

Letter from the Editor

In the last twenty years, precedent and case law have become an increasingly prominent topic in the legal discussion of civil law legal systems. The use of precedent beyond the confines of common law legal systems has meant its incorporation and implementation in many different ways, as well as its study in academia.

This year's discussion section is the result of the effort of several people who submitted papers and made it possible to hold the *Problema. Anuario de Filosofía y Teoría del Derecho* seminar, entitled "The Construction of Precedent in Civil Law: Debates, Concepts and Challenges".

The purpose of the seminar was to identify the problems, questions and discussions that must be addressed to outline and deepen our understanding of precedent. The starting point for the discussion was the problems set out in the 2020 book *La construcción del precedente en el Civil Law* [The Construction of Precedent in Civil Law], and it grew from there.

Each of the articles in this issue pose a series of challenging questions. For instance, Flavia Carbonell ponders judicial decision-making in the context of a legal system like Chile's where there is no formal obligation to follow precedents. She raises the question of whether such a case-by-case balancing of reasons way of decision-making is better than a system bound by precedent. She also explores the problems caused by an absence of a rule of precedent and shed light on the varied consequences of each approach.

Rodrigo Camarena proposes four different theoretical models to understand *ratio decidendi*, given the incorporation of precedent in the Mexican context as part of the 2021 reform. In this sense, each model prioritizes one aspect or another in the understanding and use of precedent, while suggesting a way of applying precedent that opens the door as to whether its application might become a practice that is shaped locally, influenced by the contexts in which it is applied.

Silvia Zorzetto presents a detailed consideration on the uses of precedent, generating a typology of its use as arguments. By illustrating such uses in specific cases, it soon becomes apparent that there are a variety of argumentative uses of precedent and that not all of them are consistent with

the main notion, according to which it is used to be applied to a given interpretative solution. In this sense, there is a true precedent with its application and many other uses. The article sheds light on the complexity of applying precedent and the different forms it can take, as well as the difficulty in differentiating or even “discriminating” between real and other uses of precedent. Lastly, she reflects on the challenges faced in structuring a well-ordered system of precedent.

Fabio Pulido’s article raises the question on the need for having “rules governing the use of precedent in legal system, i.e., the need to have rules that govern the use of precedent and whether, if at all, it is a necessary or incidental rule in legal systems. He suggests different ways such a rule can take in legal systems, as well as the different relationships between the nature of this rule and the ensuing consequences.

Lastly, to continue and enrich the discussion, each contribution is analyzed and discussed by Marina Gascón Abellán and Álvaro Núñez Vaquero in a reply that revisits the problems raised in the articles to reassess and question them as well as to enrich the debate. The overall purpose is to provide one more element in structuring the ideas on precedent that will enable its further study, understanding and dissemination in civil law legal systems.

I would like to express my sincere thanks and appreciation to each and every one of the people who welcomed and participated in this activity.

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