

# The common good in the Public (Inter) American Law

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# Summary

➤ What is the (Inter) American Public Law?

➤ The *jus commune* and Spanish America.

➤ The *jus commune* and the U.S. constitutional foundations.

➤ The common good clause in Spanish American constitutionalism.

➤ The *jus commune* and the Inter-American Public Law.

➤ The divergence between Public Law in the U.S. and Spanish America.

➤ Four practical consequences of the common good in the (Inter) American Public Law.

➤ Conclusions.



# What is American Public Law?

- From the Pan-American to the Inter-American.
- Inter-American Law and the shared principles of Public Law in the Americas.
- Constitutional supremacy in Inter-American Law.
- Inter-American Public Law and the common good: its differences with the general interest.





# The *jus commune* and Spanish America



- The *jus commune* and the Law of Castile: the legacy of Alfonso X.
- The *jus commune* and the human dignity centrality in the Indigenous Law.
- The Aristotelian-Thomistic foundations of human dignity in the Natural Law.

# The *jus commune* and the U.S. constitutional foundations

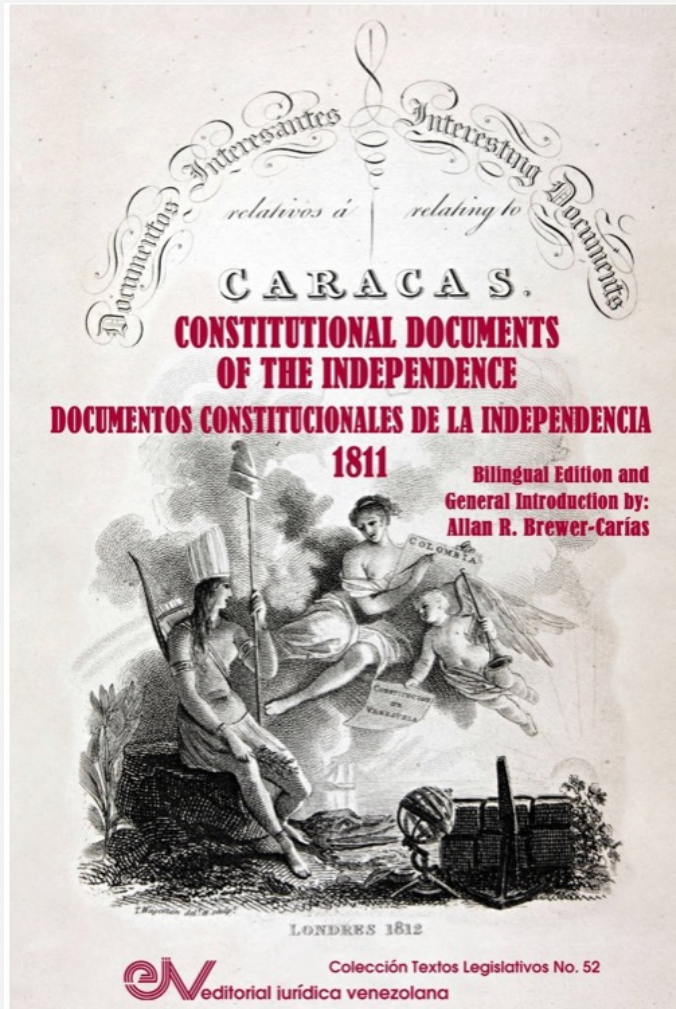
- The influence of *jus commune* on the Ancient British Constitution.
- The *jus commune* and the *jus naturale* foundations of the Declaration of Independence: the John Locke legacy.
- The common good clause in the Massachusetts Constitution of 1780.
- The ninth amendment and the flexible interpretation of the Constitution.

Common Good

Constitutionalism



# The common good clause in the Spanish American constitutionalism



- The dissemination of the American Independence ideas in the Spanish Colonies.
- The common good clause in the Constitution of Venezuela of 1811 and its diffusion in the first constitutionalism.
- The U.S. constitutional model: the representative Government based on human dignity centrality.
- Law No. 21533/2023 of Chile: *“Chile is a social and democratic State of law, whose purpose is to promote the common good”*.

# The *jus commune* and the Inter-American Public Law

## ➤ The American Declaration:

- ✓ Rights inherent to the persons and social duties.
- ✓ Human dignity and the political community.
- ✓ The just demands of the common good.





# The *jus commune* and the Inter-American Public Law

## ➤ The OAS Charter:

- ✓ Integral development as a Government task.
- ✓ The positive transformative mandates of the Government.
- ✓ Human dignity and development.





# The divergence of Public Law in the United States and Spanish America

## ➤ Spanish America

- ✓ Rules, principles, and values.
- ✓ Conventional supremacy.
- ✓ Social and economic rights.

## ➤ United States

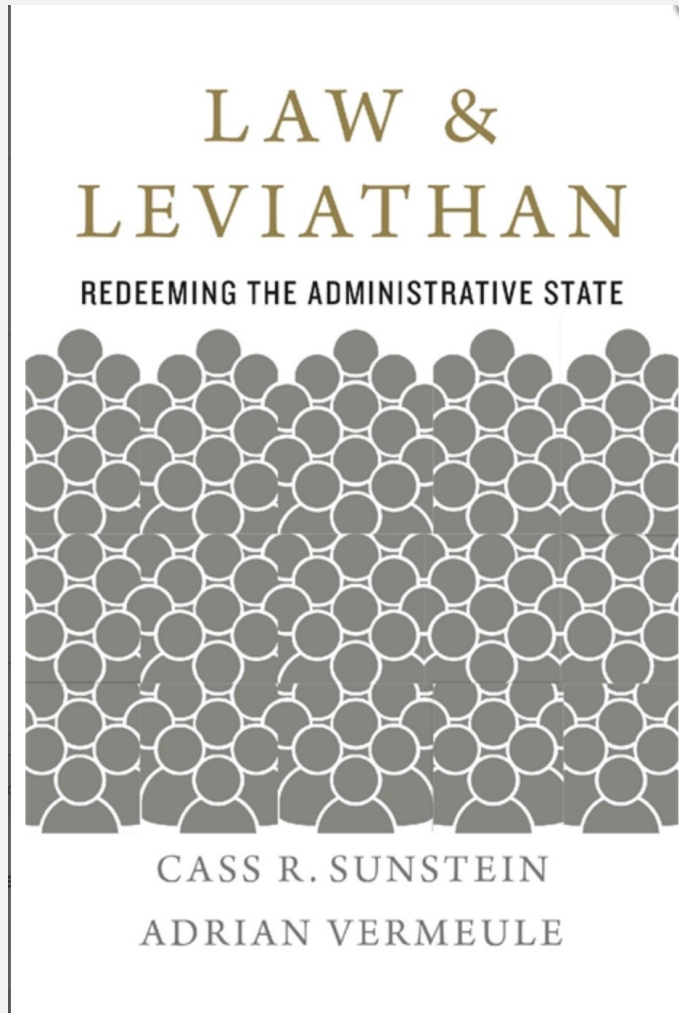
- ✓ The legacy of originalism.
- ✓ State-centered law.
- ✓ The fragile foundations of the Administrative State.

ADMINISTRATIVE  
LAW, SELECTED FROM  
DECISIONS OF ENGLISH  
AND AMERICAN COURTS

FREUND, ERNST, 1864-1932



# Four practical consequences of the common good



- The human dignity centrality and the exclusion of two extreme social orders.
- The general principles of Public Law and its foundations in the *jus naturale*.
- Public Law not only prevents the abuse of power: but it also obliges the Government to act.
- Administrative Law and the effective service of the persons.



- The *jus commune* is the basis of shared legal principles in the (Inter) American Public Law.
- The Public (Inter)American Law is based on a system of rules, principles, and values rooted in human dignity centrality.
- The foundations of (Inter)American Public Law are based on the common good value.
- Public law in the United States and Latin America has taken divergent paths with shared roots.