International Journal of Cultural Property (2017) 24:79–99. Printed in the USA.

doi:10.1017/S0940739116000369

The New Unified Civil and Commercial Code and Cultural Heritage Protection in Argentina

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Abstract: The recent reform of the Unified National Civil and Commercial Code will bring about significant changes in the Argentine legal system. The aim of this article is to analyze their impact in relation to the area of cultural heritage, especially in regard to the public property status of archaeological and paleontological heritage. Changes adopted—in contrast to those proposed, which referred to the issues related to indigenous communities and the protection of collective rights—are also discussed. The latter is the most innovative aspect of the reform since it involves a change of approach regarding private property and strengthens the regulatory powers of the state over private property, which might be applied to the protection of cultural property.

INTRODUCTION

The protection of cultural heritage in Argentina has followed an uneven path in its development, even though this development has been logical. Its evolution has coincided with the state's interest in protecting it. The first landmark event was a law passed at the beginning of the past century that protected in a specific way

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the archaeological and paleontological heritage considered valuable for scientific purposes and which aimed at stopping the pillage of sites and the avoidance of collections' theft by either foreign naturalists or treasure hunters. In 1913, Law 9080 was passed, which stated the authority and control of the nation over ruins, archaeological, paleontological, and paleo-anthropological sites of "scientific interest." Despite its good intentions, this law was never fully applied, even though it was in force until 2003.[1]

Since then, archaeological and paleontological property has followed a path separate from that of other cultural property. It was not until 1940 when Law 12665 on National Historical and Artistic Heritage was passed that this changed. In fact, Law 12665 is only applicable to those archaeological sites that have been previously declared by law national monuments or historical sites. It may be convenient to note that in the regulatory system in force not all of the property considered to be part of the cultural heritage of the country enjoys the same legal status. This is a result of the fact that, since the 1968 Civil Code reform, ruins and archaeological and paleontological sites belong to the public jurisdiction of the state in view of the former section 2340, sub-section 9, of the Civil Code, which holds that all other cultural property may be of public or private jurisdiction. This distinction, as it will be made evident in what follows, will remain in force with the effective application of the new code.

The increasing importance of cultural heritage and of the acknowledgement of the rights of other social actors in relation to their use, enjoyment, and control beyond the realm of the state or the scientific community has established variations in the political and academic agenda and, to a certain degree, has introduced last years' legal and regulatory changes. It is also important to note that Argentina is a federal republic constituted by 23 provinces plus the autonomous city of Buenos Aires. Traditionally, the state—whether national or provincial—has assumed exclusive title and jurisdiction over archaeological heritage, disregarding whoever could be the current descendants of the peoples that had produced it. This is quite evident in the case of indigenous communities. However, rights related to cultural heritage, together with those concerning the environment, either considered as collective or as human rights, have emerged as a prerogative of citizens, who, in the end, are granted these rights by legislation through actions raised against the state or against third parties.

As will be analyzed in this article, the 1994 amendment to the National Constitution, together with some specific legislation dealing with cultural heritage passed during the last decade, has initiated the protection of heritage at the national level. At this point, it is important to identify which changes are proposed by Argentina's new Unified Civil and Commercial Code (CCCU),[2] the text of which was passed in 2014 by Law 26944 and came into force on 1 August 2015.[3] It should also be said that this code, in its capacity to regulate a significant portion of the lives of Argentina's citizens, is anticipated to generate many relevant legal and regulatory changes. Within this framework, the aim of this work is to analyze how cultural

heritage and cultural rights are considered in the new code; to inquire, especially, on the basis of the initial proposal included in the bill, which topics are being dealt with, which are being amended, and which are being dropped; and to discuss the main challenges that will be faced as it comes into effect.

LEGAL FRAMEWORK

An analysis of the legal protection system in force in Argentina may be carried out in two different ways: either by following, in a chronological order, the changes in legislation that have occurred over time or by approaching the present day situation on the basis of what is written in the supreme law or National Constitution and introducing the current perspective. This second option is the one we will follow to describe the regulations of cultural heritage protection applicable in our country. However, we should say that the current system is only the sum total of all of the changes that have been introduced over time, and, thus, the legal regulations in force are not necessarily in full agreement with the higher order rules.

Cultural heritage is explicitly considered in section 41 of the National Constitution, which was amended in 1994. It states that "authorities will be in charge of preserving the natural and cultural heritage," specifying that "the Nation must pass the necessary rules and regulations containing the basic protection premises, and the provinces must pass the necessary complementary legislation in such a way that the former does not interfere with local jurisdictions." That is to say, it acknowledges the authority of the provinces (or the nation, in the case of the federal territories) even though the authority to legislate over activities related to such heritage is shared by the nation and the provinces. In addition, it enables the state to lodge an *amparo*[4] action on the grounds of unconstitutionality, whenever "the rights protecting the environment ... as well as those rights considered of collective nature in general," among which cultural heritage preservation could be included, are at risk. This proceeding can be lodged by the affected party, by the ombudsman, or by any organization dealing with the preservation of cultural heritage (section 43). In matters related to indigenous peoples, the new constitutional text acknowledges their "ethnic and cultural pre-existence," granting them, together with the provinces, "respect for their identity and participation in reference to the management of their natural resources and other interests that may affect them (section 75, sub-section 11). This last paragraph has been interpreted as an acknowledgement of their right to participate in the management of the cultural heritage of their ancestors.[5]

The amendment of the National Constitution settled the question of control over archaeological and paleontological sites between the nation and the provinces. As mentioned earlier, Law 9080 stated that the national state had control over ruins and sites, disregarding their jurisdiction. However, the amended Civil Code of 1968 introduced a substantial change in this matter by adding, in section 2340, sub-section 9, that "archaeological and paleontological ruins and sites of scientific

interest" are property under public control and stating, in section 2339, that "things are public property of the General State which constitutes the Nation or of the particular States that constitute the Nation, in accordance with the powers granted by the National Constitution." Such a division was settled by section 121 of the National Constitution, which states that "the provinces reserve to themselves all the powers not delegated to the Federal Government by this Constitution, as well as those powers expressly reserved to themselves by special pacts at the time of their incorporation." From this time on, it was understood that if there was not an explicit delegation from the provinces to the national state in reference to archaeological and paleontological sites, the national state, as well as the provinces, reserved their entitlement to those ruins and sites located within the boundaries of their territories.[6] This criterion was included in the majority of the heritage laws passed by the provinces after 1968.

The 1994 National Constitution also adds a provision stating that all treaties concluded with other nations and international organizations, as well as concordats with the Holy See, "have a higher hierarchy than laws" (section 75, subsection 22, paragraph 1). In this sense, it is important to note that Argentina has ratified a significant number of international conventions that protect cultural and natural heritage, such as the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, according to Law 23618/88 and additional protocols ratified by Laws 26115/06 and 25478/99;[7] the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, according to Law 19943/72;[8] the 1972 Convention for the Protection of Natural and Cultural Heritage, according to Law 21836/78;[9] the 1995 Convention on Stolen or Illegally Exported Cultural Objects, according to Law 25257/2000;[10] the 2001 Convention on the Protection of Underwater Cultural Heritage, according to Law 26556/09;[11] the 2003 Convention for the Safeguarding of Intangible Cultural Heritage, according to Law 26118/06;[12] the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, according to Law 26305/07;[13] and the 1976 Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations, which was ratified in 2002 by Law 25568.[14]

At the national level, there is no general "framework law" concerning cultural heritage that may help the provinces pass their own regulations.[15] Nevertheless, some of the national laws that have been passed—before and after the constitutional amendment—legislate over different types of heritage and work as a general legal framework. These are the previously mentioned Law 12665/40 on Artistic and Historical Heritage (and the corresponding Regulatory Decree 84005/41, which was issued in 1993); Law 25197/99 on a Single Registry of Cultural Heritage, which has not been regulated and, thus, is not applicable; and Law 25743/03 on the Protection of the Archaeological and Paleontological Heritage and its Regulatory Decree 1022/04, which repealed Law 9080.

The purpose of this last law is to "preserve, protect and be in charge of the Archaeological and Paleontological Heritage as an integral part of the Cultural Heritage of the Nation as well as of its scientific and cultural use" (section 1).[16] In regard to the jurisdiction of archaeological and paleontological property, it has been established by sections 2339 and 2340, sub-section 9, of the recently repealed Civil Code and section 121 and related sections of the National Constitution (section 9) that such objects are under the control of the national, provincial, or municipal states, according to the territory in which they are found. This law also defines the property that is considered archaeological and paleontological heritage. Thus, it states that "movable and immovable property or remains of any nature which are found on the surface, underground or underwater in territorial waters which may provide information about the socio-cultural groups that inhabited the country since pre-Columbian times until more recent historical times"—that is, "the last hundred years since the time of occurrence of the referring events or actions, are part of the Archaeological Heritage" (section 2, Regulatory Decree 1022/04). Regarding paleontological heritage, the law considers that "organisms or their parts, or traces of life activity of organisms which had lived in the geological past, and all the natural fossil concentration appearing on rocks or exposed sediments either on the surface or underground or underwater in territorial waters are part of the Paleontological Heritage" (section 2).[17]

With respect to the rights of indigenous communities, the constitutional amendment has consolidated a policy of positive discrimination that had started to be developed after the country moved towards democracy, and this policy was made evident in a series of successive laws. In 1985, Law 23302 on Indigenous Policy and Law 23505 on Support to Aboriginal Peoples were passed. In 1992, Argentina ratified, through Law 24071, the International Labour Organization's (ILO) Convention no. 169 Concerning Indigenous and Tribal Peoples in Independent Countries.[18] This convention states that governments must "assume the responsibility to develop, with the participation of the interested peoples, coordinated and systematic actions in view to protect the rights (social, economic and cultural) of said peoples and also to guarantee the due respect to their integrity" (sections 2.1, 2.b). It also obliges member states to adopt "the special measures which were deemed necessary to safeguard people, institutions, property, work, cultures and the environment of the interested peoples" (section 4.1) and also specifies that

> in the course of application of the provisions of this Convention, the values and social, cultural, religious and spiritual practices proper of such peoples must be acknowledged and protected, and the nature of the problems that may arise must be taken into consideration, both at the collective as well as at the individual level, and the integrity of the values, practices and institutions of said peoples must be respected (section 5(a), (b)).

Among these rights, "the right to participate in the development, application and evaluation of plans and programs of national and regional development that might directly affect them" (section 7.1) is acknowledged. The convention also states

that "the values and social, cultural, religious and spiritual practices proper of said peoples must be protected" (section 6). In reference to indigenous participation, it establishes that the governments must "determine the means through which the interested peoples may participate freely, at least in the same way as other sectors of the population do, and at all levels, in the process of decision- making within elective institutions and administrative organisms and others which are responsible of the policies and programs which to them refer" (section 6(b)).

Moreover, it explains that "the enquiries carried out in the implementation of this Convention will have to be completed in good faith and as appropriate to the circumstances, with the aim of reaching a consensus or obtaining consent as regards the proposed measures" (section 6.2). The last point is of particular interest since it creates the obligation of providing free and prior-informed consent.[19] It should be noted that this agreement did not come into effect until the year 2000, when the Argentine government deposited its instrument of ratification with the ILO. Convention no. 169 constitutes the most important international norm of binding character on the subject of indigenous rights and, having been ratified by the Argentine state, it has become part of the current legislation in the country. On the subject of the rights of indigenous peoples regarding their cultural heritage, the provisions in the Declaration on the Rights of Indigenous Peoples, which was approved by the United Nations (UN) General Assembly in 2007, are much more specific and forceful. Nevertheless, it is necessary to clarify that a declaration can only have the character of recommendation and is not binding on the states that have signed in favor of it.[20]

After the constitutional amendment and prior to the enactment of Law 25743/03 on the Protection of the Archaeological and Paleontological Heritage, Law 25517 on Indigenous Human Remains held at museums was enacted in 2001. This law regulates a complex and controversial matter, namely the location of human remains that are found in museums or form part of scientific collections. This rule establishes that museums should put the mortal remains of aboriginal people that are part of their collections at the disposal of "indigenous peoples or communities of belonging that might claim them" (section 1). It also requires of all organizations that in order "to perform any scientific enterprise related to aboriginal communities, including their historical and cultural heritage they should have the express consent of the interested community" (section 3). This law was not regulated until 2010, when the national government enacted Decree 701, which gives the National Institute of Indigenous Affairs (INAI) authority and made it "responsible for coordinating, articulating and assisting in the control and study of the compliance with the directives and actions enforced by Law 25517, being the Institute authorized to issue the necessary complementary norms for its implementation."[21]

This institute can carry out the required studies to identify the mortal remains of aboriginal people that are held in museums and/or collections (public or private), facilitate the availability of the remains and their effective restitution, and coordinate and collaborate with the relevant organizations in such matters pursuant

to Law 25517, especially with the National Institute of Anthropology and Latin-American Thought. It also establishes that the INAI can "participate in requests for the restitution of mortal remains from the communities and/or indigenous peoples, issuing through established administrative act, the historical, ethnic, cultural, biological and legitimate interests backgrounds that may concern each claim" and "express opinion in the case of conflicts of interest of reclaiming people and/or communities, upon request" as well as "gather reports and express opinion on scientific undertakings that relate to aboriginal communities, referred to in section 3 of Law N° 25.517." It is authorized to "take action in order to assess compliance with Law No. 25.517, suggesting additional or correction instruments" that may be deemed necessary for compliance with its goals (section 2, sub-sections a, b, c, d, e, f, g).

The INAI also provides that "public or private organizations that possess mortal remains of Indians that were, at the time of the restitution claim, the subject of scientific studies may require an extension period of up to twelve months from the above-mentioned claim, for the purpose of realizing the return of their remains." To do so, all of the evidential documentation of the course of investigation will have to be submitted, as well as the support of the highest authority of the organization in such matters" (section 3).

THE NEW UNIFIED NATIONAL CIVIL AND COMMERCIAL CODE

The new code contains few provisions that concern cultural heritage. In fact, cultural heritage is not explicitly mentioned in any of them. The only reference that is made deals with "the ruins and archeological and paleontological sites" in section 235, which refers to property belonging to the public jurisdiction and which replaces the text of former section 2340, sub-section 9, which was excluded—that is, the one indicating that they had to be of "scientific interest." The new text states:

> Section 235—Public property. Public property includes, with the exception of the provisions in special laws: (h) ruins and archeological and paleontological sites. Regarding the characteristics of these goods, section 237 establishes that the "public property of the State is inalienable, not- attachable and imprescriptible. People have their use and enjoyment, subject to general and local provisions. The National Constitution, the federal law and the local public law determine the national, provincial or municipal character of the goods listed in sections 235 and 236.

In this regard, Peralta Mariscal notes that "goods considered public property are intended to meet the needs of general usefulness and are meant to be of public use. This constitutes a special category as it is not an *in rem* right of ordinary jurisdiction: it lacks essential attributions such as the power of disposition, since the goods in this category are inalienable and imprescriptible. It is rather a power of regulation of the use of or, in any case, of a right to property different in sense from regular property."[22] In accordance with the doctrine,

public ownership may be natural or artificial. In the first case, the mere legislative arrangement to be declared as such is enough, while, in the second case, a specific creation of the property by the state is required, though, whether the public property of the state may or may not be disencumbered is a matter of debate.

These goods are inalienable and not attachable because they cannot be mortgaged, sold, or subject to attachments. Only their use and exploitation can be granted. They are imprescriptible since they are not subject to *usucapion* (that is, purchasing prescription by prolonged possession over time), nor are they lost over time if they are not used. It must be added, as Mariscal points out, that these goods can be used by the general public.[23] This is not contrary to the idea that the state can decide that a fee must be paid to the state or to a licensee who is assigned the exploitation for a period of time. One example is the payment of an entrance fee to a museum that falls within the public jurisdiction.

The Supreme Court of Buenos Aires established that

> [p]ublic ownership is the exercise of the right of all and for all; it represents something more than the exercise of a personal right, for that reason both the regime and regulatory system must be different from that of private property. The state property is measured for its purposes, not for its economic value. The former is always characterized by the administrative function and the latter is specific and inherent in matters of private property. The regime of property of public ownership is exclusively administrative and is destined for public use and utility; for that reason it is public property. ... It is the State which establishes the public nature of things; that is the reason why, one of the essential elements of the conceptual notion of public ownership is the normative or legal element.[24]

In relation to the archaeological and paleontological heritage, it is observed that the new code reproduces the terms of Law 9080 when referring to ruins and archeological and paleontological sites, even though it is certainly ancient terminology and even though the concept of site has been equally referred to in the most recent law of archaeological and paleontological heritage, as previously stated.[25] Law 9080 meant, at the time it was passed, a step forward with respect to the Velez Sarsfield Code (1869) passed by Law 340 because it separated the archaeological and paleontological sites from the soil property, which was governed by the general law, and made them goods that were publicly owned. Such a division was created because of the scientific value of such property and the significance that this value would have for the development of a science of national standing and the importance that would be gained by the collections in public museums.[26] This high rating justified that "the owner of a farm where there was a site ceased to be the unique, exclusive and unlimited owner of such a territory, to become a mere depositary of property belonging to the Nation and thus made public and at the same time, protector of its integrity."[27] This same concept was adopted in the comprehensive amendment of the 1968 Civil Code, which was approved by Law 17711. Sub-section 9 was added to section 2340, and it established that the ruins and archeological and paleontological sites of scientific interest are public property.

Thus, as observed, the defining criterion to establish whether or not sites are publicly owned by the state lies in their scientific interest, assuming that there may be sites that are not relevant for science and, therefore, should not be protected by the state. This concept has been criticized by Eduardo Berberián since it relies on an outdated conception of archaeology in which the archaeological record is mostly concerned with extraordinary objects or museum pieces.[28] As a result, the principle of scientific interest acknowledged in the legislation has received a great deal of criticism. For Berberián, it is an outdated criterion and, therefore, has "to be suppressed from all modern archaeological legislation" since all traces of the past are equally important and significant.[29] It has also been criticized since it is the only assessment that Argentine national legislation explicitly recognizes, while, at the international level, the idea of the multiplicity of values that archaeological heritage contains and the need to provide sustainable management for all of them has already been accepted.[30]

The truth is that scientific interest has generated a certainly unnecessary uncertainty to legal protection, especially if the existence of this type of heritage is not made evident by the presence of visible ruins on the ground or by the existence of museum pieces but, rather, by the discovery of any trace of human presence in the past, which is at least a minimum of 100 years old (according to the criteria established by Law 25743 and its regulatory decree). The other question to elucidate is whether the ruins and the archeological and paleontological sites constitute a natural or artificial public jurisdiction. The criterion that has been supported is that they constitute a natural public jurisdiction because, despite not being natural (like a river or a lake) but, rather, products of human action, their value does not depend on the will of the ruler. Instead, it is given by its condition of remain that is in the archaeological or paleontological record from the past.[31]

COLLECTIVE RIGHTS

Protecting collective rights in our country began one decade before the 1994 constitutional amendment,[32] which included them in one of its most important transformations, by conferring the hierarchy of new rights and constitutional guarantees and developing a specific procedure for their protection,[33] namely the collective *amparo*. Despite the introduction of this action as a protection tool, the National Constitution did not encourage the determination of the nature or content of these rights,[34] to which it refers in section 43 as the "rights of collective incidence in general"[35] in an original formulation,[36] distanced from the doctrinal proposals that refer to diffuse interests[37] and from comparative law, which adopted other *nomen iuris*.[38] Thus, the notion of collective rights goes beyond the classic distinction between a 'subjective right'—with full administrative and judicial supervision—and a 'legitimate interest'—with eventual protection in administrative procedure[39]—which had been at the core of the debates between the judicial and administrative representatives until that point.

The absence of normative foresight concerning the nature and content of these rights gave rise to an interesting debate in reference to the main features of the collective rights to which the National Constitution refers, which can be simplified in two basic perspectives centered around the divisibility of rights: (1) a broad one, which considers them to be a comprehensive type of divisible and indivisible rights and (2) a restricted one, which understands that collective rights are limited to those on goods, which, even when they are shared by a plurality of individuals, cannot be divided and individualized for the purposes of ownership. The issue was finally settled in 2009, when the Supreme Court of Justice (SCJ), favoring the broad thesis, extensively defined them in the Halabi case.[40] In this leading case, the SCJ included the following statement within section 43 of the National Constitution that rules the *amparo* proceeding: "[T]hree categories of rights: individual, collective—involving collective goods[41]—and collective—related to homogeneous individual rights" (whereas clause 8).[42]

In a similar way, the SCJ in whereas clause 11 of this same ruling stated that:

> collective rights aim at collective goods (section 43 of the National Constitution) ... The claim shall aim at protecting goods [that] belong to the whole community, and are indivisible with no admission of exclusion. This is the reason why extraordinary legitimization is granted to reinforce its protection, but by no means there is right for individual appropriation. ... These goods do not belong to the individual sphere but to the social one and under no circumstance are they divisible.

We understand that the human right over cultural heritage falls under this category, due to the fact that, although the owners are an indefinite plurality of individuals who belong to a social group or a community, they represent as the object of protection a general aspiration of use or of the possession of a legal good that cannot be divided for each individual petitioner to be used or owned. In this sense, it is worth mentioning that the constitutional processes that took place concurrently in most of the Argentine provinces with the 1994 National Constitution amendment helped to overcome the lack of definition regarding the content of collective rights in the National Constitution and to move forward with their consolidation since they included specific protection rules related to the human right to cultural heritage.[43]

As stated by Cançado Trindade, all human rights have an individual, as well as a social, dimension because they are applied in the social context.[44] Nonetheless, certain rights are more closely related to life within a community, which has led jurists to describe a new category of rights that falls outside of the general instruments of human rights and which most scholars have called "new human rights" or "solidarity rights"[45] and which we prefer to call, as Alejandro Medici does, "rights over relational public goods."[46]

Within this context, the CCCU was discussed and drafted in 2012, and it is considered an improved option to the individualistic nineteenth-century

tradition that characterized the Velez Sarsfield Code,[47] with its resulting unequivocal distinction between public and private law. This alternative has been put into practice under the principle of the "constitutionalization of private law," which arises as one of its axiological assumptions.[48] Thus, the aim is to achieve coherence between civil law and the federal constitutional law, which includes the National Constitution and the international instruments of human rights with constitutional hierarchy.[49]

Accordingly, the addition of a preliminary title is one of the many methodological decisions made by the Writing Committee. This title follows the historical tradition of the Velez Sarsfield Code but with a new perspective, represented by the addition of section 14 of this title, which states that the new legal text acknowledges not only individual rights but also "collective rights." This regulation is considered to be one of the most valuable aspects of the new text and was included by the Writing Committee on this basis[50] when they described it as the "Code of individual and collective rights."

While most of the Civil Code makes exclusive reference to individual rights, the Bill, in accordance with the Brazilian legislation, has also decided to include collective rights within the scope of its implementation, which, in turn, represents one of the most transcendental changes in the amendment to the 1994 National Constitution through section 41 (environmental rights and cultural heritage), section 42 (consumers and users' rights), and section 43 (individual and collective *amparo* proceedings). In this preliminary title, which assumes that the Code constitutes the core of the private legal body of laws,[51] all of the general rules of the whole system are stated—rules that are not addressed exclusively to judges but also addressed to citizens and rules that exercise rights, together with general notions, over individual and collective goods providing valuable orientation.[52]

Thus, section 14 of the CCCU, with amendments introduced by the Executive Power,[53] prescribes:

> Section 14—Individual rights and collective rights. In this Code the following are acknowledged:
>
> a) Individual rights.
> b) Collective Rights.

Nonetheless, it is worth mentioning that the CCCU succeeds to a certain point since it has avoided a definition of the characteristics and content of these rights. In this sense, the bill has proposed a core regulation of the collective rights that were "mutilated" and replaced by some basic rules in the past text.[54] We were especially sorry about the omission by Congress of the legal entity of dissuasive pecuniary sanctions that were regulated in sections 1714 and 1715 of the bill submitted by the Executive Branch as an instrumental measure to protect collective rights and also about the suppression of Chapter 5, which is entitled "On the Damage Caused to Collective Rights," and which was originally considered to be included in the bill. Consequently, the civil responsibility derived from the damage caused to collective

rights was restricted to a mere reference within the concept of damage compensation, anticipated in section 1737.[55]

As can be seen from the following dicussion, section 14 of the CCCU states in its second paragraph that "[l]aw does not protect the abusive exercise of individual rights shall they affect the environment or rights of collective incidence in general." This is a significant change and was celebrated by the academic and judicial community because there was a gap in the implementation of collective rights, despite the fact that they were recognized in the 1994 National Constitution, due to a lack of regulation and specific public policies.[56] Considering that this is a new issue in our legislation, the Writing Committee decided to provide a more specific regulation in Title III, Book One, General Part, section 3, and entitled Goods, in relation to collective rights. This section states that subjective rights acknowledge certain collective rights that are the object of tutelage such as development, sustainable consumption, and the environment.[57]

This decision is in agreement with the principle of the social function of private property, as stated in Article 21 of the American Convention on Human Rights, and it enjoys constitutional hierarchy within Argentina's legislation.[58] The Inter-American Court of Human Rights in the case of Salvador Chiriboga v. Ecuador (2008) states the following:

> The right to private property must be understood within the context of a democratic society where, to assure the prevalence of the common good and collective rights, it is necessary to take adequate measures that guarantee individual rights. The social role of property is a key element for the functioning of society, and that is why the State, in order to guarantee other fundamental rights of vital importance for a specific society, can restrict or limit the right to private property, always in line with the provisions included in the regulations of article 21 of the Convention, and the general principles of international legislation.[59]

Consequently, the new section 240 reads as follows:

> 240—Restrictions to the exercise of individual rights on goods. The exercise of individual rights over the goods mentioned in sub-sections 1 and 2[60] must be compatible with collective rights. It shall comply with the regulations of the local and national administrative law established in accordance with the public interest and it shall not affect the development or sustainability of the flora and fauna ecosystems, biodiversity, water, *cultural values*,[61] and landscape, among others, according to the criteria included in the special law.
>
> 241—Jurisdiction. Whichever be the jurisdiction where these rights are exercised, the regulations over minimal assumptions that may be applicable must be respected.

Section 240 is innovative in relation to the Velez Sarsfield Code and other amendment proposals. Unfortunately, the text that was passed in 2014 suppressed the right to information and participation in relevant decision making, which had

been explicitly included in the bill[62] and which constituted a set of operational rules in relation to the exercise of collective rights.[63] Indeed, if this formulation had been kept, it would have highlighted the interdependence between collective rights and democratic participation in the different degrees of citizen cooperation and interaction that we have advocated, such as: (1) participation as the right to have access to information; (2) participation as enquiry; (3) participation as co-decision making; and (4) participation as co-administration.[64] The minimal assumptions necessary to exercise the collective rights referred to in the new code must be the subject matter of a special law.

INDIGENOUS COMMUNITIES

The rights of indigenous communities is another topic that was superficially treated in the new code. It is only mentioned in section 18, which states:

> Acknowledged indigenous communities have the right to own and consider as their community property the land they have traditionally occupied and those that are suitable and sufficient for human development according to the law, according to the provisions established by section 15, subsection 17 of the National Constitution.

It is worth mentioning that, due to the criticism raised by both indigenous communities and doctrinal authors towards the code amendment bill in relation to the community ownership of lands of indigenous communities, several sections were suppressed, and the only one that remained was section 18, in an abridged version, which partially reproduces the constitutional contents and leaves the discussion of the topic to be covered by a special law.[65] In this section, the suppressed part makes reference to the management of natural resources and other interests that affect indigenous communities and which are included in section 75, subsection 17, of the National Constitution. Interestingly, the code amendment bill went further in relation to the management right, stating that "such exercise is carried out by means of collective rights" (section 2028).

It could be affirmed, without doubt, that a chance was lost in this case if we take into account the legal achievements that have been made in relation to the rights of these communities. In this sense, the SCJ—in the case of EbenEizer Indigenous Community v. the Province of Salta—established that:

> The culture of the members of indigenous communities—as judged by the Inter-American Court of Human Rights—corresponds to a particular way of living and being, seeing and acting in the world, which is constituted on the basis of a very close relationship with their traditional territories and the resources they find there, not only because those are their main means of survival, but also because they constitute a key element of their world view, their religion and, therefore, their cultural identity. ... To guarantee the right to community property of the indigenous people, the fact that the land is very closely related to their traditions and oral expressions, customs and language, their art and rituals, their

> knowledge and use of nature, their cooking styles, their ordinary law, clothes, philosophy and values must be taken into account.[66] According to their environment, their communion with nature and their history, the members of indigenous communities pass on this intangible cultural heritage over generations, heritage which, in turn, is constantly recreated by the members of the community and indigenous groups.[67] The relevance and fineness of such goods shall guide magistrates not only to clarify and make decisions as regards substantial legal issues but also to those related to the legal protection provided by the American Convention on Human Rights (section 25), which has constitutional hierarchy, especially since the mentioned *amparo* proceeding, even more in the case under analysis, shall not turn to be "false or ineffective".[68]

FINAL REMARKS

As can be seen, the new CCCU does not introduce much novel material in regard to cultural heritage, museums, and cultural goods. It just repeats what has been previously discussed in relation to archeological and paleontological heritage with only minimal changes. Obviously, these issues have not caught the attention of the amendment's authors. Clearly, something different happened with the issues related to indigenous communities since the original bill was much more complete, but it was disregarded in the end.

The changes related to collective rights deserve a separate comment. Their inclusion in the CCCU constitutes an important initiative, but it could have been more effective if the contents of the proposal of the bill had not been cut off. Even the project submitted by the Executive Branch, which included interesting regulations related to damages caused to collective rights as well as regulations for the participation of civil organizations, was more extensive and significant than the one that was finally enacted.

Nonetheless, the achievements on these matters could be the source of new judicial decisions, which, as long they comply with the criteria for the protection of human rights within international organizations and of the SCJ itself, might acknowledge the participation of individuals and communities who wish to protect cultural heritage and include mechanisms such as public hearings and previous enquires in decision-making processes, all of which have deep-rooted constitutional status. However, all of this will depend on the legal operators and the special laws to be passed because the CCCU has paid little attention to the operational contents included in the bill.

It must be pointed out that it will not be possible to make real and effective advances in the protection of cultural heritage without federal and provincial laws governing the implementation of collective processes, including class actions. In practice, the criteria set by the SCJ are applicable, but they fall short in terms of the need for appropriate measures for prevention, such as deterrent financial penalties or civil fines and damage repair. Regarding the latter, it is worrying that the new code has limited the responsibility of the state and public officials since these

limitations of general character also effect the damage caused to public property, including the environment and cultural heritage.

On the basis of the information presented, it can be stated that the most interesting aspect of the amendment is the acknowledgement of collective rights as well as the change of approach in regard to private property and the reinforcement of regulatory powers of the provincial and municipal states over private property, which is liable to be applied in order to protect cultural goods.[69] The submission and approval of special laws to settle unresolved matters in the CCCU, as well as the revision of existent national laws, will definitely be part of the future agenda.

ENDNOTES

1. Law 9080 Archaeological and Palaeontological Sites and Ruins, 26 February 1913, D. ses. Sen.1912, t. II: 267. Berberián 1992; Orquera 1994; Endere 2000.

2. Unified Civil and Commercial Code, 1 August 2015 (CCCU). Sections, Submission Note, and Foundations available at http://www.nuevocodigocivil.com (accessed 11 February 2017).

3. Law 27077 amended Law 26994 and anticipated the date of coming into effect, which had been set originally on 1 January 2016.

4. An "*amparo*" proceeding is a constitutional remedy aimed at preserving the rights and freedoms established by the National Constitution to challenge the state of private action (see Brewer-Carías 2009). The judicial action of *amparo* was jurisprudentially created with the initial objetive of solving disputes arising from the laws or acts of authority that violate the individual guarantees of the Constitution. It was subsequently extended to defend against private acts. Since 1994, the *amparo* is regulated in the National Constitution, protecting not only individual rights but also collective constitutional rights. The closest legal mechanism in the common law systems is the injunction. However, an injunction is a judicial order that involves an action to perform, while the *amparo* actions are also of a declarative nature.

5. Endere 2000, 56.

6. Berberián 1992, 191.

7. Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954, 249 UNTS 240.

8. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231.

9. Convention Concerning the Protection of the World Heritage and Natural Heritage, 16 November 1972, 1037 UNTS 151.

10. Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457.

11. Convention on the Protection of the Underwater Cultural Heritage, 2 November 2001, 41 ILM 37 (2002).

12. Convention for the Safeguarding of Intangible Cultural Heritage (UNESCO Convention), 17 October 2003, 2368 UNTS 1.

13. Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 20 October 2005, 2440 UNTS 311.

14. Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations, 16 June 1976, Treaty Series No. 47.

15. However, in view of the absence of a state general legal framework, the provinces produced an important regulatory corpus with definitions, mechanisms, and different protection criteria.

16. See Berberián 2009; Calabrese 2012.

17. It should be remembered that the International Council on Monuments and Sites' (ICOMOS) International Charter for the Conservation and Restoration of Monuments and Sites, 1964, states

that "archaeological heritage represents this part of our material heritage for which the methods of archaeology provide basic information. It includes all the traces of human existence and refers to places where human activity of any kind had taken place, to the structures and abandoned remains of any kind, either on the surface or buried or under water as well as all the materials to them related" (see section 1, http://www.icomos.org/charters/charters.pdf, accessed 10 February 2017).

18. International Labour Organization (ILO) Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, 27 June 1989, 28 ILM 1382 (1989).

19. Carrasco 2000; Hualpa 2003; Frites 2011.

20. The Declaration of Human Rights of Indigenous Peoples has interested the UN Commission of Human Rights since the 1980s. After two decades of paralysis, it was adopted by Resolution 61/295 of the UN General Assembly in September 2007 with 143 countries in favor, four against (Australia, Canada, New Zealand, and the United States) and eleven abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russia, Samoa, and Ukraine), while thirty-four states were absent in the voting meeting. The high number of affirmative votes obtained, in addition to the recoil of the four states that had first voted negatively and had later decided to approve it, and also the enactment of laws making it compulsory by some Latin American states, generates optimism in regard to its possibility in the coming years to reach legally binding standards, at the time the "indigenous question" gains space on the agenda of the organization. In this sense, the Inter-American Court of Human Rights, in its judgment on the case the Saramaka People v. Suriname, 28 November 2007, Series C, No. 172, considered the statement as an interpretative rule of the human rights of indigenous peoples contained in generic instruments for the protection of human rights and in the ILO Agreement 169, which are compulsory.

21. Decree 701 (2010), Article 2, para. g.

22. Peralta Mariscal 2014, 529. European Landscape Convention, adopted by the Council of Europe, Florence, 20 October 2000, European Treaty Series No. 176.

23. Peralta Mariscal 2014, 529.

24. Buenos Aires Supreme Court, Piccini, Luis María y otro vs Tres de Febrero City - Assistant Bishop of General San Martín, 15 September 1998, DJB, 155-7405.

25. At present, this landscape is being used at the international level as the primary unit of heritage protection, replacing the site or monument. See, for example, the European Landscape Agreement, which was approved by the Council of Europe in 2000).

26. See Rojas 1909.

27. See Civil Code, Articles 2513, 2514 and 2515, enacted by Law 340, 29 September 1869.

28. Berberián 1992, 94.

29. Berberián 1992, 94.

30. The discussion on the values of this heritage has been particularly fruitful, especially in the Anglo-Saxon academy (Lipe 1984; Carman 1995; Darvill 1995). This is because in these countries the criterion of protecting all of the cultural property is not the adopted one, protecting only what has been previously listed, and, therefore, it is necessary to apply criteria related to their significance. For its part, the UN Education, Scientific, and Cultural Organization's Commission of the World Heritage has been categorical in the need to attend to the values attributed to the heritage by different interest groups as a starting point for the management of heritage (with respect to value-based management, see UNESCO 2014). It is interesting to note that in this debate the scientific value, although it is always weighted, is one among a set of many others, including social, cultural, political, and economic values. There is still an important consideration to be made: all values are extrinsic, and not even the scientific value can be considered inherent in the property, since they all depend on the frame of reference of the one who evaluates it and on the cultural context in which such an evaluation is made (Lipe 1984). In this discussion, the turning point was the definition of cultural significance taken by the Australian ICOMOS Charter for Places of Cultural Significance (adopted at Burra, 1979) (Marquis-Kyle and Walker 1996), which has been recurrently taken as a reference by international organizations dealing with cultural heritage (UNESCO 2008). This charter defines the cultural significance of a site (in the sense of an immovable cultural property) as the aesthetic, historic, scientific, social, or spiritual value for past, present, or future generations (section 1.2).

31. See this debate in Berberián 1992, 103.

32. Azar 2014, 243. In the origins of the protection of collective rights in Argentina, it is necessary to establish legal precedents such as in the cases of Kattan (Federal Court in Administrative Litigation N°2, Kattan, Alberto E. y otro v. National Executive, 10 May 1983), Ekmekdjian (National Supreme Court of Justice, Ekmekdjian, Miguel A. v. Sofovich, Gerardo, 7 July 1992), and Cartañá (National Supreme Court of Justice, Cartañá, Antonio E. H. y otro v. Buenos Aires City, 7 July 1993), and the legislative action developed in different provinces, which has resulted in the adoption of laws that refer to them in a variety of ways: diffuse interests and collective or plural rights.

33. The recognition of collective rights in the chapter on "New Rights and Guarantees" of the National Constitution, which was amended in 1994, was accompanied by the incorporation of 11 international instruments for the protection of human rights with constitutional hierarchy. An analysis of cultural rights contained therein can be read in Colombato 2014.

34. Gil Domínguez 2005, 125.

35. The collective rights introduced "in particular" in the constitutional text, are the environmental ones (section 41) within which the protection of cultural heritage and the consumption rights are mentioned (section 42).

36. In Argentine, legislated "collective rights" are referred to as "rights of collective incidence"; in this text, we use "collective rights" to refer to them.

37. The fairly entrenched use of the so-called "diffuse interests" in the doctrine and in provincial legislation contributed to the underestimation of collective rights, since they served the argumentative strategy of those who placed them as legitimate interests but a step below individual subjective rights. However, as the doctrine has shown, collective rights are not new rights but, rather, a reinterpretation of old pre-existent rights (Gil Domínguez 2005, 240), so that, with different rules and characteristics, they coexist with subjective rights, having a identical hierarchy, in order to realize the dignity of human beings.

38. For example, the Brazilian Constitution, which adopts the name of "homogeneous pluri-individual rights."

39. Gordillo and Flax 2007.

40. National Supreme Court of Justice, Halabi, Ernesto v. National Executive, Law 25873, Decree 1563/04, 24 February 2009.

41. It refers to collective rights that protect indivisible goods.

42. It makes reference to collective rights that protect divisible goods. In other words, they are individual rights but are shared by a plurality of individuals in a homogeneous way, which allows for a collective action to protect them, similar to the users' rights over public services.

43. An analysis of heritage in the provincial public law can be found in Colombato 2013.

44. Cançado Trindade 1994, 63.

45. "Solidarity rights interact with individual and social rights and do not substitute them. At present, when there is a comprehensive view of human rights, which covers all areas of human activity, these new rights are added to the preexistent ones- being equally important- to increase and reinforce due protection, specially over the weakest and the most vulnerable" (Cançado Trindade 1994, 63).

46. Médici 2011. In a recent work, Médici (2013, 43–44) goes further in the analysis of this category of rights and describes them according to the following characteristics: "a) general entitlement: derived from the condition of being collective and of public interest, which coexists with a possible personal dimension that can be homogeneous, related to individual rights in the strict sense or to a combination of the previous situations; b) comprehensiveness: they act as condition of other more specific rights and they depend on the generation of relational public goods, which in turn originate public and private rights; c) relational: public goods are a condition and regulate the content of these rights, and consequently, cannot be disposed of freely by the state, the market and even by the owners themselves; d) trans-generational: that is, they transcend the time of their production and their preservation implies solidarity between the present and future generations; e) multidimensional: they require not only legal guarantees -these are essential-, but also political and social ones; f) finally, for these rights to develop fully, democratic public regulations are required that, according to the situation, legally eliminate, minimize or link the factual innominate private, state, or para-state powers that appropriate or prevent the generation of relational public goods, condition and content of those same rights."

47. The Velez Sarsfield Code, in our understanding, was the one passed by Law 340 following amendments, and we differentiate it from the new CCCU.

48. Lorenzetti, Highton de Nolasco, and Kemelmajer de Carlucci 2012, 4.

49. This objective is reflected in section 1 of the CCCU, which includes among its sources of civil law, the National Constitution and the human rights treaties of which Argentina is part, and in section 2 when ruling the interpretation of the law, it states that it must be done in a coherent way with all of the body of laws.

50. Lorenzetti, Highton de Nolasco, and Kemelmajer de Carlucci 2012, 5.

51. Lorenzetti, Highton de Nolasco, and Kemelmajer de Carlucci 2012, 10.

52. Lorenzetti, Highton de Nolasco, and Kemelmajer de Carlucci 2012, 12.

53. Section 14 of the bill, following the threefold classification established by the Supreme Court of Justice (SCJ) in the Halabi case, stated: "Individual rights and Collective Rights: In this Code the following are acknowledged: a) individual rights; b) individual rights that may be exercised through collective action, in the case that a plurality of affected individuals, having suffered common damage but clearly divisible and differentiated, generated by a common cause, according to what is set forth in Book III, Title V, Chapter 1; c) collective rights, which are indivisible and for common use. The affected parties, the Ombudsman, all registered associations and other subjects ruled by special laws, have legitimate right to exercise the rights that protect the environment, competence, users and consumers, as well as collective rights in general. The law does not protect the abusive use of individual rights when they may *seriously* affect the environment and collective rights in general." As a result, there were no doubts regarding the rights involved. The writing of the final version of the CCCU leaves aside the legal developments of the SCJ, although the consequences do not go beyond that of a semantic choice. In our opinion, subsection b) in section 14 of the text passed in 2014 introduces a comprehensive perspective, placing divisible and indivisible collective rights under the scope of protection. We celebrate the omission of the adverb "seriously," as otherwise it would have brought about transcendental disputes.

54. Azar 2014, 260.

55. Section 1737—Damage. Damage exists whenever a right or a not-legally rejected interest is infringed and the object is the person, the heritage, or a collective right.

56. This was an issue of concern relevant to participants of the XXV National Meeting on Civil Law held in Bahia Blanca, 1–3 October 2015 (see http://jndcbahiablanca2015.com/, accessed 11 February 2017). The Interdisciplinary Commission N°12 on Rights of Collective Incidence stated in the conclusions that "the introduction of collective rights in the Civil and Commercial Code places the Argentine private law in a leading position with respect to the protection of collective property and homogeneous individual rights" (para. 9). It was also pointed out that "The cultural values of Article 240 of the Civil and Commercial Code, include the protection of cultural heritage (under Article 41 of the Constitution and Articles 1 and 2 of the Civil and Commercial Code) and therefore regulatory rules and principles of rights of collective incidence concerning environment as a collective property remain applicable" (para. 14).

57. Lorenzetti, Highton de Nolasco, and Kemelmajer de Carlucci 2012, 23. We consider that this comment serves to illustrate the point and involves other collective rights such as the human right to cultural heritage.

58. American Convention on Human Rights, 21 November 1969, 1144 UNTS 123.

59. IACtHR, Salvador Chiriboga v. Ecuador, 6 May 2008, Series C, No. 229, para. 60.

60. CCCU, section 240, subsections 1 and 2, as mentioned in the text, deal, on the one hand, with the essential concepts and classification of goods and things respectively and, on the other, with the goods in relation to people.

61. Emphasis added. It would have been more appropriate that the text used the concept of cultural heritage, which had already been used in international treaties and confirmed by the Argentine state, instead of the generic reference as cultural values.

62. The intended text of the CCCU in regard to section 240 states: "Section 240—Restrictions to the exercise of individual rights over goods. The exercise of individual rights over the goods mentioned in previous sections shall be compatible with the collective rights in accordance with Section 14. It shall not seriously affect the development or sustainability of the flora and fauna ecosystems,

biodiversity, water, cultural values, landscape, among others, according to the criteria included in the special law. The subjects mentioned in Section 14 have the right to receive the necessary information and to participate in the discussion previous to relevant decision-making, in accordance with what was set forth in the special legislation. Whichever be the jurisdiction where these rights are exercised, the regulations over minimal assumptions that may be applicable must be respected."

63. Lorenzetti, Highton de Nolasco, and Kemelmajer de Carlucci 2012.

64. Medici 2011, 234.

65. The main criticism towards the CCCU makes reference to the inconvenience of regulations in the Civil Code, the lack of participation of the communities in the writing of the bill, the condition of registering the communities to exercise the right, considering indigenous communities as legal entities, the classical conception of private property present in the regulations of real rights to collective property, the ways in which this property is constituted, the secondary application of rules that regulate the property right, the reduction of free and informed prior consent to the right of information and enquiry. All of these aspects left aside the highly important precedent doctrine developed by the Inter-American Court of Human Rights in the sentences for cases: IACtHR, Moiwana Community v. Suriname, 15 June 2005, Series C, No. 124; IACtHR, Yakye Axa Indigenous Community v. Paraguay, 17 June 2005, Series C, No. 125; IACtHR, Sawhoyamaxa Community v. Paraguay, 29 March 2006, Series C, No. 146; IACtHR, Saramaka Village v. Surinam, 28 November 2007, Series C, No. 172; IACtHR, XákmokKásek Indigenous Community v. Paraguay, 24 August 2001, Series C, No. 214. For a critical view on the issue of community property in the 2012 CCCU, see Vázquez 2012; Wlasic 2014.

66. Verdicts 331: 2119, 2008.

67. Yakye Axa Indigenous Community v. Paraguay, paras. 135, 136, among others.

68. IACtHR, Mayagna (Sumo) AwasTingni Community v. Nicaragua, 31 August 2001, Series C, No. 79, para. 134.

69. See CCCU, Section 240.

BIBLIOGRAPHY

Azar, María José. 2014. "Los derechos de incidencia colectiva en el Proyecto de Código Civil y Comercial de la Nación. Comentario de una supresión." *Revista Derecho Privado* 1, no. 2: 241–80.

Berberián, Eduardo. 1992. *La Protección Jurídica del Patrimonio Arqueológico en la República Argentina*. Córdoba: Comechingonia.

Berberián, Eduardo. 2009. *La protección del patrimonio cultural argentino. Arqueológico y paleontológico. La ley nacional N° 25.753. Comentarios al texto*. Córdoba: Editorial Brujas.

Brewer-Carías, Allan R. 2009. *Constitutional Protection of Human Rights in Latin America: A Comparative Study of Amparo Proceedings*. New York: Cambridge University Press.

Calabrese, Antonio. 2012. *La protección del patrimonio cultural argentino. Arqueológico y paleontológico*. Buenos Aires: Lumiere.

Cançado Trindade, Augusto A. 1994. "Derechos de solidaridad." In *Estudios Básicos de Derechos Humanos*, Vol. 1, edited by R. Cerdas Cruz and R. Nieto Loayza, 63–73. San José, Costa Rica: Instituto Interamericano de Derechos Humanos.

Carman, John. 1995. "The Importance of Things: Archaeology and the Law." In *Managing Archaeology*, edited by M. Cooper et al., 20–32. London: Routledge.

Carrasco, Morita. 2000. *Los derechos de los pueblos indígenas en Argentina*. Buenos Aires: Vinciguerra-IWGIA.

Colombato, Lucía. 2013. "El derecho al(os) patrimonio(s) cultural(es): Aportes a la definición de su contenido." *Equipo Federal de Trabajo* 102. http://newsmatic.com.ar/conectar/245/102/articulo/3524/El-derecho-al-patrimonio-culturalAportes-a-la-definicion-de-su-contenido.html (accessed 8 June 2015).

Colombato, Lucía. 2014. "Avances, frenos y retos en la consolidación del patrimonio cultural como derecho humano." In *Proceedings of VII Congreso del IRI / I Congreso del CoFEI / II Congreso de la FLAEI* (held in La Plata, 26–28 November). http://congresos.unlp.edu.ar/index.php/CRRII/CRRIIVII/paper/view/1640 (accessed 8 June 2015).

Darvill, Timothy. 1995. "Value system in archaeology." In *Managing Archaeology*, edited by M. Cooper et al., 40–50. London: Routledge.

Endere, María Luz. 2000. *Arqueología y Legislación en Argentina. Cómo proteger el patrimonio arqueológico*. Tandil: Universidad Nacional del Centro de la Provincia de Buenos Aires.

Frites, Eulogio. 2011. *El derecho de los pueblos indígenas*. Buenos Aires: Programa de las Naciones Unidas para el Desarrollo (PNUD)–Rosa Guarú–Instituto Nacional contra la Discriminación, Xenofobia y el Racismo (INADI).

Gil Domínguez, Andrés. 2005. *Neoconstitucionalismo y Derechos Colectivos*. Buenos Aires: Ediar.

Gordillo, Angustín, and Gregorio Flax. 2007. *Derechos Humanos*. Buenos Aires: Fundación de Derecho Administrativo (FDA).

Hualpa, Eduardo. 2003. *Sin despojos: Derecho a la participación mapuche-tehuelche*. Trelew: Cuadernos de ENDEPA.

Lipe, William. 1984. "Value and Meaning in Cultural Resources." In *Approaches to the Archaeological Heritage: A Comparative Study of World Cultural Resources Management Systems*, edited by H. Cleere, 1–11. Cambridge: Cambridge University Press.

Lorenzetti, Ricardo, Helena Highton de Nolasco, and Aída Kemelmajer de Carlucci. 2012. *Fundamentos del Anteproyecto de Código Civil y Comercial de la Nación*. http://www.nuevocodigocivil.com/wp-content/uploads/2015/02/5-Fundamentos-del-Proyecto.pdf (accessed 8 June 2015).

Marquis-Kyle, Peter, and Meredith Walker. 1996. *The Illustrated Burra Charter: Making Good Decisions about the Care of Important Places. Australia ICOMOS*. Brisbane: Australia Heritage Commission.

Médici, Alejandro. 2011. *El malestar en la cultura jurídica. Ensayos críticos sobre políticas del derecho y derechos humanos*. La Plata: Edulp.

Médici, Alejandro. 2013. "Nuevo constitucionalismo latinoamericano y giro decolonial Seis proposiciones para comprenderlo desde un pensamiento situado y crítico." *El Otro Derecho* 48: 19–62.

Orquera, Luis. 1994. *La Ley 9080 y los Anteproyectos de Reforma*. Actas y memorias del XI Congreso Nacional de Arqueología Argentina. Mendoza: Universidad Nacional de Cuyo.

Peralta Mariscal, Leopoldo. 2014. "Bienes con relación a las personas." In *Código Civil y Comercial de la Nación comentado*, edited by G. Medina and J. Rivera, 502–35. Buenos Aires: La Ley.

Rojas, Ricardo. 1909. *La restauración nacionalista*. Buenos Aires: Imprenta de la Penitenciaría.

UNESCO. 2008. *Directrices Prácticas para la aplicación de la Convención del Patrimonio Mundial*. París: Centro de Patrimonio Mundial de la UNESCO.

UNESCO. 2014. *Gestión del Patrimonio Mundial Cultural*. París: UNESCO.

Vázquez, Gabriela. 2012. "Propiedad comunitaria indígena en el Proyecto." *La Ley 2012 – D*, Supplement, 12 July 2012: 1.

Wlasic, Juan Carlos. 2014. "La propiedad comunitaria en la jurisprudencia de la Corte IDH. Su evolución y comparación con el Anteproyecto de Código Civil y Comercial Unificado y la media sanción del Senado nacional." *Derecho Público Journal* 3, no. 8: 83–94.