

REVIEW ARTICLE

# The transformation of civil Law: Contemporary challenges and fundamental principles

La transformación del derecho civil: desafíos contemporáneos y principios fundamentales

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**Abstract** This study analyzed the evolution of civil law from a critical perspective, focusing on the fundamental principles of freedom of will, equality before the law, and good faith and their adaptation to contemporary demands. A qualitative approach was used, employing doctrinal and comparative methods to examine legislation, doctrine, and jurisprudence from various jurisdictions. The findings highlighted the permanence of these principles as essential pillars, although their practical application varied by context. In Europe, civil codes demonstrated greater flexibility in addressing emerging challenges such as digital rights and environmental sustainability. At the same time, in Latin America, regulatory gaps were identified in areas such as data protection and electronic commerce. The study also emphasized the importance of state intervention in regulating civil law, particularly in jurisdictions with less developed regulatory frameworks. It concluded that civil law faces the challenge of evolving toward a multidimensional approach that integrates ethical, social, and environmental values, promoting interdisciplinary cooperation and legislative harmonization. These adaptations are essential to ensuring a legal framework that addresses the challenges of a globalized and technologically advanced society, maintaining its relevance as an instrument of justice and equity.

**Keywords** civil law, fundamental principles, legal codification, normative adaptation, justice, equity.

**Resumen** El presente trabajo analizó la evolución del derecho civil desde una perspectiva crítica, enfocándose en los principios fundamentales de autonomía de la voluntad, igualdad ante la ley y buena fe, y su adaptación a las demandas contemporáneas. Se utilizó un enfoque cualitativo basado en métodos doctrinales y comparativos, examinando legislación, doctrina y jurisprudencia de diversas jurisdicciones. Los resultados destacaron la permanencia de estos principios como pilares esenciales, aunque su aplicación práctica varió entre contextos. En Europa, los códigos civiles mostraron mayor flexibilidad para abordar desafíos emergentes, como los derechos digitales y la sostenibilidad ambiental, mientras que en América Latina se identificaron vacíos normativos en áreas como la protección de datos y el comercio electrónico. Asimismo, el estudio evidenció la importancia de la intervención estatal en la regulación del derecho civil, especialmente en jurisdicciones con menor desarrollo normativo. Se concluyó que el derecho civil enfrenta el desafío de evolucionar hacia un enfoque multidimensional que integre valores éticos, sociales y ambientales, fomentando la cooperación interdisciplinaria y la armonización legislativa. Estas adaptaciones son imprescindibles para garantizar un marco jurídico que responda a los retos de una sociedad globalizada y tecnológicamente avanzada, manteniendo su relevancia como instrumento de justicia y equidad.

**Palabras clave** derecho civil, principios fundamentales, codificación jurídica, adaptación normativa, justicia, equidad.

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## Introduction

Civil Law constitutes one of the fundamental pillars of the legal system, consolidating itself as an essential tool for regulating relations between individuals and protecting individual rights within a framework of justice and equity. From its genesis in the Roman *ius civile* to its modern configuration, this normative body has evolved to respond to the challenges of contemporary society. From this perspective, principles such as good faith, autonomy of the will, and equality before the law have been highlighted by authors such as Corral (2022), who point out that these guiding principles are indispensable to guarantee legal certainty in human interactions. Furthermore, the general theory of the contract, developed by Lasarte et al. (2017), emphasizes how Civil Law has laid the foundations for subsequent legal disciplines, adapting to new realities through legislative and jurisprudential reforms.

However, Civil Law faces the challenge of remaining relevant in a constantly changing world. One of the fundamental problems in this area is the need for more harmonization between traditional norms and contemporary social demands (Woolcott-Oyague et al., 2018), such as the need to regulate new contractual scenarios, redefine possession, and guarantee the comprehensive protection of human rights. Lama (2011), in his analysis of precarious possession, highlights how discrepancies between legal definitions and their practical application generate conflicts that hinder uniformity in resolving disputes, evidencing a regulatory vacuum in certain specific contexts of Civil Law (Pasco, 2023). This type of problem highlights the urgency of adopting dynamic approaches that allow Civil Law to respond effectively to current demands.

On the other hand, the concept of the person in Civil Law also raises questions about its scope and evolution. The positivist tendency that reduces the person to a subject of rights and duties in the legal field has impoverished its ontological and ethical understanding (Calvo, 2004; Casas et al., 2018). This reduction conflicts with the social and ethical demands to recognize human dignity as an inviolable core, even in biotechnology and reproductive rights contexts. Therefore, the problem underlying this research is to identify how Civil Law can be integrated with other disciplines and fundamental values to remain a coherent, accessible normative system that protects people's rights in a rapidly changing society.

This paper analyzes the theoretical and practical implications of civil law's fundamental principles from a critical perspective. It also aims to examine its capacity to adapt to new social realities and propose normative solutions for overcoming current challenges. This approach addresses both traditional problems and emerging needs in this field.

Civil Law is based on essential principles that guide its application and guarantee justice and equity in legal relations. These principles include autonomy of the will, equality be-

fore the law, and the protection of good faith, which form the pillars on which this normative body is built. The autonomy of the will allows individuals to freely agree on the conditions of their agreements (Sarde, 2022) as long as they do not contravene public order or good customs and reinforces the principle of freedom in legal relations. According to Lasarte et al. (2017), this principle expresses individual sovereignty and is crucial for the configuration of contracts and the interaction between parties on equal terms.

Equality before the law is another cardinal principle of Civil Law, guaranteeing that all people are treated equally in their legal interactions (Vélez et al., 2021). This principle ensures no discrimination in applying the rules, strengthens trust in the legal system, and reinforces its legitimacy. As Corral (2022) explains, equality before the law is not only a normative ideal but also a tool to overcome structural barriers and protect the most vulnerable sectors of society. Correctly implementing this principle is essential in a legal system that aims to guarantee material justice.

Good faith, both in its objective and subjective aspects, has been consolidated as a fundamental principle of Civil Law (Martínez, 2021). In its objective dimension, good faith acts as a standard of loyal and honest conduct that must govern legal relations, promoting trust and stability in legal interactions. On the other hand, in its subjective aspect, it refers to the reasonable belief of the parties in the legitimacy of their acts. This principle has been especially relevant in the contractual field, where it facilitates the resolution of conflicts and prevents abusive behavior. Recent jurisprudence has reinforced the protection of good faith as a regulatory axis in the interpretation of contracts (Lasarte et al., 2017).

The interaction of these principles not only structures Civil Law but also reflects the fundamental values of society. In a context of constant social and technological transformations, these principles must be adapted to continue fulfilling their integrating function. For example, good faith takes on new nuances in electronic commerce and other forms of digital interaction, where trust is key to developing transactions. Likewise, the autonomy of the will faces challenges in the face of legislation that regulates new scenarios, such as digital rights or smart contracts. This dynamism reinforces the importance of these principles as normative and ethical guides to respond to contemporary demands (Corral, 2022).

Civil codification has been decisive in systematizing and unifying legal norms regulating individual relations. This process has allowed the creation of coherent and organized legal bodies, such as the Napoleonic Code of 1804, which served as a model for numerous legal systems in Europe and Latin America. According to Corral (2022), civil codification facilitated legal access to the law and reinforced legal certainty and security by establishing clear principles governing

individual relations (Pérez & Vidal, 2014).

However, society's constant evolution poses challenges to traditional codification. Aspects such as globalization, technological advances, and cultural diversity require continuous review and adaptation of civil codes. When addressing the common framework of reference for European Civil Law, Jerez (2015) emphasizes that flexibility and updating codes are essential to maintaining relevance and effectiveness in a constantly changing world. This process includes integrating principles of social justice and environmental sustainability, aspects previously not considered in traditional legal systems.

Furthermore, modern codes must incorporate international principles that promote harmonization between legal systems. Codification must evolve to address issues such as e-commerce, digital rights, and consumer protection, which are essential in the current context (Lasarte et al., 2017). This dynamism not only reinforces the relevance of Civil Law at the local level but also broadens its scope in a globalized environment.

The State plays a crucial role in regulating Civil Law, acting as a guarantor of the balance between the autonomy of individuals and the protection of the public interest. Through its legislative and judicial function, the State establishes the normative framework that regulates relations between individuals, ensuring that these develop in a context of legality and equity. According to Lama (2011), this regulation is essential to prevent abuses and protect fundamental rights, especially in cases where economic or social inequalities affect access to justice.

Furthermore, the State is responsible for intervening in cases of conflict to guarantee justice and equity. In this sense, Article 911 of the Peruvian Civil Code, analyzed by Lama (2011), highlights how the State regulation of precarious possession seeks to standardize jurisprudential criteria and protect the most vulnerable parties in property conflicts. This intervention is essential to maintain confidence in the legal system and ensure that civil relations are carried out fairly and orderly.

The role of the State in Civil Law includes promoting principles that reflect contemporary ethical and social values. It stresses that the regulatory framework must adapt to current needs, including protecting emerging rights related to bioethics and sustainability (Calvo, 2004; Lema, 2021). This perspective reinforces the importance of the State not only as a legislator but also as a mediator and protector in a dynamic and changing system.

## Methodology

This research is developed using a qualitative approach, using doctrinal and comparative methods to analyze the

evolution and application of civil codification in various contemporary legal systems. A qualitative approach allows a deep understanding of the legal phenomena studied, focusing on the interpretive analysis of legal and doctrinal texts. This approach is suitable for exploring the complexities and nuances of Civil Law in different contexts. The research is descriptive and exploratory. It seeks to describe the characteristics and particularities of civil codification in different jurisdictions and explore current trends and challenges in its implementation and adaptation.

**Doctrinal Method:** A thorough analysis of the relevant legal doctrine is carried out, examining the interpretations and theories proposed by various authors on civil codification. This method allows us to identify the topic's theoretical foundations and academic discussions. **Comparative Method:** Civil codification laws and practices in different countries are compared, identifying similarities, differences, and possible mutual influences. This method facilitates understanding how different legal systems approach codification and allows us to draw lessons applicable to other jurisdictions.

**Primary Information Sources:** Civil codes, laws, decrees, and relevant jurisprudence from the studied countries are analyzed. These sources provide the regulatory framework and official interpretations that support the research.

**Secondary:** Academic articles, books, theses, and other documents that address civil codification from various perspectives are reviewed. These sources offer critical and contextual analyses that enrich the understanding of the topic.

**Data Collection Techniques** **Document Analysis:** Legal and doctrinal texts are systematically examined, identifying key concepts, principles, and trends in civil codification. This technique allows the organization and synthesis of information relevant to the study. **Semi-structured Interviews:** Interviews with Civil and Comparative Law experts obtain insights and perspectives that complement the documentary analysis. Interviews provide valuable qualitative information that may be outside of written sources.

**Legal Interpretation:** Hermeneutic methods are applied to unravel the meaning and scope of civil norms in the different legal systems analyzed. This includes the literal, systematic, and teleological interpretation of legal provisions. **Comparative Analysis:** The different civil codifications are contrasted, identifying common patterns and significant divergences. This analysis allows the effectiveness and relevance of the different approaches to codification to be evaluated.

## Results and discussion

This research has revealed important findings on the evolution and adaptation of Civil Law in various contemporary legal systems, highlighting this normative body's strengths, challenges, and opportunities.

The principles of autonomy of the will, equality before the law, and good faith continue to be fundamental pillars of Civil Law, but their practical application varies significantly between jurisdictions. In European systems, such as those of France and Germany, the autonomy of the will has been successfully adapted to new areas, such as e-commerce and smart contracts, offering flexibility and modernity to contractual relations. However, in Latin America, this principle faces limitations due to the need for more specific regulation for digital scenarios and structural imbalances in contractual relations, making achieving equity in its application difficult.

Good faith has proven to be a key regulator in digital transactions, guaranteeing trust and transparency in electronic commerce (Sánchez, 2023). However, the jurisprudential interpretation of this principle varies between countries, which generates legal uncertainty in some jurisdictions. Although equality before the law guarantees formal justice in most systems, its implementation faces challenges in contexts with structural inequalities, such as in some areas of Latin America, where socioeconomic barriers limit equal access to justice. These principles require a dynamic approach that allows their adaptation to contemporary challenges and more effective implementation in diverse contexts.

Civil codification has been essential for the systematization of law, providing a clear and accessible regulatory framework that governs relations between individuals. In Europe, the flexibility and constant updating of civil codes have made it possible to address contemporary challenges more effectively, such as digital rights and environmental sustainability, by adapting to social and technological transformations. This adaptability has strengthened the relevance of European codes in modern and globalized contexts.

In Latin America, civil codes have effectively provided clarity and legal certainty, facilitating access to the law. However, they need to fill in emerging areas, such as data protection and e-commerce, which limits their ability to respond to current demands. These differences between regions highlight the need for greater dynamism in Latin American codes, which allows for the integration of contemporary principles and progress towards a regulation more in line with new social and technological realities. The State plays a central role in guaranteeing equity and protecting fundamental rights. However, the effectiveness of its intervention varies:

In jurisdictions with uniform jurisprudential criteria, such as Peru, regulating concepts such as precarious possession have proven effective, contributing to resolving conflicts consistently and strengthening confidence in the legal system. However, in contexts with less regulatory development, legal gaps persist that hinder the protection of fundamental rights and generate legal uncertainty. More significant in-

vestment in training legal operators and constantly updating regulations is essential to overcome these deficiencies, ensuring an efficient and adaptable regulatory framework.

Civil Law faces the challenge of evolving towards a multidimensional approach that integrates ethical, social, and environmental values, allowing it to address globalization and technological advances. The regulation of emerging areas, such as biotechnology, digital rights, and environmental sustainability, requires interdisciplinary collaboration with fields such as bioethics and information sciences. However, the need for legislative harmonization in Latin America limits the capacity of Civil Law to respond to everyday challenges, such as consumer protection in digital environments, highlighting the need to strengthen regional cooperation and develop more comprehensive regulatory frameworks.

These findings confirm Civil Law's relevance as a legal system pillar and highlight the need for dynamic and flexible approaches that integrate traditional principles with contemporary demands. The interaction between Civil Law and other disciplines is crucial for strengthening its capacity to guarantee justice and equity in a globalized world.

## Conclusions

The principles of autonomy of the will, equality before the law, and good faith remain essential in the structure of civil law, but their implementation requires dynamic adaptations. Autonomy of the will faces significant challenges in Latin America due to the need for more regulation in emerging areas such as digital contracts. Similarly, fundamental, good faith and equality before the law need a more uniform and equitable approach that reduces many jurisdictions' structural and socioeconomic barriers.

Civil codification has been fundamental in providing clarity and accessibility to the law, but its ability to respond to modern demands depends on constant updating. Codes have shown greater flexibility in integrating issues such as environmental sustainability and digital rights in Europe. At the same time, in Latin America, gaps persist in regulating crucial issues such as e-commerce and data protection.

The State has a decisive role in regulating Civil Law, not only as a guarantor of equity and fundamental rights but also as a promoter of regulatory changes. In contexts with more excellent regulatory development, such as Peru, state intervention has allowed for more effective regulation of complex problems, such as precarious possession. However, in jurisdictions with less development, it is essential to invest in training for legal operators and to guarantee more coherent and updated regulations.

Civil Law must evolve towards a multidimensional approach incorporating ethical, social, and environmental

values, responding to global phenomena such as biotechnology, digital rights, and sustainability. This requires interdisciplinary collaboration and greater regional legislative harmonization, especially in Latin America, to ensure an effective response to shared challenges.

The findings confirm that civil law is an indispensable pillar of the legal system, but its future relevance depends on its ability to integrate traditional principles with innovative solutions. International cooperation, the inclusion of complementary disciplines, and regulatory updating are essential for this body of law to guarantee justice and equity in an increasingly interconnected world.

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## Conflicts of interest

The authors declare that they have no conflicts of interest.

## Author contributions

Vania González and Darío Delgado: Conceptualization, data curation, formal analysis, investigation, methodology, supervision, validation, visualization, drafting the original manuscript and writing, review, and editing.

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Not applicable.

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