

Conceptualizing Violence and Physical Violence: A Comparative Analysis of the Legislation in Peru and Chile*

Conceptualizando la violencia y la violencia física: un análisis comparado de las legislaciones de Perú y Chile

JOSÉ MANUEL FERNÁNDEZ RUIZ**

Alberto Hurtado University (Chile)

Abstract: This paper seeks to contribute to our understanding of the core elements of violence by developing a conceptualization of physical violence. In identifying the elements which make up our concept of physical violence, I also identify elements which can contribute to a more comprehensive conceptualization of violence in general and the various forms it takes. While what constitutes physical violence seems intuitively self-evident, several ambiguities come to light upon closer examination. This can be illustrated by a simple question: are all homicides acts of violence? While an intentional homicide by shooting is certainly an act of physical violence, can car accident deaths also be characterized as such? There is no obvious answer to this second question. The first step in formulating an answer is to develop a conceptualization of physical violence; no research to date, however, has specifically attempted to clarify the meaning of the term. This paper will contribute to filling this gap in the literature by using a philosophical and comparative analysis to identify the elements necessary for a conceptualization of what constitutes physical violence. I conclude that a model of these elements, appropriately adapted and itemized, can be used to develop our understanding of different forms of violence.

Keywords: Physical violence, instrumental violence, criminal law

Resumen: Esta investigación busca contribuir a identificar los elementos centrales del fenómeno de la violencia a través de la conceptualización de la violencia física. De esta forma, al identificar los elementos del concepto de violencia física, también se identifican aquellos para una concepción más general de la violencia y sus diversas manifestaciones. Si bien parece intuitivamente autoevidente qué es aquello que constituye violencia física, hay varias ambigüedades que aparecen bajo un examen más detallado. Una simple pregunta puede ilustrarlo: ¿son todos los homicidios actos de violencia? Si bien un homicidio doloso causado mediante un disparo es un acto de violencia física, ¿lo es también una muerte causada en un accidente de tránsito? No hay una respuesta obvia a esta segunda pregunta. Para desarrollar

* This research is part of Fondecyt (*Fondo Nacional de Desarrollo Científico y Tecnológico*, the National Fund for Scientific and Technological Development) Project No. 11200513. I would like to thank Lidia Casas for her comments and feedback during the Alberto Hurtado University online seminar.

** Professor of Criminal Law at Alberto Hurtado University and associate researcher at VIODEMOS (the Millennium Institute for Research on Violence and Democracy) and for the ANID (*Agencia Nacional de Investigación y Desarrollo*, the National Research and Development Agency) in Santiago, Chile. Lawyer with a PhD from Glasgow University and an LLM from Toronto University.
ORCID iD: 0000-0001-7046-3420. E-mail: jmfernandez@uahurtado.cl

una respuesta es necesario conceptualizar primero la violencia física, pero no hay investigaciones específicas que apunten a clarificar su significado. La investigación contribuye a llenar este vacío en la literatura, identificando elementos para conceptualizar qué es la violencia física a través de un análisis filosófico y comparativo, y concluyendo que dichos elementos, debidamente modificados y particularizados, pueden utilizarse para entender diferentes formas de violencia.

Palabras clave: Violencia física, violencia instrumental, derecho penal

CONTENTS: I. INTRODUCTION.- II. VIOLENCE IN CRIMINAL LAW AND THE MORALITY OF VIOLENCE.- III. VIOLENCE IN THE CRIMINAL CODES OF PERU AND CHILE.- IV. HARM AND VIOLENCE.- V. AGENTS AND VICTIMS OF VIOLENCE.- VI. INTENT AND VIOLENCE.- VII. MEANS OF VIOLENCE.- VIII. APPLICATION OF THE HYBRID MODEL OF PHYSICAL VIOLENCE.- IX. CONCLUSION.

I. INTRODUCTION

This paper discusses the concept of physical violence in particular, as well as violence in general. I take a philosophical and conceptual approach, drawing on the English language literature on violence. The paper is not, therefore, primarily concerned with legal doctrine. My objectives are twofold: firstly, I aim to contribute to the identification of elements which are common to different forms of violence; secondly, and more specifically, I aim to develop a conceptualization of arguably the most clear-cut example of violence, physical violence. These objectives are connected; based on my assessment of the elements necessary to conceptualize physical violence, I propose an analytical basis for the conceptualization of violence in general. The paper thus examines physical violence in order to enable the formulation of a model of violence which, appropriately honed and developed, can be used as a basis for broader investigation of the concept and the various forms it takes from different methodological perspectives.

I use criminal law as the foundation for this model; however, given that the aim is to adopt a broadly philosophical approach, not all the conclusions will be applicable to this field of law. After all, although much of what we understand as violence is regulated by law, the concept cannot be reduced to what is covered by existing laws. This is not to suggest that any conceptualization of violence should be independent of criminal law; on the contrary, since most instances of violence constitute criminal acts, such a conceptualization must consider legislation to some degree. As will be discussed in the final section, the conceptualization of violence I propose proves illuminating when interpreting the criminal codes of Peru and Chile.

Neither the philosophical nor the criminal law literature on violence can thus far be said to have examined the quintessential example, physical violence, in great detail, instead relying on the assumption that conceptualizing this form of violence does not require great precision. Consider crimes of bodily injury: while there seems to be a consensus that such crimes constitute instances of physical violence, the claim that all such crimes are violent is not beyond dispute. Do traffic accidents constitute instances of violence? Not in the sense of negligent offenses, but rather true accidents, *i.e.*, those which are the result of a fortuitous sequence of events. Both crimes of bodily injury and traffic accidents impact upon a person's bodily integrity, but is it correct to say that both constitute violent events? It may seem that the relevant factor is the bodily harm caused, but if this is correct, then every crime of poisoning, for example, would constitute violence (Harris, 1972, p. 215; Bufacchi, 2007, p. 19; Coady, 2008, p. 41; Vorobej, 2016, p. 34). But is all poisoning necessarily violent? Even if it is accidental? Here there seems to be an obvious difference; while the crime of poisoning involves human conduct, accidental poisoning may not. Another example is the self-administering of poison by a person who wishes to end their life. These cases all result in bodily harm, but not all necessarily involve violence. One might ask, more generally, if bodily harm must necessarily result in order for an occurrence to be considered violent? Consider criminal threats. These are certainly serious crimes, but it is not clear that they constitute violent crimes and, moreover, they do not cause bodily harm. The same applies to instances where force is used against objects; it does not seem immediately obvious whether using force to destroy things, such as a table, can be considered violence.

This brief discussion of certain crimes demonstrates the need for a clearer conceptualization of physical violence; this is the focus of this paper, which is organized into eight sections following this introduction. With the exception of the final two sections, each discusses elements which are relevant for the formulation of a model which can contribute to the study of violence in general, and physical violence in particular. The second section discusses the morality of violence. The third examines various forms of violence against people and things and distinguishes what constitutes violence *in and of itself* from *instrumental* violence. The fourth section explores harm caused by violence. The fifth identifies the parties involved in violence, the agent and the victim. The sixth section distinguishes intent from negligence. The seventh section addresses *how* violence is exercised. The eighth section uses the model to analyze the crime of robbery with violence or intimidation. Finally, the ninth section presents the conclusions of this paper.

11

CONCEPTUALIZING
VIOLENCE AND
PHYSICAL VIOLEN-
CE: A COMPARA-
TIVE ANALYSIS OF
THE LEGISLATION
IN PERU AND CHILECONCEPTUALIZAN-
DO LA VIOLENCIA
Y LA VIOLENCIA
FÍSICA: UN ANÁLIS-
S COMPARADO
DE LAS LEGISLA-
CIONES DE PERÚ Y
CHILE

II. VIOLENCE IN CRIMINAL LAW AND THE MORALITY OF VIOLENCE

The literature on violence is vast; the concept has been the subject of study in many traditional disciplines such as psychology (Cuevas & Rennison, 2016), sociology (Collins, 2008), political science (Coady, 2008), history (Edwards & Penn, 2020), economics (North & Weingast, 2009), philosophy (Vorobej, 2016; Bufacchi, 2007), biology (Back, 2004; Raine, 2014), and law (Sarat & Culvert, 2009). In this first section I will discuss an aspect of criminal law which is important for conceptualizing violence in general.

To say that criminal law implies a certain degree of violence is not a controversial statement; the coercive imposition of a prison sentence which limits or deprives a person of their fundamental rights and threatens to limit and deprive them of other fundamental rights is violent. Nor is it controversial to say that criminal law regulates and criminalizes violent acts, even if it does so poorly or incompletely. This violence may seem to be at odds with the purpose of criminal law. Indeed, according to Hegel's theory of punishment it can be argued that criminal law is not first and foremost a violent activity; since it involves the imposition of a legitimate punishment, the violence is superseded by the need to carry out the requirements of justice. In this regard, Alan Brudner (2009) considers that although the imposition of a punishment involves the exercise of force (p. 2), it does not constitute "wrongful violence" (p. 3) when it is understood by the person who suffers it as self-imposed, *i.e.*, by their own choice (to commit the crime). Similarly, Gunther Jakobs (1998), while acknowledging the violence of punishment, concludes that its communicative content takes priority. Jakobs states that, in the case of punishment, although it may be perceived by the individual as violence (p. 24)¹, the crucial point of view is that of society and not that of the individual, because punishment is not interpreted as violence by the political community, but as the restoration of the rule of law (2007, p. 139). But is the legitimacy of punishment sufficient for us to disregard the fundamental role of violence in this practice?

The idea of non-violent criminal law does not make sense, especially if one accepts that at least one of the functions of criminal law is to discourage future crimes by making it known that a violent punishment will be imposed. This notwithstanding, the concept of legitimate violence means that the violence inflicted on bodies and minds is a secondary consideration. After all, it seems to be accepted that violent punishment is a legitimate practice, at least in cases of the most serious crimes. However, it should perhaps be questioned whether the significance of

¹ It is noteworthy that the criminal law literature contains little explicit discussion of the problematic relationship between criminal law and violence.

13

CONCEPTUALIZING
VIOLENCE AND
PHYSICAL VIOLEN-
CE: A COMPARA-
TIVE ANALYSIS OF
THE LEGISLATION
IN PERU AND CHILECONCEPTUALIZAN-
DO LA VIOLENCIA
Y LA VIOLENCIA
FÍSICA: UN ANÁLI-
SIS COMPARADO
DE LAS LEGISLA-
CIONES DE PERÚ Y
CHILE

violence can be disregarded solely because the practice of said violence is deemed permissible². It is interesting to consider whether this practice of violence is actually challenged on these shores. If the criminal punishments enforced here were viewed as the practice of illegitimate violence, as is the case in Myanmar³, it would likely be criticized by the media and by international organizations, perhaps inspiring marches or riots demanding that the practice be eliminated, similar to those which take place in that country. But no riots take place here despite the violence of criminal punishment⁴, no marches take place with citizens calling for its abolishment, at least none well-attended enough to deter the practice, and there are no media reports or international organizations which oppose violent punishment in general.

There are two important issues to underline here. Firstly, violence seems fundamental to any description of the practice of criminal punishment, but such violence is generally taken to be an intuitive and self-evident concept; consequently, it hardly seems necessary to specify what makes this practice violent. Indeed, the discourse around criminal punishment includes the assumption that it is violent without detailing what makes it violent. Secondly, it appears that an inherent aspect of violence in general, and of physical violence in particular, is that it can be legitimate in certain cases. That is, it is important to acknowledge that certain circumstances can justify violence and, therefore, it is necessary to distinguish justified violence from unjustified violence (Burguess-Jackson, 2003). Here, then, a first element which is usually part of any characterization of violence in general, and of physical violence in particular, can be observed: the morality of violence (Vorobej, 2016, p. 5). This element, however, while important for the formulation of a general model of violence, does not aid us in specifying what violence consists of. In other words, stating that conduct X is morally justified does not say anything about the conditions that a conduct must meet to be classed as an instance of what we term *violence*. However, violence implies a *prima facie* negative judgement, in the sense that some kind of justification must be offered in order to conclude that it is permissible. This is consistent with how violence is regulated in the criminal codes under discussion because, as we shall see, violence is in principle criminally outlawed.

2 See the stern critique by Alice Ristroph (2008, pp. 468-485).

3 See BBC News (2021).

4 The demonstrations in Chile in support of pardons for certain crimes committed after October 18, 2019, were notable exceptions.

III. VIOLENCE IN THE CRIMINAL CODES OF PERU AND CHILE

We will now examine what is an essential practice in any society and which I will use as a point of reference in order to begin to formulate a conceptualization of physical violence: criminal law, specifically as practiced in Peru and Chile, concerning violence. I will not endeavor to discuss the topic exhaustively; I will, however, consider a sufficient number of the articles in the criminal codes of these countries for my analysis. From an initial reading of this legislation, it is apparent that the regulations on violence in the criminal systems of Peru and Chile are fragmented; that is, only some forms of violence are considered (institutionally) grave enough to activate the mechanisms of criminal justice. I will begin, then, with a brief review of the instances in the Criminal Code of Peru (hereinafter, the CCP) and the Criminal Code of Chile (hereinafter, the CCC) where the term “violence” is used. This will ensure that cases which clearly involve violence are identified as such, since it can reasonably be expected that the criminal codes use the term in a manner consistent with how instances of physical violence are typically identified. I will nevertheless supplement my analysis with reference to certain additional cases which, although they may seem to be paradigmatic examples of physical violence, are described in other terms in the legislation. The following observations are pertinent:

1. Both the CCP and the CCC forbid acts deemed physically violent *in and of themselves* when such acts are carried out against persons; that is, they forbid the use of violence regardless of the objective of the agent, although they do so in different ways. Firstly, the CCP uses the term “violence” in order to clarify that a certain conduct constitutes a criminal offense; for example, when a person “knowingly facilitates or encourages acts of violent sexual exploitation which cause injury or gravely endanger the physical integrity or life of a person engaging in prostitution” (Art. 153 D, No. 5)⁵. A similar example from the CCC provides for the punishment of any person who “violently places their hands on a religious minister” (Art. 140)⁶.

Secondly, the CCP uses the term “violence” to indicate the gravity of violence against persons, such as when a person inflicts criminal harm “by using violence [...] against persons” (Art. 206)⁷, while the CCC mentions femicide committed “after any form of sexual violence has been inflicted on the victim” (Art. 390 ter, No. 3)⁸. Thirdly, although neither the CCP nor the CCC

5 Similar cases can be found in Articles 118 and 151, among others.

6 Similar cases can be found in Articles 176 and 189-C, among others.

7 Similar cases can be found in Articles 140 and 392, among others.

8 Similar cases can be found in Articles 390 quater, No. 4 and 456 bis, No. 4, among others.

15

CONCEPTUALIZING
VIOLENCE AND
PHYSICAL VIOLEN-
CE: A COMPARA-
TIVE ANALYSIS OF
THE LEGISLATION
IN PERU AND CHILE

CONCEPTUALIZAN-
DO LA VIOLENCIA
Y LA VIOLENCIA
FÍSICA: UN ANÁLIS-
S COMPARADO
DE LAS LEGISLA-
CIONES DE PERÚ Y
CHILE

use the term “violence” when referring to the typical examples of bodily injury (CCP, Arts. 121 *et seq.*; CCC, Arts. 395 *et seq.*) and homicide (CCP, Arts. 106 *et seq.*; CCC Art. 390), these are normally taken to constitute a use of physical violence against a person. Fourthly, the CCP and the CCC not only forbid the use of physical violence *in and of itself*, they also forbid what is considered *instrumental* physical violence; that is, violence is a punishable offense if it is inflicted on a person in order to achieve a specific purpose. Examples of this are the punishment defined in the CCP for a person who, “through the use of violence or threats, forces another to join a union or impedes them from so doing” (Art. 168), and that in the CCC for using violence “to commit mutiny” (Art. 128). Both codes also state that the common crime of robbery using violence or threats (CCP, Art. 188; CCC, Art. 436) is a punishable offense. This is a problematic case which I will discuss at the end of this paper.

- Both the CCP and the CCC also state that physical violence against certain things is a punishable offense *in itself*, even when the violence is not inflicted on a person. That is to say, the punishment is not conditional upon a person experiencing harm which affects their bodily integrity. However, although physical violence against certain things is a punishable offense, the codes often do not use the term “violence” directly; instead, they employ other similar terms, such as “damage” and “destruction”. Examples are the statement in the CCP that anyone who “damages, destroys or renders useless a property, movable or immovable, which fully or partially belongs to another” (Art. 205)⁹ will be punished, and that in the CCC affirming that “an ecclesiastic or public employee who [...] destroys documents or papers entrusted to them by reason of their office or position” (Art. 242)¹⁰ will be punished. *Instrumental* violence against things is also punishable; the use of violence against objects to achieve a specific purpose. An example is the CCP statement that anyone who “uses violence or threats to gain possession of an immovable property” (Art. 202, No. 3) will be punished, it being understood that “the violence referred to in paragraphs 2 and 3 is inflicted upon both persons and property” (Art. 203). The CCC, for its part, forbids the instrumental use of violence against things in order to enter the dwelling of another (Art. 144, par. 2).

From this brief classification it can be seen that both codes make a series of similar distinctions which may be considered for a conceptualization

9 Similar cases can be found in Arts. 228 and 277, among others.

10 Similar cases can be found in Arts. 242 and 323, among others.

of violence in general and physical violence in particular. A distinction is made between the use of violence *in and of itself* and *instrumental* violence. A distinction is also made between violence against people and violence against objects. It is noteworthy that, if we were to consider that only those instances in which the legislation uses the term explicitly qualify as physical violence, and develop a conceptualization based on these alone, then crimes of bodily injury, homicide and a large number of crimes of rape would be left out; when the legislation describes the conduct which constitutes these crimes, it does not use the word “violence”. This tells us that a semantic approach focusing exclusively on instances of institutional use of the term “violence” would be overly narrow and therefore unsuitable. No conceptualization of physical violence could exclude the crimes of homicide and bodily injury¹¹. This means that other terms similar to violence, or which implicitly refer to it, need to be included, such as the use of the terms “damage” and “destruction” above. However, even this strategy would be too narrow, as it would leave out acts which could potentially be understood as violent, such as robberies carried out using threats (CCP, Art. 188) or intimidation (CCC, Art. 436).

If we accept that all of these offenses should be included, then we accept a progressively broader definition of violence, ranging from violence against persons to violence against things, from violence in and of itself to instrumental violence. And if we accept this progressive broadening, we may end up with an over-inclusive conceptualization of violence, especially in the case of physical violence. In addition, it is not immediately clear whether all of the offenses mentioned above qualify as physical violence, nor whether intimidation merits inclusion. Are all robberies carried out using threats or intimidation acts of physical violence? The same question can be asked of homicides: do all homicides result from acts of violence, and can they consequently be classified as instances of physical violence? Consider the following examples.

One: X1 points an unloaded gun threateningly at victim Y1, demanding he hand over the money in his pockets. Two: family member X2 has seen his mother Y2 unconscious for five years, in a hospital bed where she is kept alive; he decides that such a life is torture and, to bring her peace, disconnects the machine that keeps her alive. Are these examples of violent robbery and homicide? Possibly they could be considered instances of violence in general, but it does not seem immediately clear that they represent instances of physical violence. This suggests that not every offense of robbery and homicide necessarily constitutes physical violence, and this observation could also be applied to the crimes considered previously. The reason for this is that we are

¹¹ Some authors do exclude these cases, however, such as Sanchez (1999, pp. 103-110).

beginning from the premise that physical violence consists of some form of body movement involving the exercise of force and whose object is a human person. If we begin with this premise, then the two examples above are not instances of physical violence. But is this right? Is violence only evidenced in conduct, or is the harm caused the decisive element?

IV. HARM AND VIOLENCE

That a violent event causes harm is indisputable, but what kind of harm exactly? Clearly different types of violence cause different types of harm, so what kind of harm does physical violence cause? If harm is understood to consist of a significant negative effect on the human body, then the harm caused by physical violence would be reduced to the effect of an injury on a person's health or bodily integrity. We might therefore consider that the notion of physical violence is tied to crimes of bodily injury since, if violence involves the exercise of some kind of force, this results in harm to a person's health or bodily integrity. This conclusion, however, would be wrong.

The concept of physical violence does not involve the same interpretation of harm as that used when we discuss crimes of bodily injury. In the criminal law literature, crimes of bodily injury are understood as result crimes; that is, crimes which have a negative impact on a person's bodily integrity or health. In contrast, harm from physical violence does not necessarily have such a negative effect. In other words, the consequence of violence is harm, but the harm does not necessarily involve a negative impact on bodily integrity. This is confirmed by the use of the term "violence" in the criminal codes under review. As we saw in section III, the infliction of instrumental violence upon persons is criminalized in the CCP and the CCC, which do not require a resulting negative impact on bodily integrity or health in order to conclude that violence has occurred¹².

A broader interpretation of harm is thus necessary, one which allows us to identify common elements among different forms of violence (not just physical violence) and which allows us to speak of common categories or, at least, of a "family resemblance" (Hanoch, 2017, p. 411). Such a conception of harm can be found in the philosophical literature, which holds that a person who has suffered violence is left in a worse situation than others; that is, a person who experiences violence finds themselves disadvantaged (Weatherford, 1983) compared to others and, obviously, compared to their situation before the violent event.

¹² Understanding harm as a negative impact on something in which an individual has an interest differentiates this proposal from that of Vorobej (2016), for whom physical violence is identified with bodily injury offenses, and consequently instrumental violence against persons does not constitute a form of physical violence (pp. 174-179).

From this perspective, a person who suffers violence is at an unfair disadvantage, and this requires a response of some kind. This is one reason why violence is relevant to different disciplines; it is relevant to economics, sociology and political science due to its effects on the equitable distribution of resources and also its aggregate effects on society from the point of view of general welfare¹³. Notwithstanding these general effects, it is important to consider the situation of the victim—despite the fact that in so doing we risk confining our analysis of violence to its effect on individuals¹⁴—because in any examination of the quintessential violence, physical violence, it does not seem reasonable to exclude its effects on the victim¹⁵. From this point of view, the victim of physical violence is necessarily a person, since the disadvantage is suffered by an individual, as evidenced by the negative effect on their well-being. While it is true that individual well-being has many components, and the very concept of “well-being” is contentious (Fletcher, 2016), the general consensus is that certain aspects of well-being are fundamental, in the sense that they constitute necessary conditions or preliminary conditions for more complex forms of well-being (Weale, 1998; Hamilton, 2003) to develop. This will be explored in more detail below.

The harm caused by violence can be conceptualized as a negative impact on certain aspects of an individual’s well-being; not just any aspect of well-being, but those in which human beings “have an interest”. What does it mean to have an interest in our well-being? The interests of a person X are those aspects of their well-being in which something important about X is at stake. Feinberg (1984, p. 54; Von Hirsch, 1986, p. 701)¹⁶ describes this feature of interest as follows: X has an interest in a certain aspect A of their life flourishing because, if aspect A fades, their life plans and projects will be ruined. In other words, aspect A of X’s well-being encompasses some factor upon which their success depends, both in their daily life and in their medium- and long-term projects, be they individual or collective (Raz, 1986, p. 295). Thus, it can be stated that X has an interest in their bodily integrity because bodily mobility allows them to interact in the social world and relate to other people. Likewise, X has an interest in sexual autonomy because this allows them the freedom to choose their sexual partners and to develop intimate relationships, etc. It is clear, then, that these fundamental aspects of

13 This is how Galtung (1969) and others who agree with his interpretation of violence understand it: “violence is present when human beings are being influenced so that their actual somatic and mental realizations are below their potential realization” (p. 168).

14 That is, the concept of harm is not necessarily premised on some form of methodological individualism; see Joseph Heath (2020).

15 This does not imply that this conception reduces individual well-being to the possession of material goods; there is still room for both relational goods and collective interests (Gheaus, 2018; Raz, 1986).

16 The narrowness of Feinberg’s perspective “as opposed to” that of Tadros is not problematic in the case of physical violence (Tadros, 2014, p. 173).

well-being, in which a person has an interest, are typically indispensable for an individual's "ulterior" projects to be successful and for them to achieve their ultimate life goals (Feinberg, 1984, p. 42). Becoming an artist, participating in politics, teaching, etc., all presuppose that the different aspects of the individual's well-being are intact; it is precisely these aspects which are destroyed or diminished by violence. This is one of the key effects of violence: it destroys, diminishes or negatively affects the fundamental aspects of individual well-being which people typically have an interest in maintaining and developing in order to achieve their ulterior goals (pp. 43-45).

However, describing the effect of physical violence as a deterioration of the aspects of individual well-being in which a person has an interest is not the only conception of harm to be found in the literature. Another influential conceptualization of violence makes use of a different concept of harm, that of violence as "violation". While the word "violence" comes from the Latin *violentus* (Vorobej, 2016, p. 4), understood as an exercise of force which causes some fundamental interest to deteriorate, it can also be understood in another way: not in the sense of causing harm, rather in terms of the meaning attributed to the word "violation" (Williams, 1983, p. 330; Bufacchi, 2007, pp. 14-15). Garver (2009) and Bufacchi (2007) take this as a starting point to develop the notion of violence as a "violation" of a human person. Specifying exactly what it means to violate a human person has proven complex, but it includes reference to the infringement of certain norms or rules regarding the treatment people deserve as dignified beings. That is, violence does not necessarily involve a negative impact on an individual's well-being, rather the infringement of a norm which determines a person's status as a dignified being. This distinction between violence as force and as violation is important for modeling different forms of violence; nevertheless, I will now move on from considering violence as violation or in terms of the notion of harm. While these may be useful ideas for the development of other models of violence, such as psychological violence—in other words, other forms of what constitutes violence more generally speaking—they do not seem to entirely encompass the notion of physical violence. In fact, an analysis of the criminal codes under discussion suggests that they consider the exercise of violence to have a physical component which is not part of the notion of "violation". In short, an element that the different forms of violence have in common is that they result in a determinate effect on the victim: *harm*.

V. AGENTS AND VICTIMS OF VIOLENCE

Up to this point, we have identified various elements which are common to both physical violence and violence in general: its morality, what they

19

CONCEPTUALIZING
VIOLENCE AND
PHYSICAL VIOLEN-
CE: A COMPARA-
TIVE ANALYSIS OF
THE LEGISLATION
IN PERU AND CHILE

CONCEPTUALIZAN-
DO LA VIOLENCIA
Y LA VIOLENCIA
FÍSICA: UN ANÁLIS-
S COMPARADO
DE LAS LEGISLA-
CIONES DE PERÚ Y
CHILE

are exercised upon, how they are exercised and the type of effect they have. In our examination of the CCP and the CCC, we have seen that these also mention violence against things. However, although there are examples in the philosophical literature of authors—albeit a minority—who hold that violence can be inflicted upon things (Holmes, 1989, pp. 19-49; Bufacchi, 2007, p. 41), it does not seem self-evident that physical violence can be inflicted upon objects in the absence of any human interest. While it is true that nature can be relevant in discussions of violence, it can only be considered to play a defining role when human interest is involved. That is, storms and earthquakes in and of themselves cannot be said to entail physical violence independently of some human interest. If this is correct, then there can be no “violence” against things unless a person with agency is somehow connected or related. Consequently, things in isolation cannot be the object of violence.

Of course, this does not mean that the destruction of things has no effect on human well-being, which can certainly deteriorate when things are destroyed in order to prevent access to goods which are fundamental for subsistence¹⁷. However, although things are obviously relevant to well-being it does not necessarily follow that they can be the object of physical violence. To further develop an idea mentioned previously, physical violence does not involve a relationship between objects or between a person and an object, but a relationship between people. This view of violence can be stated in more detail: violence, as a relationship between at least two people, requires a human *agent* (the one who instigates the violence) and another as *victim* (the one who suffers harm). This is significant, since it means that in the absence of an *agent*, in the sense of a human agent who instigates or causes violence, there can be no physical violence. Violence cannot be exercised by a mountain, nor by an animal. Nature and animals can hurt, harm and kill people, they can enhance our well-being as well as destroy it, but they cannot be *agents* of violence. The same applies to victims: if the victim is not a human being with their own agency, there can be no violence. If violence is indeed a relationship between people, it must be exercised on a person; therefore, if there is no person who may be the object of violence, then violence cannot occur. This is consistent with the definition of the *harm* of violence, as a negative impact on aspects of well-being in which an individual has an interest; this impact occurs in human beings but not in things or animals¹⁸.

¹⁷ A typical occurrence during warfare.

¹⁸ Firstly, animals do not seem to us to have “ulterior” aims such as those to which Feinberg refers. Secondly, and crucially for the present argument, violence is linked to the evaluative and normative principles and norms which *people* hold each other to because, after all, we do not hold animals morally or criminally responsible for their actions. An animal which is subjected to physical force and suffers harm or experiences pain cannot be compensated, as a person can be, for the harm suffered. Nor do apologies and forgiveness have the same meaning for animals as they do when a human

However, this assertion seems less reasonable when we consider that it rules out the possibility of violence being committed against animals. While we may accept that animals cannot be “agents” of violence, to claim they cannot be “victims” of violence seems less justifiable. After all, we consider that certain minimum reciprocal standards of decency apply to dealings with animals. The criminal punishment for animal abuse in the CCP (Art. 206-A) and the CCC (Art. 291 bis) can be understood as an expression of these standards. However, although it may seem unreasonable to suggest that animals cannot be subjected to violence, such a claim would not imply that the exercise of force against objects or animals is not deplorable, nor that such force should be permissible and not subject to severe punishment under criminal law. Stating that animals cannot be subjected to violence does not mean that we cannot condemn and punish people who inflict harm or suffering upon them, for reasons independent of the existence of violence (Scanlon, 1998, p. 181; Darwall, 2006, p. 28). In fact, it is perfectly reasonable to understand that the mistreatment of animals involves the use of some kind of force which causes pain or suffering, but that this does not qualify as violence as violence is predicated on a relationship between human beings. Thus, we can accept that the exercise of force against objects or animals is not permissible, while still retaining the idea that fundamentally violence can only exist in human relationships, and can therefore affect only such relationships.

CONCEPTUALIZING
VIOLENCE AND
PHYSICAL VIOLEN-
CE: A COMPARA-
TIVE ANALYSIS OF
THE LEGISLATION
IN PERU AND CHILE

CONCEPTUALIZAN-
DO LA VIOLENCIA
Y LA VIOLENCIA
FÍSICA: UN ANÁLIS-
S COMPARADO
DE LAS LEGISLA-
CIONES DE PERÚ Y
CHILE

VI. INTENT AND VIOLENCE

The elements discussed above can now be used to develop a preliminary conceptualization of physical violence, which may then be employed to understand violence in general: violence consists of a relationship between at least two human beings in which the agent behaves in an unjustified manner which causes the victim harm, with or without a definite purpose. We now need to incorporate another aspect of violence into this preliminary definition, an aspect which becomes apparent in a review of the criminal codes of Peru and Chile, and which is important in any characterization of physical violence specifically, although it does not necessarily apply to violence in general. All of the crimes discussed in section III, with the exception of the crimes of homicide and some crimes of bodily injury, require that the offending conduct be intentional; that is, the agent must act with malice. This epistemic requirement depends on the agency of both the *agent* and the *victim*, and as such a characteristic of violence is that it must involve

being asks for or demands them. All of these ideas presuppose legal and social competencies which apply both within and outside the criminal process, and are significant because they constitute an important part of human moral relations (Scanlon, 1998; Darwall, 2006; McKenna, 2012). Animals do not partake in interpersonal moral relationships in the same way as humans do, and it is precisely these relationships and their meanings which are affected by acts of physical violence.

intentional conduct. Whether we are discussing the crime of homicide or of rape, violence generally consists of intentional conduct; for this reason, most of the philosophical literature considers that there can be no negligent physical violence (Betz, 1977, p. 347; Childress, 1978, p. 3; Holmes, 1989, pp. 32 and 296; Audi, 2009, pp. 142-143; Jacqueline, 2013; Vorobej, 2016, pp. 17-18). That is, when it is asserted that an “agent” has done something violent it is taken to have been intentional; if it was due simply to negligence then physical violence did not take place. Some of the literature does dispute this conclusion however (Harris, 1972, p. 197; Bufacchi, 2007, p. 72; Vorobej, 2016, p. 177). The question is, then: can physical violence involve negligence?

To return our focus on the regulations detailed in the CCP and the CCC, then the answer must be yes, in the sense that people can be held liable for negligence. Nonetheless, this answer must be qualified. While it is correct to state that certain instances of negligent violence are punishable offenses, strict conditions are applied. Because the criminalization of recklessness in the CCP and the CCC follows the *numerus clausus* system, negligence is only punishable when the legislation expressly states this, as in Art. 12 of the CCP (García, 2019, pp. 561-563), or when the reference in Art. 490/492 of the CCC applies (Cury, 2005, pp. 343-346). Additionally, at least in the CCC, this criminalization of negligent violence is restricted by two further considerations. Firstly, the reference in Art. 490/492 of the CCC recognizes negligence as a crime only in cases of crimes against persons. In the Chilean criminal law literature this is taken to mean that the reference only applies to the crimes detailed in Title 8 of the CCC, “Crimes against persons”, and thus excludes, for example, the crimes of rape and making threats, which can obviously also be interpreted as crimes against persons. And secondly, not only does the reference not cover all of the crimes which can be interpreted as crimes against persons, it does not cover all of the crimes detailed in Title 8. The Chilean criminal law literature interprets the reference as relating exclusively to the crimes of homicide and causing injury, thus excluding the crimes of infanticide, abuse, smuggling of migrants, human trafficking, slander and libel¹⁹.

In the philosophical literature the debate around recognizing negligent physical violence does not view it as a different form of violence, rather locating it in the broader context of debates around liability. These are concerned with whether or not the result of the conduct—that is, its effect—should form part of the description of the conduct. If it is deemed that the result should not be included in a description of the conduct, then it is argued that there can be no negligent violence; conversely, if it is deemed that the result should be included in a description of the

¹⁹ This is the default position of the Chilean doctrine; see Hernández (2011, p. 281).

23

CONCEPTUALIZING
VIOLENCE AND
PHYSICAL VIOLEN-
CE: A COMPARA-
TIVE ANALYSIS OF
THE LEGISLATION
IN PERU AND CHILECONCEPTUALIZAN-
DO LA VIOLENCIA
Y LA VIOLENCIA
FÍSICA: UN ANÁLIS-
S COMPARADO
DE LAS LEGISLA-
CIONES DE PERÚ Y
CHILE

conduct, we can conclude that negligent violence is indeed possible. But why might it be unreasonable to view the result as being integral to the concept of physical violence? The answer is that if a liability system is based on the principle that a person is liable only for what they can control, it follows that they cannot be held liable for what they cannot control (Goti, 2008). As the result of negligent conduct is considered to normally be beyond the control of the agent, the conclusion must be that is not integral to the definition of physical violence. Indeed, in cases of negligence, the result is seen as occurring independently of the intention of the liable party: they did not intend to commit the crime. For this reason, if we assign liability for negligence even though the result is not under the person's control (if it were, the offense would be intentional), then we assign liability for events which are beyond a person's control. This means that a ruling of liability due to negligence would be illegitimate.

The debate around liability for the result is thus related to the debate on what has been termed "moral luck" (Williams, 1982; Enoch, 2010); that is, whether a person can be held liable for something which is beyond their control. Thus, if we accept the idea of "moral luck" and that, for example, X is "unlucky" if they shoot Y with the intent of merely injuring as opposed to killing them but Y dies, then X can be held liable for homicide and be deserving of criminal punishment. It is precisely because many people reject the idea of "moral luck" that a significant portion of the philosophical literature considers that physical violence cannot be negligent.

Without attempting to resolve this philosophical dispute, there is nonetheless an important point to highlight here regarding negligent physical violence, which is that at the very least, it should not be used as a typical example of physical violence. Harm inflicted through negligence is considered violence only because *intentional* physical violence is the definitive type: the issue of negligent violence is on the periphery of this concept. This can be illustrated with an example. Consider the fear of being the victim of a violent crime; does it make more sense to fear being the victim of intentional homicide than to fear dying in a reckless car crash? If we compare the raw data on intentional deaths²⁰ and traffic accident fatalities²¹, and assume that the latter are all caused by negligent conduct, we find that deaths due to negligence are more common statistically. Based on just these data, it could be suggested that fear of being a victim of a fatal traffic accident should be a central concern of those who fear being a victim of violence.

20 There were 486 intentional deaths in Chile in 2019 and 2708 in Peru (Asmann & O'Reilly, 2020).

21 There were 1617 traffic accident fatalities in Chile (Conaset, undated) in 2019 and 3110 in Peru (INEI, undated).

Nevertheless, it does not seem reasonable to equate fear of being the victim of a crime of negligence and fear of being the victim of an intentional crime, nor to hold that negligence affects our moral relationships in the same way intentional crimes do. From the point of view of a conceptualization of physical violence, the two differ in one key aspect: being a victim of intentional homicide is not the same as being a victim of a traffic accident because the attitude required to inflict intentional violence cannot be compared to the simple lack of regard for the interests of others expressed in the idea of liability due to negligence. The intention to kill is a desire to destroy precisely the kinds of human relationships²² which are the basis of all moral human interactions; reckless deaths, in contrast, are sometimes just the price we pay as a society for an efficient means of transport between one place and another. From this point of view, a fatally negligent vehicle collision is more similar to a fortuitous or natural event, because a “quasi-agent” is necessary to explain the result. A person is a human agent because they have the capacity to act intentionally (Davidson, 2001, p. 47), to choose and evaluate their reasons for acting (Frankfurt, 1971, p. 7; Taylor, 1985, p. 34), to self-govern (Bratman, 2007, p. 4) and to show creativity (Emirbayer & Mische, 1998, p. 982). Intentionally malicious conduct is a manifestation of these characteristics of human action in the sense that it is deliberate and thoughtful, precisely the features which are absent in negligent conduct.

Indeed, negligence involves only a trace of full agency (Enoch, 2012, p. 100) and, for that reason, does not affect or undermine moral relations in the same manner as intentional physically violent conduct. But there is a further reason why it makes sense, in attempting to understand physical violence, to focus on the intentional conducts behind it. Intentional violence is similar to the crime of robbery. Robbery by definition relates to the possession of an object, which is taken using violence (or threats) without the owner’s consent, but there are many other ways to lose possession of something. In a traffic accident, for example, a person may lose possession of their vehicle, but is robbery the same as negligent loss of possession due to a traffic accident? The answer is no because, on a conceptual level, the crime of robbery requires intentional conduct.

The same could be said to apply to physical violence. Physical violence, on a conceptual level, implies intentional conduct; that is, there can be no physical violence without intentional conduct by an agent. This clearly illustrates two examples of diverging perspectives in the study of violence. The first concerns the philosophical conceptualization of physical violence and how it is regulated by criminal law; philosophers typically consider that for an act to constitute physical violence it must

²² Judgments of liability are relational in nature (Kutz, 2000, pp.18-38).

be intentional, while violence as regulated by criminal law can also be negligent. The second concerns the conceptualization of physical violence and that of violence general; there seem to be no objections to including different forms of unintentional violence when studying other types of violence—structural violence, for example—while doing so in considerations of physical violence is viewed as dubious. In summary, it seems reasonable to exclude negligent harm from our conceptualization of physical violence, while at the same time viewing it as a peripheral form of violence in general, one which is important to consider in the context of certain laws.

VII. MEANS OF VIOLENCE

So far, I have identified a number of elements which are common to both physical violence and violence in general, while a number of differences emerged in the previous section. This is inevitable because physical violence represents a particular kind of violence. In this section I will continue to refine the definition of physical violence, which can be understood as follows: physical violence involves a relationship between at least two human beings in which the agent, unjustifiably and intentionally, engages in conduct which causes the victim harm, regardless of whether or not said conduct pursues a particular objective. The examination of negligence in the previous section raised the question of how relevant the result is to our understanding of physical violence, a point on which the philosophical literature is divided. Some authors consider that the resulting harm is the most important factor in any understanding of violence, regardless of the conduct itself (Galtung, 1969; Harris, 1974; Bufacchi, 2007), while others consider only the conduct to be relevant, regardless of the harm caused (Wyckoff, 2013; Jacqueline, 2013; Vorobej, 2016). Which is the key element is difficult to pin down; while it seems unreasonable to state that there can be physical violence without harm, it seems equally unreasonable to state that harm is the only relevant dimension.

At first glance it may seem that the right view is that which emphasizes the occurrence of harm as sufficient to establish that there has been physical violence. After all, as we have seen, violence is important precisely because of the effect it has on individual well-being. However, there is a fundamental problem with viewing harm as the only relevant factor in discussions of violence; namely, that this inevitably leads to a conflation of harm caused by nature with harm which is a product of human agency, and in so doing fails to focus on how violence alters human moral relations. The problem stems, as we have seen, from accepting that negligence can be violent; if it is not necessary for the agent of violence to have acted intentionally, and harm which is beyond

25

CONCEPTUALIZING
VIOLENCE AND
PHYSICAL VIOLEN-
CE: A COMPARA-
TIVE ANALYSIS OF
THE LEGISLATION
IN PERU AND CHILE

CONCEPTUALIZAN-
DO LA VIOLENCIA
Y LA VIOLENCIA
FÍSICA: UN ANÁLIS-
S COMPARADO
DE LAS LEGISLA-
CIONES DE PERÚ Y
CHILE

the control of an individual's agency can be violent, there seems to be no reason why accidents cannot also be violent. In other words, if our conceptualization of violence does not consider the element of agency, there is in principle no reason why fortuitous events or events where no negligence is involved (Vorobej, 2016, p. 7) cannot be instances of physical violence. Consequently, we would have to accept that animals and even things themselves can be "agents" of violence, which would not be consistent with the notion of the agent and the victim as the key participants in the moral relations which are affected by violence.

Understanding physical violence as an intentional action means negligence and fortuitous events should not form part of a conceptualization of violence, and is consistent with the idea of violence requiring an *agent* and a *victim*. This does not necessarily render the production of *harm* irrelevant. In fact, a natural strategy for conceptualizing physical violence would be to include both of these criteria; that is, to understand violence as harm caused by human action. The issue, then, is deciding what kinds of human action should qualify as violent according to this conceptualization. This question is largely irrelevant if we accept that negligence or fortuitous events which cause harm can be violent. Indeed, from the point of view of the characteristics of a conduct, both fortuitous events and negligence are characterized precisely by no particular quality being assigned to the conduct involved²³. In contrast, emphasizing intent with respect to violence does require us to specify what types of conduct qualify. Following the ideas of Arendt²⁴, I will call this requirement concerning the type of conduct which can be characterized as violent the *means* requirement²⁵. This implies that physical violence must necessarily be channeled through some *means*. So, what are the *means* of physical violence?

In the case of the quintessential examples of physical violence as regulated in the CCP and the CCC, such as bodily injury and homicide, we already know that these share certain characteristics: there is an *agent*, a *victim*, an *intentional* act and *harm*. What characterization of the *means* would help us unify these conducts as forms of violence? In both cases the *means* seems to correspond to a certain conduct involving the exercise of force on a person. From a scientific and philosophical point of view, the exercise of force involves a transfer of energy between atomic structures of determinate weight for a determinate amount of

23 According to Holmes (1989) these omissions are justified by other requirements, independently of how the agent's conduct is characterized (p. 33). More specifically, since mere omission in no way explains how the absence of a certain event can form part of the notion of violence, investigating violence implies seeing it as something more than a result which could have been avoided by the one who is duty-bound to act.

24 Arendt (1970) says that violence requires "implements" (p. 4).

25 Vorobej (2016) calls it the "instrument" (p. 5).

time at a certain velocity (Dowe, 2001, pp. 41-42). This assumes a causal relationship²⁶: the transfer of energy has a cause and an effect (Boudri, 2002, p. 234). However, in everyday language the term “force” does not have this exact meaning; it is not reasonable to equate merely touching another individual’s body with the use of force, even if this does involve the transfer of a certain amount of energy. Everyday use of the term involves additional implications regarding the quantity of energy transferred. That is, our everyday understanding of force and thus of the *means* of violence involves a person X, through some action, transferring a quantity of energy above a certain threshold A to another person Y (Holmes, 1989, p. 33; Maccallum, 2009, p. 116; Vorobej, 2016, p. 37).

Consequently, the relevant characteristic of physical violence is related to how the result is caused, in the sense that it is the effect of a particular *means*; a certain type of conduct which involves a transfer of a quantity of energy above a certain threshold. However, there is a problem with this notion. If X1 tortures Y1 by hitting him with a baseball bat, this can be characterized as violence because force above a certain threshold is used. However, if X2 tortures Y2 using acid, the *means* requirement is not satisfied because X2’s conduct does not involve any transfer of energy. This notwithstanding, it does not seem reasonable to say that certain types of torture do not qualify as violence because they do not satisfy the *means* requirement. The reason why this is not a reasonable assertion is that torture is a paradigmatic example of physical violence (Frazer and Hutchings, 2020, pp. 176-177). This observation is key when it comes to characterizing certain practices as violence. Including such cases of torture does not return us to the idea that harm is the only element necessary for a conceptualization of physical violence since, in practice, not all physical violence results in bodily harm. The most obvious example is instrumental violence which, as regulated in the CCP and the CCC, does not require any particular result in order to be classed as such. That is to say, this form of violence as criminalized in the criminal codes under discussion does not require that a victim’s bodily integrity be negatively affected, only that physical violence be employed. Examples are cases such as abortion, mutiny, etc. The codes therefore require the *means* criteria to be satisfied. Consequently, an optimal model of physical violence must be applicable to both torture and instrumental violence, seeing as these represent different but related

27

CONCEPTUALIZING
VIOLENCE AND
PHYSICAL VIOLEN-
CE: A COMPARA-
TIVE ANALYSIS OF
THE LEGISLATION
IN PERU AND CHILECONCEPTUALIZAN-
DO LA VIOLENCIA
Y LA VIOLENCIA
FÍSICA: UN ANÁLIS-
S COMPARADO
DE LAS LEGISLA-
CIONES DE PERÚ Y
CHILE

26 Woodward (2003) says that this understanding of causality is not applicable to all causal relationships (p. 44). However, it is particularly appropriate if we are to understand physical violence as a human activity because in this context the causal relationship does involve a collision between two atomic structures, in this case persons.

forms of the same concept: physical violence. This means that we need to develop a “hybrid” conceptualization²⁷ of physical violence.

A “hybrid” model of violence, according to Vorobej (2016, pp. 155-156), categorizes these events as violent independently of each other, in the sense that each one meets different conditions for it to qualify as violence. However, they may not be completely independent of each other. Indeed, although the criteria used to define each one as violence are not identical, they do have elements in common, including *morality*, *harm*, an *agent* and a *victim*, and *intention*. Where they differ, when talking about physical violence, is in the requirement of a *means*. We can thus talk about two kinds of physical violence, *first-degree physical violence* and *second-degree physical violence*. *First-degree physical violence* requires the existence of a *means*. *Second-degree physical violence*, on the other hand, does not require a *means* to be classed as such; nonetheless its defining element is not merely the production of substantial harm, it must also cause severe and inhuman suffering. However, this does not necessarily mean that every case of criminal torture qualifies as *second-degree physical violence*, as this category is broader than cases of criminal torture. Both the CCP (Art. 321) and the CCC (Art. 150 A) accept that torture can be physical, in which case torture does represent *second-degree physical violence*. The same is true for certain cases of psychological torture; while torture typically involves the use of *first-degree physical violence*—that is, conducts which qualify as physical violence in and of themselves, or instrumental physical violence—certain types do not involve this. The cases of torture in Guantanamo, for example, did involve physical violence as the victims were compelled through the exercise of force to breathe through a wet cloth (Parry, 2010, pp. 145-146). However, some cases of intense police interrogation could fit into the category of *second-degree physical violence*, although they may not necessarily constitute torture. As such, it can be said that not all instances of *second-degree physical violence* involve torture²⁸.

I will not examine or attempt to present a more refined concept of torture because this is not necessary for the purposes of conceptualizing *second-degree physical violence*; the above outline is sufficient to interpret all instances of torture as falling within the conceptualization of physical violence even though they may not satisfy the *means* condition. However, this does not necessarily mean that every form of undignified

27 Vorobej (2016, pp. 145-168) has developed a hybrid model of violence in general. In contrast, the model described in this paper only applies to physical violence.

28 The category of *second-degree physical violence* is more restrictive than the term “torture” as understood in the CCP, which also criminalizes subjection “to any method which undermines the victim’s personality or diminishes their mental or physical capacities’ as torture (Art. 321). Since such forms of torture, as described in the CCP, do not necessarily involve severe suffering, it does not seem reasonable to view them as instances of *second-degree physical violence*. Nevertheless, certain cases could be classed as *first-degree physical violence*, either in and of itself or instrumental, as long as the relevant conditions are met.

treatment constitutes *second-degree physical violence*. It is necessary that serious harm result, that the suffering be inhuman—that is, degrading to human dignity—and, in addition, severe. If these conditions are met, then an event can be characterized as *second-degree physical violence* and thus as physical violence. While many cases of degrading or inhuman treatment clearly merit severe punishment, this does not mean that all inhuman or degrading treatment constitutes *second-degree physical violence*. Indeed, only if such treatment meets the above requirements can it be viewed as a paradigmatic case which can be used to help build an understanding of physical violence. In short, there are many ways of inflicting suffering and degradation, but not all of these are necessarily forms of physical violence. This gives rise to a more general argument: there are many ways of causing harm, but not all—although they may be extremely harmful to human life and well-being—are necessarily forms of physical violence.

We can now articulate a more precise conceptualization of physical violence: it involves a relationship between at least two human beings in which the agent, whether in pursuit of a particular objective or not, unjustifiably and intentionally engages in conduct which causes a victim harm, such harm being defined based on the means employed or in view of the paradigmatic nature of the result. This includes all of the fundamental elements of violence which we have examined so far: *permissibility*, *harm*, an *agent* and a *victim*; the *means* and *paradigmatic harm*; violence in and of itself and instrumental violence. This conceptualization has several strengths. The first is that it defines violence through a series of analytically distinguishable elements, thereby facilitating understanding. The second is that it makes it possible to specify what must be present in order for quintessential or paradigmatic cases of physical violence to be identified as such. The third is that it reflects the fact that people are “embodied”; that is, that we are more than the sum of the operations or computations which occur in the brain, that we are beings whose experiences and existence are mediated by and dependent on our bodies and how they interact with our physical, cultural and moral environment. Indeed, the biological, symbolic and moral importance of the body could possibly be taken as sufficient justification for claiming that the physical violence is the quintessential example of violence. Although physical violence is not the only way to inflict grave harm on a victim’s interests, nor is it the only or the most common form of violence, the conceptualization articulated above does make it possible to identify quintessential examples of violence and is consistent, broadly speaking, with how it is criminalized in the criminal codes under discussion.

29

CONCEPTUALIZING
VIOLENCE AND
PHYSICAL VIOLEN-
CE: A COMPARA-
TIVE ANALYSIS OF
THE LEGISLATION
IN PERU AND CHILE

CONCEPTUALIZAN-
DO LA VIOLENCIA
Y LA VIOLENCIA
FÍSICA: UN ANÁLIS-
S COMPARADO
DE LAS LEGISLA-
CIONES DE PERÚ Y
CHILE

VIII. APPLICATION OF THE HYBRID MODEL OF PHYSICAL VIOLENCE

In this section I will apply the conceptualization of violence developed over the previous sections to a particular crime. It is of course not possible to apply it to all of the criminal offenses in the codes under discussion; I will, however, endeavor to apply it to a broadly representative case in such a way as to make it possible to draw general conclusions with relevance for other crimes. I will examine the crime of robbery using violence or threats (including those which constitute intimidation²⁹) using this conceptualization of physical violence. My objectives are twofold. Firstly, I hope to enhance our understanding of this crime. The criminal law debate has centered on defining the crime of robbery by elucidating the meaning of the term “threats”³⁰. This approach neglects to analyze the violence mentioned, which it could be argued is crucial to the description; it is also precisely the aspect that our conceptualization of physical violence can illuminate. The second objective is to illustrate the usefulness of this philosophical conceptualization of physical violence in understanding the regulations concerning a number of paradigmatic violent crimes in the criminal codes under discussion.

As stated above, I have chosen to analyze the crime of robbery as the criminal codes under discussion consider the use of violence and of threats to be equivalent in this case. This is demonstrated in the disjunctive description of the act as being carried out by means of “violence or threats”. This is important because this disjunctive description is used in relation to all offenses involving instrumental violence in the criminal codes³¹, opening the door to a conclusion which could

29 In a recent publication, Pinedo, following the thesis of Oliver (2013), argues that it is not necessary to identify threats and intimidation, but this is not the case when it comes to understanding the crime of robbery (Pinedo, 2017). Any distinction between threats and intimidation is artificial because robbery must be committed *by means of* intimidation; that is, the appropriation is not defined based on the fear experienced by the victim, regardless of its source, but rather based on the intimidation employed by the *agent*, which is an integral part of the construction of a conditional threat. In other words, the possession is appropriated by warning that some evil-doing will be perpetrated if the victim does not give up the possession. If the victim does not give up the possession because the warning of evil-doing does not effectively alter their motivation, then there is no robbery because the threat has not restricted their freedom of action. But if the victim gives up the possession, then there has been a conditional threat; that is to say, the warning of evil-doing has effectively enabled the agent to appropriate the possession. Consequently, if the intimidation does not succeed in coercing the intended victim to give up the property there has been no robbery; if the intimidation does succeed in this, then there has been a conditional threat. Pinedo similarly considers that, in Peru, robbery is deemed to have taken place if the possession is obtained despite the victim not being intimidated, but this conclusion is mistaken for the same reason as Oliver’s is. In effect, if the victim hands over the possession of their own free will, then no robbery has taken place as this requires that the appropriation be accomplished through the use of coercive means, which is not the case. But, if such coercive means are used and the property is appropriated, then there has been a conditional threat and, therefore, robbery has taken place.

30 For an illuminating discussion of how this issue is dealt with in Spanish and German regulations, which serve as a basis for the legislation in Peru and Chile, see Antonio Bascuñán (1998).

31 In all instances in which the CCP or the CCC use the term “threat” (or the equivalent “intimidation”), it is used together with the term “violence”, the two being separated by the disjunction “or”. It features in the following articles of the CCP: Art. 151; Art. 153; Art. 153 B; Art. 166; Art. 168; Art. 170; Art. 176; Art. 176 C; Art. 188; Art. 189 C; Art. 200; Art. 202; Art. 206; Art. 285; Art. 296 A; Art. 301; Art. 310 B, inc. 2;

alter the conceptualization at the heart of this paper: if threats and physical violence are equivalent, then where the legislation mentions physical violence the term could be replaced—in the case of offenses involving instrumental violence—by the term “threats” without any change in meaning. After all, if they are considered equivalent, there no argument can be made that violence is fundamentally different from threats. I will call this thesis the *equivalence thesis*. The problem with this thesis is that it blurs the concept of physical violence not only in relation to the crime of robbery³², but in all offenses involving instrumental violence which are described using this disjunctive expression. Comparative literature speaks of the “spiritualization” of violence³³ in reference to this issue; it features in discussions of illegal conditional threats (more specifically, coercion³⁴), but also applies to the crime of robbery because, as we have seen, the structure of conditional threats is integral to robbery.

In order to reject the equivalence thesis, we must first answer two questions. The first relates to what we understand by the term “violence” and the term “threat”. It does not seem controversial to state that violence involves an agent engaging in a conduct involving the use of force against a victim. Nor is it controversial to understand a

Art. 354; Art. 355; Art. 365; Art. 366; Art. 396; Art. 409 A; Art. 413; Art. 414; Art. 415. It features in the following articles of the CCC: Art. 138; Art. 144, sub. 2; Art. 261, No. 1; Art. 268 sexies; Art. 268 septies; Art. 335; Art. 361; Art. 366 quater; Art. 368, sub. 2; Art. 384, sub. 2; Art. 411 quater; Art. 432; Art. 433; Art. 436; Art. 438; Art. 439; Art. 460.

32 In Chile, a significant portion of the literature relies on the equivalence thesis, viewing “violent coercion” as violence. However, coercion does not necessarily involve a violent event, and by characterizing coercion as “violent” the core meaning of physical violence is no longer clear; hence the use of the equivalence thesis (Oliver, 2013, p. 276).

33 Jakobs, for example, makes use of a spiritualized conceptualization, defining violence as the blocking of the victim’s legally protected means of organization. This author attempts to avoid the pitfalls of such a broad proposal; strictly speaking, anybody who blocks a road is restricting the legally recognized freedom of movement of the victim. Whether or not this conduct constitutes criminal restriction of freedom from a legal point of view—as regards the discussion on coercion—is debatable, but it certainly does not constitute physical violence. To avoid characterizing this type of conduct as violent, Jakobs (1997, pp. 451-453) argues that violence occurs only when the victim has some legally guaranteed right which protects against harmful conduct by the agent, but this is not a workable strategy for differentiating intimidation from physical violence. Both cases may involve harm to important interests, but it is not this legal guarantee which differentiates physical violence from intimidation; this is simply another way of referring to *harm*. In order to differentiate violence from intimidation we need to look at the *means*, at least when it comes to *first-degree physical violence*. Hruschka (2005, p. 258) and Ragues (2003, p. 485) agree with Jakobs on this.

34 It is worth noting that this debate around the concept of violence takes criminal coercion as its starting point, and more specifically, legally protected rights. In other words, the spiritualization of the concept of violence rests on a broadening of our understanding of the means by which freedom of action can typically be restricted. This is the argument behind the equivalence thesis, which would not be (so) problematic if it were restricted to the crime of coercion, but this is not the case. Indeed, the equivalence thesis is erroneously extended to other crimes, such as the crimes of bodily injury and robbery; however, a conceptualization of the violence involved in these is unrelated to any discussion of the crime of coercion. That is to say, crimes of bodily injury and robbery are not (always) related to freedom of action and, as such, a conceptualization of violence should not necessarily be affected by this process of spiritualization. This is why the distinction between *vis absoluta* and *vis compulsiva* in these crimes is not relevant as a criterion for defining what we mean by the term “violence”: The absence of action or culpability does not help us in establishing criteria for what qualifies as violence outside the context of the crime of coercion. This distinction between *vis absoluta* and *vis compulsiva* is of course important for differentiating between threats and coercion, but it is not relevant when identifying criteria for what constitutes violence, be it in and of itself or instrumental.

threat as a form of conduct through which agent X warns Y that some evil-doing will be inflicted on them. However, cases which equate threats and violence are not referring to simple or non-conditional threats, they are referring to conditional threats. Formally, such threats involve X warning Y that they will perpetrate some unlawful evil A, conditional upon whether Y does B or not; that is, it is assumed that X threatens Y in order to achieve a certain objective. The second question relates to why the criminal codes equate threats with violence; the answer to this lies in the instrumental structure of threats. The structure of a threat is the same as that of instrumental violence examined in previous sections: like threats, instrumental physical violence is something an *agent* inflicts on a *victim*, and the definition relies on the *agent* acting in order to achieve a certain purpose.

The equivalence thesis is thus founded on this instrumental structure; accomplishment of the objective is the defining characteristic used to equate threats with violence. The problem with this is that asserting the equivalence thesis suggests that conclusions can be drawn about physical violence overall. However, the way out of this problem is relatively simple: the debate regarding violence and threats should be limited to the relevant context, namely that of instrumental violence against people. In this way, by restricting the debate, the discussion on physical violence overall remains separate; that is, the term “violence” should never be substituted for the term “threats” outside the context of instrumental violence.

Given this advance in our argument, we must now answer the following question: is the use of force involved in the crime of robbery with violence really physical violence? There are two possible answers here. The first is that to qualify as physical violence the use of force must fulfil the conditions of the conceptualization developed in this paper. To wit, if the force used is less than the established threshold then there is no *first-degree physical violence*, and hence no robbery with violence. The problem with this assertion is that it implies that if the degree of force used is not sufficient to constitute *first-degree physical violence*, there is no robbery, even if the degree of force is sufficient to enable appropriation of the possession involved; in other words, it is functionally adequate. The second answer is that the relevant measure is not the use of *first-degree physical violence*, merely the use of a degree of force which is functionally adequate to enable appropriation. Which answer is correct?

While the answer depends on the legislation in question, deciding on the correct alternative involves correlating the type of threat required to commit robbery with the type of exercise of force which may or may not constitute violence. The latter is precisely what is missing from

the literature which claims that physical violence is an intuitive and self-evident concept. In order to correlate the type of threat and the type of force involved in each case, it is pertinent that both cases seem to entail a consideration of the level of severity or *gravity*; that is, both the threat and the force must meet a certain threshold of gravity³⁵ in order to constitute robbery or physical violence respectively. The use of the term “violence” communicates this better than “threat”. Indeed, the use of physical violence is the paradigmatic example of the notion of violence, which emphasizes gravity. Consequently, if the exercise of force is a necessary condition to effectively communicate the requirement of gravity involved in the crime of robbery, this can only be achieved if the exercise of force constitutes violence. The same applies to threats. Although the CCP is explicit (Art. 189) with respect to this requirement and the CCC is not (Art. 436), in Chile both the law in practice and the literature consider that the threat must be grave; in other words, as stated in the CCP, the warning must imply an imminent danger to life or bodily integrity. It follows from this that non-grave threats or an exercise of force which does not amount to violence do not rise to the level of severity required for the crime of robbery³⁶. As we have seen, both threats and violence have an instrumental structure which is integral to any definition of the crime of robbery. That is, both violence and threats can be grave but they meet the requirements for an act to qualify as robbery only when they are also instrumental; *i.e.*, when they are functionally adequate to accomplish the appropriation.

Having established the minimum use of force necessary for an act to constitute robbery, we need to identify a distinguishing characteristic of physical violence which does not apply to threats, as physical violence can result in different types of harm, some of which are criminalized as independent offenses, such as homicide and bodily injury, among others. According to the CCP, if the violence employed causes minor bodily injuries, then the offense is one of aggravated robbery and the second paragraph of Art. 189 applies; if the injuries are grave, the third paragraph of Art. 189 applies. If the violence does not cause bodily injury the crime is simple robbery. This last definition does not imply that the offense does not cause the victim harm and that thus no violence has

35 This “gravity” is not necessarily related to the gravity implicit in the term “*disvalue of action*” because the *disvalue of action* in traditional legal doctrine, understood as the inherent dangerousness of a particular conduct, is used more to characterize types of conduct based on whether or not they are adequate to achieve a certain (usually significant) result; while the gravity element of the conceptualization of physical violence which has been developed in this paper refers to the use of energy above a certain threshold as being significant in itself; that is to say, regardless of the result.

36 The CCP imposes an additional restriction for an act to constitute simple robbery, which concerns the magnitude of the harm resulting from the violence. The violence must not result in any bodily injury; if minor injuries are caused, then Art. 189, paragraph 2, applies and the crime becomes aggravated robbery and, if serious injury is caused, Art. 189, Paragraph 3, applies. In contrast, the CCC imposes no such additional restriction; the violence does not necessarily have to cause bodily injury and, if it does, these are classed as “less grave” bodily injuries (Art. 399) or minor bodily injuries (Art. 494, No. 5).

taken place. Violence, as we have seen, is what allows us to characterize the exercise of force as sufficiently grave for an act to qualify as a crime of robbery. The CCC applies a similar distinction; if the violence results in grave injuries, the offense is aggravated robbery (Art. 439)³⁷. If a certain amount of harm is a condition for an act to constitute robbery, it may be reasonable to assume that not only must violence be exercised, but that bodily injuries, be they grave or minor injuries, must also result. However, this is not a fundamental condition in order for an act to constitute robbery with violence because, as we discussed, violence does not necessarily result in harm in terms of a negative effect on bodily integrity or health.

In summary, analyzing threats and violence together enhances our understanding of the elements which are required for an act to constitute robbery. The scant attention paid in the literature to precisely what constitutes violence, due to the exclusive emphasis on the threat as the fundamental element in our understanding of the structure of robbery, has made it difficult to appreciate that the means employed are instrumental to the act of appropriation, as well as the specific characteristics of those means. Recognizing the functional nature of the means employed tips the balance in favor of that part of the literature and legal doctrine which considers that the crime of robbery can be understood fundamentally as robbery using threats (coercion)³⁸, and against those who consider that the offense is in addition an attack on individual safety (Peña, 2008, pp. 204-206). However, the structure of robbery cannot be reduced to robbery as coercion as this ignores the functionality of physical violence. Thus, the conceptualization of physical violence is fundamental for an adequate understanding of this criminal offense, and insights gleaned from analyzing it can naturally be generalized to other instances where the criminal codes discussed in this paper equate the terms “violence” and “threat”.

IX. CONCLUSION

This research has sought to identify the core elements which are necessary to characterize a given social occurrence as physical violence. After a certain amount of analysis, I proposed a “hybrid” conceptualization of physical violence, divided into *first-degree physical violence* and *second-*

37 In the case of the CCC, it is clear that the serious bodily injury is not necessarily a result of the exercise of functional violence. In addition to aggravated robbery, Art. 433 also covers homicide and rape, among other crimes, offenses which may take place alongside the robbery. Consequently, the crime of robbery in the CCP does not always involve instrumental violence. In any case, if instrumental violence is involved, it would probably fall into the category of *second-degree physical violence* which is covered by the regulations on “multiple offenses” in the legislation. This issue does not exist in the case of the CCP regulations, the resultant harm is not considered independently of the instrumental violent conduct.

38 For Chile, see the discussion in Antonio Bascañán (2002). In the case of Peru, Ramiro Salinas (2013, p. 989), among others, takes this view.

degree physical violence. Although these are independent, they are sufficiently related to describe them both as physical violence. Certainly, the elements of *morality*, an *agent* and a *victim*, *intent* (whether in pursuit of a purpose or not) and *harm* are common to both, although certain differences were noted with respect to the *means*. As discussed, this hybrid model does not seek to specify the necessary and sufficient conditions for a conceptualization of violence; rather it is a wide-ranging model which can be expanded or contracted in order to classify different forms of violence. Due to this conceptual flexibility, the hybrid model of physical violence and its classification criteria make it possible to unite a diverse range of behaviors under a common label. In this sense, it contributes to the study of violence in general.

This conceptualization of physical violence made it possible to identify elements which merit further research as part of the study of violence in general because, as demonstrated, elements such as the *morality*, the *agent* and the *victim* are common to both. While it is true that the elements of *harm*, *intent* and the *means* do not map precisely between the two, this is simply because physical violence is a specific category of violence in general. In other words, these six elements can be extrapolated to other types of violence regardless of the particular form it takes. The specifics of each can be adjusted in order to develop different conceptualizations of different forms of violence; the *agent* and *victim* for example, can refer to individuals or groups such as state or non-state actors; the *means* may be psychological or involve some exercise of physical force; the specific nature of the *harm* must be considered. Variations in how violence is interpreted are inevitable, but this does not mean that the elements identified in this paper are absent. On the contrary, as suggested, they operate as vectors which can be used to define various forms of violence, and it would be a mistake not to integrate them into our understanding of the concept.

The conceptualization developed in this paper will have to survive much debate in order to become an accepted model which can help us better understand the quintessential example of violence: physical violence. It has proven useful for an analysis of a specific conduct which constitutes a crime—that of robbery with violence or threats—but its usefulness need not be limited to the field of criminal law. Not only does the model detail the elements which are relevant in discussions of physical violence, these can be used to develop further models of violence. As such, the paper provides criteria for making judgements regarding what behaviors necessarily constitute violence, which is not only relevant to philosophical discussions on the concept of violence or in the interpretative context of criminal justice courts, but also provides a conceptual model capable of guiding and integrating empirical research. A review of the empirical research carried out to date would

35

CONCEPTUALIZING
VIOLENCE AND
PHYSICAL VIOLEN-
CE: A COMPARA-
TIVE ANALYSIS OF
THE LEGISLATION
IN PERU AND CHILECONCEPTUALIZAN-
DO LA VIOLENCIA
Y LA VIOLENCIA
FÍSICA: UN ANÁLISIS
COMPARADO
DE LAS LEGISLA-
CIONES DE PERÚ Y
CHILE

be especially interesting from the point of view of identifying the criteria used in the study of violence and fear of crime; these may need to be adapted and refined to incorporate the elements identified in this paper. Such a review and analysis should form part of future research.

REFERENCES

- Arendt, H. (1970). *On Violence*. San Diego: Harvest, HBJ Book.
- Asmann, P., & O'Reilly, E. (2020, January 20). Balance de Insight Crime de los homicidios en 2019. *Insight Crime*. <https://es.insightcrime.org/noticias/analisis/balance-homicidios-2019/>
- Audi, R. (2009). On the Meaning and Justification of Violence. In V. Bufacchi (ed.), *Violence: A Philosophical Anthology* (pp. 136-167). Basingstoke: Palgrave Macmillan.
- Bäck, A. (2004). Thinking Clearly about Violence. *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, 117(1), 219-230. <https://doi.org/10.1023/B:PHIL.0000014534.75890.da>
- Bascuñán, A. (1994). La regulación española de la coerción en el marco de la codificación penal europea. *Anuario de Derecho Penal y Ciencias Penales*, 47(3), 191-306.
- Bascuñán, A. (2002). El robo como coacción. *Revista Estudios de la Justicia*, (1), 55-125. <https://doi.org/10.5354/0718-4735.2011.14974>
- BBC News. (2021, March 4). Myanmar: la violenta represión a las protestas contra el golpe de Estado deja decenas de manifestantes muertos. <https://www.bbc.com/mundo/noticias-internacional-56275290>
- Betz, J. (1977). Garver's Definition and a Deweyan Correction. *Ethics*, 87(4), 339-351. <https://doi.org/10.1086/292046>
- Boudri, C. (2002). *What Was Mechanical About Mechanics. The Concept of Force Between Metaphysics and Mechanics From Newton to Lagrange* (Sen Mcglinn, trad.). Dordrecht: Springer.
- Bratman, M. (2007). *Structure of Agency. Essays*. Cambridge: Cambridge University Press.
- Brudner, A. (2009). *Punishment and Freedom. A Liberal Theory of Penal Justice*. Oxford: Oxford University Press.
- Bufacchi, V. (2008). *Violence and Social Justice*. Basingstoke: Palgrave Macmillan.
- Burgess-Jackson, K. (2003). Violence in Contemporary Analytic Philosophy. In W. Heitmeyer and J. Hagan (eds.), *International Handbook of Violence Research* (pp. 989-1004). New York: Kluwer.
- Childress, J., & Kennedy, J. (1978). Some Reflections on Violence and Non-violence. *Philosophical Papers*, 7(1), 1-14. <https://doi.org/10.1080/05568647809506480>

Coady, C.A.J. (2008). *Morality and Political Violence*. Cambridge: Cambridge University Press.

Collins, R. (2008). *Violence. A Micro-sociological Theory*. Princeton: Princeton University Press.

Comisión Nacional de Seguridad de Tránsito (Conaset). (s.f.). *Observatorio de Seguridad Vial*. <https://www.conaset.cl/programa/observatorio-datos-estadistica/>

Cuevas, C., & Rennison, C. (2016). *The Wiley Handbook on the Psychology of Violence*. Chichester: Wiley.

Cury, E. (2005). *Derecho Penal Parte General*. Santiago de Chile: Universidad Católica de Chile.

Darwall, S. (2006). *Second-Person Standpoint: Morality, Respect, and Accountability*. Cambridge, Massachusetts: Harvard University Press.

Davidson, D. (2001). Agency. En D. Davidson, *Essays on Actions and Events* (2nd ed.). Oxford: Oxford University Press.

Dowe, P. (2000). *Physical Causation*. Oxford: Oxford University Press.

Edwards, L., Penn, N., & Winter, J. (2000). *The Cambridge World History of Violence*. Cambridge: Cambridge University Press.

Emirbayer, M., & Mische, A. (1998). What Is Agency? *American Journal of Sociology*, 103(4), 962-1023. <https://doi.org/10.1086/231294>

Enoch, D. (2010). Moral Luck and the Law. *Philosophy Compass*, 5(1), 42-54. <https://doi.org/10.1111/j.1747-9991.2009.00265.x>

Enoch, D. (2012). Being Responsible, Taking Responsibility, and Penumbral Agency. In U. Heuerer and G. Lang (eds.), *Luck, Value and Commitment. Themes From the Ethic of Bernard Williams* (pp. 95-132.). Oxford: Oxford University Press.

Feinberg, J. (1984). *The Moral Limits of the Criminal Law. Harm to Others* (vol. I). Oxford: Oxford University Press.

Fletcher, G. (2020). *The Philosophy of Well-Being*. Londres: Routledge.

Frankfurt, H. (1971). Free Will and the Concept of a Person. *The Journal of Philosophy*, 68(1), 5-20. <https://doi.org/10.2307/2024717>

Frazer, E., & Hutchings, K. (2020). *Violence and Political Theory*. Cambridge: Polity.

Galtung, J. (1969). Violence, Peace, and Peace Research. *Journal of Peace Research*, 6(3), 167-191. <https://doi.org/10.1177/002234336900600301>

García, P. C. (2019). *Derecho Penal Parte General*. Lima: Ideas.

Garver, R. (2009). What Violence Is. In V. Bufacchi (ed.), *Violence: A Philosophical Anthology* (pp. 170-182). Basingstoke: Palgrave Macmillan.

CONCEPTUALIZING
VIOLENCE AND
PHYSICAL VIOLEN-
CE: A COMPARA-
TIVE ANALYSIS OF
THE LEGISLATION
IN PERU AND CHILE

CONCEPTUALIZAN-
DO LA VIOLENCIA
Y LA VIOLENCIA
FÍSICA: UN ANÁLIS-
S COMPARADO
DE LAS LEGISLA-
CIONES DE PERÚ Y
CHILE

- Gheaus, A. (2018). Personal Relationship Goods. *The Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=personal-relationship-goods>
- Goti, J.M. (2008). *Suerte, moralidad y responsabilidad moral*. Buenos Aires: Hammurabi.
- Hamilton, L. (2003). *The Political Philosophy of Needs*. Cambridge: Cambridge University Press.
- Hanoch, B. (2017). Vagueness and Family Resemblance. In H. Glock and J. Hyman (eds.), *A Companion to Wittgenstein* (pp. 407-419). Chichester: Wiley.
- Harris, J. (1974). The Marxist Conception of Violence. *Philosophy and Public Affairs*, 3(2), 192-220.
- Heath, J. (2020). Methodological Individualism. *The Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/entries/methodological-individualism/>
- Hernández, H. (2011). Art. 10 No. 13. In J. Couso and H. Hernández (dir.), *Código penal comentado* (libro I, pp. 280-28). Santiago de Chile: LegalPublishing Chile.
- Hirsch, V.A. (1986). Injury and Exasperation: An Examination of Harm to Others and Offense to Others. *Michigan Law Review*, 84(4), 700-714. <https://doi.org/10.2307/1288841>
- Holmes, R. (1989). *On War and Morality*. Princeton: Princeton University Press.
- Hruschka, J. (2005). *Imputación y Derecho Penal. Estudios sobre la Teoría de la Imputación*. Montevideo and Buenos Aires: B de F.
- Instituto Nacional de Estadística e Informática (INEI). (s.f.). *Accidentes de tránsito*. <https://www.inei.gob.pe/estadisticas/indice-tematico/traffic-accidents/>
- Jacquette, D. (2013). Violence as Intentionally Inflicting Forceful Harm. *Revue Internationale de Philosophie*, 265(3), 293-322. <https://doi.org/10.3917/rip.265.0293>
- Jakobs, G. (1997). *Estudios de Derecho Penal*. Madrid: Civitas.
- Jakobs, G. (1998). *Sobre la Teoría de la Pena*. Bogotá: Universidad Externado de Colombia.
- Jakobs, G. (2007). *La pena estatal. Significado y finalidad*. Madrid: Thomson & Civitas.
- Kutz, C. (2000). *Complicity. Ethics and Law for a Collective Age*. Cambridge: Cambridge University Press.
- McKenna, M. (2012). *Conversation and Moral Responsibility*. Oxford: Oxford University Press.
- North, D., Wallis, J., & Weingast, B. (2009). *Violence and Social Orders. A Conceptual Framework for Interpreting Recorded Human History*. Cambridge: Cambridge University Press.

- Oliver, G.C. (2013). *Delitos contra la propiedad*. Santiago de Chile: LegalPublishing.
- Parry, J. (2010). *Understanding Torture*. Michigan: University of Michigan Press.
- Peña, A.C. (2008). *Derecho Penal Parte Especial* (vol. II). Lima: Idemsa.
- Pinedo, C.S. (2017). La Relevancia de las Amenazas con Contenido Ficticio en los Delitos de Coacción Patrimonial. Un Planteamiento a partir de las Legislaciones Penales de Perú y Chile. *Revista de Ciencias Penales*, 45(4), 29-56.
- Ragues, R.V. (2003). ¿Coacciones sin violencia? Apuntes sobre el difícil encaje de la legalidad en un sistema funcional del derecho penal. In E. Lynett (coord.), *El funcionalismo en Derecho Penal. Libro homenaje al profesor Günther Jakobs* (vol. II, pp. 481-496). Colombia: Universidad Externado de Colombia.
- Raine, A. (2013). *The Anatomy of Violence. Biological Roots of Crime*. New York: Pantheon Book.
- Raz, J. (1986). *The Morality of Freedom*. Oxford: Oxford University Press.
- Ristroph, A. (2011). When Freedom isn't Free. *New Criminal Law Review: An International and Interdisciplinary Journal*, 14(3), 468-485. <https://doi.org/10.1525/nclr.2011.14.3.468>
- Salinas, R.S. (2013). *Derecho Penal Parte Especial*. Lima: Grijley.
- Sánchez, J.M. (1999). *La violencia en el Derecho Penal. Su análisis jurisprudencial y dogmático en el CP 1995*. Barcelona: Bosch.
- Sarat, A., & Culbert, J. (2009). *States of Violence. War, Capital Punishment, and Letting Die*. Cambridge: Cambridge University Press.
- Scanlon, T.M. (1998). *What We Owe to Each Other*. Cambridge, Massachusetts: Harvard University Press.
- Tadros, V. (2014). What Might Have Been. In J. Oberdiek (ed.), *Philosophical Foundations of the Law of Torts* (pp. 171-192). Oxford: Oxford University Press.
- Taylor, C. (1985). What is Human Agency. In *Human Agency and Language Philosophical Papers*. Cambridge: Cambridge University Press.
- Vorobej, M. (2016). *The Concept of Violence*. Abingdon: Routledge.
- Weale, A. (1998). Need and interests. In E. Craig (ed.), *The Routledge Encyclopedia of Philosophy*. United Kingdom: Routledge.
- Weatherford, R. (1983). Defining the Least Advantaged. *The Philosophical Quarterly*, 33, 63-69. <https://doi.org/10.2307/2219204>
- Williams, N. (1982). *Moral Luck. Philosophical Papers 1973-1980*. Cambridge: Cambridge University Press.
- Williams, R. (1983). *Keywords. A Vocabulary of Culture and Society* (revised edition). New York: Oxford University Press.
- Woodward, J. (2003). *Making Things Happen. A Theory of Causal Explanation*. Oxford: Oxford University Press.

CONCEPTUALIZING
VIOLENCE AND
PHYSICAL VIOLEN-
CE: A COMPARA-
TIVE ANALYSIS OF
THE LEGISLATION
IN PERU AND CHILE

CONCEPTUALIZAN-
DO LA VIOLENCIA
Y LA VIOLENCIA
FÍSICA: UN ANÁLIS-
S COMPARADO
DE LAS LEGISLA-
CIONES DE PERÚ Y
CHILE

40

Wyckoff, J. (2013). Is the Concept of Violence Normative? *Revue Internationale de Philosophie*, 265(3), 337-352. <https://doi.org/10.3917/rip.265.0337>

Received: 05/10/2021
Approved: 10/01/2022