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Brazil - The Reintroduction of a Democratic State and the Liberalization of a Previously Closed Economy

Daniela Trejos Vargas

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As a product of this revolution, we will assist a globalized world and as a spiral that does not find limits and is positioned in all that a contemporaneous humanity does. The challenge compels us to design new schemes to continue ahead in the proper formation of future professionals in Hemispheric Laws. No doubt that as we travel together, on a trip without return, to do the same things in different places despite material and cultural borders, we are implicated in common proposals because they are the answer to the daily exigencies of a world filled with magnitude and multidimensional dynamism, of a society that overtakes the professional paradigms. The resulting priority is to rethink the way to integrate actions and grow together.

We note how each time interchanges of professors and students among universities become more frequent. We have had wonderful experiences within our faculty when young people graduate and transfer to an American university for postgraduate work. Their contact with other students begin to develop the reciprocal involvement to study problems and solutions in each regulation. These contacts result in permanent contracts in offices which bring to our country important professional and academic experiences considered applicable as much in the cases as in *modus operandi* of these offices. There exist other methods of work in conjunction with professionals in Law who obey this urgent need to attend to new conflicts and distinct challenges with international agreements among all not only in the commercial world, but also camps of human rights and others.

An example that we cannot forget is the European integration in the last ten years, during which frontiers have opened to allow legal professionals work without limits or sovereign judgments.

XIX. BRAZIL — THE REINTRODUCTION OF A DEMOCRATIC STATE AND THE LIBERALIZATION OF A PREVIOUSLY CLOSED ECONOMY

*Daniela Trejos Vargas**

Traditionally in Brazil, the law schools formed the political leaders of the country. But this changed since the advent of the military regime in 1964, and it is common to hear in Brazil that we are now the “Republic of the Economists.” Former students and professors of economics, mainly of the PUC-RIO College of Economics and the University of Campinas —

* Professor of Private International Law and Property Law/Real Estate, School of Law, Pontifical Catholic University of Rio de Janeiro (PUC-RIO), Brazil

UNICAMP — College of Economics have for the past two decades been setting the rules of the political and economic reform of the country. The prestige of Law Schools for the Brazilian society was only renewed with the return to a democratic regime, and with the enactment of the current Brazilian Constitution in October 1988, also called the “Citizens Constitution.” During the discussion of the text of the new Constitution, Law Schools made important contributions in the Constitutional Congress, with papers and depositions of law professors as experts in different matters. This was, however, an exceptional situation, when the whole society was mobilized to reinstate the basis of a democratic state after twenty-four years.

There is very little institutional connection between the Law Schools and the lawmakers in Brazil. This is due a lot to the structure of the Brazilian State. Both the executive power and the legislative power have legal advisors and legal aides — civil servants recruited through special selective exams. These are the people who advise the government on the lawmaking, and not the Law Schools. When Law Schools are involved in a specific project, the professors are called upon on an individual basis to advise on a specific project in their area of expertise. The Law Schools are not actively called into the process of law reform.

Significant law reforms have been conducted in Brazil since 1988. The 1990’s was a landmark in Brazil, with the reintroduction of a democratic State and the liberalization of a previously very closed economy. Since then, there was a very significant progress in the fields of economic integration and the respect for human rights: the ratification by Brazil of the international covenants of human rights, both the UN covenants and the Inter-American covenants; the regional integration structure of MERCOSUR; many important economic reforms through privatization and also the economic stabilization since the 1994 Economic Stabilization Plan — “Plano Real” — which attacked hyperinflation in Brazil and stabilized our economy. Very important laws for the society were enacted: the consumer protection code and the statute on children’s rights. I would like to mention the new Brazilian arbitration law, permitting the enforcement of arbitration clauses, which before were not self-effective in Brazil. At this moment, Brazilian Congress is discussing major reforms essential for new phases of Brazilian society: a complete tax reform, intended to simplify taxation and eliminate cascade-type taxation, which makes Brazilian export products less competitive a reform of the social security system and the very important reform of the judiciary system in Brazil. Regarding this matter, the Brazilian bar association is very active conducting this law reform and negotiating with congressmen the necessary measures to ensure that the judicial procedures are less bureaucratic and more efficient. Lastly,

amendments have been proposed to the Brazilian Constitution that give human rights treaties a constitutional status, like in Argentina.

We can say that Brazilian Law Schools have changed their focus of interest since Brazil's re-democratization process, with a greater emphasis in teaching and research in the constitutional law and international law. Before the democratization process, the stars of the law schools were the professors of Civil Procedure and Administrative Law. Since the beginning of the nineties, as Brazil opened its economy and sought regional integration, we see the rising interest from students and from the society as a whole in international law questions and also comparative law.

This change in Brazilian society has caused an important change in the curriculum of Law Schools. After twenty-five years, the Ministry of Education of Brazil has re-introduced International Law as one of the core courses in all law school programs in Brazil.

Another important change that has been seen in law schools and legal professions in Brazil is the significant increase of women in the student body, and in public careers. Presently, in the PUC-RIO College of Law, 56% of law students are women. In the selective processes for public legal careers, like public attorneys, prosecutors and judges, there are more women candidates than men. In the State of Rio de Janeiro, over half of the most recently approved judges and public attorneys are women. Six out of every ten lawyers in Brazil are women. A majority of the new associate professors in Law schools are also women. This is an important change in Brazilian society and specifically in a very traditional branch like the Judiciary System. The current President Cardoso intends to nominate a woman to the Brazilian Supreme Court for the first time in Brazilian history before the end of his mandate.¹¹⁶

If twenty or even fifteen years ago law professors and law students were concentrated in the study of civil procedure, now the keynote issues that catch the attention of law students range from constitutional law to human rights, from international commercial law and international arbitration to environmental law and consumer law. We can foresee that one of the roles of Law Schools in hemispheric integration will be to adapt their undergraduate curriculum to this change of interest and give the students the tools to act as future international lawyers. In the Americas, as we debate the future implementation of the Free Trade Area, we are in fact speaking of integrating thirty-four different countries, who speak at least four different languages. Of these countries, the vast majority of the legal

116. Judge Ellen Northfleet was appointed in November 2000 as the first woman justice in the Brazilian Supreme Court.

systems are civil law systems, most of them of Spanish and French tradition, and others, like Brazil, with a Roman-Germanic influence.

We are thus faced with the need to deal simultaneously with common law and civil law approaches to the solution of many legal issues. This leads us to the question of the teaching of comparative law in Law Schools. From the viewpoint of Brazilian lawyers, in order to be an international lawyer and to be able to work in international business transactions, besides being fluent in English, one has to have solid notions of the common law system. Otherwise, it will be sometimes difficult to understand the foreign client's problems and the questions that are brought up by the American law firms in the negotiation of international agreements. In order to attain this expertise, more and more students come to the United States or go to Great Britain for graduate studies. It would be ideal, however, to be able to give these students access to the fundamentals of the common law system in their undergraduate studies in their home countries. That is where I see the great importance of the exchange programs with Latin-American Law Schools, not only for students, but also for teachers to be more familiar with a comparative law approach. At my university, besides the mandatory three semesters of international law, we have already started to offer in the undergraduate curriculum, elective courses in comparative law, and integration law where we introduce WTO, MERCOSUR, European Union and NAFTA. There is a great emphasis in comparative constitutional law in the Constitutional Law course, and in the graduate program we now have a specific course on American constitutional law.

This brings me to another important question: what about the teaching of the fundamentals of civil law in American Law Schools? How is the teaching of comparative law being done in American Law Schools? One very recent volume of the American Journal of International Law was entirely dedicated to the questioning of the study of comparative law, with several teachers giving their point of view on this subject. Professor Friedrich Juenger of the University of California at Davis College of Law has also brought up this issue in a recent conference. In Professor Juenger's viewpoint, American Law Schools profited greatly in past decades from the many European lawyers and professors, who like him, came from Europe to America during and after World War II. These scholars were trained in civil law in their home countries and, once in the United States, studied common law as well. As professors, they were able to pass this experience to their students and have a more comprehensive understanding of legal issues. Many of these European-born and European-educated professors are now retiring. The question is, will the new generation of professors be able to give this same background to their students?

It is my conviction that effective integration will only be possible in the Americas with the understanding of the existing legal systems, that is both common law and civil law systems. The need for a comparative law approach to legal problems especially when thinking of this hemispheric integration can only be achieved through effective exchange programs between the Law Schools of our countries. It is by means of effective initiatives to bring together professors and students from different countries, as the one that we are observing here at the University of Florida, that we will achieve the necessary modernization of the teaching of law and thus permit Law Schools to train better lawyers, judges, and new law professors for the century we are having the privilege to inaugurate.

