

# **DIGNITY, PRIVACY, AND HONOUR PROTECTION IN ARGENTINA**

## **TRANSTLANTIC LEGAL LECTURES**

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# MAIN QUESTIONS

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- How does Argentina protect dignity, privacy and honour?
- What is the constitutional foundation for these rights?
- How did Supreme Court caselaw shape the balance between freedom of speech and other rights?

# AGENDA

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**1. Historical Foundations**

**2. Free Speech and Privacy**

**3. Caselaw**

# HISTORICAL FOUNDATIONS: THE 1853 CONSTITUTION

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# HISTORICAL FOUNDATIONS: THE 1853 CONSTITUTION

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- Drafted after national unification, inspired by the U.S. Constitution.
- Established a republican, federal and liberal political system.
- Enshrined key civil liberties: freedom of speech and press, association, and religion.
- Introduced an enduring emphasis on limits to state power and individual liberty.

# HISTORICAL FOUNDATIONS: THE 1853 CONSTITUTION

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- Art. 14.- All inhabitants of the Nation enjoy the following rights in accordance with the laws that regulate their exercise; namely: the right to work and engage in any lawful industry; to navigate and trade; to petition the authorities; to enter, remain, travel through, and leave Argentine territory; to publish their ideas in the press without prior censorship; to use and dispose of their property; to associate for useful purposes; to freely profess their religion; and to teach and learn.
- Article 19.- Private actions of men that in no way offend public order and morality, nor injure a third party, are reserved solely for God, and exempt from the authority of the magistrates.

CORPUS  
IURIS CIVILIS  
ROMANI,

IN QUO

INSTITUTIONES, DIGESTA

AD CODICEM FLORENTINUM EMENDATA,

CODEX ITEM ET NOVELLÆ,

NEC NON

JUSTINIANI EDICTA, LEONIS ET ALIORUM  
IMPERATORUM NOVELLÆ, CANONES APOSTOLORUM, FEUDORUM  
LIBRI, LEGES XII. TABB. ET ALIA AD JURISPRUDENTIAM ANTE-  
JUSTINIANÆM PERTINENTIA SCRIPTA.

CODE  
NAPOLEON.

ÉDITION ORIGINALE ET SEULE OFFICIELLE.



A PARIS,  
DE L'IMPRIMERIE IMPÉRIALE.

M. DCCC. VII.

# HISTORICAL FOUNDATIONS: THE 1869 CIVIL CODE

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- Authored by Dalmacio Vélez Sársfield, following the Napoleonic Code.
- Rooted in continental European legal rationalism.
- Aimed to regulate private relations, emphasizing property and contractual autonomy.
- Did not explicitly protect personal or moral rights (privacy, image, dignity).



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## CONSTITUTIONAL REFORM (1994) - NEW CIVIL AND COMMERCE CODE (2015)

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- After the dictatorship (1976–83), democracy restored the centrality of the National Constitution and of individual rights.
- 1994 Reform: incorporated international Human Rights Treaties with constitutional hierarchy (art. 75 inc. 22).
- 2015 Civil and Commercial Code: codified personal rights—dignity, privacy, identity, honour, image (arts. 51–61).
- Signified a 'constitutionalized civil law': private law interpreted under constitutional and human-rights principles.

## FREEDOM OF SPEECH

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- The Supreme Court of Argentina regards freedom of speech as the cornerstone of democracy (CSJN, Campillay, 1986; Costa, 1987; Verbitsky, 1993).
- Its protection extends especially to opinions that are critical, uncomfortable, or unpopular.
- The Court has adopted a view of free speech inspired by U.S. caselaw (*New York Times v. Sullivan*, among others).

## NEGATIVE DIMENSION: PROHIBITION OF PRIOR CENSORSHIP

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- Explicitly recognized in Articles 14 and 32 of the National Constitution and Article 13.2 of the American Convention on Human Rights (ACHR).
- No authority may review, prevent, or condition the dissemination of ideas before publication (*La Nación c/ Provincia de Buenos Aires*, 1986).
- Includes the prohibition of indirect censorship (*Editorial Río Negro*, 2001).
- In *Revista Barcelona c/ Pando* (2021), the Court reaffirmed that there is no 'right not to be offended' and that punishing critical expression produces a chilling effect.
- Freedom of speech also protects the mode of expression—satire, irony, provocation—as legitimate vehicles of ideas.

## POSITIVE DIMENSION: RIGHT TO SEE, RECEIVE AND IMPART INFORMATION

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- Derived from Article 13.1 American Convention on HR.
- Entails a state obligation to guarantee material and legal conditions for the effective exercise of the right to information.
- Key precedents: ADC c/ PAMI (2012) – recognized access to public information as an autonomous, enforceable right; Giustiniani c/ YPF (2015) – mandated transparency in state contracts.
- Citizens hold the right to be informed; the State must remove obstacles to access and dissemination of information.

# INFLUENCE OF THE INTERAMERICAN COURT OF HUMAN RIGHTS

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- The Inter-American Court defines freedom of speech as having a dual dimension: individual (self-expression) and social (collective right to receive information) (OC-5/85, Herrera Ulloa v. Costa Rica, 2004; Kimel v. Argentina, 2008).
- Free speech is considered a prerequisite for the enjoyment of all other human rights.
- Argentina has adopted the Inter-American principle of heightened protection for speech on matters of public interest and strict proportionality for any restriction.



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## CSJN, PONZETTI DE BALBÍN, 1984

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- *Gente* published photos of Ricardo Balbín in his hospital bed.
- His wife claimed violation of privacy and intimacy.
- The Court ruled for the family: no public interest justified disclosure.
- Article 19 CN protects a private sphere of autonomy (family, health, beliefs, image).
- Public figures retain privacy when facts lack public relevance.

## CSJN, PONZETTI DE BALBÍN, 1984

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**“The right to self-determination of conscience requires the comprehensive protection of the private sphere, also in the material sense, so that this lofty spiritual purpose is not frustrated. Beyond these, as an integral part of the scheme of "ordered liberty" that shapes the internal structure, the marrow and bones of the Constitution, and sustains all its elements, lies the generic right to the assurance—even in material terms—of an area of exclusion reserved solely for each person and penetrable only by their free will. Such exclusion is imposed not only as a limit on state power, but also on the actions of individuals, especially when these are part of groups that, at the present stage of development of the media, have become factors exercising considerable social power, against which individuals cannot be left defenseless” (vote of Dr. Petracchi).**

**“The right to privacy and intimacy is constitutionally based on Article 19 of the National Constitution. In direct relation to individual freedom, it legally protects an area of individual autonomy consisting of feelings, habits and customs, family relationships, economic situation, religious beliefs; mental and physical health; and, in short, actions, facts, or data that, taking into account the ways of life accepted by the community, are reserved for the individual and whose knowledge and disclosure by outsiders poses a real potential danger to privacy.”**

## CSJN, PONZETTI DE BALBÍN, 1984

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**“The right to privacy includes not only the domestic sphere, the family circle of friends, but also other aspects of the spiritual and physical personality of people such as bodily integrity or image, and no one may interfere in the private life of a person or violate areas of their activity not intended to be disseminated, without their consent or that of their authorized relatives and only by law may such interference be justified, provided that there is a higher interest in safeguarding the freedom of others, the defense of society, good customs or the prosecution of crime.**

**In the case of celebrities whose lives are public or popular figures, their public or private actions may be disclosed insofar as they relate to the activity that confers them prestige or notoriety, provided that the public interest justifies it.**

**However, this encroachment on privacy does not authorize harming the public image or honor of these individuals, much less maintain that they do not have a private sector or sphere protected from any interference. This is especially true when, through their conduct throughout their lives, they have not encouraged indiscretions, either by their own actions, or authorized, tacitly or expressly, the invasion of their privacy or the violation of their right to privacy in any of its manifestations.**

**The material protection of the sphere of privacy is one of the greatest values of respect for the dignity of the person and a distinguishing feature between the democratic rule of law and authoritarian and totalitarian political forms.” (Vote of Dr. Petracchi)**

## CSJN, PANDO C/BARCELONA, 2021

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- **The publication in question was linked to a matter of public interest, because the back cover referenced the 2010 protest by wives and family members of military personnel imprisoned for crimes against humanity, including Cecilia Pando.**
- **Barcelona magazine uses satire as a form of critical discourse, "inevitably generating in those who read or observe it the perception of 'something' that is not true or accurate." This literary genre is not excluded from the constitutional protection of freedom of expression.**
- **The back cover does not violate Cecilia Pando's right to honor because it constitutes political criticism that does not exceed the limits of the protection granted to freedom of speech by the National Constitution, as it does not constitute a gratuitous insult or unjustified harassment.**

## CSJN, PANDO C/BARCELONA, 2021

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**"The unpleasant, outrageous, or excessive nature of certain expressions in public debate could not strip them of constitutional protection without incurring criteria that, ultimately, would depend on the subjective tastes or sensibilities of the court called upon to weigh them...the criterion will be given by the absence of undoubtedly insulting expressions that are unrelated to the ideas or opinions expressed."**



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## CSJN, BELÉN RODRÍGUEZ C/GOOGLE INC., 2014

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- Belén Rodríguez sued Google & Yahoo! for linking her name to pornographic sites.
- Alleged harm to honour and image.
- The Court rejected strict liability of search engines.
- Intermediaries are not editors, but neutral platforms.
- Liability arises only with actual knowledge of illegality + failure to act when required by judges.
- Broad protection of Internet speech; avoids indirect censorship.

# CSJN, GIMBUTAS C/GOOGLE INC., 2017

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**“In brief, on that occasion, it was concluded that the defendant's activity constitutes the full and regular exercise of constitutionally protected freedom of expression and that, in accordance with the characteristics of the Internet, it is reasonable to assume that search engines - which lack control over content originating from a potentially harmful third party and, therefore, are unable to prevent the occurrence of harm resulting from its dissemination - are only civilly liable for content that is not theirs when they become effectively aware of the illegality of said content and such knowledge is not followed by diligent action (Article 1109 of the previous Civil Code). Indeed, indifference and passivity in these cases makes the search engine liable for damages arising from its activity, since with its deliberate omission it contributes to the maintenance of the damaging event that, at first, it is unaware of and is foreign to it.”**

**"...The manifestation of will that allows the image to be displayed in magazines and shop windows...is a positive act of will that, as such, is not tacit, since it does not depend on an inference from an act other than consent, nor is it counterfactual or hypothetical, since it is not a mere conjecture nor, finally, is it presumed by law, given that it does not result from a directive imposed by any legal provision."**

## CSJN, DENEGRI C/GOOGLE, 2022

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- Producer Natalia Denegri requested removal of 1990s TV videos about the 'Caso Coppola.'
- Denegri claimed outdated content harmed her present reputation.
- The Court denied the request: information was true, historical and of public interest.
- The Court held that Argentina does not recognize a general 'right to be forgotten.'

## CSJN, DENEGRI C/GOOGLE, 2022

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- "The unpleasant, outrageous or excessive nature of certain expressions of public debate could not strip them of constitutional protection without incurring in criteria that, ultimately, would depend on the subjective tastes or sensibilities of the court of justice called upon to weigh them; the mere fact that these expressions may be unpleasant or offensive to the people involved could not, without further ado, remove them from that constitutional protection (Quoting Fallos 343:2211, "Pando").
- "...the protection of privacy does not extend to those aspects of personal life that the owner consents to reveal to the public."

**QUESTIONS?**

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