

EDITORIAL

Special Issue on Brazilian Law Reform

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Editorial

Brazil is the first letter of the BRICs acronym, one of the world's fastest growing emerging economies. The country moved, since the early 1990s, from a state-dominated, protected economy to a free-market system. Currently, the combination of increasing foreign direct investments and the apparent success of extreme poverty reduction policies – while the 'North' is experiencing a severe financial crisis – is drawing international attention to this continental-size country.

The invitation from Dr Constantin Stefanou, editor of the *European Journal of Law Reform*, to organize an issue on Brazil was very welcome and fits perfectly with our need to show a different aspect of this Southern phenomenon. In this context, the contributors to the present issue provide us with an interesting mix of perspectives on the way law reform and legislative drafting operates in Brazil.

A few introductory notes to the reader should shed some light on the intricate Brazilian legislative system. As a legacy of Portuguese colonization, it is a civil law country. However, academics, politicians and legislative drafters have been open to a range of foreign influences and legislative transplants. The 1988 Federal Constitution – the seventh since its Independence (1822) – was clearly inspired by the Portuguese and Italian constitutions, but also by the North American constitutional system.

Following a long military dictatorship (1964-1985), the 1988 Constitution led the country to become one of the largest democracies in the world. Given that it quotes the word 'rights' much more than the word 'duties', it has been nicknamed the 'Citizen Constitution' by the President of the National Constituent Assembly, Deputy Ulisses Guimarães. It is regarded as one of the world's longest constitutional texts because it has hundreds of very detailed provisions. In spite of being classified as a rigid constitution because of its limitation clauses,

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69 amendments have been enacted so far and many more are on their way. On top of this, the activism of the Brazilian Supreme Court also indicates that the constitutional setting in Brazil is subject to fast transformation.

Brazil is a republican federative state with three equal levels of membership, formed by the Federal Union, 26 member-states, the Federal District and over 5,500 municipalities. All of them enact legislation. The result is a maze of complex legislation and an incoherent division of legislative powers. At the federal level, Congress is bicameral and composed of the Chamber of Deputies (lower house) and the Federal Senate (upper house), while the other political units have unicameral legislatures.

The Constitution contains a whole section on 'legislative process' (Arts. 59-69), which lists the sources of law with equal hierarchy but different functions: constitutional amendments, complementary law, ordinary law, provisional measures, delegated laws and legislative decrees. It also requires a complementary law to provide for the preparation, drafting, amendment and consolidation of laws. The National Constituent Assembly was clearly concerned with framing legislative drafting and improving the quality of the legislation.

However, there is still a 'long and winding road' to bring legislation of all legislatures to acceptable standards. Moreover, there is an enormous difficulty in legal enforcement. Brazilians have the expression *lei para inglês ver* – literally, an 'Act to be seen by an Englishman' – which refers to demagogic laws that are not enforced in practice. The origin of the term has several versions. It probably derives from the colonial period, when the British, who had explored slavery for centuries, began the abolition movement and used its maritime force to make other countries do the same. Therefore, Brazil signed many treaties with Britain for the gradual abolition of slavery, but the general feeling of the time was that they were signed only to keep the British happy but would never be enforced. In fact, Brazil was the last of the Western countries to abolish slavery in 1888.

The complexity of the legislation, the multiple and often overlapping sources of legislative powers and the lack of enforcement makes this one of the most intriguing topics of Brazilian law. The relevant contributions in this special issue address some of the problems concerning the drafting of new legislation, the difficulties of compatibility of new statutes with such a detailed Constitution, and the challenge to implement international treaties and conventions. The articles also demonstrate foreign influence in the Brazilian legislation and the problematic attempt to achieve compromises on issues which concern the whole world such as environmental law and human rights.

We are very grateful to the *European Journal of Law Reform* for the opportunity to share some of the Brazilian experience; to the British Council and its Director in Recife, Mr. Marcus Vinicius Machado, for the invaluable contribution of translating all the articles from Portuguese to English; to the Institute of Advanced Legal Studies (IALS) and Judge Leopoldo de Arruda Raposo, former Director of the School of Judiciary Studies of Pernambuco, for beginning an enlightening academic relationship between the IALS and Brazilian judges; and last, but not least, to Judge Jovaldo Nunes Gomes, President of the Court of Justice of Pernambuco, for all his support in this important project.

It was a great challenge to select articles that would appeal to the interests of the international audience of the *European Journal of Law Reform*, but it was also an enormous pleasure to deal with such varied and high-standard papers.