CREATIVE INTERPRETATION? THE DISTINCTION BETWEEN APPLICATION AND CREATION IN HARD CASES

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ABSTRACT
In this paper, I critically address some of the main contributions of Paolo Sandro's book, *The Making of Constitutional Democracy*. In particular, chapters 4, 5 and 6 are analysed, by first exposing Sandro's considerations in support of the distinction between application and creation of law, and then carrying out a critical analysis. As I will try to show, despite Sandro's essential considerations for our understanding of law, semantic minimalism does not allow us to properly distinguish between discretion and creation in the legal field.

KEYWORDS
Paolo Sandro, interpretation, creation, discretion, semantic minimalism

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1. *Introduction*

Paolo Sandro's excellent book, *The Making of Constitutional Democracy*[1], contains innovative reflections on the distinction between the creation and the application of law, illuminatingly drawing on and linking discussions in legal theory, semantics, and political philosophy. The relevance of the distinction, and thus the justification for writing a book on it, can hardly be questioned. But Sandro shows very clearly the relevance of the distinction in the context of constitutional democracies, especially if we want to achieve the action-guiding function of law and preserve collective autonomy through law.

To support this distinction, in chapter 4, Sandro deals with the concept of *legal discretion*, presenting a unified account that distinguishes between normative and interpretive discretion. In chapter 5, he takes an intermediate view about legal interpretation, advocating a kind of semantic minimalism to defend against sceptics the possibility of applying pre-existing law. In chapter 6, he differentiates, on the one hand, formal and substantive application and, on the other, the question of deontic modality and the question of interpretive discretion. In this paper, I'll focus on these three sets of issues by first stating what Sandro claims and then conducting a critical analysis. To this end, I will explain the controversies surrounding the interpretation of the term "violence" in the context of the crime of coercion in the Spanish legal system (Article 172 of the Penal Code[2]). In particular, it has been debated whether the provision includes only physical violence against persons or also psychological coercion and the use of force on things, which are considered to be covered by "intimidation" and "use of force" in other criminal offenses. The legislature has not included these other expressions ("intimidation" and "use of force") in regulating coercion, while it has done so for other crimes such as sexual assault and robbery. In deciding specific cases, the Spanish Supreme Court has moved toward a so-called progressive spiritualization of violence, understanding "violence" in a broad sense, which has led to disagreements about whether it is creating new law[3].

2. *A Unified Account of Legal Discretion*

To maintain the distinction between creation and application of law, Sandro presents a *unified* account of legal discretion in chapter 4. In his view, discretion always constitutes a limited

* I am grateful to Josep Joan Moreso and Diego Papayannis for their comments to a previous version of this contribution.

[1] SANDRO 2022.

[2] The article is applied to someone who, without being legitimately authorized, prevents another person *with violence* from doing something not prohibited by law, or compels them to do something they do not want to do.

[3] On the interpretation of "violence" in the crime of coercion, see RAMÍREZ-LUDEÑA 2021.

power to decide: all discretionary power is legally constituted, which means that to a certain extent it is normatively limited by higher rules and principles. According to Sandro's view, both in the judicial and the administrative spheres, *normative* discretion can be distinguished from *interpretive* discretion (SANDRO 2022,158 ff.). The two kinds of discretion are asymmetrical and analytically independent from each other. Normative discretion (SANDRO 2022,162-165) presupposes the intentional distribution of decision-making power among agents at different levels of an institutional normative system[4]. As for interpretive discretion (SANDRO 2022,165-167), it points to the degree of choice of anyone who has to make a decision. While the first notion implies that there is no right answer and that the body exercising discretion has the final say if it remains within the normative limits of the delegation, the second notion does not imply a systemic determination of who has the final say in the matter, being inherent to every act of interpretation and application of law. Nor does it imply that there is a right answer, as it may be absent due to the amount of interpretive discretion involved in the decision. Unlike normative discretion, interpretive discretion admits of degrees, and the review of this discretion depends on the combination of institutional rules, judicial conventions and interpretive canons adopted in a particular legal system. This classification seems preferable to the one that distinguishes between judicial and administrative discretion, since normative and interpretive discretion can occur in both spheres and, according to Sandro, it is clearer than the distinction between weak and strong discretion.

Normative discretion may give rise to general or individual rules. Only when it gives rise to general rules, however, does it imply the creation of law; when it gives rise to individual rules there is discretionary application. Normative discretion may involve the power to make or not to make a decision, or over the content of the decision. It is important to notice that even if there is discretion to choose among several equally available normative options, once that choice has been made and some standards established, those standards become normative together with requirements of practical reason such as rationality. Moreover, delegation may be express or tacit. In this last case, it all depends on the interpretation of the distribution of power in the system, which depends in turn on the functioning of the system in question and may lead to disagreements.

Interpretive discretion is pervasive. It can be semantic, factual, or systemic. Semantic discretion is inversely proportional to the degree of semantic determination of the language of the law in question. Factual discretion occurs in the process of recognizing the facts related to a decision. Both are the result of the necessary use of natural languages in legal communication and the interpretative nature of empirical knowledge more generally. In contrast, systemic discretion is a purely legal phenomenon. It depends on contingent aspects of legal systems, such as the defeasibility of the norms, the principles accepted in the system, the contradictions and fragmentation of the sources, the accepted canons of interpretation, the specific conventions accepted among legal actors, and the jurisdiction and structure of the courts. Different legal systems will have different institutional features and, consequently, higher or lower levels of systemic discretion. At the end of chapter 4, Sandro points out that systemic discretion is sometimes difficult to distinguish from normative discretion, and that it can even be considered a subcategory of normative discretion, in which the distribution of power is not intentional and can lead to the creation of law if it involves the generation of general rules.

The first question that seems to be problematic is how to understand intentionality in Sandro's scheme, and what agents and facts are relevant to determine that there is an intentional delegation (express or tacit). This relates to the question of whether the two types of discretion are distinguishable. First, Sandro points out that in the case of normative discretion there is an intentional distribution of power but that the delegation may be tacit. In discussing systemic

[4] In a similar vein, see SHAPIRO 2013.

discretion, however, he acknowledges that there may be unintended normative discretion (SANDRO 2022,167). But then it becomes unclear what makes a certain exercise of discretion normative and what enables us to distinguish it from interpretive discretion (of any of the three types).

The distinction seems clearer if instead we acknowledge the central role of intentionality to consider that we are facing normative and not interpretive discretion. But if we also concede that the delegation can be tacit, doubts will arise as to whether there is normative or systemic discretion. It is not only that doubts may occasionally arise, but that all cases in which the delegation is not explicit may be reconstructed as cases in which normative discretion has been delegated intentionally or as cases in which there is interpretive discretion. That is, if whenever doubt arises it can be understood that there were more precise alternatives, then it can also be assumed that there is always some kind of intent to confer discretion. This problem arises not only with respect to systemic discretion, but also with respect to semantic and factual discretion. As Sandro acknowledges, in relation to semantic and factual discretion it is always possible to understand that there are ways in which the regulation could have been established that would leave less room for discretion. Consequently, in all those situations there seems to be discretion to determine the type of discretion (normative or interpretative) we are faced with, calling into question the usefulness of the distinction.

Sandro points out that in the case of imprecise terms, understanding that there is discretion of one type or the other is a choice that each system must make; a choice which resists analytical treatment. This means emphasizing that it all depends on how it is understood in that system. That, in turn, seems to assume that, in tacit normative discretion, the intentional element is not relevant. What becomes relevant is how practice develops. However, we have already seen that considerations such as the absence of right answers or the question of the reviewable nature of decisions are not conclusive in determining whether we are dealing with one kind of discretion or another. What aspects, then, are crucial to knowing whether we are dealing with a case of tacit normative discretion rather than interpretive discretion? In any case, whether what is emphasized is the intentions of the agents who introduced the regulations, or how those rules are understood in subsequent legal practice, Sandro does not provide us with a (more general) theory of why one thing or the other would be relevant, and which agents, actions and mental states would be decisive. Undoubtedly, controversies will arise over those issues that cannot be resolved by his account[5].

More importantly, it is not clear that the distinction is useful for differentiating creation and application, which is one of the main goals of the book. According to Sandro, normative discretion leads to creation of law inasmuch it involves general rules, and it is necessary to distinguish creation in that sense from that which supposes exceeding the limits in the delegated activity. As for interpretive discretion, from what he points out it follows that, if systemic discretion gives rise to general norms, it also implies creation. Thus, if in both cases there can be no right answer and no possibility of control, and there is a creative activity when it involves general norms, the distinction between normative and interpretative discretion becomes less useful for distinguishing between creation and application.

Another relevant question is whether it is possible to distinguish, within interpretive discretion, between semantic and systemic discretion. Given the existence of disagreements about how to understand the semantic question, and how often these discussions imply a discussion about intentions, contexts, and other elements related to legal tools of interpretation, semantic discretion seems to entail systemic discretion. I will return to this point in the next section.

[5] In fact, as Sandro himself argues against Kelsen (SANDRO 2022, 136), it would be questionable to speak of intentional discretion without giving priority to the interpretation that emphasizes the legislator's intention, something Sandro does not commit himself to, as we will see in the next section.

To illustrate the above problems, let's reflect on the term "violence". The Spanish Supreme Court has decided that even cases without physical violence, but psychological coercion or the use of force on things, constitute crimes of coercion. Is this a case of normative or interpretive discretion? This is not easy to determine: since there have been opportunities to make the Criminal Code more precise, it might be argued that there is an intentional distribution of power in favour of the courts. But it also seems to be plausible to think that there is interpretive discretion. Which agents or facts are decisive to determine whether there has been a delegation or not is difficult to specify, there being disagreements among participants in the legal practice about the relevance of the legislator's intention, the creative role of the Supreme Court or with respect to its fallibility. If we assume that there is interpretive discretion, it is not clear whether it would be semantic or systemic, as the various arguments have often been presented as different reconstructions of the literal and/or ordinary meaning of the term, but also other interpretative tools have been invoked. Moreover, it is not clear to what extent the distinction between types of discretion is helpful in determining whether the Supreme Court is creating new law, since the determining factor seems to be whether it creates general norms, which Sandro argues can be the case with either type of discretion.

3. *The Defence of Semantic Minimalism*

In order to maintain that in the legal sphere there is genuine application of pre-existing law, Sandro questions the pragmatic turn that can lead to rule scepticism. He challenges two fundamental assumptions underlying the current mainstream understanding of legal practice: that law is a subspecies of ordinary language and that legal communication can be analysed through the same lens as ordinary communication

First, he rejects the emphasis on adjudication and stresses the importance of the general public in legal communication, which is not limited to legislators and judges. In order to reject that law is a subspecies of ordinary language, Sandro highlights the (macro)pragmatic purpose present in legal communication: «the creation and maintenance of a separate 'universe of discourse(s)' where group conflicts as to 'what needs to be the case' can be managed, and compromises or authoritative resolutions be reached (as well as peacefully challenged)» (SANDRO 2022, 185). While borrowing natural language as a whole to fulfil the guiding function of law, legal authorities also claim the power to modify some of those rules *ad hoc* in their pursuit of a more precise and verifiable intersubjective tool to manage conflicts within the group (SANDRO 2022, 184-190).

Moreover, Sandro argues that legal communication differs from ordinary language in virtue of its written form and its distinctive functions (SANDRO 2022, 190-195). In written communication, there are no paralinguistic cues (e.g., body movements) and no prosody (e.g. changes in intonation). But written communication allows for a greater degree of precision and objectivity, as well as the ability to address vast audiences in a stable manner across time and space.

Furthermore, texts might be interpreted in a potentially infinite number of contexts where there might be no direct epistemic access to the context of creation, being participants on both sides of law's communicative endeavour irrelevant to a great extent. There is no correspondence between individual legislative provisions and the norms that emerge from them, and often several norm-sentences interact with each other to yield a complex meaning. Indeed, in the legal field, the relevant co-text may extend beyond the immediate norm-sentence and even beyond the statute in which the provision is contained. In any case, it is important to note that the boundaries of the relevant co-text of the legislative utterance can be artificially fixed in advance

According to Sandro, we can only intelligibly account for instances of multi-contextual, text-based communication if we adopt some form of *semantic minimalism* as a theory of legal meaning, especially in the form defended by Emma Borg (SANDRO 2022, 200-205). Following

Borg, Sandro notes that the four main claims of minimalism are: 1) semantic content for sentences is truth-evaluable content; 2) it is fully determined by syntactic structure and lexical content; 3) there are only a limited number of context-sensitive expressions in natural language; 4) recovery of semantic content is possible without access to current speaker intentions (SANDRO 2022, 202). On this account, the notion of what is said shifts depending on the social aims and purposes of the different linguistic acts we perform. In some written endeavours such as legal communication what is said is determined by the literal content of the utterance prior to wide pragmatic enrichment (SANDRO 2022, 204). This is because, in these situations, written language is a means to communicate standards of behaviour and other normative contents to a multitude of recipients across different contexts of application. It is also a consequence of the fact that, in the case of typical text-acts, the context of creation of the utterance that is fully accessible to the recipients of the communication is limited to the co-text. As noted by Sandro, there seems to be a fundamental difference between the notion of co-text of a text-act and that of the context surrounding a speech-act, in that the former can be purposely fixed by the author of the text-act itself. As he points out,

> «in the case of complex text-acts, what is said is not a direct function of the intention of the speaker, as contextualists claim for ordinary communication, but of what we can call 'objective' determinants: lexico-grammatical structures and their interrelations as part of a complex text» (SANDRO 2022, 205).

It is in those cases in which the content of the utterance is not determined that we must seek the intention of the author of the text-act, Sandro argues.

Following Guastini, Sandro distinguishes different senses of "interpretation", and he considers the distinction between cognitive and adjudicative interpretation particularly important. Adjudicative amounts to selecting one of the meanings as the correct meaning of the text, and it contrasts with creative interpretation, that is related to the ascription of a meaning that is not among the meanings identified through cognitive interpretation. Creative interpretation, in fact, involves not interpretation, but interstitial legislation or construction (SANDRO 2022, 207).

In his view, interpretation is what brings us from a legal text to the meaning expressed by that text. Application, instead, is the activity of using the norm as a reason for action and thus deciding to act in a certain way because of the norm. This means that someone can apply both a norm that is the product of interpretation and a legal norm that is not. In a sense, all judicial decisions are acts of law-application. The real question, Sandro argues, is whether the law, as identified by the judge and which is the basis for the decision in the case at hand, is the product of understanding or interpretation, or the product of construction. If we apply a radical contextualist picture of meaning to legal communication, this last distinction disappears, for there are no limits to the potential meanings expressed by each individual utterance. In Sandro's view, minimalism is necessary to have intersubjective criteria for distinguishing between interpretations and constructions of a legal text.

Considering the above, Sandro's views on semantics leads us again to the question of whether the distinction between semantic and systemic discretion can be accepted. If the appropriate semantics must be sensitive to the fact that we are in the legal realm and to elements such as the co-text, they seem sensitive to the legal particularities, which Sandro understood as related to systemic interpretative discretion. That is to say, if semantics in the legal domain must pay attention to the specificities of that domain, which involves attending to elements that are normally understood as interpretive tools and conventions, then it is not clear how semantic discretion can be distinguished from issues related to systemic discretion.

Second, as noted in the previous section, it is not clear what role intentions play and how they are to be determined. For example, we have seen that social goals and purposes are assumed to be relevant, and Sandro mentions that the legal co-text is intentionally set by the

author of the text. But it is not clear how those elements are to be identified. Sandro also affirms that «if she wants to successfully transmit exactly the *same* message to any number of different recipients across a variety of contexts, must seek a higher degree of 'accuracy and precision of meaning' than in ordinary, face-to-face conversation» (SANDRO 2022, 204). In the chapter, he clearly distinguishes between the intention to create a text and more specific intentions, but he does not specify which agents are relevant in relation to the former and how these intentions extend, for example, to a particular understanding of the co-text that isn't limited to the mere intention to create a normative text. According to Sandro, if his account were not correct, then the functions of legal systems, such as preserving autonomy, would not be fulfilled. However, I think that his view of the functions of the system does not enable us to exclude the possibility that the legislator does not intend to create a regulation by determining a well-defined co-text, or that different agents want to transmit different messages, just to mention a couple of examples.

Moreover, Sandro does not take a clear position on how to understand the relationship between the norm expressed by legal provisions based on semantic minimalism (which leads to determining a minimal literal content) and other interpretative tools. If we adopt a position that focuses on the communicated meaning according to semantic minimalism, we would have at least two problems. On the one hand, semantic minimalism so understood does not allow us to distinguish between discretionary application and creation of law, for it would provide us with a reconstruction only of clear cases, not of those in the penumbra. On the other hand, it is not then clear to what extent it is possible to speak of semantic discretion, since it seems that in this area there is either unproblematic application (without discretion) or creation. If instead, following Guastini[6] we argue that the provisions may express different norms depending on the different instruments of interpretation we take into account, then for us literal interpretation will not play a preponderant role: it will not always be decisive and sometimes it will be completely irrelevant. We would then have a way to distinguish creation from interpretation depending on whether it goes beyond the permissible interpretations, but then literal meaning would not play a central role in distinguishing interpretation from creation, as Sandro claims. In other words, he seems to face a dilemma: The first horn leads to the impossibility of accounting for discretion (and distinguishing it from creation) and the second to the irrelevance of semantic minimalism.

Furthermore, if we were to adopt a position like Guastini's, the distinction between interpretation within the framework and creation by integrating gaps would no longer depend on this minimal content. There may be instances where we can identify a gap using one interpretative instrument, but not if we were to use another instrument, which would view the case as clearly falling within the scope of the rule in question.This means that the distinction between creation and application becomes less relevant, because a case in which there is a gap, which involves creation, can be reconstructed by appealing to another instrument as a case of non-problematic application. In fact, I think the problem with adopting such a conception is much deeper, because it runs the risk of falling into scepticism, which Sandro wants to avoid. I will elaborate on this point in the next section.

To return to the term "violence" and the crime of coercion, there have been discrepancies about whether other articles of the Criminal Code are relevant, aspects such as the intentions and purposes have been emphasized, and different readings about the meaning of "violence" have been offered, by invoking different readings about its literal and/or ordinary meaning. In such a context, what might be considered the content of the provision, which would be communicated, according to the minimalism suggested by Sandro? Would it refer to clear

[6] For example, GUASTINI 2012.

instances of physical violence? Or, if not, what generic property would be decisive? In any case, if instruments other than literal interpretation have been foregrounded in many cases, wouldn't that show that semantic minimalism is not a limitation on permissible interpretations?

4. *Creation vs. Bound and Discretionary Application*

Throughout the book, and especially in chapter 6, Sandro is interested in the possibility of distinguishing between cases in which a court has applied existing law and cases in which it has created (and applied) new law. In contrast to a Kelsenian view, Sandro argues that it is possible to speak of acts of application without creation of law (e.g. in the granting of certain administrative licenses). In his view, judges do not create norms when deciding cases if the decision is derived from the premises. What is relevant, in line with the action-guiding function of law, is whether the decision is an innovation in the legal system in question. Judges create law only when they create a general and abstract norm that cannot be derived from the sources of the legal system in question, the norm being the product of "construction" or "invention", not obtained through the process of cognitive interpretation. It is important to note that if a norm that does not follow from the system is created, the general norm is the *ratio*, not the individual decision. Following Bulygin, Sandro points out that when the judge decides according to a vague standard and chooses one of the many possible norms expressed by such standard, she is still applying the given standard, whereas if she fills a normative gap, or invents a new norm (for whatever reason), we can say that she is creating the law (SANDRO 2022, fn. 66).

Sandro emphasizes that application, unlike rule-following and mere compliance, is a justified (SANDRO 2022, 231-234) and intentional (SANDRO 2022, 234-237) activity related to power conferring rules. He also distinguishes formal from substantive norms in the application of law (240 ff.). According to Sandro, formal application always requires conformity to the norms that establish formal requirements for the exercise of a power-conferring norm, so that the decision-maker is bound to do exactly what the formal norms require in order to produce a valid token-act of the type established by the power-conferring norm. By contrast, a decision can be governed by substantive requirements in two ways: by the modality of obligation or by permission to determine the content of the decision, resulting in a discretionary application of the law. Moreover, the fact that a decision is substantively bound, as to its contents, by higher norms, does not necessarily mean that it is also determinate. Consequently, we can speak of a bound application of the law only when the decision is mandatory and the extent of interpretative discretion present is negligible. In all other cases, where the decision is mandatory but non-determinate or non-obligatory but determinate, the decision is discretionary in the sense that the decision-maker yields some power to choose vis-à-vis the exercise of the relevant power. When the exercise of the relevant power-conferring norm is both (substantively) non-obligatory and non-determinate, it is constrained, according to Sandro, in an autonomous way.

Turning to the critical analysis of these elements of the chapter, it is worth questioning the fact that Sandro considers that application, related to norms that confer powers, is always intentional, and that it is a justified activity. With regard to the first point, it is important to note that judges sometimes make decisions in which they consider a particular interpretation of the rules to be the correct one, and it is only later that the practice of considering these decisions as binding precedents with legal relevance develops. What is the most appropriate reconstruction in these cases? Are they empowered to unintentionally dictate general rules? Are the rules that determine the relevance of precedents not power-conferring norms? As for justification, the emphasis on this question seems to presuppose that applicability is a necessary condition for application, which Sandro does not point out. Moreover, the question of justification is at odds with what he says at the end of the chapter, in which he acknowledges

the possibility of referring to "application" in cases in which a norm outside the framework of possibilities that arise from cognitive interpretation is being taken into consideration. In fact, by reading the chapter it is not clear if, according to Sandro, it makes sense to speak of "misapplication" or "unjustified application". Moreover, it is questionable whether formal application is always bound, because it seems that even in relation to formal issues (such as deadlines or the formal way in which contracts can be implemented, to mention just two examples), there may be discretion in their application.

More importantly, a sharp distinction is assumed (again in this chapter) between filling gaps and solving problems of interpretation, which I have already described as problematic in the previous section. In any case, if we assume that judges create a general and abstract norm when there are gaps, it is useful to reflect on why this is not what happens when adjudicative interpretation takes place. In adjudicative interpretation, judges opt for one of the interpretations within the framework of possibilities derived from the existence of different interpretative tools and conventions, identifying one of the norms as *the* norm expressed by the provision. In principle, as we have already seen, it seems to be a central argument of Sandro's position that creation is opposed to the (non-creative) application of law within the interpretative framework. However, he argues at the end of the chapter that this is a matter of degree and that it may ultimately be considered that law is created depending on how far the interpretive option is from what the provision in question communicates. Apart from the fact that the distinction between (application with) creation and application (without creation) becomes less clear, I think that additional arguments are needed to claim that, in general, in adjudicative interpretation within the interpretive framework there is no creation. This is so given that in adjudicative interpretation a decision is being made regarding which norm integrates the legal system (i.e., about the relevant correlation between legal properties and legal consequences), in contrast to other options that would lead to other decisions and would motivate conducts in a different way. This seems to involve the creation of an individual norm to solve the case, but also the determination of the general norm expressed by the provision. Moreover, this affects not only the adjudicative interpretation *stricto sensu*, where one of the interpretations within the framework is chosen, but also what happens when problems of subsumption are solved. The resolution of these problems seems to have an impact on the interpretation in the abstract because ultimately it affects the determination of which norm is expressed by the provision. Thus, whenever interpretative doubts are resolved and an interpretation chosen, the norm expressed by the provision is being identified or determined, which in turn seems to affect the initial configuration of the norm expressed by the rule (which, in his view, is derived from the minimalist conception that he advocates)[7].

To illuminate this point of criticism, let's think about what happens with the term "violence" in the offence of coercion, where the interpretation of the Spanish Supreme Court conforms to a great extent with existing interpretative conventions. In principle, it would seem that according to Sandro, there is no creation of law. However, in a system like the Spanish one, the reading of the Supreme Court is binding on the lower courts and deviating from it can lead to the invalidation of the decision. The Supreme Court's decision presupposes that a particular norm, resulting from the consideration of a particular interpretative tool (instead of other possibilities) integrates the normative system and is legally binding. Therefore, it seems intuitive to say that it is creating law. But, for this to be the case, what is the relevant factor? It may be emphasized that, while adopting an interpretation, an activity that is creative is being carried out (at least in some cases); or that there are rules of adjudication that determine the

[7] See my analysis in RAMÍREZ-LUDEÑA 2012, in the special issue of *Discussions* on Riccardo Guastini's moderate scepticism.

binding nature of the Supreme Court's decision; or it may be pointed out the fact that the Supreme Court's interpretative decisions are considered law according to the rule of recognition in Spain.[8] In any case, the answer to the question about the relevant factor is not clear if we consider Sandro's view. In fact, if in the case of normative gaps judges create law (general and abstract norms) regardless of whether there is a system of precedents, why would the existence of binding precedents that are considered law be required in the case of interpretative decisions?

All of the above are just minor remarks that do nothing more than show the interest that Paolo Sandro's excellent book arouses and the relevance of his reflections for drawing the crucial distinction between application and creation of law.

[8] Distinguishing the three issues, RAMÍREZ-LUDEÑA 2023.

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