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Wrongful Convictions and Prosecutions in Latin America A Systematic Literature Review (2010-2023)

Mauricio Duce  and Víctor Beltrán 

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Article abstract

Drawing on a systematic literature review, this paper examines the scholarly discourse surrounding wrongful convictions and prosecutions in Latin America, spanning from 2010 to July 2023, across the WoS, Scopus, and SciELO databases, identifying a set of 50 publications. From a quantitative perspective, the paper inquires into aspects such as publication year, countries covered, characteristics of the scientific community involved, and the topics addressed. Then, the paper briefly delves into a qualitative analysis of the publications' content, distinguishing among those that address general aspects, factors contributing to wrongful convictions and prosecutions, correction mechanisms, and compensation mechanisms for wrongful convictions and prosecutions. Although with limitations, the findings provide an overview of research in this area in Latin America, showing that, although scholarship is still scarce compared with other latitudes, the topic has begun to attract interest in recent years in the region.

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Wrongful Convictions and Prosecutions in Latin America: A Systematic Literature Review (2010-2023)

Mauricio Duce¹ & Víctor Beltrán²

Drawing on a systematic literature review, this paper examines the scholarly discourse surrounding wrongful convictions and prosecutions in Latin America, spanning from 2010 to July 2023, across the WoS, Scopus, and SciELO databases, identifying a set of 50 publications. From a quantitative perspective, the paper inquires into aspects, such as publication year, countries covered, characteristics of the scientific community involved, and the topics addressed. Then, the paper briefly delves into a qualitative analysis of the publications' content, distinguishing among those that address general aspects, factors contributing to wrongful convictions and prosecutions, correction mechanisms, and compensation mechanisms for wrongful convictions and prosecutions. Although with limitations, the findings provide an overview of research in this area in Latin America, showing that, although scholarship is still scarce compared with other latitudes, the topic has begun to attract interest in recent years in the region.

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¹ Lawyer from Diego Portales University in Chile. J.S.M., Stanford University. Professor at the School of Government, Pontificia Universidad Católica de Chile. E-mail: mauricio.duce@uc.cl ORCID: <https://orcid.org/0000-0002-5068-926X>

² Lawyer from Diego Portales University in Chile. LL.M., University of Wisconsin-Madison. Ph.D. (c) in Law and Adjunct Researcher of the Procedural Reform and Litigation Program at Diego Portales University, School of Law. E-mail: victor.beltran@mail.udp.cl ORCID: <https://orcid.org/00000003-3554-1838>.

I Introduction

The study of errors within the criminal justice system has a long history. Literature from the late 19th and early 20th centuries has addressed this concern in Europe and the United States.³ However, it has only been since the 1990s that this subject evolved into a significant interest in academic research, explored from various perspectives and disciplines.

Recent research has delved into publications up to 2021 in the Scopus database using the term "wrongful conviction," identifying 693 studies on the subject. While most of these studies originated from the United States (398), publications were also identified in countries from other continents, such as the United Kingdom (74), Australia (46), and China (25) (Le et al., 2023). Research has also noted the existence of 36 papers published in English in Asian countries between 2010 and 2021. Beyond this database, a quick review of internationally available literature reveals recent national reports on the issue of wrongful convictions in 14 countries across four continents.⁴ This exemplary account shows that a robust body of evidence has been forming internationally in this field.⁵

In this scenario of growing academic concern from various perspectives and disciplines, questions that naturally arise are: Has something similar occurred in research produced in Latin America as seen at the international level? What is being investigated and published about Latin American criminal justice errors? To address these questions, we conducted a systematic review to identify publications concerning the 19 countries comprising Latin America⁶ in three databases: Web of Science (WoS), Scopus, and SciELO between 2010-2023 (July). Our article aims to present the results of applying this method to questions about available research in the region on errors in criminal justice from different perspectives and disciplines.

We provide a conceptual clarification. Errors in criminal justice encompass a diverse range of problems, ranging from cases where an innocent person is convicted (false positives) to cases where a guilty person is acquitted (false negatives), including a wide range of intermediate situations. For this work, we focus on identifying research on two types of errors: wrongful convictions and wrongful criminal prosecutions. Wrongful convictions will be understood broadly, including cases that end with the conviction of a factually innocent person and those where convictions were obtained under conditions of injustice that seriously call into question the guilt of the convicted individual. Wrongful criminal prosecutions include cases of factually innocent individuals who have been subject to criminal prosecution (usually involving pre-trial detention) but are dismissed before trial or acquitted during the process due

³ For Italy, the classic text by Giuriati (1893) is a key reference. In the United States, often considered the pioneer in the field, scholars frequently cite Borchard's work (1932).

⁴ As an illustrative example, Robins' book (2023) compiles national reports on the issue of wrongful convictions. The book covers 14 countries and four continents: Germany, Argentina, Australia, Canada, Spain, the United States, France, England and Wales, Italy, Norway, New Zealand, the Netherlands, Sweden, and Taiwan.

⁵ The volume of references grows exponentially when examining specific topics, such as factors increasing the probability of systemic errors. For instance, the Wilson Center for Science and Justice's report (2022) on eyewitness identifications found 1,246 scientific publications up to 2020, with 265 published between 2014 and 2020.

⁶ These countries include Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, the Dominican Republic, Uruguay, and Venezuela.

to an error or malfunction in the system that could have been detected earlier if the various state agencies involved had acted more diligently.

Our research included publications analyzing the general aspects of both types of errors and those addressing factors that increase the likelihood of their occurrence and studies of existing mechanisms to correct and remedy them.

The paper consists of three chapters. The first provides details on the systematic review methodology and, specifically, its application to the research question of this work. The second presents the main quantitative results obtained, including identifying aspects such as the publication years of the identified texts, the nationality of their authors, the areas they cover, and the disciplines to which they belong, among others. The third chapter develops a brief qualitative analysis of the contents of the identified research to provide an overview of the topics and approaches used to address the issue in Latin America. We hope to contribute this way with information that will facilitate comparisons with the evidence available in other regions. Finally, we present some brief concluding remarks.

II Methodology: Systematic Literature Review

We conducted a systematic literature review (SLR). This method allows for making sense of large amounts of information by synthesizing available evidence on a particular topic by reviewing quantitative and qualitative aspects of primary studies (Pittway, 2008; Manterola et al., 2013). The method involves the development of a detailed and exhaustive work plan with a predefined search strategy, aiming to reduce biases by identifying, assessing, and synthesizing all relevant studies on a topic (Uman, 2011; Letelier et al., 2005).

Following the fundamental principles of SLRs to ensure detailed, transparent, reliable, and comprehensive communication of the process and findings (Page, 2021; Pittway, 2008), we describe the workflow below, detailing the review protocol and specifying the stages of the process we followed.

The research question was: What has been researched and published on wrongful convictions and prosecutions in Latin American countries?

To access relevant studies, we searched in three academic indexes: Web of Science (WoS), Scopus, and SciELO. We accessed such indexes through the remote access service provided by the University Diego Portales Library. These databases offer broad coverage of high-quality scientific publications in various disciplines, encompassing papers, books, and book chapters, thus enabling the inclusion of a significant range of research related to the topic. However, we acknowledge that this methodological decision might exclude articles addressing the topic but published in non-indexed journals, a situation more common in law than in other disciplines⁷. Nevertheless, we have restricted the databases to work with a manageable set of publications. Also, because this research represents a first effort to systematize the available

⁷ For instance, in Brazil and Chile, countries that significantly contribute to regional academic production on the subject, there are traditional journals in the field of criminal law that are not indexed in the selected databases and, therefore, fall outside the scope of this review. In the case of Brazil, the *Revista Brasileira de Ciências Criminais*; and in the case of Chile, the *Revista de Ciencias Penales*.

literature in the region. Consequently, we believe that, following this initial endeavour, new research could complement the findings by covering texts not included in this study.

We designed a search strategy to identify relevant studies by combining various English and Spanish keywords, progressing from general to specific terms to approach the problem comprehensively. The following terms were employed: “wrongful conviction,” “miscarriages of justice,” “error judicial,” “condena de inocentes,” and “condenas erróneas.” Specific searches for each country were then conducted using factors contributing to wrongful convictions and charges considered by specialized literature as part of the canonical or traditional list⁸. We also applied Boolean operators and truncations in all cases according to the specificities of each database.

Similarly, through “other sources,” we included studies ($n = 4$) known to us, published in journals indexed in the selected records, and that met inclusion criteria. However, they were not yielded as results in the searches for unknown reasons.

We established three initial inclusion criteria: publication date, language, and the country the publication refers to. Firstly, the review includes studies published from 2010 until July 2023. Secondly, the review encompasses articles written in Spanish, English, and Portuguese, the predominant languages of academic work in Latin America. Lastly, the review considers studies addressing the phenomenon concerning Latin America, regardless of whether they were published outside the region.

To focus the literature review on scientific works published under high scientific production and publication standards, so-called “gray” sources such as NGO reports, reports from governmental bodies, legislative reports, or others have been excluded⁹. While acknowledging that this decision may exclude some relevant documents, it allowed us to access a manageable universe for the proposed investigation.

The process began with identifying records from the selected indexes ($n = 777$). After each search, a file with the results was exported and manually entered into a Microsoft Excel spreadsheet, where a comparison and subsequent results cleansing occurred. We removed duplicate records ($n = 274$).

The screening process was conducted on the refined sample ($n = 503$), evaluating each identified record based on inclusion and exclusion criteria. This evaluation relied on reviewing the title, abstract, and general publication data.

Records that passed the initial screening ($n = 57$) were retrieved for an eligibility assessment based on a content analysis. From the total recovered documents, with a minor decrease ($n = 55$), a content analysis was conducted involving a full-text reading from which documents not truly addressing wrongful convictions or prosecutions were excluded ($n = 6$),

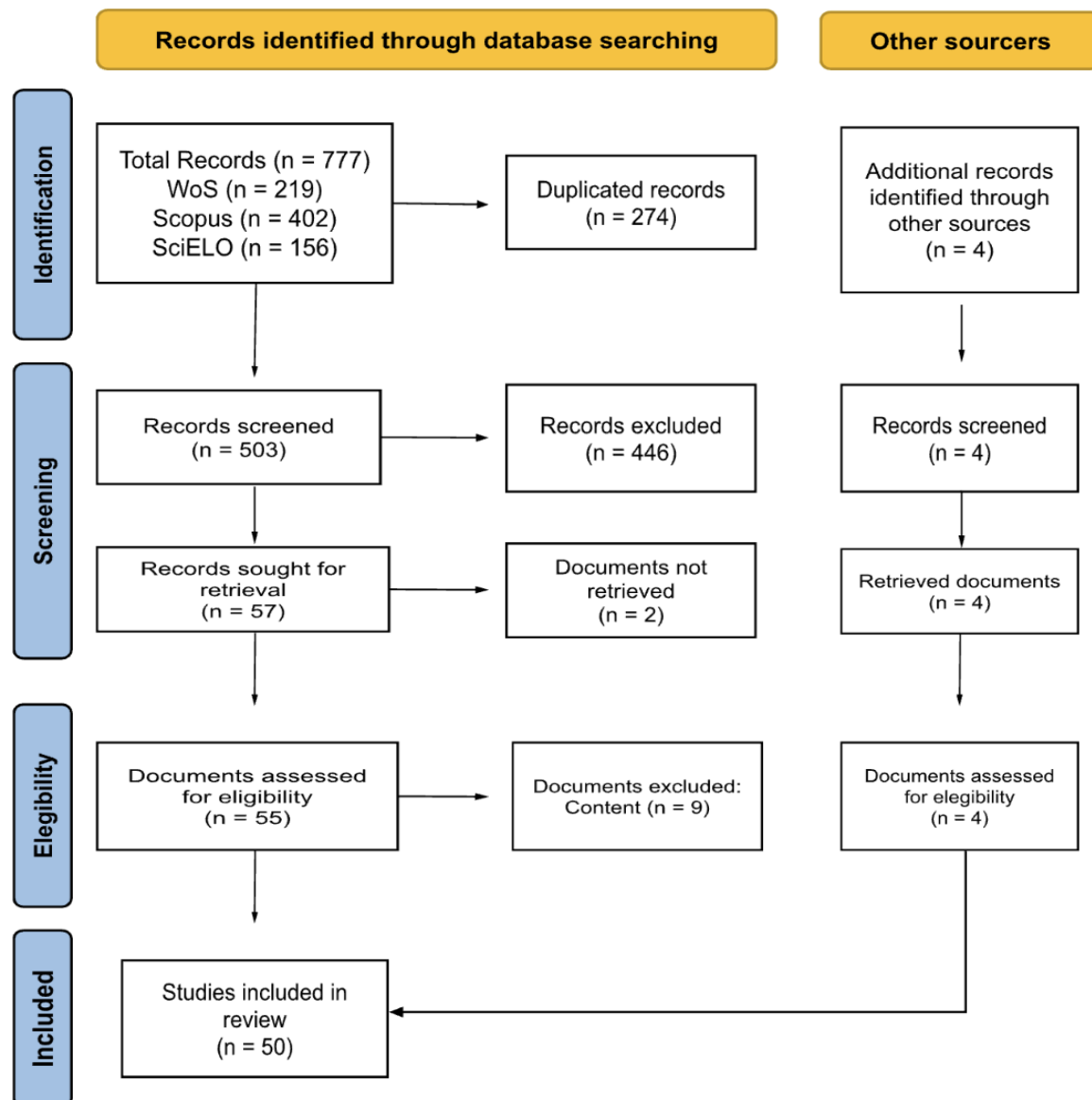
⁸ The review encompasses eyewitness identification, false confessions, unreliable expert evidence, unreliable testimonies, misconduct by state agents, and defective legal representation. Additionally, we have included tunnel vision. *See*: Duce & Findley (2022). For an overview of the research on the first five factors, *see* Garrett (2020).

⁹ This could be a limitation in our review, given that some authors have recommended incorporating grey literature into systematic reviews. *See*: Manterola et al. (2013).

as well as documents that despite addressing the phenomenon, did not refer to the selected countries (n = 3).

Finally, we extracted general data from the studies obtained through other sources (n = 4) and obtained through indexes (n = 46), followed by content analyses presented in the following chapters. The following figure illustrates and summarizes the systematic review process.

Figure 1. Systematic Literature Review Process Flow



Source: Prepared by the authors based on PRISMA Diagram

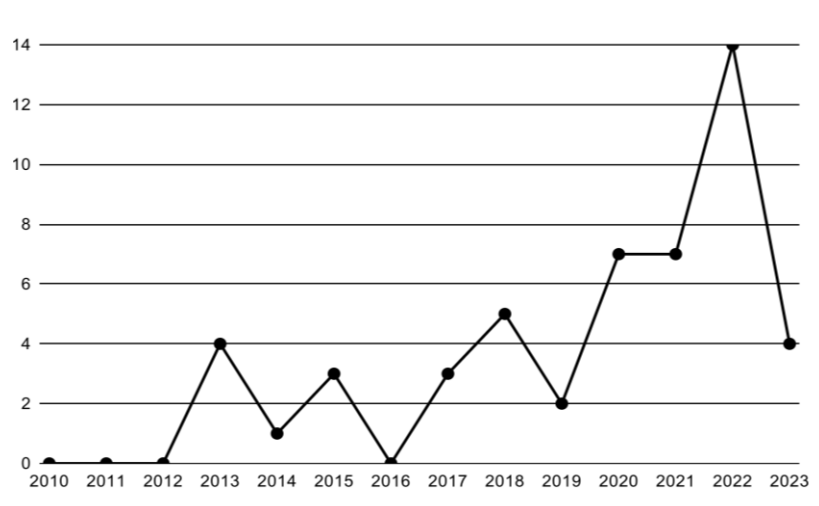
III Quantitative Findings

This chapter will highlight key quantitative findings from our systematic review, offering insights into basic trends in Latin American academic output on wrongful convictions and prosecutions.

A. Temporal and Geographic Distribution of Publications

Our analysis of publications from 2010 to 2023 reveals a concentrated surge, notably post-2020. Thus, 32 (64%) of the 50 publications identified emerged between 2020-2023, indicating a recent academic interest in Latin America. Surprisingly, we have yet to find publications for 2010-2012. Considering 2010-2016, there were only eight publications (16%). This underscores a lag in Latin American scholarly attention compared to the 1990s surge observed in comparative contexts. Figure 2 summarizes the results:

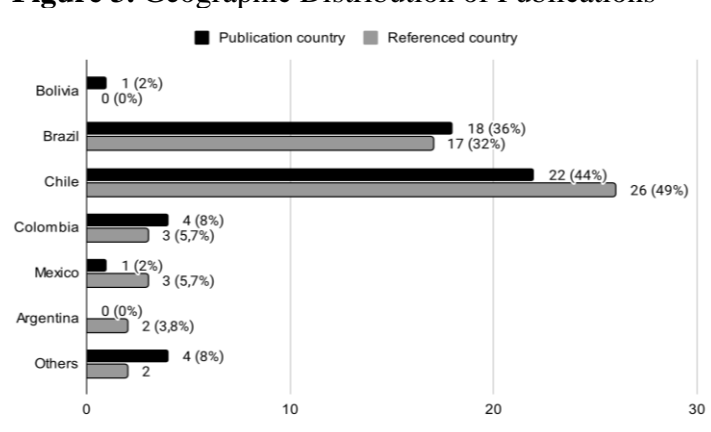
Figure 2. Temporal Distribution of Publications



Source: Prepared by the authors

We also explored publication locations and referenced countries. For the first aspect, we identified the nationality of the journal or published text, with a total of 50 items in this category. For the second aspect, in our content analysis, we determined the country or countries that were predominantly addressed in the publication. Thus, the overall scope expanded to 53, as some works analysed more than one country as a primary focus. It is essential to clarify that, for these purposes, we did not include texts that merely exemplified or referenced evidence or situations from other countries in the region. To be classified as a "referenced country," the publication needed to exhibit a predominant analytical orientation towards it. Figure 3 summarizes the results of both aspects.

Figure 3. Geographic Distribution of Publications



Source: Prepared by the authors

As seen, we found works in five regional countries and some outside (e.g., Spain and England). The concentration is intense in Chile and Brazil, making up 80% of publications, with Chile at 44% and Brazil at 36%. Colombia and others are considerably lower at 8% each.

The scenario slightly changes when examining the countries studied, expanding to 53. The count remains at five countries, but Argentina replaces Bolivia with two publications (3.8%). The concentration persists, with 43 (81.1%) works focused on Chile (49%) and Brazil (32%). Colombia and Mexico follow at a distance with three works each (5.7% each). “Others” include a Bolivian publication, primarily addressing international human rights law within the inter-American system. Another from Brazil provides a panoramic view of issues related to wrongful conviction, including examples from various countries within and outside the region.

The concentration in Chile and Brazil, both as publication and studied countries, may reflect more developed academic communities and publications indexed in the three studied indexes.¹⁰ These proportions might shift if the study incorporates non-indexed academic publications. Another factor could be the existence of prolific authors in both countries, explaining a significant portion of the publications related to them, as we will analyse in the next section.

B. Authorship insights

We aimed to understand the community engaging in research and publishing in this field in the region by extracting key authorship data. Of 50 documents, 28 (56%) had individual authors, and 22 (44%) had co-authors.

The total author count reached 84, accounting for some repetition across publications. Among these, 58 (69%) were male authors, and 26 (31%) were female authors. Adjusting for repeated authorship, the total count was reduced to 62. Within this, 40 (64.5%) were male authors, and 22 (35.5%) were female authors.

Considering both criteria, women contributed to nearly a third of the total. However, this presence significantly varied between individual and collaborative publications. In individual authorship works, women contributed to five, constituting 17.9%, while men rose to 23, making up 81.2%. Conversely, in collaborative publications, women contributed to 19 out of 22 works, accounting for 86.4%, with three works exclusively authored by men. Notably, no collaborative works were exclusively authored by female authors, resulting in 100% of these works featuring at least one male author.

As anticipated, within the set of 50 documents, five authors participated in more than one publication. The most prolific was Duce (Chile), with 13 (26%) publications, followed by

¹⁰ For instance, in the 2023 QS international ranking, Brazil and Chile lead the list with 26 and 16 institutions, respectively, among the top 100 universities in Latin America (Mexico has 14, Colombia 12, Argentina 11, Peru 4, and Costa Rica 3). *See*: topuniversities.com/university-rankings/latin-american-university-rankings/2023 (last accessed on September 1, 2023). Regarding publications, a 2011 study determined that regarding the percentage of SciELO journals in Latin America and the Caribbean, Brazil had 253 (35.2%), and Chile had 93 (12.9%). In Scopus journals, once again, Brazil led with 234 (44.7%), and Chile ranked third with 69 (13.2%), closely following Mexico in the second position with 70 publications (13.4%). *See*: Miguel, 2011, p. 192.

Cecconello and Stein (Brazil), with five (10%) and four (8%) publications, respectively. Beltrán (Chile) contributed to three (6%) publications, and Carbonell (Chile) to two (4%).

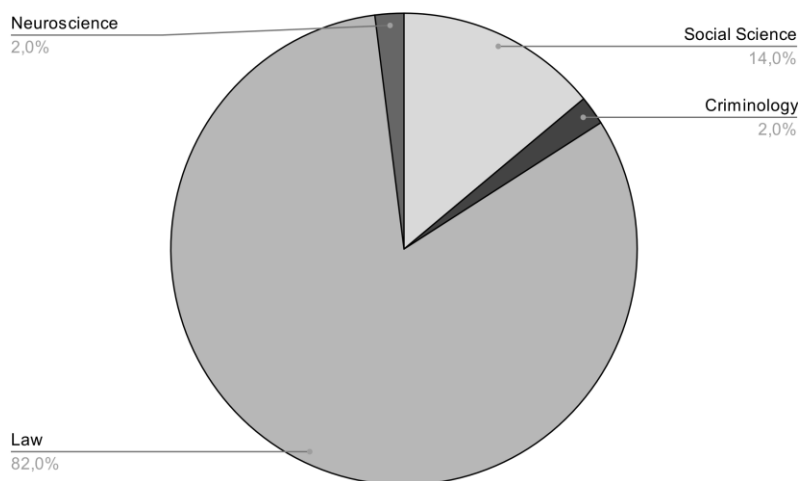
We also identified the authors' nationalities, spanning five regional countries and three from outside the region (Canada, the United States, and England), each representing 1.6% or a combined 4.8% of the total. Among regional countries, Brazil had the highest number of authorships at 43.5%, followed by Chile at 25.8%, Mexico at 14.5%, Argentina at 6.5%, and Colombia at 4.8%.

We noted significant dispersion across 29 reported institutions when examining institutional affiliations.¹¹ Most authors (87.1%) were affiliated with the region's universities, higher education institutions, or research institutes. Additionally, three authors were associated with non-regional universities (4.8%), two identified as independent researchers (3.2%), and three belonged to an organization focused on wrongful convictions (Argentina Innocence Project) (4.8%).

C. Disciplines and Research Topics

This section delves into the disciplinary affiliations and subjects covered by the 50 identified publications. Figure 4 provides an overview of the disciplines, revealing a concentrated presence in Law (82% of the total). Other Social Sciences account for 14%, including Psychology (6%), Police Sciences (4%), and Public Policy (4%). Criminology and Neuroscience each contribute 2%.

Figure 4. Publications by Discipline



Source: Prepared by the authors

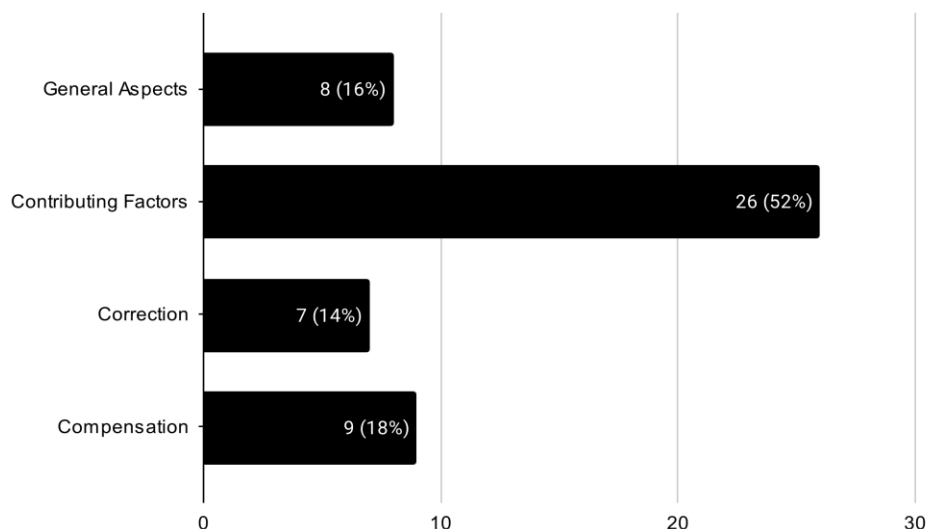
The intense focus on Law is partly due to topics closely linked to legal issues associated with regulating mechanisms for correcting and redressing wrongful convictions. However, many topics do not necessarily require legal analysis, suggesting the focus on Law reflects broader interests generated by the subject in Latin American disciplines beyond law.¹²

¹¹ We use "at least" because several authors report affiliation with more than one institution. For these purposes, we have considered only the first institution mentioned.

¹² When contrasting our findings with the study on Asia by Le et al. (2023, p. 7), a significantly more significant presence of publications in scientific disciplines such as medicine (14.9%) is evident on that

We further explored specific topics addressed predominantly in the research. Four categories were considered: "General Aspects," covering general issues related to wrongful convictions and prosecutions; "Contributing Factors," analyzing elements associated with increased error probabilities; "Correction," focusing on available mechanisms to rectify wrongful convictions; and "Compensation," examining mechanisms to compensate victims. Figure 5 summarizes this categorization.

Figure 5. Publications by Topic



Source: Prepared by the authors

52% of publications analyse factors associated with wrongful convictions and prosecutions, 18% address correction mechanisms, 16% fall under "General Aspects," and 14% focus on compensation mechanisms. Works categorized under correction and compensation could initially be associated more with the field of Law, representing 32% of the total, whereas publications in that area, as seen earlier, constitute 82%.

In summary, this chapter indicates a significant increase in publications, particularly in the later study years, with a concentrated presence in both the publication location and the country under study (Chile and Brazil). The data also reveal a higher presence of male authors, particularly in individually authored works. Prolific authors explain a significant percentage of the region's academic production. Most of the authors are affiliated with regional universities or research institutes. Finally, most publications are in Law, focusing on analyzing factors associated with wrongful convictions and prosecutions.

IV Qualitative Findings

The purpose of this chapter is to provide a comprehensive overview of the contents of the reviewed studies. To achieve this, we will delve into the four fundamental thematic areas that distinctly emerge in regional research.

continent. There is also a higher prevalence of studies in psychology (10.6%) and, notably, in social sciences (59.6%), without a specific identification of the field of law. For insights into the disciplinary diversity of studies on this subject in the United States. *See:* Garrett (2020, p. 246).

A. General aspects of wrongful convictions and prosecutions

These works constitute 16% of the total publications. The first group of them generally examines errors from the perspective of evidentiary law. One discusses a model of evidentiary law based on standards and another based on rules; in doing so, rules regulating the standard of proof in Argentina, Colombia, and Chile are reviewed (Larsen, 2020). Another proposes a theoretical model that would allow categorizing defective judicial decisions based on procedural rules related to the content of the judgment, reasoning, and avenues of challenge, including the revision appeal (Carbonell, 2020).

A second group of papers addresses general aspects of wrongful convictions, their quantification, and contributing factors. In the case of Chile, these are generally works that leverage empirical information and literature from comparative experiences (Castillo, 2013; Duce, 2013). Similarly, one publication discusses known error cases and identifies factors contributing to wrongful convictions in Argentina (Garrido et al., 2023). Lastly, taking a more global perspective, a publication highlights the challenges in quantifying cases of wrongful convictions, examines contributing factors, and discusses problematic aspects related to correction and redress mechanisms (Duce & Findley, 2022).

Another work emphasizes the importance of DNA technologies, highlighting their use in preventing and correcting wrongful convictions. It is also recognized as a valuable tool for identifying authentic perpetrators and conducting complex investigations into missing person cases (Trindade et al., 2022).

In line with the proliferation of the so-called Innocence Projects worldwide, one study outlines how to organize such a project in Brazil (Simões & de Araújo, 2021). Another describes the role of the Argentina Innocence Project (Garrido et al., 2023), while in Chile, there is commentary on the database maintained by the Innocents Project of the Public Defender's Office (Duce, 2013, pp. 244-246).

Finally, a study addresses the consequences and impact of the wrongful incarceration of an innocent individual (Escaff et al., 2013). This collection of works provides general insights into issues related to wrongful convictions, many of which touch upon aspects that have been subjects of debate in comparative contexts.

B. Contributing factors to wrongful convictions and prosecutions

Articles primarily focusing on studying and analyzing factors associated with an increased probability of wrongful convictions and prosecutions comprise 26 publications, representing 52% of the analysed universe. This area has the highest number of identified publications.

A notable aspect is the thematic distribution. While all works primarily address factors described in the available literature (Duce & Findley, 2022; Garrett, 2020), their distribution is uneven. The majority, 14 (54% of publications in this category and 28% of the total universe), are dedicated to analyzing various dimensions and issues related to eyewitness identifications. Following at a considerable distance are works that review aspects of the impact of expert evidence on error production within the system and others related to the use of confessions, both with four publications each (15.4% of this group and 8% of the total universe each). Additionally, three works focus on studying factors associated with the misconduct of state

agents making relevant decisions for criminal prosecution (11.5% of these works and 6% of the total universe). Finally, one work includes analyses of various factors mentioned above.

The section will be organized into five subheadings. The first four are dedicated to each of the traditional factors in which we classified the analysed publications. The last one is reserved for presenting other factors, such as those mentioned secondarily in the works and others that go beyond traditional categories, seemingly reflecting the peculiarities of the countries in the region.

a) Eyewitness identification

Mistaken eyewitness identifications often emerge in various record systems globally as one of the main factors favoring wrongful convictions and prosecutions¹³. As mentioned in the introduction, it is also one of the subjects that has generated a high level of scientific research in the last 30 years¹⁴.

Consistent with these developments, research on eyewitness identifications constitutes the topic with the most identified works in our study (14 or 28%). Three additional publications classified as related to general aspects (Castillo, 2013; Duce, 2013; Duce & Findley, 2022) and one categorized as related to general factors (Duce, 2015) should be added to them, as they, although not centrally, address eyewitness identifications in their development.

Content analysis reveals that this is an area with a fascinating disciplinary diversity. While most publications on eyewitness identifications are found in legal journals, this percentage is much lower than the overall result (57% vs. 82%). There is a greater diversity in the disciplines of the publications, especially from a broader and more varied analytical perspective than in other topics.

Noteworthy in this increased interdisciplinary approach are the works of Ceconello et al. (2018, 2022, and 2023), Ceconello & Stein (2020), and Ronzon-González et al. (2017). The first, published in a public policy journal, reviews scientific evidence regarding the risks posed to memory by the repeatability of activities such as eyewitness identifications and

¹³ According to the Innocence Project in the United States in early October 2023, over 60% of the cases of wrongful convictions they registered had an eyewitness identification that incriminated an innocent person, making it the primary factor in these cases (<https://innocenceproject.org/eyewitness-misidentification/>) (last visited on October 11, 2023). Around the same time, the National Registry of Exonerations in the United States identified this procedure as a factor in 27% of the cases (<https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>) (last visited on October 11, 2023). The Canadian Register of Wrongful Convictions also identified it in 29% of the cases (25 out of 86) (<https://www.wrongfulconvictions.ca/data>) (last visited on October 11, 2023). Systematic research on Asia shows that it is also a significant factor in many wrongful convictions on that continent (Le, 2023, p. 11). In the context of continental Europe, a study in Germany identified it as a factor in 45.8% of wrongful conviction cases between 1990 and 2016 (Leuschner et al., 2020, p. 698). Finally, research on near misses in the United States shows that this procedure was similar to the sample of wrongful conviction cases they used for comparison, constituting 75% of the cases in the sample (Gould et al., 2014).

¹⁴ The Wilson Center for Science and Justice (2022) identified 1,246 scientific publications up to 2020. In a previous work, Epstein (2014) mentioned that over 2,000 peer-reviewed articles would be published on eyewitness memory and its performance in the 30 years leading up to 2014.

provides policy recommendations to mitigate these risks (Cecconello et al., 2018). The second, published in a psychology journal, reports the results of an experiment measuring the impact of lineup filler similarity on suspect identifications. It concludes that the similarity of fillers to the suspect does not significantly impact the probability of suspect identifications, whether guilty or not (Cecconello et al., 2022). The third, published in a journal of police science, evaluates the impact of a training program for Brazilian police officers aimed at improving the development and execution of eyewitness identification procedures, finding a positive impact in various areas, such as lineup construction and instructions provided (Cecconello et al., 2023).

Furthermore, the work of Cecconello and Stein (2020), published in a psychology journal, reviews evidence from eyewitness testimony studies to recommend how to conduct eyewitness identification procedures. Lastly, the work of Ronzon-González et al. (2017), from the field of neuroscience, reports the results of a study observing the behavior of neural circuits in individuals evaluating their memory and confidence response when viewing photographs, all through the use of brain scans (fMRI), providing information on the biological foundations of eyewitness identification processes.

In an intermediate zone between a scientific and legal perspective, Cani & Alcántara (2022) preferentially analyse critically the impact that the introduction of facial recognition algorithms would have as a technique to overcome problems detected in eyewitness identification procedures, concluding that they also present significant risks of false positives. At this same intersection, it seems that the work of Navas, published in a public policy journal, is located. The study reviews and analyses scientific evidence highlighting the fallibility of human memory, emphasizing the problem of false memories. It then uses this information to analyse legal design issues related to using testimonial evidence and eyewitness identifications in the criminal process in Brazil (Navas, 2018). A last work in this group, published in a legal journal, reviews available evidence in experimental and cognitive psychology to argue in favour of using photographic identifications to ensure the execution of proper and fair procedures, challenging legal regulations and the predominant conception among system actors in Brazil that consider such procedures less reliable (Matida & Cecconello, 2021).

Another group of four works, all published in legal journals, are characterized by using, with varying levels of importance and depth, some empirical methodology aimed at describing or understanding reality, usually accompanied by a review of legal texts and more traditional legal analysis. A fundamentally empirical work sought to identify practices in Chile associated with the conduct of eyewitness identification procedures and their use in criminal justice. The research concludes with recommendations to overcome identified problems, including aspects of public policy, training, and legal reform (Duce, 2017).

The other three works analysed in this group come from Brazil and include an empirical component in the form of a review of relevant cases, allowing them to describe how eyewitness identification procedures unfold in practice. One of them reviews the jurisprudence of the Superior Court of Justice over ten years (2012-2022) regarding habeas corpus and revision appeals to identify whether stereotypes and epistemic injustices are reproduced in the practice of eyewitness identifications in Brazil, affirmatively concluding to such a question (Leite & Bahia, 2023). Another work investigates eyewitness identification practices based on images collected from surveillance cameras. Empirical findings reveal a need for uniformity in procedures and a judicial assessment of them as if the images captured in the videos were faithful representations of reality (Guedes et al., 2022). Finally, the work with the minor empirical component and, consequently, more analysis and text review examines the impact of

eyewitness identification procedures in the United States and Brazil in reinforcing the criminal justice system's selectivity and labelling approach phenomena (Magalhaes, 2020).

Additionally, a work categorized as dealing with factors causing errors could be added to this group. The work examines four cases of wrongful convictions in Chile, identifying that eyewitness identifications played a crucial role in two. Some lessons about the poor quality of procedures conducted in Chile are identified (Duce, 2015).

The last group in this section consists of two works addressing eyewitness identification problems with an approach based on more traditional legal analysis. The first argues the possibility of excluding eyewitness identification evidence from trial when these procedures are conducted without meeting basic standards to ensure their reliability (Alcaíno, 2014). The second analyses recent developments in the jurisprudence of the Superior Court of Justice of Brazil regarding issues associated with police investigative work, including the administration of eyewitness identification procedures. This jurisprudence is said to have changed the paradigm for conducting such procedures, raising the previously existing standards (Schietti, 2022).

From this brief overview, research on eyewitness identifications exhibits a trend similar to that identified in comparative experiences: a concern reflected in a significant number of publications, a diversity of disciplinary approaches to the problem, and a fairly critical view of how these procedures are conducted in the countries under study and how they are subsequently used and evaluated by criminal justice systems.

b) Use of expert evidence

Four works address the impact of expert testimony on wrongful convictions and prosecutions, complemented by references provided by publications related to general aspects. This factor is also identified as one of the most relevant in comparative evidence but has less presence in the literature of Latin America¹⁵.

Drawing from the debate on the use of expert evidence and its relationship with the production of wrongful convictions in the United States, one work reflects on the current situation in Brazil, highlighting some reforms aimed at reducing errors in the production of expert reports. These reforms include the implementation of quality management systems, standardization of procedures for each type of expert examination, improvements in the chain of custody, and the imposition of strict rules of administrative, civil, and criminal responsibility for professionals responsible to produce expert examinations, among others (Simões & de Araújo, 2021).

In Colombia, a study discusses the difficulties in assessing expert testimony, particularly psychological expertise. In response to the "probative assessment crisis of expert

¹⁵ For instance, the *National Registry of Exonerations* identified this evidence as a factor present in 24% of cases as of October 2023, online:

(<https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>)

(last visited on October 11, 2023). Systematic research on Asia also reveals it to be a significant factor in wrongful convictions in countries such as China and Taiwan (Le, 2023, pp. 11-12). Research in Germany found it to be present in 35.7% of wrongful conviction cases between 1990 and 2016 (Leuschner et al., 2020, p. 700).

evidence," the work proposes the applicability of the Daubert criteria developed by the U.S. Supreme Court and expressly incorporated in Article 422 of the Criminal Procedural Code of Colombia. These criteria are proposed as elements to discuss the admissibility of expert testimony and as guidelines for probative assessment (Calderón & Cueto, 2022). Similarly, in Brazil, there has been a discussion about whether the Daubert criteria are recognized in legislation and their potential use as guidelines for probative assessment (Simões & de Araújo, 2021).

In Chile, various difficulties related to the use of expert evidence have been identified. This exploration stems from studying paradigmatic error cases and evidence accumulated in comparative experience (Duce 2013; Duce 2018a). Subsequently, an empirical study was conducted to delve into the use and practice of expert evidence (Duce, 2018a; Duce, 2018b). Findings highlight the routine use of expert evidence with questionable reliability, the need for more specialization of experts in some areas, problems in the preparation and delay in the production of expert reports, and the lack of certification of laboratories, among other issues. Virtually no control over the admissibility of this type of evidence is also noted. During the trial, findings reveal problems in presenting this type of evidence, difficulties in its confrontation, and limited control over the information provided by the experts. Finally, professional judges encounter challenges when assessing this evidence (Duce, 2018b).

In Argentina, problems have been reported in the legal regulation of expert evidence. On one hand, there is extensive freedom for litigants to offer and use any evidence as expert testimony. On the other hand, no regulation or guidelines address what can be considered expert testimony. This, along with the lack of technical and scientific knowledge by judges and juries, increases the risk that expert testimony may be overvalued or overestimated by the decision-making body (Garrido et al., 2023).

As observed, the presented landscape tends to emphasize various problems and challenges in using expert evidence in the region; therefore, it could be a significant factor that increases the likelihood of errors.

c) Use of false confessions

To analyse research addressing the use of false confessions, we distinguish between two groups. On the one hand, some studies deal with issues related to police interrogations and confessions in their more traditional sense (Beltrán, 2022; Moscatelli, 2020; Navarro & de Lucena, 2023). On the other hand, one study delves into the phenomenon known more broadly as admissions of criminal responsibility within the context of negotiated criminal proceedings (Duce, 2015; Duce, 2019).

Studies on false confessions in Brazil have emphasized the historical importance rooted in the inquisitive tradition of valuing confessions as the primary form of evidence (Moscatelli, 2020; Navarro & de Lucena, 2023). The problem with confessions arises at two moments: during the preliminary investigation, and in the assessment of evidence. In the preliminary investigation, Moscatelli (2020) reports on a previous empirical study that examined police investigations in five Brazilian state capitals, showing that the suspect's confession was the method used in approximately 80% of the investigations with external investigations and technical-scientific expertise being rare. Research has also shown that those who confess in police stations tend to be individuals from lower socioeconomic classes, predominantly young people living in precarious socioeconomic conditions, those with low levels of education, and those belonging to Afro-descendant or mestizo ethnic groups (Moscatelli, 2020, pp. 367-368).

Regarding the role of confessions in evidence assessment, exploring the problem from the perspective of agential epistemic injustice, Navarro & de Lucena (2023) observe that court decisions have tended to consider confessions given at the moment of most minor agency of the subject as more credible.

In Chile, through a dogmatic and jurisprudential study, efforts were made to identify some potentially problematic aspects in the treatment of confessions to the police. Findings highlight certain police practices that take advantage of discretionary spaces in the initial stages of investigations to obtain confessions outside the norms and judicial control and significant deference from the Supreme Court toward police conduct during interrogations, among other issues (Beltrán, 2022).

On the other hand, some studies emphasize the analysis of admissions or "confessions" produced in the context of the development of developing negotiated proceedings in most regional procedural systems. In the Chilean case, this would be the main source of production of convictions (Duce, 2015; Duce, 2019). An investigation analyzing four cases of exonerations refers to the environment of fear and pressure exerted on defendants during the hearings discussing these types of proceedings. Indeed, these are usually proceedings related to minor offenses, in brief and rapid hearings, with little information, including considerable technical language, where defendants have had virtually no contact with their lawyers, and where there are significant incentives for accepting responsibility (Duce, 2015). Another empirical study found that in Chile, factors and dynamics are similar to those identified in comparative experience that increase the risk of wrongful convictions through negotiated proceedings. These include a significant space for offering reduced sentences by prosecutors, the presence of public defenders with little interaction with their clients, and judges exercising minimal control, especially regarding the voluntariness of acceptance (Duce, 2019).

The body of research we have grouped in this area shows that the existence of false confessions, that is, by innocent individuals, could be a relevant factor in Latin America. This could occur through police interrogation practices or the use of false confessions in negotiated procedures, which overwhelmingly result in criminal convictions.

d) State agents' misconduct

This is the thematic area with the fewest identified works, although it is often considered one of the most prevalent in international databases.¹⁶ In this context, a primary line of studies relates to decision-making during investigations. In Brazil, based on interviews with experienced homicide detectives, it was found that factors influencing the success or failure of an investigation, as well as the decision to press charges, include the existence of evidence, the ability and structure to identify this evidence, and the individual skills and competencies of investigators along with gaps in their training (Lino & Roazzi, 2022). In homicide investigations, guilt is noted to be constructed based on the suspect's confession, guiding the selection of which other pieces of information should be collected. This may result in

¹⁶ For instance, the National Registry of Exonerations identified this evidence as a factor present in 60% of cases as of October 2023, online:

(<https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>) (last visited on October 11, 2023). According to the Canadian Registry of Wrongful Convictions, prosecutor misconduct is present in 22.5% of cases, while police misconduct is present in 23.6% of registered cases, online: (<https://www.wrongfulconvictions.ca/data>) (last visited on October 11, 2023).

discarding hypotheses or other suspects, not preserving the chain of custody, and failing to request forensic evidence, among other shortcomings. The goal seems to justify a single hypothesis at all costs, based on extracted statements supporting the preconceived conclusion about the suspect (Moscatelli, 2020).

In Chile, studies have focused on tunnel vision, addressing its general aspects (Beltrán, 2021a; Beltrán, 2021b; Castillo, 2013; Duce, 2013). Two publications seek to identify its impact on a high-profile case's investigation and trial. Findings indicate that the phenomenon led the Public Prosecutor's Office and the police to refrain from conducting and omitting investigative activities that could benefit the accused or clarify contradictory points. Additionally, certain diligences were carried out sloppily, and the information obtained was misinterpreted. During one of the trials, uncooperative statements were observed from the police, showing a reluctance to respond to points favorable to the accused (Beltrán, 2021a; Beltrán, 2021b). Similarly, another publication reports that the phenomenon would impact the rigor of the police and the Public Prosecutor's Office's working processes (Duce, 2013).

Another line of studies relates more to the deliberate misconduct of agents. In Argentina, authors highlight "fabricated cases" where evidence is manipulated or planted to incriminate a person. Additionally, the manipulation of witnesses has been documented, either in exchange for favours or under threats, to falsely testify against a person (Garrido et al., 2023). Explanations suggest that the fabrication of cases aims to build statistics, responding to institutional or political pressures. Complicating the situation are issues related to the training of police forces, the use of underdeveloped investigative techniques, and the deployment of tactics that allow the police to evade judicial oversight (Garrido et al., 2023, p. 158).

The studies emphasize the importance of decision-making during criminal investigations and point to factors influencing investigative work. Moreover, based on cases of deliberate misconduct, the need to enhance the training of professionals in criminal investigation has been underscored. Ultimately, aspects related to the misconduct of state agents could be a relevant factor in the region.

e) Other factors and peculiarities in Latin America

Finally, in this section, we group findings into two diverse directions. First, some factors, while not central in the reviewed studies, are mentioned and stand out for their consistency with those detected in the literature from other jurisdictions. Among these, practices such as using unreliable witnesses or informants - generally, individuals providing false testimony against another innocent person - have been highlighted (Hadaad & Pinto, 2022; Garrido et al., 2023). We have also identified more structural factors, such as weaknesses in criminal defences that lead to inadequate legal counsel (Duce, 2015; Garrido et al., 2023).

Second, we have identified some factors that do not have a clear correlation in comparative literature or in traditionally addressed topics. Therefore, these would be more related to the local realities of the various countries in the region and would be particular or specific factors in the Latin American criminal justice systems¹⁷. It is worth noting that these

¹⁷ Recent research into factors outside the Anglo-Saxon world is also beginning to reveal specificities. For instance, in Asia, a systematic literature review highlights the use of torture as a significant variable in obtaining false confessions, along with the political factor or the prevailing punitive and authoritarian ideology in criminal justice and practice in various countries such as China and Singapore (Le et al.,

are not isolated occurrences in a single country, but rather, they have been detected in two or more countries through their mention in various works.

In this second group of factors, identity theft cases stand out in Chile and Brazil (Duce, 2015; Hadaad & Pinto, 2022). These are situations where an individual who provided a false name or identity at the time of arrest is convicted. Not detected in time by authorities, this situation allows an official conviction to be achieved and recorded concerning the impersonated person, who is later detained and proves that they had never participated in the crime. However, the issue arose because someone usurped their identity in the original process (Duce, 2015). Even in Chile and Brazil, victim or witness recantation is identified in the literature as another contributing factor to errors. These are primarily cases where the crime victim or the key witness has recanted their statement against the wrongly convicted innocent person (Hadaad & Pinto, 2022; Duce, 2015; Fernández & Olavarría, 2018).

Surprisingly, some findings reveal issues that could be even more basic. One such example are matters that are related to the lack of coordination within the judicial system and the institutions involved during the process preventing access to public information that could exonerate a wrongly convicted person (Duce, 2015; Hadaad & Pinto, 2022).

Another distinct problem in some countries is the need for adequate education and training for state agents, contributing to or increasing the risk of errors due to inappropriate investigative techniques and procedures (Garrido et al., 2023; Duce, 2017). However, this is not only linked to the training of police officers and prosecutors, but it also extends to judges. For example, in Minas Gerais, the main contributor to the error is more related to judges' mistakes when determining the sentence's severity (Hadaad & Pinto, 2022).

In conclusion, the available literature indicates some factors that align with findings from jurisdictions outside the region. This suggests that, in Latin America, as in other parts of the world, justice systems face similar challenges likely resulting from common structural issues in criminal justice beyond the specific design elements that each country or region may have. However, the reviewed literature also shows the presence of specific factors that require further exploration.

C. Correcting wrongful convictions

We have detected that this is the thematic area with the lowest number of publications in Latin America during the reviewed period. The studies account for 14% of those included in the review and address cases in Chile ($n = 6$) and Brazil ($n = 1$). These works focus on the study of the mechanism for overturning a wrongful conviction: the review process.

Some aim to better understand the practical functioning of the review mechanism (Duce, 2015; Fernández & Olavarría, 2018; Hadaad & Pinto, 2022), while others deal with more theoretical aspects related to certain features or operational issues (Mañalich, 2020; Carbonell & Valenzuela, 2021). There are also works with a prospective approach, emphasizing the need for a better correction mechanism (Duce, 2022a; Duce, 2022b).

The methodological approach varies significantly. Firstly, some studies are based on empirical analysis and examine the functioning of the correction mechanism based on

2023, pp. 8-9, 12-13). In the German context, evidence indicates that cases of exonerating individuals not criminally responsible due to mental insanity are relevant factors (Leuschner et al., 2020, p. 698).

submitted review requests. For example, in the state of Minas Gerais (Brazil), a study analysed a database of 4,561 review requests from 2012-2020 (Hadaad & Pinto, 2022). In Chile, a study analysed 470 review cases, delving into 44 cases where the appeal was ultimately granted (Duce, 2015). Another study, although somewhat doctrinal, provides data on the admissibility of appeals and supplements its study with a review of Supreme Court jurisprudence when resolving them (Fernández & Olavarría, 2018).

Secondly, legal-practical studies can be identified. These works primarily focus on legal aspects but have a practical component to some extent in their development. In this line, one study identifies problems that highlight the need to find a new balance between legal certainty and justice to have a mechanism that better covers victims of wrongful convictions (Duce, 2022b). Another text develops a conceptual framework to clarify the evidentiary standard the Chilean Supreme Court should use when reviewing a case. Based on its conceptual development and reviewing some cases, the study analyses how the Court has behaved when reviewing appeals (Carbonell & Valenzuela, 2021).

Thirdly, a study uses a comparative approach to analyse the review process in Spain and the Criminal Case Review Commission in England, Wales, and Northern Ireland, then reflects on the situation in Chile, emphasizing the need to improve the mechanism (Duce, 2022a).

Finally, a purely theoretical-doctrinal study focuses on systematizing and reconstructing the scope of the grounds for review provided by the Chilean Criminal Procedural Code (Mañalich, 2020).

Most of the studies adopt a critical perspective toward the correction mechanism, either from the configuration, scope, and meaning of the appeal grounds (Duce, 2015; 2022b; Fernández & Olavarría, 2018; Mañalich, 2020) or from aspects related to the mechanism's operation and the jurisprudential practice that has developed (Carbonell & Valenzuela, 2021; Duce, 2015, 2022a, 2022b; Fernández & Olavarría, 2018). In contrast, Hadaad & Pinto (2022) take a more descriptive approach.

We will briefly delve into studies that empirically analyse the functioning of the review process. One striking aspect is the contrast regarding the grounds that have allowed review requests to be accepted. While in Chile, the most common ground for review cases is the letter d) of art. 473 of the Criminal Procedural Code, which involves the discovery of unknown facts or documents during the process that suffice to establish the innocence of the convicted person; in Minas Gerais, it has been the ground in the first part of letter a) of art. 621 of the Criminal Procedural Code (when the convicting sentence is contrary to the express text of the criminal law). Another exciting aspect is that their findings provide insight into the factors or contributors to wrongful convictions based on the in-depth study of each case. Thus, the findings align with some factors identified in comparative literature, but non-traditional factors also respond to the region's peculiarities, as we have seen.

To conclude this section, some of these studies include recommendations or proposals in response to the identified problems. Hadaad & Pinto (2022) emphasize promoting and strengthening judges' decision-making training. In Chile, there have been suggestions to advance a doctrinal reconstruction of the review process that allows for broader coverage, for example, through a broader understanding of the grounds, and abandoning restrictive jurisprudential interpretations, among others (Duce, 2022b; Carbonell & Valenzuela, 2021; Mañalich, 2020; Fernández & Olavarría, 2018). Proposals have also been made to advance a

legal reform that expands the scope of some review process grounds, specific rules regarding the procedure, and other aspects aimed at facilitating victims' access to the mechanism for wrongful convictions (Duce, 2022a; Duce, 2022b).

D. Repairing or compensating wrongful convictions and prosecutions

This topic has yet to be a primary object of study in comparative literature that examines the problem from the perspective of system errors despite evidence showing the enormous impact and severe harm they cause (Duce & Findley, 2022, p. 550). However, there is a growing interest in comparative law on this matter¹⁸. Our research reveals that it is the second area accumulating the highest number of publications during the period in Latin America, comprising 18% of the total (nine works)¹⁹, although still far from the main topic related to factors.

The high presence of texts on this topic could be a natural consequence of various compensation mechanisms often regulated at the constitutional or legal level, attracting attention from the legal sphere. We estimate that six out of the nine works come from this legal perspective (Ballivian, 2013; Rangel, 2015; Islas & Cornelio, 2017; Martínez, 2020; Fernández, 2021; and Pacheco, 2022), while only three focus on examining its connection with system errors (Duce & Villarroel, 2019; Duce, 2020; and Duce 2021).

A distinction is necessary to comprehend the scope of the contents covered in these works. Compensation mechanisms regulated in national and international legislations distinguish two types of reparations: those arising from wrongful convictions and those resulting from criminal prosecutions that have caused harm, whether wrongful or not²⁰. Considering this perspective, four works emphasize the former mechanisms (Rangel, 2015; Islas & Cornelio, 2017; Fernández, 2021; and Duce, 2022), and an equal number focus on the latter (Ballivian, 2013; Martínez, 2020; Duce, 2020; and Pacheco, 2022). One addresses a mechanism that regulates both hypotheses (Duce & Villarroel, 2019).

Most works predominantly analyse the constitutional or legal regulation of one or two specific countries. Thus, Chile has three works (Ballivian, 2013; Duce & Villarroel, 2019; and Martínez, 2020) and Mexico one (Rangel, 2015). Additionally, one comparatively analyses the situation in Mexico and Chile (Fernández, 2021), and another compares Colombia and Spain (Pacheco, 2022). Two works take a more globally comparative view (Duce, 2020 and Duce, 2021), while one analyses the problem from the perspective of international human rights law (Islas & Cornelio, 2017)²¹.

¹⁸ For example, a book that includes national reports on the issue of compensation for wrongful convictions (England and Wales, Germany, Italy, Spain, the Netherlands, Norway, Lithuania, Poland, and the United States), along with a chapter on the development of European standards and another proposing an optimal model to address the problem (Jasinski & Kremens, 2023).

¹⁹ In addition, one of the works we considered under "General Aspects" included a section dedicated to the topic (Duce & Findley, 2022, pp. 550-555).

²⁰ The main topic concerning compensation for criminal prosecutions concerns indemnification for pretrial detention in cases that do not result in convictions. Three of the four works emphasize this aspect without necessarily referring to cases where an error is proven in ordering this precautionary measure (Martínez, 2020; Duce, 2020; and Pacheco, 2022).

²¹ Several texts analyse international statutes, but not as the central focus of the work, for example, Rangel (2015) and Fernández (2021).

The preferred methodological approach of the works is doctrinal, meaning a systematic analysis of the meaning and scope of the rules under study based on text review, opinions from legal scholars, and, in some cases, referencing jurisprudence. The primary exception is a work (Duce & Villarroel, 2019) that strongly emphasizes reviewing historical data on the use of the mechanism in Chile and then presents an analysis of 12 years of decisions by the country's Supreme Court (2006-2017).

The more globally comparative works (Duce, 2020; Duce, 2021) have a fundamentally descriptive perspective of different legislations. However, both include some empirical background on the operation of the mechanisms studied in their respective countries.

From an intellectual perspective, the works predominantly exhibit a descriptive but critical view of the institutions under analysis, especially those related to specific countries in the region. Indeed, there is a shared view that the available mechanisms have problems or limitations that excessively restrict their use. For example, discussing the jurisprudential line adopted in Colombia to grant compensation in cases with preventive detentions that do not end in conviction, Pacheco (2022) asserts that it has narrowed the scope of compensation with the potential impact of leaving manifestly unjust cases without remedy. Analyzing Mexico's constitution and its 2008 reform, Rangel (2015) concludes that the country needs to comply with the commitments made in international treaties. In this line, Fernández (2021) criticizes the lack of explicit constitutional regulation and a mechanism to enforce this right in the same country. In the case of Chile, Manríquez (2021) reveals the inconsistencies in constitutional regulation concerning compensation for cases of erroneously imposed preventive detentions, and Duce & Villarroel (2019) especially highlight that, based on regulatory regulation and especially the Supreme Court's interpretation, the existing mechanism falls far short of meeting the reparative needs arising from wrongful convictions and prosecutions.

V Concluding Remarks

Based on the review of articles published in WoS, SciELO, and Scopus from 2010 to 2023, this paper highlights the nascent nature of academic production on wrongful convictions and prosecutions in Latin America, with a notable surge in recent years.²² Furthermore, we have observed that it is concentrated in a few countries (Brazil and Chile) and within a specific type of publication and analytical perspective (Law). Nevertheless, the qualitative analysis reveals that, despite these limitations, the studies provide valuable information that helps understand the dynamics of various factors influencing the production, correction, and redress of wrongful convictions and prosecutions in the region.

The reviewed evidence indicates alignment with factors contributing to wrongful convictions in comparative literature. Unfortunately, there is consensus that correction mechanisms are inadequate and need to be improved. Also, reparation mechanisms must adequately address the problem's scale. Unique aspects not found in comparative evidence were also identified, warranting regional reflection.

²² We remark that the exclusion of articles published in non-indexed journals in these three databases, as well as those contained in other grey literature sources, should introduce caution in the scope of our conclusions and, at the same time, may serve as an incentive for future publications that can complement this work.

Further regional research is crucial to deepen our understanding, not just in quantity but by diversifying analytical perspectives and countries under study. This text aims to provide a comprehensive overview, inspiring researchers across countries to conduct studies complementing existing ones for a complete understanding of the phenomenon.

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