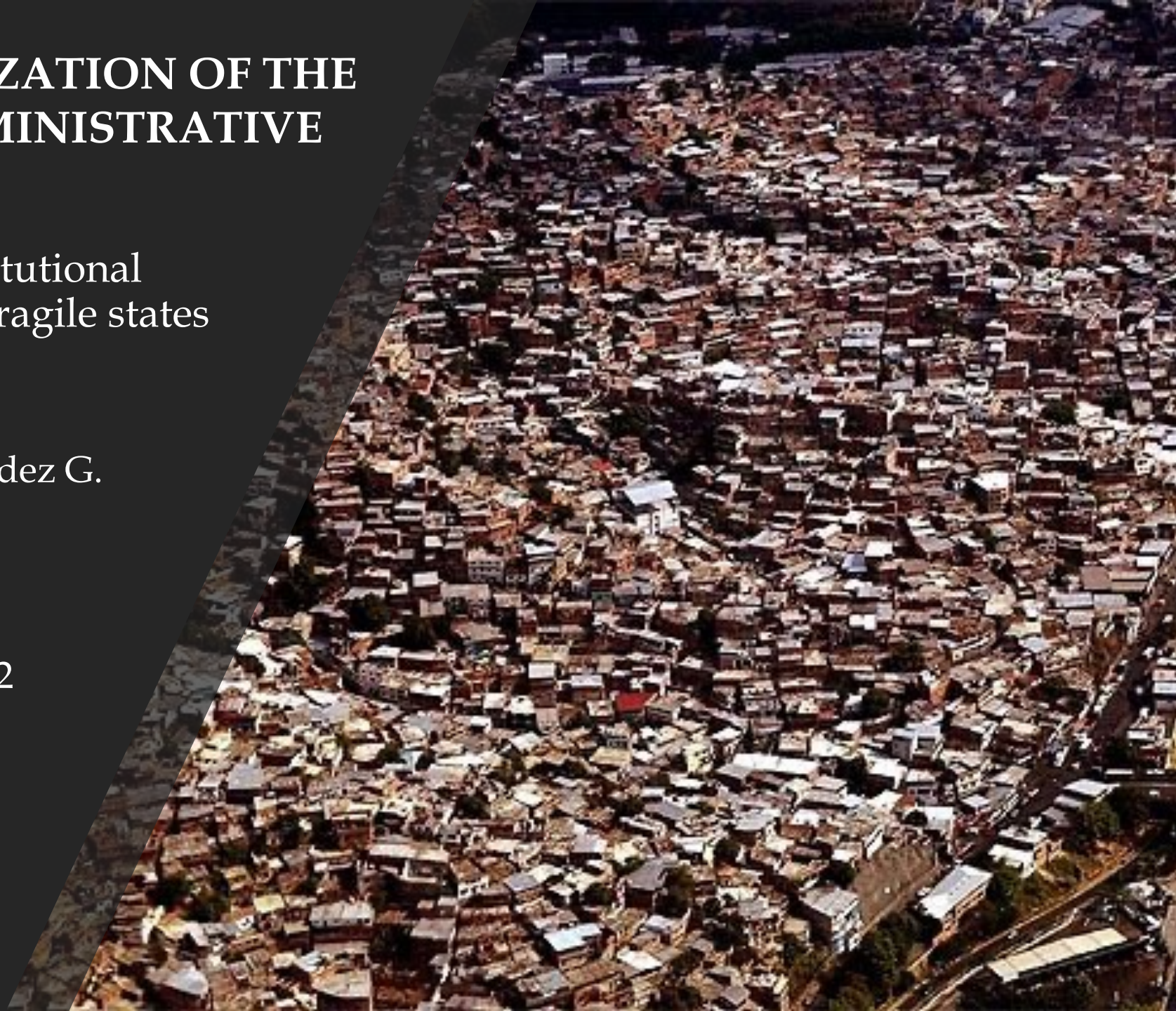


# THE CONSTITUCIONALIZATION OF THE LATIN AMERICAN ADMINISTRATIVE LAW

An ambitious Constitutional  
Administrative Law in fragile states

José Ignacio Hernández G.

September 2022





## La pandemia de la COVID-19 y el Derecho Administrativo en América Latina

Un estudio sobre la fragilidad de las Administraciones Públicas

José Ignacio Hernández G.



# The Latin America of the constitutionalization of the Administrative Law

The Latin American Administrative Law can be understood as the concretization of the transformative Constitutional Law.



The *miscegenation* of the Latin American Administrative Law.

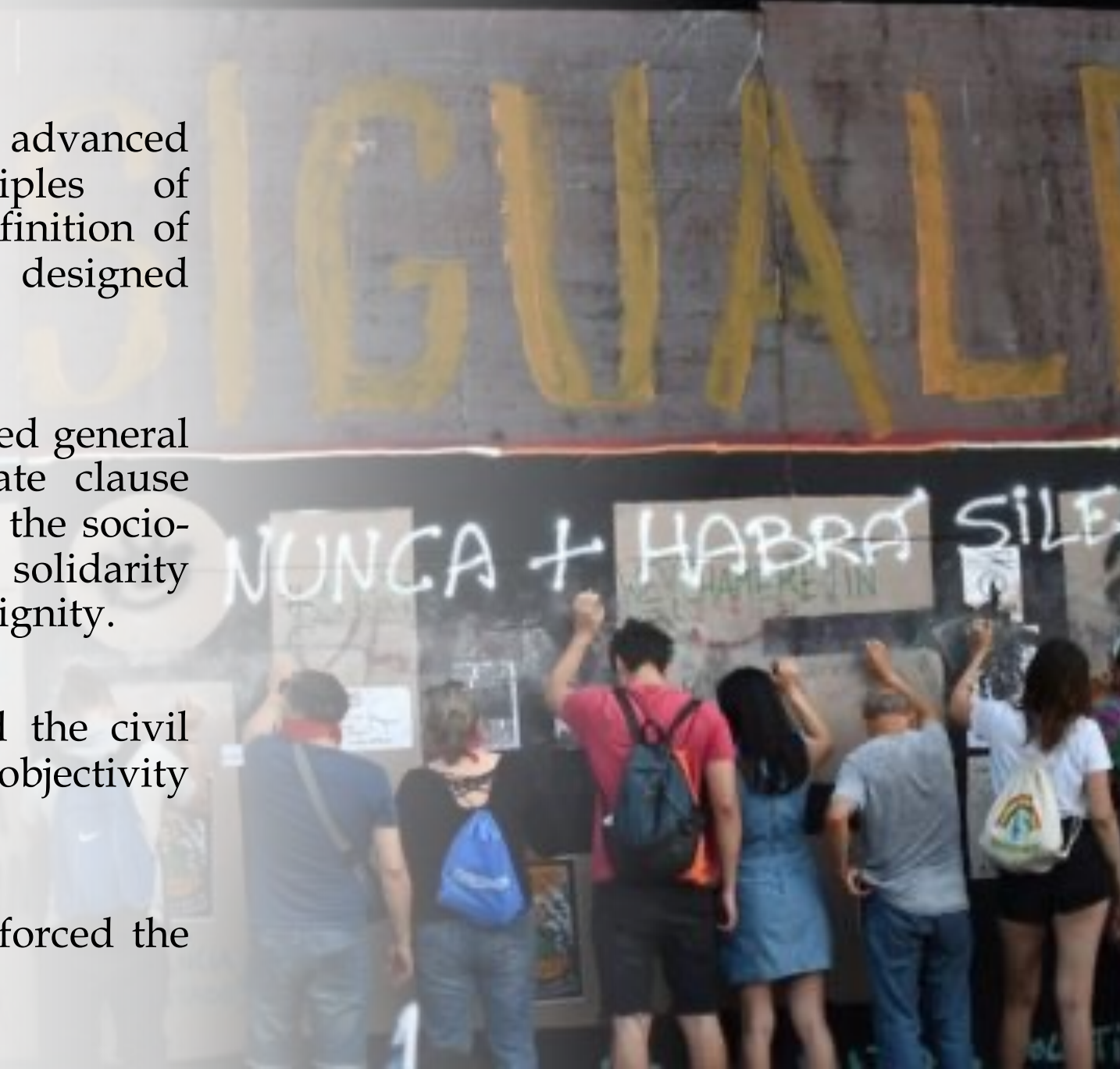


The influence of the Inter-American Human Rights System and the Inter-American Administrative Law.

# The constitutional foundations of the Administrative Law: recent trends

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- Since the 1990s, Constitutional Law has advanced to embed the general principles of Administrative Law, including the definition of Public Administrations as institutions designed to serve the persons effectively.
- The 1991 Colombia Constitution adopted general principles based on the Welfare State clause (cláusula Estado Social) that promotes the socio-economic transformation based on the solidarity principle and the centrality of human dignity.
- The 1993 Peru Constitution protected the civil servant's statute according to the objectivity principle.
- The 1993 Guatemala Constitution reinforced the judicial review principles.



# The constitutional foundations of the Administrative Law: recent trends

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- The 1998 Brazil Constitution recognized the Public Administration's core principles, such as legality, objectivity, and morality, with several provisions regarding civil service.
- The Constitutions adopted in Venezuela (1999), Ecuador (2008), and Bolivia (2009) adopted the fiduciary concept of Public Administration based on the persons' centrality. The influence of Spain.
- The 2010 Republic Dominican Constitution summarized general principles that designed Public administrations oriented at the persons' service.
- The 2022 draft Constitution in Chile defined the Public Administration as an institution that satisfies the person's needs based on general principles, such as legality, celerity, objectivity, and participation.



# The good administration standards

## ESTUDIOS SOBRE LA BUENA ADMINISTRACIÓN EN IBEROAMÉRICA

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Nº 4

## Constitutionalism and a Right to Effective Government?

Edited by Vicki C. Jackson  
and Yasmin Dawood

CAMBRIDGE

- The constitutional foundations of good administration:
  - A qualitative approach to Administrative Law.
  - The centrality of human dignity and the common good.
  - The enhancement of civil participation avenues.
  - Administrative Law is not only a constraint but an enabler of executive action.
- As the Inter-American Human Right Court has concluded, the common good favors “*the organization of social life in such a way as to strengthen the functioning of democratic institutions*”.  
(Advisory Opinion OC-5/85 dated November 13, 1985, paragraph 66).

## The Achilles' heel



- Despite the ambitious mandates in the Latin American Constitutional and Administrative Law, the region is considered the most unequal in the world.
- Sebastián Mazzuca explains, *“Latin America succeeded at state formation but failed at state building because the former was incompatible with the later (...) Latin American states were born with built-in propensity to become large-scale patronage machines.”*
- The failed Administrative Law: beyond institutions, it is necessary to build state and civil societies' capabilities.
- Public-private coordination and new technologies: advancing in resilient Public Administrations.