

1992

A PANORAMA OF BRAZILIAN LAW

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A PANORAMA OF BRAZILIAN LAW

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**Originally written in Portuguese; first English translation
by Michael R. Royster (J. D., Indiana University)*

FOREWORD

The Brazilian legal system has taken shape under the influence of the main civil codes of Europe, especially those of France, Italy and Germany. The original transmission of Portuguese legislation has left a considerable mark upon Brazilian legal institutions. Brazil has also been strongly affected by the government structure and the legal accomplishments of the United States in the realm of public law.

Our doctrine follows basically a comparative process, as the study of each legal subject begins with a detailed description of its historical origins and a careful analysis of its modern development in various countries.

Brazilian courts are cognizant of judgments handed down in other countries, and it is not uncommon to read of decisions by higher Brazilian federal courts that cite case law of other countries.

The situation, however, reflects a one-way street, since the international legal community is hardly ever informed of legal developments in Brazil. The reason is the language barrier: Unlike Spanish and Italian, Portuguese is not readily accessible to the English and French-speaking worlds; thus very little is published on Brazilian law in international and/or foreign journals.

This lack of foreign acquaintance with the realities of Brazilian law is the source of a certain frustration, because we follow, teach and write about what is happening in the outside legal world, while the achievements of Brazilian jurists receive scant recognition abroad.

An ever-larger number of law journals, reviews, yearbooks and other legal publications provide a permanent source of legislative, doctrinal and jurisprudential information regarding practically all European countries, the United States, Canada, Australia and most Asian and African nations.

Yet, Latin American countries somehow remain very silent, and Brazil may well be the quietest of all. It is true that a few American scholars and lawyers have published some informative and analytical material regarding certain aspects of Brazilian law, and from time to time legal news from Brazil may appear in European and U.S. journals — albeit a far cry from comprehensive coverage. Of course the Brazilian legal community has no one to blame but itself for this state of affairs.

The desire to correct this situation has inspired the publication of this first collection of essays on various fields of Brazilian law. The Constitution of October, 1988, has been selected as an appropriate starting point: Certain subjects are dealt with entirely from the perspective of the new Constitution; some refer only incidentally to constitutional aspects, while others have no connection whatsoever to this document. These are not studies in comparative law; however, we trust that

the material will prove useful to comparatists, and some papers also to international specialists, as well as to all legal and business professionals who need or want to know more about Brazil. The importance of Brazil in Latin America and among the developing countries and the possibilities for foreign investment in its development are bound to create a growing interest in its legal institutions.

We have endeavored to give an overall view of contemporary Brazilian law. It has naturally not been possible to cover every subject: Specialized areas such as Family, Succession, Property, Contracts, Banking and Finance, Intellectual Property, Admiralty and General Criminal Law have been reserved for subsequent publication.

Contributors to this collection — a joint effort by three generations of scholars — include professors from the University of São Paulo (USP), the State University of Rio de Janeiro (UERJ), the State University of São Paulo (UNESP) and the Catholic University of Rio de Janeiro (PUC-RJ). Caio Tácito and Miguel Reale, two distinguished, eminent names in Brazilian law and philosophy, former Chancellors of UERJ and USP, have long been a source of inspiration to every Brazilian lawyer.

This work is the outcome of efforts by a broad spectrum of the legal profession: practicing lawyers, public prosecutors, federal government attorneys, judges of state and federal appellate courts, and the eminent Justice of the Brazilian Supreme Court, José Carlos Moreira Alves — all of us dedicated to that most noble of legal activities — the teaching of law.

Professor Keith S. Rosenn of the University of Miami has been our international collaborator. It was he who translated and annotated the 1988 Constitution, in addition to editing the final English version of all material contained in this publication.

It has been my privilege to strengthen the intellectual ties between the legal scholars of Rio de Janeiro and of São Paulo, with the assistance of Professor João Grandino Rodas. My appreciation extends to my former and ever-present teacher, Professor Caio Tácito, for his wholehearted encouragement and steadfast guidance while this work was being prepared.

"A Panorama of Brazilian Law" is a step towards realizing a long-standing dream: To provide the world with a window to Brazilian law.

May it always remain open, and bear good fruit.

Jacob Dolinger

President

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