombia?</i>	175
4	<i>Final Remarks</i>	177
	<i>Notes</i>	178
11	A Counterhistory of Anti-Trust in Latin America	185
	<i>Andrés Palacios Lleras</i>	
1	<i>The Development of Anti-Trust Law in Latin America: The Dominant Narrative</i>	186
2	<i>Continuity and Discontinuity in Latin American Anti-Trust</i>	189
	<i>The Enduring Allure of Legal Reform</i>	189
	<i>Discontinuity in Economic Doctrines</i>	193
3	<i>Conclusions</i>	196
	<i>Notes</i>	197
Part IV	Constitutional Engine Room: Between Individual Autonomy and Collective Self-Government	203
12	Latin American Constitutionalism, 1810–2010: The Problem of the ‘Engine Room’ of the Constitution	205
	<i>Roberto Gargarella</i>	
1	<i>1810–1850: Constitutionalism in the Independence Years</i>	206
2	<i>1850–1917: The Founding Period of Latin American Constitutionalism</i>	208

3	<i>1917–1950: The Advent of Social Constitutionalism</i>	209
4	<i>1950–2010: Constitutionalism and Human Rights</i>	211
5	<i>The ‘Engine Room’ of the Constitution</i>	213
6	<i>Conclusion</i>	215
	<i>Notes</i>	216
13	Addressing Poverty through a Transformative Approach to Anti-Discrimination Law in Latin America	221
	<i>Alberto Coddou McManus</i>	
1	<i>A Transformative Approach to Anti-Discrimination Law: Socioeconomic Lens</i>	222
	<i>Purposes and Boundaries</i>	222
	<i>A Transformative Approach to ADL in Latin America</i>	224
	<i>Socioeconomic Lens</i>	227
2	<i>ADL and Poverty in Argentina</i>	229
3	<i>Conclusion</i>	233
	<i>Notes</i>	234
14	Gender Quotas, Legislative Resistance and Non-Legislative Reform	239
	<i>Malu A. C. Gatto</i>	
1	<i>Gender Quota Adoption and Strengthening</i>	241
2	<i>Measuring Gender Quota Strength</i>	242
3	<i>Results</i>	244
4	<i>Conclusion</i>	251
	<i>Notes</i>	253
15	Human Rights and Remains: A Policy Proposal to Prevent Human Rights Violations in Brazil	257
	<i>Pedro Fortes</i>	
1	<i>Allegations of Torture in Contemporary Brazil</i>	258
2	<i>Structural Elements within the Criminal Justice System</i>	262
3	<i>A Policy Proposal to Prevent Human Rights Violations in Brazil</i>	265
4	<i>Final Remarks</i>	267
	<i>Notes</i>	270

Part V	<i>Mundus Novus: Emerging Technologies and Rights</i>	273
16	<i>Mundus Novus: The Construction of a Free Flow of Information from the Navigators of Yesterday to the Internauts of Today</i>	275
	<i>Joaquim Falcão</i>	
1	<i>The Road of Autograph Letters in the Fifteenth Century</i>	277
2	<i>Mundus Novus and the Misattribution of Authorship</i>	279
3	<i>The Free Flow of Cooperative Information</i>	282
4	<i>On the Current Legal Obstacles to the Free Flow of Information</i>	284
5	<i>The Multiple Nature of Ambition</i>	287
	<i>Notes</i>	289
17	<i>Digital Culture, Copyright and the Orphan Works Issue: A View from Brazil</i>	293
	<i>Paula Westenberger</i>	
1	<i>Digitisation, Orphan Works and Cultural Institutions: From Human Rights to International Copyright Law</i>	295
2	<i>Existing Solutions for the Orphan Works Issue Internationally</i>	297
3	<i>Brazil's Copyright System and Constitutional Rights</i>	298
4	<i>Projects of Reform of Brazil's Copyright Law</i>	300
	<i>Preservation</i>	300
	<i>Accessibility</i>	301
	<i>Specific Provisions for Orphan Works</i>	302
	<i>Problems Not Addressed by the Projects of Reform</i>	302
5	<i>Conclusion</i>	303
	<i>Notes</i>	303
18	<i>The Incorporation of a Right to Health Perspective into Brazil's Patent Law Reform Process</i>	311
	<i>Emmanuel Kolawole Oke</i>	
1	<i>The Tension between Patent Rights and the Right to Health</i>	312
	<i>The Right to Health and Access to Medicines</i>	312

	<i>The Tension Between Patent Rights and the Right to Health in Brazil</i>	313
2	<i>The Relationship Between Patent Rights and the Right to Health</i>	315
3	<i>Brazil's Patent Law Reform Process and the Right to Health</i>	316
	<i>Eliminating Patents on New Uses or New Forms of Known Drugs</i>	318
	<i>Raising the Standard for Determining an Inventive Step</i>	319
	<i>Clear Rejection of Data Exclusivity</i>	319
	<i>Clarifying ANVISA's Role in the Examination of Patent Applications for Pharmaceutical Products and Processes</i>	321
4	<i>Conclusion</i>	323
	<i>Notes</i>	323
19	Constitutional Environmental Protection in Brazil: A Rights-Based Approach	327
	<i>Julia Mattei and Larissa Verri Boratti</i>	
1	<i>From Inside: The Fundamental Rights Approach to Environmental Protection in Brazil</i>	329
	<i>Scope and Structure</i>	330
	<i>Implementation</i>	333
2	<i>Looking Backwards: Environmental Protection in the Context of Latin American Constitutionalism</i>	335
3	<i>Looking Elsewhere: Other Approaches to Environmental Protection</i>	337
4	<i>Conclusion</i>	338
	<i>Notes</i>	339
	Index	347