

# Legal Transplants and Codification: Exploring the North American Sources of the Civil Code of Argentina (1871)

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*This article examines possible legal transplants in the drafting of the 1871 Civil Code of Argentina with reference to text, history, and the sources available to its author, Vélez. In particular it makes systematic comparisons of provisions of the Civil Code of Argentina and North American Codes (e.g. Louisiana Civil Code) and codification projects (e.g., a project for a New York Code) to document the process of transplantation. The process of transplantation is shown not only to involve the importation of legal provisions and perspectives, but also their integration into a recipient society whose unique ethos results in a new and distinctive body of law.*

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## LEGAL TRANSPLANTS AND THE BORROWING OF LEGAL IDEAS

Ideas tend to spread quickly when they are successfully implemented. Legal ideas are no exceptions. Jurists have long been familiar with the concept of borrowing of ideas. Alan Watson, before developing his theory on legal transplants, briefly defines these as “the moving of a rule or a system of law from one country to another, or from one people to another.”<sup>1</sup> In this paper it is understood that this moving of provisions will make the recipient of the provision the new owner, and in turn, the recipient makes the borrowed provision new: when the original provision interacts with the *ethos* of the recipient society, the interaction gives rise to new legal manifestations.

Two main activities take place in the context of legal transplantation. On the one hand, legislators, when they borrow, try to borrow provisions that they believe will adapt successfully to their legal system and society, against the potential risk that those provisions may not adapt and fail in the process. On the other hand, legal historians and comparative law scholars, among others, often try to trace

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1. ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* 21 (2nd ed. 1993).

the origins of new provisions or of provisions that will be transplanted.<sup>2</sup> Many times a lack of satisfaction with a given legal solution in their own system pushes comparativists to look for the possibility of better solutions in other systems.<sup>3</sup> This pursuit helps in transforming the lawyer into a jurist: the latter does not limit his study to current law as it is, and, naked of a scientific and social context. On the contrary, among other qualities, a jurist seeks the origins and reception that the different legal institutions had in different regions and time periods.<sup>4</sup>

Legal transplantation — either of entire systems or of individual provisions — has been around for thousands of years. More than 2000 years ago, Plato explained that in order to make a new colony successful, the borrowing of ideas should be considered.<sup>5</sup> When looking at the Americas, legal transplants and borrowings are noticeable. The American continent has been subject to many legal transplants. The first transplant was the transportation of Castilian law to the Hispanic possessions in the early sixteenth century.<sup>6</sup> In the same regions, in the early nineteenth century, many drafters used legal transplants when elaborating their first national civil codes.<sup>7</sup> The civil codes of Andrés Bello for Chile and of Dalmacio Vélez Sarsfield (Vélez) for Argentina were two important exponents of legal transplantation and borrowing. Their work served as models for many other countries of Latin America, including the borrowed provisions.<sup>8</sup> Legal transplants also took root in Louisiana.<sup>9</sup> At that same time, legal transplantation took place when the Digest of 1808 was applied in the region comprising the Spanish laws that were still in effect.<sup>10</sup> But legal transplants were not limited to Hispanic possessions

2. Agustín Parise, *Las bibliotecas jurídicas como herramientas fundamentales del Derecho Comparado: El caso de Schmidt en la Luisiana del siglo XIX*, 15 REVISTA DE DERECHO COMPARADO 195, 197 (2009). For an overview, in Spanish, of the origins of comparative law See Alberto Ricardo Dalla Via, *El Derecho Público Comparado*, (December 06, 2009), <http://www.derechocomparado.org.ar/documentos.htm> at 2-4.

3. KONRAD ZWEIGERT & HEIN KÖTZ, AN INTRODUCTION TO COMPARATIVE LAW 25 (Tony Weir trans. 1977).

4. Parise, *supra* note 2, at 198; and Agustín Parise, *La Imperiosa Remisión al Derecho Comparado en las Investigaciones de Carácter Jurídico*, REVISTA UNIVERSITARIA LA LEY 36, 37 (Nov. 2002).

5. Legal transplants were addressed by Plato in Book III of his work on *The Laws*. Within the conversation of Athen, Clin, and Megil it is possible to read:

Clin: [...] For the greatest part of Crete is attempting at present to establish a certain colony, and orders the Cnossians to take the care of the matter; but the city of the Cnossians (imposes it) upon me and nine others; and at the same time orders us to lay down laws (taken) from this place, if any are pleasing to us, and, if there are any, from elsewhere, making no account of their foreign character, should they appear to be better. Let us then grant this favour to myself and you. After making a selection out of what has been said, let us in our discourse form a state, and colonize it, as if from its commencement; and there will be to us at the same time an inquiry into what we are in search of, and at the same time I may perhaps make use of this information for the city that is to be... [emphasis added].

5 GEORGE BURGESS, *THE WORKS OF PLATO* 119-120 (1859).

6. See 1 ALFONSO GARCÍA GALLO, *MANUAL DE HISTORIA DEL DERECHO ESPAÑOL* 103 (10th ed. 1984).

7. See, e.g., Agustín Parise, *The Place of the Louisiana Civil Code in the Hispanic Civil Codifications: The Comments to the Spanish Civil Code Project of 1851*, 68 LA. L. REV. 823 (2008).

8. *Id.*

9. *n.b.*; an early paper reflects in its title that some scholars had already looked at the civil law in Louisiana as a transplant. THOMAS J. SEMMES, *THE CIVIL LAW AS TRANSPLANTED IN LOUISIANA: A PAPER READ BEFORE THE AMERICAN BAR ASSOCIATION* (1883).

10. About the sources of the Digest of 1808 See, e.g., Rodolfo Batiza, *The Louisiana Civil Code of 1808: Its*

in America. About thirteen colonies also experienced an early reception and later transplantation of English common law in their territory.<sup>11</sup>

### I. THE CIVIL CODE OF ARGENTINA AS AN EXAMPLE OF A LEGAL TRANSPLANT<sup>12</sup>

In 1864, Vélez was appointed to draft a civil code for Argentina.<sup>13</sup> His draft was approved without parliamentary debate<sup>14</sup> by the Argentine National Congress on September 25, 1869, and took effect on January 1, 1871.<sup>15</sup> The Civil Code of 1871<sup>16</sup> had 4051 articles and was divided into two preliminary titles and four books: Preliminary Title I, of laws [legislative acts] (*De las leyes*); Preliminary Title II, of the manner of counting intervals of the law (*Del modo de contar los intervalos del derecho*); Book I, of persons (*De las personas*); Book II, of personal rights in civil relations (*De los derechos personales en las relaciones civiles*); Book III, of real rights (*De los derechos reales*); and Book IV, of real and personal rights - dispositions in common (*De los derechos reales y personales - disposiciones communes*).<sup>17</sup> Argentina has never enacted a subsequent civil code. However, the existing code is the result of many partial revisions.<sup>18</sup> Its examples are the reform of 1889 introducing civil marriage, and the reform of 1968<sup>19</sup> under the direction of Guillermo Borda. This latter reform introduced principles of social solidarity<sup>20</sup> and modified 204 articles.<sup>21</sup> Another significant reform took place in 1987, when the Civil Code was amended to admit a divorce from the bonds of marriage.<sup>22</sup>

Argentina has also attempted integral reforms to the Civil Code of 1871. In the 1920s, Juan Bibiloni drafted a pre-project of a civil code<sup>23</sup> that followed the

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*Actual Sources and Present Relevance*, 46 TUL. L. REV. 4 (1971); and Robert A. Pascal, *Sources of the Digest of 1808: A Reply to Professor Batiza*, 46 TUL. L. REV. 603 (1972).

11. About the early American period See, e.g., Paul Samuel Reinsch, *The English Common Law in the Early American Colonies*, in 1 SELECTED ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 367-415 (Association of American Law Schools ed. 1907); BERNARD SCHWARTZ, *THE LAW IN AMERICA: A HISTORY* 8-18 (1974); and KERMIT L. HALL ET AL., *AMERICAN LEGAL HISTORY: CASES AND MATERIALS* 24-25 (1991).

12. See generally Olivier Moréteau & Agustín Parise, *Recodification in Louisiana and Latin America*, 83 TUL. L. REV. 1103, 1143-1146 (2009).

13. 2 ABELARDO LEVAGGI, *MANUAL DE HISTORIA DEL DERECHO ARGENTINO* 266 (1987).

14. *Id.* at 269. See also JORGE CABRAL TEXO, *HISTORIA DEL CÓDIGO CIVIL ARGENTINO* 156-178 (1920).

15. Law No. 340, Sept. 29, [I] A.D.L.A. 496-905 (Arg.).

16. The current text of the Argentine Civil Code is available at CÓDIGO CIVIL ARGENTINO, <http://www.infoleg.gov.ar/infolegInternet/anexos/105000-109999/109481/texact.htm>.

17. See Law No. 340, *supra* note 15, at 496-905.

18. 1 JORGE JOAQUÍN LLAMBIÁS, *TRATADO DE DERECHO CIVIL PARTE GENERAL* 199-203 (6th ed. 1975).

19. Approved by Law No. 17,711, dated April 22, 1968. 1 GUILLERMO A. BORDA, *TRATADO DE DERECHO CIVIL PARTE GENERAL* 143 (9th ed. 1987).

20. LEVAGGI, *supra* note 13, at 271.

21. Guillermo Antonio Borda, *La Reforma de 1968 al Código Civil Argentino*, in 2 EL CÓDIGO CIVIL DEL SIGLO XXI (PERÚ Y ARGENTINA) 1445 (Muñiz Ziches et al. coord. 2000); See also LUIS M. VALIENTE NOAILLES, *COMENTARIOS A LAS REFORMAS AL CÓDIGO CIVIL* 7-9 (1968); GUILLERMO A. BORDA, *LA REFORMA DE 1968 AL CÓDIGO CIVIL* (1971); ROQUE GARRIDO & LUIS ANDORNO, *REFORMAS AL CÓDIGO CIVIL* (2nd ed. 1971); and Juan José Casiello, *Memorando la reforma civil de 1968*, LA LEY 11/28/2008 at 1.

22. See RÉGIMEN DE MATRIMONIO CIVIL Y DIVORCIO: LEY 23.515 (Eduardo A. Zannoni ed., 2nd ed. 1989).

23. See generally 1-7 JUAN ANTONIO BIBILONI, *ANTEPROYECTO DE REFORMAS AL CÓDIGO CIVIL ARGENTINO* (1929).

principles of German legal science captured by the BGB.<sup>24</sup> In the 1930s, the pre-project was revised by a Commission<sup>25</sup> that submitted a draft of 2144 articles divided into a Preliminary Title and five books.<sup>26</sup> In the 1950s, a new attempt for integral reform was made under the leadership of Jorge Joaquín Llambías.<sup>27</sup> This new draft included national jurisprudence and was inspired by the Italian and Venezuelan codes (1942), the Peruvian Code (1936), and the Swiss Code (1912).<sup>28</sup> Another opportunity of integral reform arose in the 1980s but even the attempt of 1987 failed as well.<sup>29</sup> In the late 1990s, a new integral reform<sup>30</sup> was presented and sent for study to the National Congress.<sup>31</sup> The project was drafted by, among others, Atilio Anfbal Alterini, Jorge Horacio Alterini, and Julio César Rivera.<sup>32</sup> The main characteristic of the project was the unification of the civil and commercial codes.<sup>33</sup> Finally, in June 2008, a new codifying commission was appointed to work on the drafting of a reform and its update and for the unification of the civil and commercial codes.<sup>34</sup>

#### A. Vélez's Eclectic Sources

It has been said, when referring to codification, that to choose correctly is to create,<sup>35</sup> and that drafters use the knowledge that humanity has treasured.<sup>36</sup> While drafting his code, Vélez worked with enthusiasm and with an unbreakable perseverance<sup>37</sup> and was able to identify materials from many sources: laws, drafts, codes, commentaries, and scholarly works that served him as guides.<sup>38</sup>

24. LEVAGGI, *supra* note 13, at 272. See generally Agustín Parise, *La Comisión de Reformas al Código Civil (1926). Aproximación Histórico-Jurídica a su Proyección*, IUS HISTORIA, Sept. 2006, <http://www.salvador.edu.ar/juri/reih/3ro/index.htm>.

25. BORDA, *supra* note 21, at 148.

26. PROYECTO DE CÓDIGO CIVIL ARGENTINO 523-537 (1938).

27. ANTEPROYECTO DE CÓDIGO CIVIL DE 1954 PARA LA REPÚBLICA ARGENTINA 7 (1968).

28. LEVAGGI, *supra* note 13, at 272.

29. See Julio César Rivera, *La Reforma de la Codificación Civil en América Latina*, 1 REVISTA DE DERECHO COMPARADO 169, 178 (1999).

30. About the Project, See Fernando J. López de Zavalía, *Reflexiones sobre el actual Proyecto de unificación civil y comercial*, in ESTUDIOS SOBRE EL PROYECTO DE CÓDIGO UNIFICADO DE 1998 25-70 (Roberto H. Brebbia dir. 2001); See also Julio César Rivera, *El Proyecto de Código Civil para la República Argentina*, 35 REV. JURÍDICA U. INTER. P.R. 381 (2001).

31. See *Proyecto de Código Civil de la República Argentina*, in VII ANTECEDENTES PARLAMENTARIOS 149-546 (2nd ed. 2000); See also Rivera, *supra* note 29, at 178.

32. See <http://www.biblioteca.jus.gov.ar/Nota-Elevacion.PDF>.

33. See Rivera, *supra* note 29, at 179.

34. See Resolution 1710/2008 of the Ministry of Justice, available at <http://www.infoleg.gov.ar/infolegInternet/anexos/140000-144999/142152/norma.htm>.

35. I JOSÉ OLEGARIO MACHADO, EXPOSICIÓN Y COMENTARIO DEL CÓDIGO CIVIL ARGENTINO: CONTENIENDO LA EDICIÓN OFICIAL Y LAS NOTAS DEL DR. VÉLEZ-SARSFIELD, LA APLICACIÓN DE LOS FALLOS DE LA SUPREMA CORTE NACIONAL, LOS DE LAS CÁMARAS DE APELACIÓN DE LA CAPITAL Y UN ESTUDIO SOBRE LA LEY DEL REGISTRO CIVIL xvi (1898).

36. ALFREDO COLMO, TÉCNICA LEGISLATIVA DEL CÓDIGO CIVIL ARGENTINO 350 (2nd ed. 1961).

37. HÉCTOR P. LANFRANCO, LA CODIFICACIÓN CIVIL EN LA REPÚBLICA ARGENTINA 53-54 (1939).

38. Raymundo Salvat, *El Código Civil Argentino (Estudio General). Historia, Plan o Método y Fuentes*, VII REVISTA ARGENTINA DE CIENCIAS POLÍTICAS 420, 436 (1913).

Vélez, like other drafters, used the ideas and codes that existed at the time.<sup>39</sup> He was especially interested – as were Andrés Bello in Chile, Teixeira de Freitas in Brazil, and Louis Moreau-Lislet in Louisiana – in the works that were theorized on modern law while building from the principles of Roman law.<sup>40</sup> Finally, Vélez added to those initial materials, the identification of mores, uses, and customs.<sup>41</sup>

The sources used by Vélez may be divided into two: material (*v. gr.* the *Corpus Iuris Civilis*, the *Siete Partidas*) and formal.<sup>42</sup> In many occasions, formal sources – as in Louisiana and Uruguay— “dress” with modern language, the foreign ideas which may be universal.<sup>43</sup> Vélez was perfectly acquainted with the Roman law and the Spanish legislation. Due to the archaic nature of those texts, he looked for direct and modern models that would reproduce those ideas: the project of a civil code by Teixeira de Freitas for Brazil, the *Code Napoléon*, the project of a civil code for Spain by García Goyena, the civil code of Chile by Andrés Bello,<sup>44</sup> and the Louisiana Civil Code of 1825. Without intending to be exclusive, the following enumeration includes some of the different sources that Vélez mentions in his civil code positive law and drafts: the *Corpus Iuris Civilis*;<sup>45</sup> the *Novísima Recopilación*;<sup>46</sup> the *Siete Partidas*;<sup>47</sup> principles of canon law;<sup>48</sup> the project of a civil code for the state of New York;<sup>49</sup> the codes of Austria,<sup>50</sup> Baden,<sup>51</sup> Bavaria,<sup>52</sup> Belgium,<sup>53</sup> Sardinia,<sup>54</sup> Denmark,<sup>55</sup> Fribourg,<sup>56</sup> Haiti,<sup>57</sup> Hesse,<sup>58</sup> Holland,<sup>59</sup> Italy,<sup>60</sup> Naples,<sup>61</sup> Norway,<sup>62</sup> Prussia,<sup>63</sup> Russia,<sup>64</sup> Sweden,<sup>65</sup> and Vaud;<sup>66</sup> and (ii) doctrinal works by Aubry and

39. ABELARDO LEVAGGI, DALMACIO VÉLEZ SANSFIELD, JURISCONSULTO 180 (2005).

40. *Id.*

41. I RAYMUNDO SALVAT, TRATADO DE DERECHO CIVIL ARGENTINO: PARTE GENERAL 132 (1950).

42. LEVAGGI, *supra* note 39, at 181.

43. *Id.*

44. Ricardo Zorraquín Becú, *La recepción de los derechos extranjeros en la Argentina durante el siglo XIX*, 4 REVISTA DE HISTORIA DEL DERECHO, 325, 350 (1976).

45. *See, e.g.*, note to article 2913 of the Argentine Civil Code in Law No. 340, *supra* note 15, at 773.

46. Note to article 2074, *Id.* at 697.

47. Note to article 455, *Id.* at 546.

48. Note to article 14, *Id.* at 507.

49. Note to article 2538, *Id.* at 741.

50. Note to article 19, *Id.* at 508.

51. Note to article 22, *Id.* at 508.

52. Note to article 1640, *Id.* at 662.

53. Note to article 167, *Id.* at 524.

54. Note to article 21, *Id.* at 508.

55. Note to article 325, *Id.* at 536.

56. Note to article 275, *Id.* at 532.

57. Note to article 325, *Id.* at 536.

58. *Id.*

59. Note to article 462, *Id.* at 547.

60. Note to article 1198, *Id.* at 625.

61. Note to article 21, *Id.* at 508.

62. Note to article 325, *Id.* at 536.

63. Note to article 19, *Id.* at 508.

64. Note to article 167, *Id.* at 524.

65. Note to article 325, *Id.* at 536.

66. Note to article 459, *Id.* at 547.

Rau,<sup>67</sup> Blackstone,<sup>68</sup> Bonnier,<sup>69</sup> Chabot,<sup>70</sup> Demante,<sup>71</sup> Demolombe,<sup>72</sup> Domat,<sup>73</sup> Duranton,<sup>74</sup> Foelix,<sup>75</sup> Gómez de la Serna,<sup>76</sup> Grenier,<sup>77</sup> Heinccio,<sup>78</sup> Kent,<sup>79</sup> Laya,<sup>80</sup> Leclercq,<sup>81</sup> López,<sup>82</sup> Marcadé,<sup>83</sup> Massé,<sup>84</sup> Maynz,<sup>85</sup> Merlin,<sup>86</sup> Meyer,<sup>87</sup> Molitor,<sup>88</sup> Morell,<sup>89</sup> Pardessus,<sup>90</sup> Pont,<sup>91</sup> Pothier,<sup>92</sup> Proudhon,<sup>93</sup> Savigny,<sup>94</sup> Seoane,<sup>95</sup> Story,<sup>96</sup> Toullier,<sup>97</sup> Troplong,<sup>98</sup> Vazeille,<sup>99</sup> Vinnio,<sup>100</sup> and Zachariae.<sup>101</sup> Even when French authors and the codes that followed the *Code Napoléon* seem to prevail, the enumeration reflects that Vélez did not limit himself to one single stream of thought, and that his very diverse sources helped him to elaborate an eclectic code. The enumeration also helps the readers to conclude that most sources used for the drafting of the Argentinean code, were, to some extent, following, studying, or analyzing the Roman law. The sources of the Argentinean Civil Code of 1871 have been studied with different intensity.<sup>102</sup> For example, there are studies on the

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67. Note to article 1074, *Id.* at 615.

68. Note to article 167, *Id.* at 524.

69. Note to article 1026, *Id.* at 611.

70. Note to article 3448, *Id.* at 834.

71. Note to article 3389, *Id.* at 826.

72. Note to article 2680, *Id.* at 753.

73. Note to article 1198, *Id.* at 625.

74. Note to article 1065, *Id.* at 614.

75. Note to article 3638, *Id.* at 856.

76. Note to article 3129, *Id.* at 799.

77. Note to article 3118, *Id.* at 797.

78. Note to article 2182, *Id.* at 706.

79. Note to article 3136, *Id.* at 800.

80. Note to article 3115, *Id.* at 796-797.

81. Note to article 18, *Id.* at 507-508.

82. Note to article 392, *Id.* at 541.

83. Note to article 1196, *Id.* at 625.

84. Note to article 3994, *Id.* at 898.

85. Note to article 2748, *Id.* at 758.

86. Note to article 3, *Id.* at 505-506.

87. *Id.*

88. Note to article 2398, *Id.* at 726.

89. Note to article 5, *Id.* at 506.

90. Note to article 2680, *Id.* at 753.

91. Note to article 2064, *Id.* at 696.

92. Note to article 1650, *Id.* at 663.

93. Note to article 2566, *Id.* at 743.

94. Note to article 3283, *Id.* at 813.

95. Note to article 166, *Id.* at 524. According to Salerno, this is the only reference to the work of Seoane. See Marcelo Urbano Salerno, *La legislación comparada del señor Seoane, fuente del código civil argentino*, 20 REVISTA DEL INSTITUTO DE HISTORIA DEL DERECHO RICARDO LEVENE 311, 315 (1969).

96. See, e.g., note to article 9 of the Argentine Civil Code in Law No. 340, *supra* note 15, at 506.

97. Note to article 1198, *Id.* at 625.

98. Note to article 1186, *Id.* at 625.

99. Note to article 3991, *Id.* at 898.

100. Note to article 3108, *Id.* at 795.

101. Note to article 338, *Id.* at 537.

102. On the sources of the Argentine Civil Code in general, See GUILLERMO L. ALLENDE, *Fuentes del código civil: Análisis y manejo de las mismas*, LXXVI-730 REVISTA DEL NOTARIADO 1771-1791 (1973); ABEL CHÁNETON, *HISTORIA DE VÉLEZ SÁRSFIELD* 379-424 (reprint 1969); HÉCTOR LAFAILLE, *FUENTES DEL DERECHO CIVIL Y CÓDIGO CIVIL ARGENTINO* 83-102 (1917); Abelardo Levaggi, *El método del código civil argentino y sus fuentes*, 10 REVISTA

sources from the *patrio*<sup>103</sup> law and on the influence of Canon law.<sup>104</sup> At the same time, studies have been conducted on the origins in the Castilian,<sup>105</sup> French,<sup>106</sup> Germanic,<sup>107</sup> and Roman<sup>108</sup> laws and in the work by Teixeira de Freitas.<sup>109</sup> Even the influence of the Louisiana Civil Code of 1825 has been studied.<sup>110</sup>

When drafting his civil code Vélez had easy access to the sources he used. He owned an extensive personal library, which contained some of the works of concordances that had been popular in America during the nineteenth century.

### 1. Vélez's Library

Vélez intended to donate his library to the University of Córdoba (Argentina), and in fulfillment of that intention, his heirs<sup>111</sup> delivered it to the University,<sup>112</sup>

DE ESTUDIOS HISTÓRICO-JURÍDICOS 159-175 (1985); 1 JORGE JOAQUÍN LLAMBIAS, TRATADO DE DERECHO CIVIL: PARTE GENERAL 211-224 (10th ed. 1984); 1 RAYMUNDO SALVAT, TRATADO DE DERECHO CIVIL ARGENTINO: PARTE GENERAL 132-142 (1950); and LEVAGGI, *supra* note 39, at 180-204.

103. See generally JORGE CABRAL TEXO, FUENTES NACIONALES DEL CÓDIGO CIVIL ARGENTINO (ESTUDIO DE ALGUNAS DE SUS DISPOSICIONES) (1919).

104. See, e.g., ABELARDO LEVAGGI, DALMACIO VÉLEZ SÁRSFIELD Y EL DERECHO ECLESIASTICO 191-229 (1969).

105. See, e.g., GUILLERMO L. ALLENDE, *Los códigos españoles como fuentes de nuestro código civil*, LA LEY 1981-C 1015-1026 (1981). See also Salerno, *supra* note 95.

106. See, e.g., GUILLERMO L. ALLENDE & MARTA FAZIO DE BELLO, *El código francés como fuente del código civil argentino*, LA LEY 1979-D 928-932 (1979); GUSTAVO A. BOSSERT, *Influencia del código civil francés en el código argentino y otros códigos de Hispanoamérica*, LA LEY 2005-A 1452-1457 (2005); JORGE JUAN CORTABARRÍA, *El Code Napoleon y sus comentaristas como fuentes del Código Civil Argentino*, IUS HISTORIA, (March 2005), available at <http://www.salvador.edu.ar/juri/reih/2ndadell1/index.htm>; and MARCELO URBANO SALERNO, *Un retorno a las fuentes del código civil argentino: la doctrina francesa*, in FUENTES IDEOLÓGICAS Y NORMATIVAS DE LA CODIFICACIÓN LATINOAMERICANA 219-240 (Abelardo Levaggi coord. 1992).

107. See, e.g., ROLF KNÜTEL, *Influencia del allgemeines landrecht prussiano del 1794 sul código civil argentino del 1869*, in DALMACIO VÉLEZ SÁRSFIELD E IL DIRITTO LATINOAMERICANO 79-108 (Sandro Schipani coord. 1991); PEDRO LEÓN, EL CÓDIGO DE PRUSIA COMO FUENTE DEL CÓDIGO CIVIL ARGENTINO (1946); and NÉSTOR A. PIZARRO, EL CÓDIGO DE PRUSIA Y SAVIGNY (SU INFLUENCIA EN LA DOCTRINA Y LA LEGISLACIÓN) 21, 33 (1944).

108. See, e.g., 1 AGUSTÍN DÍAZ BIALET, EL DERECHO ROMANO EN LA OBRA DE VÉLEZ SÁRSFIELD (1949); AGUSTÍN DÍAZ BIALET, *La transfusión del derecho romano en la Argentina (s.XVI-XIX) y Dalmacio Vélez Sarsfield autor del Código Civil Argentino (1864-1869)*, in V STUDI SASSARESI 295-315 (1981); and ABELARDO LEVAGGI, *La formación romanística de Dalmacio Vélez Sarsfield*, in V STUDI SASSARESI 317-345 (1981).

109. See, e.g., EDMUNDO GATTI, *Freitas en las notas del Código Civil (Con motivo del Código Civil editado por LA LEY)*, LA LEY 1975-A 1094-1098 (1975); ENRIQUE MARTÍNEZ PAZ, FREITAS Y SU INFLUENCIA SOBRE EL CÓDIGO CIVIL ARGENTINO liv-lvi (1927); SILVIO A. B. MEIRA, *Direito brasileiro e direito argentino. Codigos comercial e civil. Influencia do "Esboço" de Teixeira de Freitas no projecto de Vélez Sarsfield*, in V STUDI SASSARESI 228-244 (1981); and ABELARDO LEVAGGI, *Influencia de Teixeira de Freitas sobre el proyecto de código civil argentino en materia de relaciones de familia. Las fuentes utilizadas por Vélez Sarsfield*, in AUGUSTO TEIXEIRA DE FREITAS E IL DIRITTO LATINOAMERICANO 399-426 (Sandro Schipani coord. 1988).

110. See, e.g., NÉSTOR A. PIZARRO, EL CÓDIGO CIVIL ARGENTINO Y EL CÓDIGO DE LUISIANA (ESTUDIO SOBRE LAS FUENTES LEGISLATIVAS DEL CÓDIGO CIVIL) (1950); RICARDO LIÑIC, *Historia del Código Civil de Louisiana. Antecedente del Código Civil Argentino*, 12 REVISTA DE HISTORIA DEL DERECHO 164-172 (1961); FRANCISCO EDUARDO TRUSSO, *El derecho hispano indiano en el derecho civil de Louisiana y su influencia a través de éste en el Código Civil Argentino*, LA LEY 1986-B 960-965 (1986); ROLF KNÜTEL, *Influences of the Louisiana Civil Code in Latin America*, 70 TUL. L. REV. 1445-1480 (1996); INÉS ZERDAN, *La reparación del daño moral. Influencias reciprocas entre el código de Luisiana y el código civil argentino*, LA LEY 1999-F 971-983 (1999); and JORGE HORACIO ALTERINI, *Influencia del Código Civil de Luisiana de 1825 en el Código Civil Argentino de 1871: Acerca de los Efectos de la Inscripción Registral*, in ESSAYS IN HONOR OF SAÚL LITVINOFF 89-108 (Olivier Moréteau et al. eds. 2008).

111. JOSÉ MARÍA CASTÁN VÁZQUEZ, *Los Libros Jurídicos Españoles consultados por Vélez Sarsfield*, in ESTUDIOS EN HOMENAJE AL DR. GUILLERMO A. BORDA 75 (1984).

112. LEVAGGI, *supra* note 39, at comment to picture 2.

where it is currently preserved.<sup>113</sup> The catalog of Vélez's library, published in 1940 and 1980,<sup>114</sup> indicates that it comprised 621 entries, many of those divided into several volumes.<sup>115</sup> In Vélez's time, his library was "significantly up-to-date."<sup>116</sup> The collection gained recognition, and even though not exclusively a law library, it was well furnished with law books.<sup>117</sup> The library is of importance mainly because of the value and significance of the materials included, and to a lesser extent, because of the number of books.<sup>118</sup> The library includes the manuscripts of the Civil Code by the drafter<sup>119</sup> and law books from very diverse origins, among others, Anglo-Saxon, Argentine, Brazilian, Castilian, Germanic, Roman, and Uruguayan.<sup>120</sup> French law and commentaries on the *Code Napoléon* certainly outnumbered other items of the library. Many of those French materials had been given to the drafter by Manuel Rafael García, who acted as the Secretary of the Argentine delegation in France.<sup>121</sup>

## 2. Nineteenth-Century Works of Concordances

The other element that granted Vélez an easy access to sources was a set of works that presented concordances between the different civil codes of that time. Those works were essential tools for the drafters of civil codes around the world and especially in Latin America.<sup>122</sup> Among the works of concordances it is possible to mention the work of 1840, *Concordance entre les Codes civils étrangers et le Code Napoléon*,<sup>123</sup> in French and by Fortuné Anthoine de Saint-Joseph; and the work of 1852, *Concordancias, Motivos y Comentarios del Código Civil Español*,<sup>124</sup> in Spanish, by Florencio García Goyena. This second work is included in the catalog of the library of Vélez.<sup>125</sup>

Another work must be added to those two concordances: Juan Antonio Seoane

113. *Id.*; See also JOSÉ MARÍA CASTÁN VÁZQUEZ, LA INFLUENCIA DE LA LITERATURA JURÍDICA ESPAÑOLA EN LAS CODIFICACIONES AMERICANAS 124 (1984).

114. José María Castán Vázquez, *Vélez Sársfield, Jurista Bibliófilo*, in IV HOMENAJE A DALMACIO VÉLEZ SÁRSFIELD 525 (2000).

115. See BIBLIOTECA MAYOR, CATÁLOGO DE LA DONACIÓN DE VÉLEZ SÁRSFIELD 1-134 (1980). The catalog also includes an addendum with other items and manuscripts that originally were not part of Vélez's library. *Id.* at 135.

116. JORGE CABRAL TEXO, HISTORIA DEL CÓDIGO CIVIL ARGENTINO 88 (1920).

117. CASTÁN VÁZQUEZ, *supra* note 113, at 124.

118. Castán Vázquez, *supra* note 114, at 525.

119. Ramón Cárcano, *El Código civil argentino: Sus manuscritos originales*, in CUESTIONES Y JUICIOS 231 (1910).

120. See generally BIBLIOTECA MAYOR, *supra* note 115, at 1-134.

121. CABRAL TEXO, *supra* note 116, at 88.

122. See generally Knütel, *supra* note 107.

123. ANTHOINE DE SAINT-JOSEPH, CONCORDANCE ENTRE LES CODES CIVILS ÉTRANGERS ET LE CODE NAPOLÉON (1840). There was also an edition in four volumes, in 1856, I-IV ANTHOINE DE SAINT-JOSEPH, CONCORDANCE ENTRE LES CODES CIVILS ÉTRANGERS ET LE CODE NAPOLÉON OUVRAGE TERMINÉ ET PUBLIÉ PAR M. A. DE SAINT-JOSEPH (1856).

124. I-IV FLORENCIO GARCÍA GOYENA, CONCORDANCIAS, MOTIVOS Y COMENTARIOS DEL CÓDIGO CIVIL ESPAÑOL (1852).

125. BIBLIOTECA MAYOR, *supra* note 115, at 54.



in 1861 published a work that addressed the jurisprudence of Spain and other regions.<sup>126</sup> This work was well read in the region of Río de la Plata.<sup>127</sup> Together with the previous compilations, it helped in the study of legal doctrines and solutions that had been implemented in other countries, and, in some cases, even in countries that did not follow the Roman tradition.<sup>128</sup> For example, when looking into other legal systems, Seoane classified his study in five main groups or divisions: Civilian, Slavic, Germanic, Oriental, and Romanic.<sup>129</sup>

### B. Notes to Articles

The Civil Code of 1871 included notes for many of its 4051 articles. Those notes are not a part of positive law, and only intend to inform the reader about the genesis of the thoughts of Vélez.<sup>130</sup> Therefore, they are an element that may help understand and judge the value of the articles, in a similar way as an *exposé des motifs* and the legislative history.<sup>131</sup> The notes are still useful as an additional element for interpretation of the codified provision,<sup>132</sup> and may serve as guides or auxiliaries when studying articles, although in other cases they may generate confusion.<sup>133</sup> The notes may also be useful for determining a juridical, economical, or philosophical position that inspired the Civil Code of 1871.<sup>134</sup> In brief, the notes have been seen as a treatise of Argentinean civil law.<sup>135</sup>

The notes may have been generated as a response to a letter that the Minister Eduardo Costa sent to Vélez on October 20, 1864.<sup>136</sup> The letter reads in part:

To guaranty [*sic*] the success of a work of this nature [*i.e.* civil code], that we can say will make a mark in the life of societies, the President desires that the project entrusted to the recognized abilities of doctor Vélez contain all the necessary background for its discussion. [The President] believes that it would be very convenient that articles are annotated with the correspondences or discrepancies with the provisions of the law established in the current codes of the Nation, together with their

126. JUAN ANTONIO SEOANE, JURISPRUDENCIA CIVIL VIGENTE ESPAÑOLA Y ESTRANJERA, SEGÚN LAS SENTENCIAS DEL TRIBUNAL SUPREMO DESDE EL ESTABLECIMIENTO DE SU JURISPRUDENCIA EN 1838 HASTA LA FECHA (1861).

127. VÍCTOR TAU ANZOÁTEGUI, LA CODIFICACIÓN EN LA ARGENTINA (1810-1870): MENTALIDAD SOCIAL E IDEAS JURÍDICAS 276 (1977).

128. *Id.* at 275.

129. SEOANE, *supra* note 126, at ix.

130. Luis Moisset de Espanés, *Reflexiones sobre las notas del código civil argentino*, in V STUDI SASSARESI 448 (1981).

131. LEVAGGI, *supra* note 39, at 209.

132. MANUEL OSVALDO COBAS & JORGE ALBERTO ZAGO, *La influencia de las "notas" del código civil en la ciencia del derecho argentino y latinoamericano*, in DALMACIO VÉLEZ SANSFIELD E IL DIRITTO LATINOAMERICANO 146-147 (Sandro Schipani coord. 1991).

133. I RODOLFO RIVAROLA, INSTITUCIONES DEL DERECHO CIVIL ARGENTINO: PROGRAMA DE UNA NUEVA EXPOSICIÓN DEL DERECHO CIVIL 12 (1901).

134. COBAS & ZAGO, *supra* note 132, at 148.

135. Agustín Díaz Bialek, *El espíritu de la legislación en la concepción del derecho en Dalmacio Vélez Sarsfield*, in DALMACIO VÉLEZ SANSFIELD E IL DIRITTO LATINOAMERICANO 24 (Sandro Schipani coord. 1991).

136. COBAS & ZAGO, *supra* note 132, at 144.

conformity or disagreement with the civil codes of the main nations of the world.

[The President] also considers that it would lead to a more effective understanding if doctor Vélez would set out in an autonomous work the reasons for those main resolutions that alter the present law and the fundamental reasons of the new dispositions that he very probably has judged necessary when raising our legislation, that had been for long left stationary, to the standards of progress of civilization and science.<sup>137</sup>

The request by Eduardo Costa was most probably aimed at the completion of a work similar to the *Concordancias* of García Goyena.<sup>138</sup> Notwithstanding, Vélez did not accomplish that autonomous work. Vélez made reference to the existence of the notes in a letter to Eduardo Costa dated June 21, 1865. He enclosed with that letter the first book of his civil code. The letter read in part:

I believe the work is accomplished as your Excellency has requested. I indicated the concordances between the articles of each title and the current laws and the codes of Europe and America, for an easier and more illustrated discussion of the draft. On occasions I had the need of including long notes in articles that solved archaic and serious matters that had been under debate by jurists or when it was necessary to legislate in areas of law that needed to be moved from doctrine and turned into law.<sup>139</sup> Two observations are necessary regarding the notes:

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137. The passages of the letter read in Spanish:

Para que una obra de esta naturaleza [*i.e.* código civil], que bien puede decirse marcará una época en la vida de los pueblos, ofrezca las posibles garantías de acierto, S.E. el señor presidente desea que el proyecto que confía a la reconocida competencia del doctor Vélez, contenga todos los antecedentes necesarios para su discusión.

Considera S.E. que sería muy conveniente que en los diversos artículos que lo forman, sean anotadas las correspondencias o discrepancias con las disposiciones del derecho establecido en los códigos vigentes de la Nación, así, su conformidad o disconformidad con los códigos civiles de las principales naciones del mundo.

Considera asimismo, que conduciría eficazmente a su mejor inteligencia, que el doctor Vélez expusiera en un trabajo separado los motivos de aquellas resoluciones principales que alteran el derecho actual y las razones fundamentales de las nuevas disposiciones que es muy probable ha de juzgar necesario introducir para elevar nuestra legislación, por tan largo tiempo estacionaria al nivel de los progresos de la civilización y la ciencia.

CABRAL TEXO, *supra* note 103, at 77-78; LEVAGGI, *supra* note 39, at 204; and COBAS & ZAGO, *supra* note 132, at 144.

138. LEVAGGI, *supra* note 39, at 204.

139. The passages of the letter read in Spanish:

Creo que el trabajo está hecho como V.E. me lo encargó, concordando los artículos de cada título con las leyes actuales y con los Códigos de Europa y América, para la mas fácil é ilustrada discusion del proyecto.

Me he visto en la necesidad de poner muchas veces largas notas en artículos que resolvian antiguas y graves cuestiones entre los jurisconsultos, ó cuando ha sido preciso legislar en puntos de derecho que debian ya salir del estado de doctrina y convertirse en leyes.

DALMACIO VELEZ SANSFIELD, PROYECTO DE CÓDIGO CIVIL PARA LA REPÚBLICA ARGENTINA—LIBRO PRIMERO V (1865). See also LEVAGGI, *supra* note 39, at 204 and 310; and COBAS & ZAGO, *supra* note 132, at 144.

they do not always indicate the sources, due to silence or due to error; also, at least 1/3 of the articles do not have notes.<sup>140</sup>

### C. Classification of Notes

Different studies have been made of the notes. Some scholars, following the text of the letter of remission of the first book,<sup>141</sup> divided the notes of Vélez into concordances, citations, and strictly notes.<sup>142</sup> In the first, Vélez intended to indicate the concordances between his dispositions and those of Roman and Spanish law and with the remaining codes and drafts.<sup>143</sup> In the second, Vélez reproduced the thoughts of scholars and theories, especially the French.<sup>144</sup> In the third, the Argentine drafter expressed his own opinions, and frequently, dressed them with the other two types of notes.<sup>145</sup>

Other scholars have also divided the notes into three: concordances, doctrinal, and heuristic (even when one note could fall into two or three of these categories).<sup>146</sup> The first type of note tends to locate the provision within the comparative legislation and doctrine, establishing the affinity, identity, and oppositions.<sup>147</sup> The second type of note provides grounding for the solutions given to "archaic and serious matters that had been under debate by jurists"<sup>148</sup> and when ideas had to be moved from doctrine and turned into law.<sup>149</sup> The third type of note indicates expressly or tacitly the source of the article.<sup>150</sup> Even when other studies and classifications have been made,<sup>151</sup> this paper follows this second tri-partite classification.

### D. References to Sources within the Notes

As Abelardo Levaggi mentioned, the statistics stated since the work of Lisandro Segovia,<sup>152</sup> about the amount of times that Vélez cites the different sources are

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140. Carlos J. Rodríguez, *La redacción de los códigos: Necesidad de la indicación de la fuente de sus artículos*, XVII-XVI REVISTA DEL COLEGIO DE ABOGADOS DE BUENOS AIRES 191 (1938).

141. Part of the letter reads in an English translation:

When the code is published with the alterations that could be necessary, the citations, concordances and notes will be removed; and all articles will have a uniform numeration.

VELEZ SANSFIELD, *supra* note 135, at xi; See also Moisset de Espanés, *supra* note 130, at 448.

142. Moisset de Espanés, *supra* note 130, at 448.

143. *Id.* at 449.

144. *Id.* at 450.

145. *Id.*

146. LEVAGGI, *supra* note 39, at 207.

147. *Id.*

148. VELEZ SANSFIELD, *supra* note 135, at v. See also Abelardo Levaggi, *Fuentes de la sección "de las personas en general" de código civil argentino de Vélez Sarsfield influencia de ella en el código civil uruguayo*, in DALMACIO VÉLEZ SANSFIELD E IL DIRITTO LATINOAMERICANO 228 (Sandro Schipani coord. 1991).

149. LEVAGGI, *supra* note 39, at 208.

150. *Id.*

151. See, e.g. the early work of Enrique Díaz de Guíjarro, *El valor de las notas del código civil*, 44 JURISPRUDENCIA ARGENTINA 223-228 (1933).

152. See generally 1 LISANDRO SEGOVIA, EL CÓDIGO CIVIL DE LA REPÚBLICA ARGENTINA (CÓPIA DE LA EDICIÓN

of interest, but certainly, they are not conclusive or as relevant as many think.<sup>153</sup> Nonetheless, it is necessary to determine precisely, what references exist within the Civil Code. That information will help in the understanding of the presence that different sources had within the Argentine legislation. It will be possible to identify, for example, the impact that French, Spanish, Roman, or North American scholars and legislation had on the Code. Those elements, together with many other factors, will help in the understanding of the origins and spirit of the Civil Code of 1871. A classification of references may divide them into three types: general, direct, and transcribed. In the first group, Vélez does not identify the article, section, or passage of the source to which he refers, while he limits himself to making a general reference. In the second group, Vélez identifies exactly the article, section, or passage that he refers to. In the third group, even if he does not refer to specific articles, sections, or passages, Vélez transcribes passages of the sources in his notes.

Those three categories may also be divided into sub-categories: positive and negative. The first are those references in which Vélez follows or supports the position expressed in the source. The second sub-category is made by those references in which Vélez rejects or condemns the solution expressed in the source. Finally, the three categories and sub-categories also qualify with the tripartite division of concordances, doctrinal, and heuristic (*n.b.* also contemplating the distinction between material and formal sources).<sup>154</sup> Also, when a reference is heuristic and exclusive to one single source, it is indicated as *exclusive heuristic*.

## II. NORTH AMERICAN SOURCES OF THE CIVIL CODE OF ARGENTINA

North American sources have been, and are still, consulted by Argentine members of the judiciary and law-makers. Argentine courts have looked at US court decisions when making their own judgments, and, therefore, have many times used US cases as precedents. In addition, the impact of North American sources is perceived in drafts of legislation in areas of public and private law. Even when Argentine sources are generally traced to Roman, Spanish or French sources, the North American sources should not be overlooked. Argentine courts have looked at US decisions while solving local claims.<sup>155</sup> On several occasions, the Argentine Supreme Court has mentioned decisions of the US Supreme Court. For example, in the Argentine case *De la Torre*<sup>156</sup> (1877), the Argentine Supreme Court cited North American case law and doctrinal writings from,

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OFICIAL ÍNTEGRA) CON SU EPLICACION Y CRÍTICA BAJO LA FORMA DE NOTAS xvii-xxvii (1881).

153. LEVAGGI, *supra* note 39, at 181.

154. *Id.* at 207.

155. See generally Jonathan M. Miller, *The Authority of a Foreign Talisman: A Study of U.S. Constitutional Practice as Authority in Nineteenth Century Argentina and the Argentine Elite's Leap of Faith*, 46 AM. U. L. REV. 1483 (1997).

156. Corte Suprema de Justicia [CSJN], 21/08/1877, "D. Lino de la Torre sobre recurso de habeas corpus," Fallos (1878-19-231) (Arg.). See also Miller, *supra* note 155, at 1548-1551.

among others, Story and Kent.<sup>157</sup> Another example is found in the Argentine case *Acevedo*<sup>158</sup> (1885), where the vote in dissent mentions the North American *National Digest* of Abbot.<sup>159</sup> Finally, the seminal US decision in the case *Marbury v. Madison*<sup>160</sup> (1803) has been cited in, among other occasions, the Argentine case *Sojo*<sup>161</sup> (1887). In *Sojo*, the Argentine court ruled as if bound by the North American precedent, and even left aside its local precedents.<sup>162</sup>

Argentine public law found important sources in North America. For example, while drafting what would turn out to be the Argentine Constitution of 1853, attention was given to, among others, the US Constitution.<sup>163</sup> The influence is notorious when one looks, for example, at the preambles of both the constitutions.<sup>164</sup> Both the preambles are similar, and the Argentine preamble clearly follows the wording of the US preamble. Another example may be found in the first Argentine project of a code of criminal procedure. In 1873, Florentino González and Victorino de la Plaza drafted a proposal that was inspired by, among others, the code of criminal procedure of New York of 1850 and the project for Louisiana by Edward Livingston.<sup>165</sup>

Finally, North American sources have also been used by Argentine law-makers while drafting in the area of private law. A clear example is found in the sources used by Vélez while drafting the Argentine Civil Code of 1871. In his work, Vélez

157. See, e.g., D. Lino de la Torre, *supra* note 156, at 237.

158. Corte Suprema de Justicia [CSJN], 01/08/1885, "D. Eliseo Acevedo sobre recurso de habeas corpus," Fallos (1886-28-406) (Arg.). See also Miller, *supra* note 155, at 1551-1553.

159. See, e.g., D. Eliseo Acevedo, *supra* note 158, at 410.

160. William Marbury v. James Madison, 5 U.S. 39 (1803).

161. Corte Suprema de Justicia [CSJN], 22/09/1887, "D. Eduardo Sojo por recurso de habeas corpus contra una resolución de la H. Cámara de Diputados de la Nación," Fallos (1889-32-120) (Arg.). See the reference to the North American case in *Id.* at 132. See also Miller, *supra* note 155, at 1553-1568.

162. See D. Eduardo Sojo, *supra* note 259; Julieta Marotta, *Marbury v. Madison in Argentina: An Example of Legal Transplant?* 30 (on file with the author); and Miller, *supra* note 155, at 1559.

163. See Abelardo Levaggi, *Constitucionalismo Argentino 1810-1850*, IUS HISTORIA, (Oct. 2005), available at <http://www.salvador.edu.ar/juri/reih/2da/104.pdf> [Last visit: December 06, 2009], at 5-9; See also Agustín Parise, *La Carta Fundamental de los argentinos: Desde lo intrínseco, un siglo y medio después*, in *ESSAYS IN HONOR OF SAÚL LITVINOFF 671-672* (Olivier Moréteau et al. eds. 2008).

164. The US Preamble reads:

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

<http://topics.law.cornell.edu/constitution/preamble> [Last visit: December 05, 2009].

The Argentine Preamble reads in an English translation:

We, the representatives of the people of the Argentine Nation, gathered in General Constituent Assembly by the will and election of the Provinces which compose it, in fulfillment of pre-existing pacts, in order to form a national union, guarantee justice, secure domestic peace, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves, to our posterity, and to all men of the world who wish to dwell on Argentine soil: invoking the protection of God, source of all reason and justice: do ordain, decree, and establish this Constitution for the Argentine Nation.

<http://www.senado.gov.ar/web/intetes/constitucion/english.php>.

165. LEVAGGI, *supra* note 13, at 89.

makes generic references to the US in three notes,<sup>166</sup> but in many others, he refers specifically to the Civil Code of Louisiana of 1825, to the Project of a Civil Code for the State of New York, and to the works of Joseph Story and James Kent. This paper focuses on these last references and analyzes them in the light of the division explained in H.D. In this manner, the paper will illustrate the North American impact on the Argentine Civil Code.

### A. Civil Codes

The American continent was not immune to the nineteenth-century codification movements.<sup>167</sup> Quebec enacted its civil code in 1866,<sup>168</sup> while in the United States, some states, such as Louisiana, Alabama,<sup>169</sup> California,<sup>170</sup> North Dakota, South Sur,<sup>171</sup> South Carolina,<sup>172</sup> Georgia,<sup>173</sup> Montana,<sup>174</sup> and New York<sup>175</sup> envisioned civil codes.

Codification in the US found inspiration in the theories of Jeremy Bentham and in the *Code Napoléon*.<sup>176</sup> The latter had proved to be a useful and successful form, and seemed possible to be applied to the North American conditions.<sup>177</sup> To these sources it is necessary to add the codification efforts of David Dudley Field.

#### 1. Louisiana Civil Code

In the early nineteenth century, the legal culture of Louisiana was an isolated "Civil Law island" partially surrounded by a "sea of Common Law," a status that had to be safeguarded to survive.<sup>178</sup> Therefore, on June 7, 1806, James Brown and

166. See the general references to the United States in the note to Title II, Section III, Book II, and in the notes to articles 41 and 1324. Law No. 340, *supra* note 15, at 630, 511, and 637.

167. See generally Parise, *supra* note 7, at 830-831; David Gruning, *Vive la Différence? Why No Codification of Private Law in the United States?*, 39 REVUE JURIDIQUE THEMIS N.S., 153 (2005); John W. Head, *Codes, Cultures, Chaos, and Champions: Common Features of Legal Codification Experiences in China, Europe, and North America*, 13 DUKE J. COMP. & INT'L L. 1, 52-88 (2003); Wienczyslaw J. Wagner, *Codification of Law in Europe and the Codification Movement in the Middle of the Nineteenth Century in the United States*, 2 ST. LOUIS U. L.J. 335 (1952); and Gunther A. Weiss, *The Enchantment of Codification in the Common-Law World*, 25 YALE J. INT'L L. 435, 498-532 (2000).

168. About the Civil Code of 1866 See, e.g., BRIAN J. YOUNG, *THE POLITICS OF CODIFICATION: THE LOWER CANADIAN CIVIL CODE OF 1866* (1994).

169. 2 EDUARDO ESPINOLA, *TRATADO DE DIREITO CIVIL BRASILEIRO* 447 (1939).

170. Jean Louis Bergel, *Principal Features and Methods of Codification*, 48 LA. L. REV. 1073, 1076 (1988).

171. *Id.*

172. CHARLES M. COOK, *THE AMERICAN CODIFICATION MOVEMENT: A STUDY OF ANTEBELLUM LEGAL REFORM* 121 (1981).

173. Bergel, *supra* note 170, at 1076.

174. *Id.*

175. COOK, *supra* note 172, at 121.

176. *Id.* at 74.

177. *Id.* at 71.

178. Agustín Parise, *Non-Pecuniary Damages in the Louisiana Civil Code Article 1928: Originality in the Early Nineteenth Century and Its Projected Use in Further Codification Endeavors* 14 (May 18, 2006) (unpublished LL.M. thesis, Louisiana State University, Paul M. Hebert Law Center) (on file with the LSU Law Library).

Louis Casimir Elisabeth Moreau-Lislet were appointed to draft a civil code.<sup>179</sup> Their draft was promulgated on March 31, 1808, by the Legislature of the Territory of Orleans, and entitled *A Digest of the Civil Laws Now in Force in the Territory of Orleans*.<sup>180</sup> Soon a need for a new body of law was felt, and on March 14, 1822, three jurists were appointed to revise the Digest of 1808.<sup>181</sup> Those jurists (*i.e.* Pierre Derbigny, Edward Livingston, and Louis Casimir Elisabeth Moreau-Lislet) submitted a Preliminary Report to the Louisiana Senate on February 13, 1823.<sup>182</sup> That same year, on March 26, the Louisiana Legislature ordered that the revision by the three jurists be printed and distributed as soon as it was ready to go to press.<sup>183</sup> Finally, in 1825, the Louisiana Civil Code, having 3522 articles, took effect.<sup>184</sup> The Code was divided into a preliminary title and three books: Preliminary Title, of the General Definitions of Rights and the Promulgation of the Laws; Book I, of Persons; Book II, of Things and of the different modifications of property; and Book III, of the different modes of acquiring the property of things.<sup>185</sup> Each book was divided, when pertinent, into titles, chapters, sections, paragraphs, and articles.

Vélez refers to the Louisiana Civil Code in 295 notes to the articles of the Argentine Civil Code.<sup>186</sup> The analysis of those notes shows that the Louisiana Civil Code had a significant presence within the Argentine Code. Following the classification in II.D, the examples below help explain the impact that the Louisiana Civil Code had on the Argentine Civil Code. Most references to the Louisiana Civil Code are direct. There are, in fact, cases in which Vélez identifies the exact number of the Louisiana Civil Code article that he cites.

Within the direct references, a majority are positive and of concordance. This may be explained because the Louisiana Civil Code was included in both works of concordances by García Goyena and Saint-Joseph. These two works were certainly useful tools in elaborating these notes. In the notes of concordances, Vélez was able to show that the legal texts of Argentina and Louisiana share several principles and dispositions. This should not surprise the readers: Louisiana and Argentina were both at some point subjects of Spain. An example of a direct and positive reference that indicates concordance is found in the note to article

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179. 1806 La. Acts No. 214.

180. 1808 La. Acts No. 120.

181. 1822 La. Acts No. 108.

182. EDWARD LIVINGSTON, A REPUBLICATION OF THE PROJET OF THE CIVIL CODE OF LOUISIANA OF 1825 lxxxv (1937).

183. 1823 La. Acts No. 68.

184. CIVIL CODE OF THE STATE OF LOUISIANA (1825).

185. *Id.*

186. See appendix A. *n.b.* some of the references that Vélez made to the Louisiana Civil Code were incorrect, due mainly to material errors while drafting. See the complete analysis of each article in the doctoral dissertation of the author, entitled: *Historia de la Codificación Civil del Estado de la Luisiana y su Influencia en el Código Civil Argentino* (on file with the Universidad de Buenos Aires).

4015<sup>187</sup> of the Argentine Civil Code.<sup>188</sup> In that note Vélez indicated the positive concordance with articles 3465<sup>189</sup> and 3466<sup>190</sup> of the Louisiana Civil Code. It must be noted that Louisiana included a reference to slavery, something that was already abolished in Argentina at the time of drafting the Civil Code. The work of concordances of Saint-Joseph transcribed the text of both Louisianan articles.<sup>191</sup> The work of concordances of García Goyena included a reference to article 3465 in the note to article 1966.<sup>192</sup> The Spaniard considered both articles of Louisiana in the note to article 1961 of his work.<sup>193</sup> Vélez reproduced, to a great extent, article 1961 of the Spanish text and, therefore, showed that the Spanish text was a formal source for his work. In addition, Vélez reproduced several of the sources included in the note to the Spanish article, but included references to the works of Pothier, Zachariae, Duranton, Vazeille, and Troplong.

In his efforts to show that Louisiana and the Argentine Civil Code shared similarities, Vélez also made direct references to Louisiana when he drafted his doctrinal notes. Thirty notes had positive references to the North American text. For example, Vélez drafted a doctrinal note for article 2807<sup>194</sup> of his Civil Code and referred to usufruct.<sup>195</sup> That note includes an opening reference to article 525<sup>196</sup> of the Louisiana Civil Code. Even when Vélez omitted some passages of

187. Article 4015 of the Argentine Civil Code reads in an English translation:

Ownership and other real rights over immovable property are also prescribed by [thirty] years continuous possession, with intent of having the thing for oneself, without necessity of title or good faith on the part of the possessor, [without distinction among present or absentees] saving what is provided with respect to servitudes, for the prescription of which, a title is needed.

CIVIL CODE OF ARGENTINA: TRANSLATED INTO ENGLISH, WITH AN INTRODUCTION AND INDEX 416 (Julio Romañach, jr. trans., 2nd ed. 2008).

188. Law No. 340, *supra* note 15, at 901.

189. Article 3465 of the Louisiana Civil Code of 1825 reads:

The property of immoveables is prescribed for by thirty years, and that of slaves by fifteen years, without any need of title or possession in good faith.

CIVIL CODE OF THE STATE OF LOUISIANA 1092 (1825).

190. Article 3466 of the Louisiana Civil Code of 1825 reads:

This prescription runs both against residents of the State and absentees. But the possession, on which it is founded, ought to have the other qualities, which are necessary to the prescription of ten and twenty years, that is to say, it must be continuous and uninterrupted during all that time; it must be public and unequivocal, and under the title of owner.

*Id.* at 1092.

191. SAINT-JOSEPH (1840), *supra* note 123, at 125; and SAINT-JOSEPH (1856, II), *supra* note 123, at 571.

192. IV GARCÍA GOYENA, *supra* note 124, at 324.

193. *Id.* at 320.

194. Article 2807 of the Argentine Civil Code reads in an English translation:

Usufruct is the real right of using and enjoying a thing the ownership of which belongs to another without altering its substance.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 303.

195. Law No. 340, *supra* note 15, at 763-764.

196. Article 525 of the Louisiana Civil Code of 1825 reads:

Usufruct is the right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility and advantages which it may produce, provided it be without altering the substance of the thing. The obligation of not altering the substance of the thing takes place only in the case of a complete usufruct.



the text of Louisiana, it seems that he used the latter as a formal source for his article. Saint-Joseph did not transcribe the text of article 525 and limited his work to indicate the similarity to the text of the *Code Napoléon*.<sup>197</sup> García Goyena mentioned article 525 in his note to article 435 of the *Concordancias*.<sup>198</sup> Vélez used the note of García Goyena as a formal source when drafting the first paragraph of his extensive note, because he borrowed almost all the same references that the Spaniard made to Roman and Spanish law, and to the nineteenth-century codes. It must be noted that the rest of the note is a creation of Vélez in which he referred also to the works of Demolombe and Proudhon.

On six occasions, Vélez made doctrinal notes in which he did not follow the Louisiana text. In these notes he made direct, negative, and doctrinal references. For example, in the doctrinal note for article 619,<sup>199</sup> Vélez explained his position on the obligations of the debtor when there has been an augmentation or diminution in the currency.<sup>200</sup> In that note Vélez correctly indicated that there was a negative concordance with article 2884<sup>201</sup> of Louisiana. In his opinion, Vélez delegated the matter to the legislative power, and added that if he had to take a position, he would not follow the one adopted by Louisiana. Saint-Joseph did not include the North American text.<sup>202</sup> García Goyena mentioned the North American text in his note to article 1096 of the *Concordancias*.<sup>203</sup> Vélez and the Spaniard made similar references and transcriptions in their notes. Therefore, it must be concluded that Vélez worked with the *Concordancias* when drafting his note.

General references also had an impact on the Argentine text, although they were significantly less than the direct references. In this category, the references are mainly negative. Both general and negative references help in the understanding of these two legal systems. When comparing the dispositions of the Argentine and the Louisiana texts, they help in appreciating the value of those references

CIVIL CODE OF THE STATE OF LOUISIANA 142 (1825).

197. SAINT-JOSEPH (1840), *supra* note 123, at 30; and SAINT-JOSEPH (1856, II), *supra* note 123, at 480.

198. I GARCÍA GOYENA, *supra* note 124, at 384.

199. Article 619 of the Argentine Civil Code reads in an English translation:

If the debtor's obligation involves the delivery of a sum of a determined species or quality of [national] currency the obligation is discharged by giving the species specified [, or other species of national currency at the exchange rate that applies to the place] at the time of maturity of the obligation.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 92.

200. Law No. 340, *supra* note 15, at 565.

201. Article 2884 of the Louisiana Civil Code of 1825 reads:

The obligation, which results from a loan of money, can never be more than the numerical sum mentioned in the contract.

If there has been augmentation or diminution in the value of the specie before the time of the payment, the debtor is bound to return nothing more than the numerical sum which was lent to him, in such specie as has currency at the time of the payment.

CIVIL CODE OF THE STATE OF LOUISIANA 912 (1825).

202. SAINT-JOSEPH (1840), *supra* note 123, at 98; and SAINT-JOSEPH (1856, II), *supra* note 123, at 553.

203. III GARCÍA GOYENA, *supra* note 124, at 124.

while studying the different areas of law. An example of a reference that is general, negative and of concordance is found in the note to article 17<sup>204</sup> of the Argentine Civil Code. In that note Vélez indicated a negative concordance with Louisiana, who, contrary to Argentina, expressly admitted customs.<sup>205</sup> Even when the references of Vélez do not specify an article in Louisiana, together with Knütel<sup>206</sup> and Pizarro,<sup>207</sup> it must be noted that customs were included in article 3<sup>208</sup> of the Louisiana Civil Code of 1825. Saint-Joseph included the text of article 3 in his *Concordances*.<sup>209</sup> García Goyena also mentioned that Louisiana expressly admitted customs, this time in article 5 of the *Concordancias*.<sup>210</sup> There is a similarity in language, and therefore, it seems that Vélez picked his reference to Louisiana from the Spanish text.

Heuristic references are, of course, positive. In 48 notes, Vélez used Louisiana as a source for his articles. In 26 of those notes, Louisiana was the exclusive source. Most of those references are located in Book III of the Argentine Civil Code, and generally cover lacunas that García Goyena or Saint-Joseph did not address. An example of an exclusive and heuristic reference is found in article 3122<sup>211</sup> of the Argentine Civil Code. In that note Vélez made exclusive reference to article 3266<sup>212</sup> of Louisiana.<sup>213</sup> Vélez took principles from the text of Louisiana and reproduced almost *verbatim* some passages of it. Saint-Joseph transcribed a summarized version of article 3266, but omitted some passages that Vélez used in his text.<sup>214</sup> García Goyena made no reference to article 3266 of Louisiana in his

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204. Article 17 of the Argentine Civil Code reads in an English translation:

Laws may be repealed in whole or in part only by other laws. Uses, customs, and other practices cannot create rights except when laws refer to them.

Law No. 340, *supra* note 15, at 507.

205. *Id.* at 507.

206. Knütel, *supra* note 107, at 1477.

207. PIZARRO, *supra* note 107, at 44.

208. Article 3 of the Louisiana Civil Code of 1825 reads:

Customs result from a long series of actions constantly repeated, which have by such repetition, and by uninterrupted acquiescence, acquired the force of a tacit and common consent.

CIVIL CODE OF THE STATE OF LOUISIANA 2 (1825).

209. SAINT-JOSEPH (1840), *supra* note 123, at 1; and SAINT-JOSEPH (1856, II), *supra* note 123, at 459.

210. I GARCÍA GOYENA, *supra* note 124, at 18.

211. Article 3122 of the Argentine Civil Code reads in an English translation:

If the obligation for which the third party has given a mortgage were annulled as a result of an exception that was purely personal in nature, as that raised by a minor, the mortgage given by a third party shall be valid and shall have its full and entire effect.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 333.

212. Article 3266 of the Louisiana Civil Code of 1825 reads:

Although the nullity of the principal obligation includes that of the mortgage, this is to be understood, with respect to a person giving a mortgage for another, only in so far as the principal obligation is rescinded by an absolute nullity; for if the principal debtor has only obtained a rescission by a plea merely personal, such as minority or coverture, the mortgage given for him by a third person is no less valid, and shall have its full and entire effect.

CIVIL CODE OF THE STATE OF LOUISIANA 1028-1030 (1825).

213. Law No. 340, *supra* note 15, at 798.

214. SAINT-JOSEPH (1840), *supra* note 123, at 116; and SAINT-JOSEPH (1856, II), *supra* note 123, at 563.

*Concordancias.*<sup>215</sup>

In some occasions, heuristic references included references to the Roman and Spanish law. Therefore, there could be cases in which García Goyena, following other French principles, departed from the law that Vélez considered its own and proper to adopt. In most cases, Vélez adopted the text of Louisiana by means of a direct translation. This situation may be seen clearly in article 3012<sup>216</sup> of the Argentine Civil Code. In the note to that article, Vélez mentioned article 755<sup>217</sup> of Louisiana and incorporated dispositions of the North American text, although it limited the number of examples.<sup>218</sup> Louisiana article/Code was a formal source for the Argentine article. Saint-Joseph, in his edition of 1840, did not transcribe completely the text of article 755.<sup>219</sup> On the contrary, in the edition of 1856, the French author completely reproduced the text of article 755.<sup>220</sup> García Goyena made no reference to article 755.<sup>221</sup> It must be noted that Vélez added a reference to the *Siete Partidas*. Vélez drafted seven notes that were illustrated with references transcribed from the Louisiana text: these were notes in which Vélez used the Louisiana text to show concordances (positive or negative) or to illustrate his doctrinal writings. In most cases, the transcribed texts were taken from the work by García Goyena. An example will illustrate this position. In article 3302<sup>222</sup> of his code Vélez indicated a positive concordance with article 944<sup>223</sup> of the Louisiana Civil Code.<sup>224</sup> It must be noted that the concordance is partial, because

215. See the silence in the outline available at Parise, *supra* note 7, at 926-927.

216. Article 3012 of the Argentine Civil Code reads in an English translation:

Persons that can establish servitudes over their estates can also acquire servitudes; however, persons that do not enjoy the exercise of their rights, such as minors, can acquire servitudes even though they cannot establish them.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 321.

217. Article 755 of the Louisiana Civil Code of 1825 reads:

Those who can establish servitudes on their lands can also acquire servitudes. There are some persons who cannot establish servitudes, who nevertheless can acquire them; such as those who cannot exercise their rights, minors, women not authorized, administrators, tutors, husbands; for the acquisition of a servitude augments the value and convenience of an estate.

CIVIL CODE OF THE STATE OF LOUISIANA 236-238 (1825).

218. Law No. 340, *supra* note 15, at 785.

219. SAINT-JOSEPH (1840), *supra* note 123, at 36.

220. SAINT-JOSEPH (1856, II), *supra* note 123, at 489.

221. See the silence in the outline available at Parise, *supra* note 7, at 894.

222. Article 3302 of the Argentine Civil Code reads in an English translation:

The incapacity or unworthiness shall be measured only as of the time of the death of the person from whose succession a person attempts to inherit.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 350.

223. Article 944 of the Louisiana Civil Code of 1825 reads:

The incapacity of heirs is the absence of those qualities required in order to inherit at the moment the succession is opened. He who wants these qualities at this time cannot be the heir.

It is at the moment of the opening of the succession that the capacity or incapacity of the heir, who presents himself to claim an intestate succession, is considered.

CIVIL CODE OF THE STATE OF LOUISIANA 304 (1825).

224. Law No. 340, *supra* note 15, at 816.

the North American text refers only to successions *ab intestato*. Vélez provided a Spanish and partial translation of the North American article in his note. Saint-Joseph transcribed an abbreviated version of article 944 in his work of 1840 and included some passages that Vélez included in his note.<sup>225</sup> In the edition of 1856, the French jurist completely reproduced the Louisiana article.<sup>226</sup> García Goyena addressed the topic in article 620 of the *Concordancias*,<sup>227</sup> and transcribed part of article 944 of the Louisiana Code.<sup>228</sup> In his note, Vélez reproduced almost exactly the transcription of the Spaniards. It must also be noted that Vélez even repeated other transcriptions and references that were included in the Spanish note. Moreover, Vélez added a reference to the work of Aubry and Rau. Finally, it must be noted that Vélez repeated *verbatim* the first paragraph of the Spanish article. Therefore, the article and the note of Garcia Goyena were formal sources for the Argentine article and note.

The references to the Louisiana Civil Code are dispersed throughout the entire Argentine Civil Code, with the exception of Preliminary Title II, of the manner of counting intervals of the law. The main clusters of references to the North American text are located in Book II, of personal rights in civil relations, and Book III, of real rights.

## 2. Project of a Civil Code for the State of New York

David Dudley Field, influenced by the works of Jeremy Bentham,<sup>229</sup> advocated for codification in the United States during the nineteenth century.<sup>230</sup> After drafting a project of a civil code and four other projects in the period 1847-1865,<sup>231</sup> Field turned out to be one of the greatest exponents of codification in North America.<sup>232</sup> Field believed there was a need for a political code, a code of civil procedure, a code of criminal procedure, a code of private rights and obligations, and a code of crimes.<sup>233</sup> Therefore, he presented before the legislature of New York a partial project of a civil code that was approved in 1848 and another project for a penal code that was approved in 1882.<sup>234</sup>

Many consider Field as the creator of codification in the US and feel that his Project of a Civil Code for the State of New York was of great importance at that time.<sup>235</sup> The Project was presented by Field and Alex W. Bradford before

225. SAINT-JOSEPH (1840), *supra* note 123, at 41.

226. SAINT-JOSEPH (1856, II), *supra* note 123, at 496.

227. II GARCÍA GOYENA, *supra* note 124, at 71-72.

228. *Id.* at 71.

229. Shael Herman, *The Fate and the Future of Codification in America*, 40 AM. J. LEGAL HIST. 407, 422 (1996).

230. See generally Rodolfo Batiza, *Sources of the Field Civil Code: The Civil Law Influences on a Common Law Code*, 60 TUL. L. REV. 799 (1986).

231. Herman, *supra* note 229, at 422.

232. COOK, *supra* note 172, at 187.

233. Weiss, *supra* note 167, at 504-505.

234. EXTRACTS FROM NOTICES OF DAVID DUDLEY FIELD 39 (1894).

235. COOK, *supra* note 172, at 187.

the Legislature of New York on February 13, 1865,<sup>236</sup> and was comprised of four divisions: persons; property; obligations; and general provisions applicable to persons, property, and obligations, or to two of those subjects.<sup>237</sup> The Project was also subdivided into parts, titles, chapters, articles, and sections. The Project had 2034 sections<sup>238</sup> with notes for many of them, and indicated references to, among others, related jurisprudence,<sup>239</sup> revised statutes,<sup>240</sup> the *Code Napoléon*,<sup>241</sup> and the Louisiana Civil Code of 1825.<sup>242</sup> Finally, the Project had a schedule of forms<sup>243</sup> and a detailed thematic index.<sup>244</sup>

Even though the Project was never the law of New York (it was vetoed twice by the Governor<sup>245</sup>), its eight drafts and 18 partial corrections were very influential.<sup>246</sup> For example, in the US, its provisions about the law of contracts were adopted by California, North Dakota, South Dakota, Georgia, Idaho, and Montana.<sup>247</sup> The Project was a source for the codification works of Vélez,<sup>248</sup> who had a copy in his private library.<sup>249</sup> Vélez believed that the Louisiana Civil Code was better than the Project of New York,<sup>250</sup> and only cited the New York text as a source in ten articles of the Argentine Civil Code.<sup>251</sup>

Eight references to the Project were direct, and all of those references were positive. Four of those references were of concordance. For example, in the note to article 2038<sup>252</sup> of the Argentine Civil Code Vélez indicated a concordance

236. THE CIVIL CODE OF THE STATE OF NEW YORK ix (1865).

237. *Id.* at 2.

238. *Id.* at 647.

239. For example, the note to article 443 of the Project reads: "*Halsey v. McCormick*, 18 N.Y., 147." *Id.* at 135.

240. For example, the note to article 523 of the Project reads: "R.S., 758, § 12." *Id.* at 156.

241. For example, the note to article 444 of the Project reads: "This and the four sections following are similar to those of the Code Napoleon, art. 559-563." *Id.* at 135.

242. For example, the note to Chapter 2, Title 3, Part 4, Division 2 of the Project reads: "The provisions of this chapter, except § 455, are similar to those of the Code Napoleon and the Code of Louisiana." *Id.* at 136.

243. *Id.* at 648-660.

244. *Id.* at 661-776.

245. HENRY M. FIELD, *THE LIFE OF DAVID DUDLEY FIELD* 88 (1898).

246. EXTRACTS, *supra* note 234, at 39.

247. Herman, *supra* note 229, at 425.

248. See Ricardo David Rabinovich, *Alrededor del muy mencionado y poco conocido proyecto de código civil para el estado de Nueva York*, 22 REVISTA DE HISTORIA DEL DERECHO 279 (1994); and LEVAGGI, *supra* note 39, at 196.

249. BIBLIOTECA MAYOR, *supra* note 115, at 83.

250. See the letter of Vélez to Domingo Faustino Sarmiento, dated February 25, 1866. A passage of the letter reads in an English translation:

I have read almost all the Project of a Civil Code for New York. I believe the Civil Code of Louisiana is better.

MUSEO HISTÓRICO SARMIENTO, ARCHIVO, CARPETA 2, NÚMERO 235. "CARTA DE DALMACIO VÉLEZ SANSFIELD A DOMINGO FAUSTINO SARMIENTO - 25/2/1866," cited by LEVAGGI, *supra* note 39, at 184.

251. See appendix B.

252. Article 2038 of the Argentine Civil Code reads in an English translation:

A surety that pays more than his share is subrogated to the rights of the creditor against the co-sureties for the excess, and he may demand a proportionate payment from all the co-sureties.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 233.

with section 675<sup>253</sup> of the Project.<sup>254</sup> In the same note, Vélez also indicated a concordance with the *Siete Partidas*, i.e. with Spanish Law. The note of Field to section 675 indicates references to case law and to a work of Story.<sup>255</sup> Four other references of Vélez to the work of New York were exclusive heuristic. For example, in the note to article 1680,<sup>256</sup> Vélez only indicated a reference to section 1324<sup>257</sup> of the Project.<sup>258</sup> The article of Vélez is a translation and almost a *verbatim* transcription of the North American text. This reflects that the North American text was a formal source for the Argentine article. In this second example, the references that Field makes in the note to his article are to the revised statutes and to laws of 1854, both of which seem to have no relation to the civil law.<sup>259</sup> Vélez also made a reference to the Project that was general, negative, and doctrinal. In the extensive note to article 3115,<sup>260</sup> Vélez addressed different aspects of mortgages.<sup>261</sup> In that note, Vélez said that the Project adopts a system that differs from the one adopted by the Argentine Civil Code. The silence of Vélez's reference may be corrected by identifying that the Project addresses mortgages in sections 1608 to 1646, Chapter 2, Title 14, Part 4, and Division 3.<sup>262</sup> The notes that Field included in his chapter on mortgages made indications almost exclusively to the common law, and therefore, the negative reference of Vélez should be no surprise. Finally, Vélez drafted one note that included a transcribed reference to the Project, which was also positive and of concordance. The reference is located in article 1670<sup>263</sup> of

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253. Section 675 of the Project for New York reads:

A party to a joint or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

THE CIVIL CODE OF THE STATE OF NEW YORK 197 (1865).

254. Law No. 340, *supra* note 15, at 694.

255. THE CIVIL CODE OF THE STATE OF NEW YORK 197 (1865).

256. Article 1680 of the Argentine Civil Code reads in an English translation:

The name of a partnership that conducts its business in places outside the territory of the Republic may be continued by persons that are their successors in such affairs, and by their heirs, with the knowledge of the persons whose names were used, if they are still alive.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 197.

257. Section 1324 of the Project for New York reads:

The name of a partnership, which has had business relations with places without the United States, may be continued in use by the persons succeeding to its business, and by their successors, upon compliance with the provisions of this article, and with the consent of the persons, if living, whose names are used.

THE CIVIL CODE OF THE STATE OF NEW YORK 395 (1865).

258. Law No. 340, *supra* note 15, at 666.

259. THE CIVIL CODE OF THE STATE OF NEW YORK 395 (1865).

260. Article 3115 of the Argentine Civil Code reads in an English translation:

There is no mortgage other than a conventional mortgage constituted by the debtor of an obligation in the manner provided in this title.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 332.

261. Law No. 340, *supra* note 15, at 797.

262. THE CIVIL CODE OF THE STATE OF NEW YORK 485-499 (1865).

263. Article 1670 of the Argentine Civil Code reads in an English translation:

The heirs or legatees of partnership rights do not have partnership status, unless all the parties consent to the substitution, or the substitution had been contracted with the

the Argentine Civil Code, and on that occasion Vélez referred to section 1285<sup>264</sup> of the New York text to show that both texts were similar when stating matters of partnership and heirs.<sup>265</sup> Vélez wrongly referred to the article when he was actually translating and transcribing part of the note of the North American provision.<sup>266</sup> The note by Field also included a reference to the work of Story on partnership, and other references to case law. Vélez worked with the Project of a Civil Code for the State of New York. He found it of interest especially when drafting on partnerships, but he also referred to it on matters of divorce, obligations, deposit and wills.

### B. Doctrinal Writings

During the nineteenth century, the US literature on law was diverse. It was led by hundreds of case reports, which month by month covered the developments of the courts.<sup>267</sup> Every state published reports that included the decisions of their higher courts.<sup>268</sup> In addition, during the last half of the century, approximately one thousand treatises or commentaries were published.<sup>269</sup> The vast majority were editions of American books, and non-American editions of British treatises.<sup>270</sup> Once a work was popular and sold well, publishers would hire other men to carry on under the valuable name,<sup>271</sup> a practice that somehow still prevails. Many US doctrinal works, reports, and legislation reached Latin America. Some of the legislation, reports, and commentaries reached Argentina and were studied when facing the need to solve conflicts in those areas of law. For example, Vélez had in his library 34 volumes of the US Supreme Court Reports,<sup>272</sup> a copy of *The Federalist Papers*,<sup>273</sup> and works by, among others, Abbott,<sup>274</sup> Brightly,<sup>275</sup> Cooley,<sup>276</sup>

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deceased partner and accepted by the heir.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 197.

264. Section 1285 of the Project for New York reads:

A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership, without the consent of every existing member thereof.

THE CIVIL CODE OF THE STATE OF NEW YORK 382 (1865).

265. Law No. 340, *supra* note 15, at 665.

266. The passage that Vélez translated reads: "No one can be made a partner by inheritance or otherwise against his will (*Jacquin v. Buisson*, 11 How. Pr. 385)." THE CIVIL CODE OF THE STATE OF NEW YORK 382 (1865).

267. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 538-539 (1973).

268. *Id.* at 539.

269. *Id.* at 541.

270. *Id.*

271. *Id.*

272. BIBLIOTECA MAYOR, *supra* note 115, at 15.

273. *Id.* at 48-49.

274. *Id.* at 1. The works are BENJAMIN V. ABBOTT, A TREATISE UPON THE UNITED STATES COURTS AND THEIR PRACTICE EXPLAINING THE ENACTMENTS BY WHICH THEY ARE CONTROLLED (1869); and BENJAMIN V. ABBOTT, A DIGEST OF THE REPORTS OF THE UNITED STATES COURTS, AND OF THE ACTS OF CONGRESS (1867).

275. BIBLIOTECA MAYOR, *supra* note 115, at 20. The work is FREDERICK C. BRIGHTLY, AN ANALYTICAL DIGEST OF THE LAWS OF THE UNITED STATES FROM THE ADOPTION OF THE CONSTITUTION (1857).

276. BIBLIOTECA MAYOR, *supra* note 115, at 32. The work is THOMAS MC INTYRE COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN

Curtis,<sup>277</sup> Field,<sup>278</sup> Jameson,<sup>279</sup> Livingston,<sup>280</sup> Seaman,<sup>281</sup> Tiffany,<sup>282</sup> Washburn,<sup>283</sup> and Wheaton.<sup>284</sup>

### 1. Kent's Commentaries

Kent was born on July 31, 1763 in Fredericks, New York.<sup>285</sup> In 1777, Kent started studying at Yale College,<sup>286</sup> and, in 1785, he was admitted as an Attorney of the Supreme Court of the State.<sup>287</sup> In 1793, he was appointed Professor of Law at Columbia College.<sup>288</sup> Five years later, he was made justice of the Supreme Court of New York,<sup>289</sup> and, in 1814, he was raised to the office of Chancellor of the State,<sup>290</sup> where he served for nine years.<sup>291</sup> James Kent died in 1847.<sup>292</sup>

At Columbia College, once he resumed his teaching after being Chancellor, he started to deliver lectures in 1824, in which he covered nearly all the subjects that would later form his *Commentaries on American Law* (Kent's Commentaries).<sup>293</sup> Two years later, a revised edition of his lectures was published as the first volume of Kent's Commentaries.<sup>294</sup> His initial ambition was to publish two volumes, but he realized that was too limited, and by 1830, the fourth and final volume was published.<sup>295</sup> That *editio princeps* was quickly followed by a second one, broader

UNION (1868).

277. BIBLIOTECA MAYOR, *supra* note 115, at 35. The work is GEORGE TICKNER CURTIS, HISTORY OF THE ORIGINAL, FORMATION AND ADOPTION OF THE CONSTITUTION OF THE UNITED STATES, WITH NOTICES OF ITS PRINCIPAL FRAMERS (1865). Vélez also had a Spanish translation of that same book, by Cantilo and with a preface by Vélez himself.

278. BIBLIOTECA MAYOR, *supra* note 115, at 49. The work is DAVID DUDLEY FIELD, OUTLINES OF AN INTERNATIONAL CODE (1872).

279. BIBLIOTECA MAYOR, *supra* note 115, at 64. The work is JOHN ALEXANDER JAMESON, THE CONSTITUTIONAL CONVENTION (1867).

280. BIBLIOTECA MAYOR, *supra* note 115, at 68. Vélez had a French version of the work by Livingston: EDWARD LIVINGSTON, EXPOSÉ D'UN SYSTÈME DE LÉGISLATION CRIMINELLE POUR L'ÉTAT DE LA LOUISIANE ET POUR LE ÉTATS-UNIS D'AMÉRIQUE (1872).

281. BIBLIOTECA MAYOR, *supra* note 115, at 7. The work is EZRA CHAMPION SEAMAN, THE AMERICAN SYSTEM OF GOVERNMENT; ITS CHARACTER AND WORKINGS, ITS DEFECTS, OUTSIDE PARTY MACHINERY AND INFLUENCES AND THE PROSPERITY OF THE PEOPLE UNDER ITS PROTECTION (1870).

282. BIBLIOTECA MAYOR, *supra* note 115, at 109. The work is JOEL TIFFANY, A TREATISE ON GOVERNMENT (1867).

283. BIBLIOTECA MAYOR, *supra* note 115, at 132. The work is EMERY WASHBURN, A TREATISE ON THE AMERICAN LAW OF EASEMENTS AND SERVITUDES (1863).

284. BIBLIOTECA MAYOR, *supra* note 115, at 132. The work is HENRY WHEATON, ELEMENTS OF INTERNATIONAL LAW (1888).

285. JOHN DUER, A DISCOURSE ON THE LIFE, CHARACTER, AND PUBLIC SERVICES OF JAMES KENT, LATE CHANCELLOR OF THE STATE OF NEW-YORK 5 (1848).

286. *Id.* at 10.

287. *Id.* at 18.

288. *Id.* at 27.

289. *Id.* at 32.

290. *Id.* at 53.

291. *Id.* at 69.

292. Carl F. Stychin, *The Commentaries of Chancellor James Kent and the Development of an American Common Law*, 37 AM. J. LEGAL HIST. 440, 443 (1993).

293. DUER, *supra* note 285, at 72.

294. *Id.* at 73.

295. *Id.* at 74.



and more comprehensive.<sup>296</sup> He then published revised third (1835) and fourth editions (1841).<sup>297</sup> The work of Kent had a quick and broad circulation, occupying a privileged place in the law offices of the nineteenth century.<sup>298</sup>

Kent's Commentaries provided for the first time a systematic overview of and discussion on the main areas of American law.<sup>299</sup> His work was seen as a local alternative to the *Commentaries* of Blackstone.<sup>300</sup> Kent's Commentaries comprised, in its seventh edition (i) Volume I:<sup>301</sup> Part I of the law of nations, Part II of the government and constitutional jurisprudence of the United States, Part III of the various sources of the municipal law of the several states, and Part IV of the law concerning the rights of persons; (ii) Volume II:<sup>302</sup> Part IV of the law concerning the rights of persons (continued), and Part V of the law concerning personal property; (iii) Volume III:<sup>303</sup> Part V of the law concerning personal property (continued), and Part VI of the law concerning real property; and (iv) Volume IV:<sup>304</sup> Part VI of the law concerning real property (continued).

Kent's Commentaries went through at least fourteen editions,<sup>305</sup> and the twelfth edition was edited by Oliver Wendell Holmes, Jr.<sup>306</sup> Vélez had in his library the seventh edition,<sup>307</sup> and that is probably the one he used when drafting the Argentine Civil Code. The seventh edition was edited by William Kent, and was the first one to have additions or alterations not made by James Kent.<sup>308</sup> Kent was familiar with and interested in civil law. In his court opinions, Kent often followed or expressed some principles of continental European law or Roman law to elaborate his decisions or to illustrate them.<sup>309</sup> Therefore, it is not surprising that Vélez, being well acquainted with Roman law, would look with special consideration into the work of Kent. In addition, Kent paid attention to the civil law tradition,<sup>310</sup> and highlighted its importance frequently in his writings on American law.<sup>311</sup> This part of Kent's work has been somehow ignored by historians,<sup>312</sup> but might have been seen with eager eyes by Vélez. He made reference to Kent's Commentaries in three notes of the Argentine Civil Code.<sup>313</sup>

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296. Strychin, *supra* note 292, at 443.

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

301. 1 JAMES KENT, COMMENTARIES ON AMERICAN LAW (7th ed. 1851).

302. 2 KENT, *supra* note 301.

303. 3 KENT, *supra* note 301.

304. 4 KENT, *supra* note 301.

305. Strychin, *supra* note 292, at 440.

306. 1 JAMES KENT, COMMENTARIES ON AMERICAN LAW (12th ed., Oliver Wendell Holmes Jr. ed. 1873).

307. BIBLIOTECA MAYOR, *supra* note 115, at 65.

308. 1 KENT, *supra* note 301, at iii.

309. DUER, *supra* note 285, at 39-40.

310. Strychin, *supra* note 292, at 453.

311. *Id.* at 454.

312. *Id.* at 453.

313. See appendix C.

In the first reference, *i.e.* the note to article 159<sup>314</sup> of the Argentine Civil Code, Vélez made a transcribed, positive, and doctrinal reference to the work of Kent.<sup>315</sup> Vélez referred to Lecture XXVI of the work of Kent, more precisely to pages 83 and 84,<sup>316</sup> when he elaborated his note on polygamy and incest as cause for nullifying a marriage. He did not copy *verbatim* and he did paraphrase when translating. In the section that Vélez cites, Kent refers to common law, but also to civil law (*v.gr.* *Code Napoléon* and the Louisiana Civil Code) and to Canon law.<sup>317</sup>

In the second reference, *i.e.* the note to article 1205,<sup>318</sup> Vélez made a direct and positive reference to the work of Kent which also indicated the concordance.<sup>319</sup> On that occasion, Vélez mentioned Lectures XXXVII (page 394)<sup>320</sup> and XXXIX (pages 458-469),<sup>321</sup> when he developed his notion of the nature of contracts celebrated in foreign jurisdictions. The pages Vélez indicates, especially the ones of Lecture XXXIX, are not limited to common law principles, because Kent also refers to principles of international law and, in some parts, to civil law.<sup>322</sup>

The third reference to Kent's work is in the note to article 3136<sup>323</sup> of the Argentine Civil Code, where Vélez makes a direct and positive reference which also indicated a concordance.<sup>324</sup> On that occasion, Vélez cited Lecture XXVIII, page 169,<sup>325</sup> when explaining mortgages. It must be noted that the reference by Vélez is incorrect, and that the correct reference is to Lecture LVIII, page 169.<sup>326</sup> In this last citation, Kent provides the words that Vélez reproduces in his note. In that same analysis, Kent makes references to the civil law and specifically to the *Code Napoléon*.

314. Article 159 of the Argentine Civil Code reads in an English translation:

The validity of marriage [when there is no polygamy or incest, is] governed by the law of the place where it was contracted, even though the parties had left their domicile in order not to be subjected to the [modalities and laws] governing at such a place.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 35.

315. Law No. 340, *supra* note 15, at 523.

316. 2 KENT, *supra* note 301, at 46-49.

317. *Id.*

318. Article 1205 of the Argentine Civil Code reads in an English translation:

Contracts made outside the territory of the Republic shall be governed, with respect to their validity or nullity, their nature and the obligations they may produce, by the laws of the place in which they were made.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 150.

319. Law No. 340, *supra* note 15, at 626.

320. 2 KENT, *supra* note 301, at 476-478.

321. *Id.* at 571-591.

322. *See, e.g., Id.* at 583.

323. Article 3136 of the Argentine Civil Code reads in an English translation:

If after the mortgage is constituted but prior to recordation of the mortgage, and within the legal term for recordation, a subsequent creditor with knowledge of the previous mortgage records the mortgage made in security of his credit-right, the earlier recordation of the subsequent mortgage is ineffective with respect to the first mortgage, provided that the first mortgage is recorded within the legal term.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 335.

324. Law No. 340, *supra* note 15, at 800.

325. 2 KENT, *supra* note 301, at 157.

326. 4 KENT, *supra* note 301, at 176-177.

## 2. Story's Commentaries

Joseph Story was born on September 18, 1779, at Marblehead, Massachusetts.<sup>327</sup> He was a graduate of Harvard, where he began study in 1795.<sup>328</sup> Six years later, he was admitted to the Essex Bar, and opened an office in Salem.<sup>329</sup> In November 1811, he was appointed Associate Justice of the US Supreme Court by President Madison.<sup>330</sup> In 1829, he became the first Dane Professor of Law at Harvard.<sup>331</sup> He died on September 10, 1845, at Cambridge.<sup>332</sup> During his prolific career, he was a Justice of the US Supreme Court and a Harvard Professor. He wrote some 13 volumes of legal treatises,<sup>333</sup> some of which sold well in Great Britain and were also translated into, for example, French, German,<sup>334</sup> and Spanish.<sup>335</sup> He was considered by many, including James Kent, as *the most extraordinary jurist of the age*.<sup>336</sup>

### a. Commentaries on the Conflict of Laws

In 1834, the first edition of the *Commentaries on the Conflict of Laws* (Commentaries on Conflict) was published.<sup>337</sup> The Commentaries on Conflict became the authority on the subject area in the US and in England, and was highly regarded in France and Germany.<sup>338</sup> Unlike its predecessors, the substance of the Commentaries on Conflict was found in the opinions rendered by Anglo-American courts,<sup>339</sup> but it extended beyond the limits of the common law because it discussed principles of universal application and interest.<sup>340</sup> The Commentaries on Conflict was divided into 17 chapters.<sup>341</sup>

327. GILBERT J. CLARK, *LIFE SKETCHES OF EMINENT LAWYERS, AMERICAN, ENGLISH AND CANADIAN* 294 (1895).

328. 1 WILLIAM W. STORY, *LIFE AND LETTERS OF JOSEPH STORY* 43 (1851).

329. *Id.* at 95.

330. JOSEPH STORY: *A COLLECTION OF WRITINGS BY AND ABOUT AN EMINENT AMERICAN JURIST* 18 (Schwartz and Hogan eds. 1959).

331. 2 STORY, *supra* note 330, at 1-2.

332. CLARK, *supra* note 327, at 294.

333. *Id.* at 295.

334. John B. Cassoday, *James Kent and Joseph Story*, 12 YALE L.J. 146, 148 (1902).

335. For a Spanish translation, See JOSEPH STORY, *COMENTARIO SOBRE LA CONSTITUCIÓN FEDERAL DE LOS ESTADOS UNIDOS* (Calvo trans. 1888).

336. James Kent, *Letter to the Editor*, 1.2 LOUISIANA LAW JOURNAL 159 (1841).

337. JOSEPH STORY, *COMMENTARIES ON THE CONFLICT OF LAWS, FOREIGN AND DOMESTIC, IN REGARD TO CONTRASTS, RIGHTS, AND REMEDIES, AND ESPECIALLY IN REGARD TO MARRIAGES, DIVORCES, WILLS, SUCCESSIONS, AND JUDGMENTS* (1834); and Ernest G. Lorenzen, *Story's Commentaries on the Conflict of Laws—One Hundred Years After*, 48 HARV. L. REV. 15, 15 (1934).

338. Lorenzen, *supra* note 337, at 27-28.

339. *Id.* at 29.

340. 2 STORY, *supra* note 330, at 161.

341. The Commentaries were divided into the following chapters: (i) introductory remarks, (ii) general maxims of international jurisprudence, (iii) national domicile, (iv) capacity of persons, (v) marriage, (vi) marriage—incidents to, (vii) foreign divorces, (viii) foreign contracts, (ix) personal property, (x) real property, (xi) wills and testaments, (xii) successions and distribution, (xiii) foreign guardianships and administrations, (xiv) jurisdiction and remedies, (xv) foreign judgments, (xvi) penal laws and offences, and (xvii) evidence and proofs.

STORY, *supra* note 435.

Story collected writings on the civil law from an early date<sup>342</sup> and his works consider the views of continental writers, from which he regularly quotes.<sup>343</sup> Story looked at the civil law as a source of useful materials, but accepted those materials only when he felt them persuasive and not conflicting with his common law reasoning.<sup>344</sup> In a letter to Gustavus Schmidt, dated July 11, 1841, Story said: "I hail it [referring to the *Louisiana Law Journal*] as an important addition to our juridical literature, and coming from that part of the Union whose jurisprudence presents the most valuable means of improving the science of the common law."<sup>345</sup> In another letter, dated February 3, 1842, Story said to Schmidt, "we really are sadly ignorant of the vast resources of the Roman, the French, and other foreign laws, which may be brought in aid of our common law studies."<sup>346</sup> Story adapted Roman and civil law principles in his *Commentaries on Conflict* when the common law did not provide a substantive rule. In this way, he imported civil law ideas into American law.<sup>347</sup> Story's *Commentaries on Conflict* went through at least eight editions.<sup>348</sup> Vélez had a copy of the fifth edition of the book in his library.<sup>349</sup> He also had two other works by Story, one of them translated into French.<sup>350</sup> The fifth edition was edited by Edmund Hastings Bennett, and published in 1857.<sup>351</sup> This edition was probably the one Vélez used when drafting the Argentine Civil Code. Vélez made reference to the *Commentaries on Conflict* in his writings. References are not only in the notes to fourteen articles of his civil code, but also in the letter of transmission of Book I of the draft that Vélez sent to the minister Eduardo Costa on June 21, 1865. That letter read, in part:

Regarding the legal doctrines that I believed necessary to convert into laws for the First Book, my main guides have been the German juriconsults Savigny and Zachariæ, the great work of Mr. Serrigny on administrative law of the Roman Empire, and the work of Story, *Conflict of Laws*.<sup>352</sup>

342. MICHAEL H. HOEFELICH, *ROMAN AND CIVIL LAW AND THE DEVELOPMENT OF ANGLO-AMERICAN JURISPRUDENCE IN THE NINETEENTH CENTURY* 27 (1997).

343. Lorenzen, *supra* note 337, at 27.

344. HOEFELICH, *supra* note 342, at 41.

345. Joseph Story, *Letter to the Editor*, 1.2 *LOUISIANA LAW JOURNAL* 158 (1841).

346. 2 STORY, *supra* note 330, at 414; and Frederick Davis, *Comparative Law Contributions to the International Legal Order: Common Core Research*, 37 *GEO. WASH. L. REV.* 615, 630 (1969).

347. HOEFELICH, *supra* note 342, at 42.

348. Lorenzen, *supra* note 337, at 27.

349. BIBLIOTECA MAYOR, *supra* note 115, at 107.

350. *Id.* at 106-107. The works are JOSEPH STORY, *COMMENTAIRE SUR LA CONSTITUTION FÉDÉRALE DES ÉTATS-UNIS* (1843); and JOSEPH STORY, *COMMENTARIES ON EQUITY JURISPRUDENCE* (1846).

351. JOSEPH STORY, *COMMENTARIES ON THE CONFLICT OF LAWS, FOREIGN AND DOMESTIC, IN REGARD TO CONTRASTS, RIGHTS, AND REMEDIES, AND ESPECIALLY IN REGARD TO MARRIAGES, DIVORCES, WILLS, SUCCESSIONS, AND JUDGMENTS* (5th ed. 1857).

352. The part of the letter reads in Spanish:

Respecto a las doctrinas jurídicas que he creído necesario convertir en leyes en el primer libro, mis guías principales han sido los juriconsultos alemanes Savigny y Zachariæ, la grande obra del Sr. Serrigny sobre el Derecho administrativo del Imperio Romano, y la obra de Story, *Conflict of Laws*.

The references to the Commentaries on Conflict within the articles of the Argentine Civil Code are diverse, and this paper will address some examples of positive references.<sup>353</sup> Vélez makes a direct, positive, and exclusive heuristic reference to the work of Story in the note to article 9<sup>354</sup> of the Argentine Civil Code. There, Vélez stated that the personal disqualifications are strictly territorial, and made an exclusive reference to page 105 of the work of Story.<sup>355</sup> It must be noted that the reference is incorrect. The topic is addressed by Story in section 104, page 198, of Chapter IV.<sup>356</sup> There is a reference to page 104, and not to section 104, in the draft of Vélez;<sup>357</sup> this was incorrectly changed to 105 when revised and approved. Vélez also makes three direct, positive, and heuristic references to the work of Story. For example, in article 10<sup>358</sup> of the Argentine Civil Code, when stating that real property is ruled by the law of the territory, Vélez cited section 224 of the work of Story and a Spanish law included in the *Siete Partidas*.<sup>359</sup> It must be noted that the correct citation to Story is section 424,<sup>360</sup> and that Vélez translated and transcribed several passages of Story and included them in his article. Story indicated that his rule, i.e. the same rule that Vélez used, was the common law rule, even when in his note he also cited the work by the Frenchmen Foelix. This article shows that civil law (*v.gr.* the *Siete Partidas*) and common law (*v.gr.* Story) principles share, to some extent, a similar grounding when referring to the law ruling in conflicts with real property. Another example of this kind of reference is found in the note to articles 160-163<sup>361</sup> of the Argentine Civil Code.

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VELEZ SARSFIELD, *supra* note 135, at v. See also LEVAGGI, *supra* note 39, at 310; and Parise, *supra* note 7, at 848-849.

353. See appendix D.

354. Article 9 of the Argentine Civil Code reads in an English translation:

Incapacities contrary to the laws of nature, such as slavery, or those that are penal in character are merely territorial.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 19.

355. Law No. 340, *supra* note 15, at 506.

356. STORY, *supra* note 449, at 198.

357. VELEZ SARSFIELD, *supra* note 135, at 4.

358. Article 10 of the Argentine Civil Code reads in an English translation:

Immovables situated in the Republic are governed exclusively by the laws of the country with respect to their character as such, the rights of the parties, the capacity to acquire them, the methods of transferring them, and the formalities that must accompany such acts. Therefore, title to immovable property can only be acquired, transferred, or lost in accordance with the laws of the Republic.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 19.

359. Law No. 340, *supra* note 15, at 506-507.

360. STORY, *supra* note 449, at 693.

361. Article 160 of the Argentine Civil Code reads in an English translation:

The rights and duties of spouses are governed by the laws of their marriage domicile as long as they stay living there. If they change that domicile, their personal rights will be governed by the laws of the new domicile.

Law No. 340, *supra* note 15, at 523.

Article 161 of the Argentine Civil Code reads in an English translation:

The marriage contract governs over the property of the marriage, regardless of the laws of the marriage domicile or of the new domicile in which the spouses are located.

*Id.* at 523.

On that occasion, when addressing the law ruling marriage, Vélez mentioned that he took these articles from chapter VI<sup>362</sup> of the Commentaries on Conflict and from article 2370<sup>363</sup> of the Louisiana Civil Code.<sup>364</sup> The wording of the articles show that article 2370 could be a source only for article 163 of the Argentine Civil Code. Story mentioned article 2370 in his Commentaries on Conflict and that he analyzed the situation in Louisiana.<sup>365</sup> In his conclusion, Story covered the same topics covered in articles 160-162 of the Argentine Civil Code.<sup>366</sup> Therefore, article 2370 is an indirect and formal source for the Argentine text through the work of Story.

Vélez also made three references that were direct, positive, and of concordance when working with the Commentaries on Conflict. For example, in article 12<sup>367</sup> of the Argentine Civil Code, when referring to the law ruling on the form and solemnity of contracts, Vélez indicated a concordance between his article and article 10<sup>368</sup> of the Louisiana Civil Code.<sup>369</sup> Vélez took the wording of his article

Article 162 of the Argentine Civil Code reads in an English translation:

When no matrimonial agreements or changes in domicile exist, the law of the place of celebration of the marriage governs over the moveable property of the spouses, regardless of where it is located or where it was acquired. Immovables are governed by the law of the place where they are located.

*Id.* at 523.

Article 163 of the Argentine Civil Code reads in an English translation:

When a change in domicile exists, the property acquired by the spouses before the change of domicile is governed by the laws of the previous domicile. The property acquired after the change of domicile is governed by the law of the new domicile.

*Id.* at 523-524.

362. STORY, *supra* note 449, at 242-305.

363. Article 2370 of the Louisiana Civil Code of 1825 reads:

A marriage, contracted out of this State, between persons who afterwards come here to live, is also subjected to the community of acquets, with respect to such property as is acquired after their arrival:

CIVIL CODE OF THE STATE OF LOUISIANA 768 (1825).

364. Law No. 340, *supra* note 15, at 523-524.

365. STORY, *supra* note 449, at 289.

366. Compare with the topics covered by Story. *Id.* at 286-305.

367. Article 12 of the Argentine Civil Code reads in an English translation:

Forms and formalities of contracts and of every public document are governed by the laws of the country in which they were made.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 20.

368. Article 10 of the Louisiana Civil Code of 1825 reads:

The form and effect of public and private written instruments are governed by the laws and usages of the places where they are passed or executed.

But the effect of acts passed in one country, to have effect in another country, is regulated by the laws of the country where they are to have effect.

The exception made in the second paragraph of this article does not hold, when a citizen of another State of the Union, or a citizen or subject of a foreign State or country, disposes by will or testament, or by any other act *causa mortis* made out of this State, of his moveable property situated in this State, if at the time of making said will or testament, or any other act *causa mortis*, and at the time of his death, he resides and is domiciliated out of this State.

CIVIL CODE OF THE STATE OF LOUISIANA 4-6 (1825).

369. Law No. 340, *supra* note 15, at 507.

from article 10 of the *Concordancias* of García Goyena<sup>370</sup> In that same article, Vélez indicated a concordance with section 260 *et seq.*<sup>371</sup> of the work of Story. In his note, Vélez correctly stated that Story provided an extensive and very important discussion on the topic. In his development, Story looked at common law examples and sources. Nevertheless, in section 264, Story provided “an illustration [that] may be taken from a case often put by civilians.”<sup>372</sup> It must be noted that in that same note Vélez also made references to Roman and Spanish law.

Vélez also drafted six notes that included direct, positive, and doctrinal references. For example, Vélez included the work of Story, as he had done with the work of Kent, in the note to his article 159<sup>373</sup> when elaborating on polygamy and incest as a cause for nullifying a marriage.<sup>374</sup> Vélez correctly referred to section 121 *et seq.*<sup>375</sup> of the Commentaries on Conflict on this point, and to the Spanish scholar that Story cites. In addition Vélez transcribed a short passage of the English work, not copying *verbatim*, but paraphrasing.<sup>376</sup>

Most of the references that Vélez did of the abovementioned work of Story are in the area of conflict of laws, especially focusing on capacity, form and effects of contracts, marriage, and testaments.

#### *b. Commentaries on Equity Jurisprudence*

Story began to work on his book on equity jurisprudence the moment the one on Conflict of Laws was published.<sup>377</sup> Two years later, in 1836, the first edition of the *Commentaries on Equity Jurisprudence* (*Commentaries on Equity*) was itself published.<sup>378</sup> Story, like Kent, while drafting his Commentaries, had originally envisioned one volume, but with time, realized that the topic could not be limited to just one.<sup>379</sup> The *Commentaries on Equity* comprised, in its fourth edition, two volumes. Volume I was divided into 16 chapters<sup>380</sup> and Volume II was divided

370. I GARCÍA GOYENA, *supra* note 124, at 22.

371. STORY, *supra* note 449, at 392 *et seq.*

372. *Id.* at 404.

373. *See supra* note 412.

374. Law No. 340, *supra* note 15, at 523.

375. STORY, *supra* note 449, at 123 *et seq.*

376. It Seems that Vélez paraphrased from section 114. *See Id.* at 206-207.

377. 2 STORY, *supra* note 330, at 179.

378. 1-2 JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE, AS ADMINISTERED IN ENGLAND AND AMERICA (1836); and 2 STORY, *supra* note 330, at 123.

379. 2 STORY, *supra* note 330, at 211.

380. Volume I was divided into the following chapters (i) the true nature and character of equity jurisprudence, (ii) the origins of equity jurisprudence, (iii) general view of equity jurisprudence, (iv) current jurisdiction of equity—accident, (v) mistake, (vi) actual or positive mistake, (vii) constructive fraud, (viii) account, (ix) administration, (x) legacies, (xi) confusion of boundaries, (xii) dower, (xiii) marshalling of securities, (xiv) partition, (xv) partnership; and (xvi) matters of rent.

1 JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE, AS ADMINISTERED IN ENGLAND AND AMERICA (4th ed. 1846).

into 27 chapters.<sup>381</sup> When looking at the construction of the American system of law, some scholars regard the Commentaries on Equity as Story's most important contribution.<sup>382</sup> In his work, Story presented English equity in a very readable fashion and depicted it as essentially Roman law, being a body of universal principles of justice.<sup>383</sup> These new commentaries by Story were also well read, not only in the US, but also in Europe and Latin America.<sup>384</sup> The *Commentaries on Equity* went through at least fourteen editions.<sup>385</sup> Vélez had the fourth edition in his library. This edition was released in 1846 and published posthumously by William Story, including the revisions and editions of his father, Joseph Story.<sup>386</sup>

Story said when speaking of equity, that "that portion of the common law, which is now most admired for its sound policy, derives its principal attraction from its being founded in a large and liberal equity, and therefore is assumed as a rule equally at Paris and at London, at Rome and at Washington."<sup>387</sup> In this same line of ideas, Vélez added in his note to articles 2567-2570<sup>388</sup> that ordinary

381. Volume II was divided into the following chapters: (xvii) peculiar remedies in equity—discovery—cancellation and delivery of instruments, (xviii) specific performance of agreements and other duties, (xix) compensation and damages, (xx) interpleader, (xxi) bills *quia timet*, (xxii) bills of peace, (xxiii) injunctions, (xxiv) exclusive jurisdiction—trusts, (xxv) marriage settlements, (xxvi) terms for years, (xxvii) mortgages, (xxviii) assignments, (xxix) wills and testaments, (xxx) election and satisfaction, (xxxi) application of purchase-money, (xxxii) charities, (xxxiii) implied trusts, (xxxiv) penalties and forfeitures (xxxv) infants, (xxxvi) idiots and lunatics, (xxxvii) married women, (xxxviii) set-off, (xxxix) establishing wills, (xl) awards, (xli) writs of *ne exeat regno*, and supplicavit, (xlii) bills of discovery, and to preserve and perpetuate evidence, and (xliii) peculiar defences and proofs in equity.

2 STORY, *supra* note 478.

382. HAROLD GILL REUSCHLEIN, *JURISPRUDENCE, ITS AMERICAN PROPHETS; A SURVEY OF TAUGHT JURISPRUDENCE* 55 (1951).

383. *Id.*

384. *See, e.g.*, the letter of the Frenchmen Foelix dated February 22, 1841, in which he praised the work of Story. 2 STORY, *supra* note 330, at 375.

385. JOSEPH STORY, *COMMENTARIES ON EQUITY JURISPRUDENCE, AS ADMINISTERED IN ENGLAND AND AMERICA* (W.H. Lyon, Jr. ed., 14th ed. 1918); and STORY, *supra* note 428, at 222.

386. 1-2 STORY, *supra* note 478.

387. STORY, *supra* note 428, at 63.

388. Article 2567 of the Argentine Civil Code reads in an English translation:

Ownership is acquired by transformation or specification when someone with his work makes a new object using someone else's materials with the intention of appropriating it.

CIVIL CODE OF ARGENTINA, *supra* note 187, at 281.

Article 2568 of the Argentine Civil Code reads in an English translation:

If the transformation is made in good faith, and the person making the transformation did not know that the thing belonged to another and it were not possible to bring the thing back to its previous form, the owner thereof shall only be entitled to the corresponding indemnification.

*Id.* at 281-282.

Article 2569 of the Argentine Civil Code reads in an English translation:

If the transformation were made in bad faith, where the person making the transformation knew or should have known that the thing belonged to another, and it is impossible to bring the thing back to its prior form, the owner of the materials shall have the right to be compensated for all damages and to bring the criminal action for which the act involved may give rise, unless he prefers to have the thing in the new form, paying the person making the transformation for the increase in value of the thing as a result of the transformation.

*Id.* at 282.



judges in Argentina also could decide on equity matters, even when they were no courts of equity, such as in the states of the US that did not have specific courts of equity.<sup>389</sup> That was the only note in which the Argentinean made reference to this work of Story. In that note he directed the readers to section 623<sup>390</sup> of the Commentaries on Equity, making in that way, a direct, positive, and doctrinal reference to the North American work.

### III. OVERALL IMPACT OF NORTH AMERICAN SOURCES IN THE CIVIL CODE OF ARGENTINA

The Argentine Civil Code includes in its notes references to sources from many diverse origins, including Roman, Brazilian, Castilian, French, and Germanic. North American sources, such as the Louisiana Civil Code, the Project of a Civil Code for the State of New York, and the works of Kent and Story are mentioned in more than 300 notes. Those notes are distributed throughout the four books and Preliminary Title I of the Argentine Civil Code.

A vast majority of references to North American sources are direct. In those cases Vélez identified the article, section, or passage of the source that he referred to. On very few occasions, Vélez made general references. This may show that Vélez was familiar with the sources he was citing.

On most occasions, references to North American texts are positive (*i.e.* Vélez referenced these sources in a positive manner) indicating that they provided principles that were similar to those applied in Argentina. Some references were negative, and in those cases Vélez indicated that he did not follow the principles included in the North American sources. The majority of positive sources could have been generated due to the Roman law perspective and influence that Vélez found in North American sources, which he felt appropriate for the Argentine legislation.

The references are also mainly of concordance. In those notes, and primarily with the assistance of the works of concordances of Saint-Joseph and García Goyena, Vélez was able to identify the corresponding passages in North American sources. These references of concordances in many cases were also followed by corresponding texts from other authors or civil codes.

North American sources also provided doctrinal references, which were used in doctrinal notes when explaining some legal doctrines. In those cases, Vélez would look into the North American texts as a tool to explain his position. Most

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Article 2570 of the Argentine Civil Code reads in an English translation:

If the transformation was made in good faith and it were possible to bring the thing back to its original form, the owner of the materials shall be the owner of the new thing by paying the transformer for his work; but he has a right to demand the value of the materials only, in which case the thing remains the property of the person making the transformation.

*Id.*

389. Law No. 340, *supra* note 15, at 744.

390. STORY, *supra* note 449, at 986-987.

doctrinal references are positive, although some are clearly negative.

Finally, in more than 50 notes Vélez used the North American texts as sources for his texts. To put it in other words, he made heuristic references, indicating the origins of his texts. In approximately half of those references, North American sources were exclusive for his articles.

The many references to North American sources should not surprise the readers. The Louisiana Civil Code of 1825 was a good exponent of nineteenth-century civil codification, which was generated in a jurisdiction which at that time was purely civilian. The Project of a Civil Code for the State of New York, although not purely a civil law creature, was vested and illustrated with civil law principles and with references to many civil law authorities. The works of Kent and Story are properly known as excellent exponents of the common law. The works of these two authors valued Roman and civil law traditions and were able to include them in their pages. Nevertheless, their works must be seen as works on common law.

The examples of references included in this paper, mainly focus on the reception that civil law had in all North American sources. This paper does not intend to show that all North American sources were civilian, something that is clearly not the case. The paper intends to show that Vélez drafted in an eclectic way, while working with several sources, and that these sources were also valued, even if they came from common law jurisdictions.

#### FINAL COMMENTS

Vélez borrowed and transplanted provisions from North American sources into the Argentine Civil Code. While doing so, he became the new owner of those provisions, because those provisions interacted with the Argentine *ethos*: an interaction that still exists. Since the 1870s, Argentine scholars have been looking at the origins of the transplanted provisions, making it a fertile area of study. This paper will hopefully add to the previous studies and provide a new grounding for future works. It may be said that the adaptation of individual provisions from North American sources into the Argentine legal system and society was successful. It was a work of legal science to import institutions that were absorbed by the remaining legal structure.<sup>391</sup> The Argentine Civil Code is clearly a successful legislative act. It has survived for more than 130 years, and, above all, it has become the *Argentine* civil code, that is to say, it is clearly identifiable to the Argentine *ethos*. Vélez predicted this success when he said, “give me a different society and I will give you different laws.”<sup>392</sup>

391. These words are borrowed, *mutatis mutandis*, from the analysis that Robert A. Pascal made on trust in Louisiana. Robert A. Pascal, *Of Trusts, Human Dignity, Legal Science, and Taxes: Suggested Principles for a Louisiana Trust Estates Law*, 23 LA. L. REV. 639, 659 (1963).

392. José María Mariluz Urquijo, *Dalmacio Vélez Sarsfield: Tradición y Modernidad*, 29 REVISTA DE HISTORIA DEL DERECHO 13, 20 (2001).

## APPENDICES

The first table of each appendix includes a breakdown of the different references made to each North American source within the Argentine Civil Code. The second table of each appendix includes all the references that the Argentine Civil Code makes to the different North American sources. The numbers in the left column correspond to Argentine articles, while the numbers and units in the middle column are those of North American sources that correspond to those of the Argentine Civil Code. The symbol N/A (not available) has been used when no direct reference was provided by Vélez. Finally, the column on the right indicates the type of reference that the note makes to the North American text (G: General, P: Positive, N: Negative, C: Concordance, D: Doctrinal, H: Heuristic, and H Exclusive: Exclusive Heuristic).

The reference to the Commentaries on Equity did not merit an appendix and is analyzed in III.B.2.b.

*A. References to the Louisiana Civil Code*

General References		10	
	Positive	3	
	Concordances	1	
		Doctrinal	2
		Heuristic	0
	Negative	8	
	Concordances	5	
Doctrinal		3	
Heuristic		0	
Direct References		278	
	Positive	258	
	Concordances	180	
		Doctrinal	30
		Heuristic	22
		Exclusive Heuristic exclusivas	26
	Negative	20	
	Concordances	14	
		Doctrinal	6
		Heuristic	0
	Transcribed References		7
	Positive	2	
	Concordances	1	
		Doctrinal	1
		Heuristic	0
	Negative	5	
	Concordances	3	
		Doctrinal	2
		Heuristic	0
Total References		295	

Argentine Civil Code (1871)	Louisiana Civil Code (1825)	Reference
12	10	D, P, C
17	N/A	G, N, C
18	12	D, P, C
20	7	D, P, C
Note (a), before article 30	N/A	G, N, D
54	413	T, P, D
63	29	D, P, D
72	948 and 917	T, N, D
160, 161, 162, and 163	2370	D, P, H
250	207	D, P, H
325	N/A	G, P, D
343	914	D, P, C
377	N/A	G, N, C
383	275	D, P, C
389	282	D, P, C
394	279	D, N, C
416	343	D, P, C
424	341	D, N, C
443, paragraphs 4 and 7	345 and 348	D, P, C
450	327	D, P, C
451	342	D, N, C
456	3003	D, P, C
462	352	D, P, C
464	Id.	D, P, C
466	353	D, P, C
470	384 and 385	D, N, C
473	394	D, P, C
475	361 and 362	D, P, C
483	410	D, P, H Exclusive
501	1891	D, P, H
510	1907	D, P, H
522	1928	T, N, C
619	2884	D, N, D
629	1920 and 1921	T, N, C
709 and 710	2091	D, P, C
725	2127 and 2128	D, P, C
730	2132	D, P, C
747	2153	D, P, C
818	2204	D, P, C
820	2205	D, P, C
821	2210	D, P, C
832	3038	D, P, C

Argentine Civil Code (1871)	Louisiana Civil Code (1825)	Reference
835	3040	D, P, C
850	3045	D, P, D
859	3050	D, P, C
860	3049	D, P, C
862	2214	D, P, C
923	1813	D, P, D
931	1844	D, P, C
936, 937, and 938	1845 – 1847	D, P, D
941	1844	D, P, C
943	2567	D, N, D
979	2231	D, P, C
987	2232	D, P, C
993	2233	D, P, C
995	2235	D, P, C
1031	2240	D, P, C
1033	2241	D, P, C
1061	2252	D, P, C
1065	Id.	D, P, C
1113	2299	D, P, C
1131	2301	D, N, C
1204	2041	D, N, C
1276	2373	D, P, C
1294	2399	D, P, C
1324	489	D, P, C
1380	2545	D, N, C
1381	N/A	G, N, C
1389	2561	D, P, C
1390	2562	D, P, C
1432	2041	D, N, D
1492	2637	D, P, C
1497	2703	D, P, C
1498	2704	D, P, D
1572	2693	D, P, C
1622	2658 and 2659	D, N, D
1646	2733	D, N, C
1651	N/A	G, N, C
1677	2810	D, P, C
1681	2838	D, P, C
1692	2839	D, P, C
1725	2833	T, N, C
1741	2855 and 2856	D, P, C
1747	2844	D, P, C

Argentine Civil Code (1871)	Louisiana Civil Code (1825)	Reference
1797	1529	D, P, C
1831	1494	D, P, C
1842	1521	D, P, D
1850	1546	D, P, C
1858	1547	D, P, C
1865	1547	D, P, C
1866	1549	D, P, C
1867	1951	D, P, C
1868	1556	D, N, C
1906	2980	D, P, C
1909	2973 and 2974	D, P, C
1949	2991	D, P, C
1950	2994	D, P, C
1956	2992	D, P, C
2001	3012	D, P, C
2012	3014	D, P, C
2026	3026	D, P, C
2030	3021	D, P, C
2032	3023	D, P, C
2043	3031	D, P, D
2046	3032	D, P, C
2050	3031	D, P, C
2097	2477	D, P, C
2099	2480	D, P, C
2101	2481	D, P, C
2118	2482	D, P, C
2125	2487	D, P, C
2141	1422	D, P, C
2142	1426	D, P, C
2164	2496 and 2497	D, P, C
2168	2513 et seq.	D, N, C
2182	N/A	G, P, D & G, N, D
2208	2911	D, P, C
2216	2925 and 2926	D, P, C
2240	2881	D, P, C
2251	2892	D, P, C
2255	2862 and 2863	D, P, C
2269	2870 and 2871	D, P, C
2270	2873	D, P, C
2278	2874	D, P, C
2281	2876	D, P, C
2283	2877	D, P, C

Argentine Civil Code (1871)	Louisiana Civil Code (1825)	Reference
2284	2878	D, P, C
2286	2880	D, P, C
2353	3404	D, P, C
2356	495	D, P, C
2423	494	D, P, C
2445	3407 et seq.	D, P, C
2447	3408	D, P, C
2456	3412	D, P, H
2507	482	D, P, D
2509	487	D, P, H
2510	488	D, P, H
2511	489	D, P, H
2567, 2568, 2569, and 2570	517 and 518	D, N, D
2572	501	D, P, C
2583	503	D, P, C
2587	499	D, P, C
2594	513	D, P, D
2595	515	D, P, C
2596	523	D, P, C
2600	520	D, P, C
2616	666	D, P, H Exclusive
2621	688 – 691	D, P, C
2622	689	D, P, H Exclusive
2623	690	D, P, H
2624	691	D, P, H Exclusive
2630	694	D, P, C
2646	656	D, P, C
2653	Id.	D, P, C
2654	692	D, P, C
2660	693	D, P, C
2722	674	D, P, C
2723	675	D, P, C
2725	671	D, P, H Exclusive
2730	681	D, P, C
2731	676	D, P, C
2732	677	D, P, C
2733	678	D, P, C
2742	683	D, P, H Exclusive
2743	684	D, P, H Exclusive
2807	525	D, P, D
2808	526	D, P, H
2811	528	D, P, H Exclusive
2838	533	D, P, H

Argentine Civil Code (1871)	Louisiana Civil Code (1825)	Reference
2846	525	D, P, C
2855	552	D, P, H
2856	557	D, P, C
2857	Id.	D, P, C
2863	536	D, P, C
2864	538	D, P, D
2865	540	D, P, C
2866	545	D, P, C
2880	584 and 585	D, P, C
2894	572	D, P, C
2897	581	D, P, H
2902	587	D, P, C
2920	601	D, P, C
2937	609	D, P, C
2953	628, 634, 636, and 637	D, P, C
2967	624 and 625	D, P, H
2986	735	D, P, H
2987	738	D, P, H Exclusive
2993	766	D, P, C
3003	750 – 754	D, P, H Exclusive
3011	749	D, P, H
3012	755	D, P, H
3013	756	D, P, H Exclusive
3014	757	D, P, H Exclusive
3016	760	D, P, H Exclusivé
3017	761	D, P, C
3018	770	D, P, C
3021	775	D, P, H
3037	773	D, P, C
3044	749	D, P, H Exclusive
3045	818	D, P, H
3053	780 and 781	D, P, C
3055	801 and 802	D, P, C
3056	802	D, P, C
3057	808	D, P, C
3059	786	D, P, D
3061	897	D, P, C
3062	798	D, P, C
3063	792	D, P, C
3068	696	D, P, C
3073	697	D, P, C
3074	696	D, P, C



Argentine Civil Code (1871)	Louisiana Civil Code (1825)	Reference
3075	698	D, P, H Exclusive
3077	697	D, P, C
3122	3266	D, P, H Exclusive
3125	3268	D, P, C
3135	3316	D, P, H Exclusive
3142	3329	D, P, H Exclusive
3149	3319	D, P, H Exclusive
3150	3320	D, P, H Exclusive
3151	3333	D, P, C
3201	3337	D, P, H Exclusive
3202	3340 et seq.	D, P, H Exclusive
3203	3343	D, P, D
3205	3129	D, P, C
3224	3132	D, P, C
3225	3134	D, P, C
3228	Id.	D, N, C
3229	3131	D, P, C
3231	3135 and 3136	D, P, C
3233	3138	D, P, C
3235	3130	D, P, H Exclusive
3279	867	D, P, C
3291	960	D, P, D
3293	960	D, N, C
3302	944	T, P, C
3304	968	D, P, H
3305	963	D, P, C
3316	1001, 1002, 1015, 1017, and 1018	D, P, D
3317	980 and 1009	D, P, C
3319	982	D, P, C
3331	1022	D, P, C
3345	1010	D, P, D
3371	1047	D, P, C
3433	1397 et seq.	D, P, D
3460	1227	D, P, C
3477	N/A	G, N, D
3482	1318	D, P, C
3502	1378	D, P, C
3508	1426	D, P, C
3514	1225	D, P, D
3547	881	D, P, C
3552	896	D, P, C
3560	N/A	G, P, C

Argentine Civil Code (1871)	Louisiana Civil Code (1825)	Reference
3561	895	D, P, C
3572 (3570 and 3571)	N/A	T, N, D
3586	N/A	G, N, C
3607	1564	D, P, D
3614	1464	D, N, D
3618	1566	D, P, D
3664	1585 and 1586	D, N, C
3666	1577 and 1578	D, P, C
3667	1578	D, P, C
3670	1583	D, P, D
3672, 3673, and 3674	1590	D, P, C
3679	1594	D, P, C
3692	1648 and 1650	D, P, C
3741	1478	D, P, D
3743	1690	D, P, C
3744	1609 et seq.	D, P, C
3745	1611 and 1612	D, P, C
3746	1616	D, P, C
3752	1632	D, P, D
3827	1685	D, P, C
3828	1686	D, N, C
3838	1688	D, P, D
3847	1656 and 1657	D, P, D
3872	1676	D, P, C
3880	3160	D, P, D
3891	3184 (2)	D, P, H Exclusive
3897	3190	D, P, H Exclusive
3933	3216	D, P, H Exclusive
3947	3420 et seq.	D, P, C
3948	3421 and 3422	D, P, H
3958	3486	D, P, C
3962	3428	D, P, H
3963	3429	D, P, C
3964	3426	D, P, D
3984	3483	D, P, C
3986	3484	D, P, D
3999	3435	D, P, D
4002	3443	D, P, C
4008	3447 and 3448	D, P, C
4010	3449	D, P, D
4015	3465 and 3466	D, P, C
4018	3515	D, P, C

*B. References to the Project of a Civil Code for the State of New York*

General References		1
	Positive	0
	Concordances	0
	Doctrinal	0
	Heuristic	0
	Negative	1
	Concordances	0
	Doctrinal	1
Heuristic	0	
Direct References		8
	Positive	8
	Concordances	4
	Doctrinal	0
	Heuristic	0
	Exclusive Heuristic exclusivas	4
	Negative	0
	Concordances	0
	Doctrinal	0
Heuristic	0	
Transcribed References		1
	Positive	1
	Concordances	1
	Doctrinal	0
	Heuristic	0
	Negative	0
	Concordances	0
	Doctrinal	0
Heuristic	0	
Total References		10

Argentine Civil Code (1871)	Project of a Civil Code for the State of New York (1865)	Reference
1047	54	D, P, C
1670	1285	T, P, C
1679	1323	D, P, H Exclusive
1680	1324	D, P, H Exclusive
1722	1347	D, P, C
2038	675	D, P, C
2538	938	D, P, C
3115	N/A	G, N, D
3825	554	D, P, H Exclusive
3826	568	D, P, H Exclusive

## C. References to the Commentaries on American Law by Kent

General References		0	
	Positive	0	
	Concordances	0	
		Doctrinal	0
		Heuristic	0
	Negative	0	
	Concordances	0	
		Doctrinal	1
Heuristic		0	
Direct References		2	
	Positive	2	
	Concordances	2	
		Doctrinal	0
		Heuristic	0
		Exclusive Heuristic exclusivas	0
	Negative	0	
	Concordances	0	
Doctrinal		0	
Heuristic		0	
Transcribed References		1	
	Positive	1	
	Concordances	0	
		Doctrinal	1
		Heuristic	0
	Negative	0	
	Concordances	0	
		Doctrinal	0
Heuristic		0	
Total References		3	

Argentine Civil Code (1871)	Commentaries on American Law (7th ed. 1851)	Reference
159	Lecture XXVI, ps. 83-84	T, P, D
1205	Lecture XXXVII, p. 394 & Lecture XXXIX, ps. 458-469	D, P, C
3136	Lecture XXVIII, p. 169	
Correct citation is:		
Lecture LVIII, p. 169	D, P, C	

*D. References to the Commentaries on the Conflict of Laws by Story*

General References			0
	Positive		0
		Concordances	0
		Doctrinal	0
		Heuristic	0
	Negative		0
		Concordances	0
Doctrinal		0	
Heuristic		0	
Direct References			14
	Positive		13
		Concordances	3
		Doctrinal	6
		Heuristic	3
		Exclusive Heuristic exclusivas	1
	Negative		1
		Concordances	0
		Doctrinal	1
Heuristic		0	
Transcribed References			0
	Positive		0
		Concordances	0
		Doctrinal	0
		Heuristic	0
	Negative		0
		Concordances	0
		Doctrinal	0
		Heuristic	0
Total References			14

Argentine Civil Code (1871)	Commentaries on the Conflict of Laws (5th ed. 1857)	Reference
6 – 8	Chapter IV	D, P, D
9	Page 105	
Correct citation is: Section 104	D, P, H Exclusive	
10	Section 224	
Correct citation is: Section 424	D, P, H	
11	Sections 362-376, 38, 388 et seq.	D, P, C
12	Section 260 et seq.	D, P, C

<b>Argentine Civil Code (1871)</b>	<b>Commentaries on the Conflict of Laws (5th ed. 1857)</b>	<b>Reference</b>
159	Section 121	D, P, D
160 – 163	Chapter VI	D, P, H
165	Chapter V	D, N, D
1205	Sections 242, and 263 to 267	D, P, D
1206 and 1207	Sections 244 and 351	D, P, D
1208	Sections 245 and 257	D, P, D
1209 and 1210	Sections 242 and 280	D, P, C
1215 and 1216	Chapter VIII	D, P, D
3611	Chapter XI, Section 445 Correct citation is: Chapter XI, Section 465	D, P, H