

**‘DO YOU KNOW WHOM YOU ARE TALKING TO?’ –
THE SUBORDINATION OF LAW TO SOCIAL STATUS IN
BRAZIL**

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‘For my friends, everything; for strangers, nothing; for my enemies – the law!’

Old Brazilian maxim

Abstract

This article notes the existence of a considerable chasm in Brazil that divides law on paper and ‘law’ in practice. It observes the prevailing perceptions of law in Brazilian society, noting, for instance, that Brazilians suffer from a substantial lack of respect for laws. Indeed, Brazilians can in theory be apparently governed by a rights-based democratic constitutional framework, while in practice they are far more regulated by unwritten social norms, which basically promulgate and protect the ethic of privilege and those who act on it.

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I INTRODUCTION

Due to the chasm that, in Brazil, separates law on paper and ‘law’ in practice, anyone wishing to understand how the country really works will need to consider the ways in which people are able to exempt themselves from the content of positive laws.

An observation of Brazil’s reality reveals a society that is deeply regulated by *contra-legem* (anti-legal) rules. These are not the rules taught in the law schools but rather are socially defined rules that vary remarkably from the state codes and statutes, and the rulings of the courts.

This article provides a critical analysis of Brazil’s legal culture. By legal culture is meant the prevailing perceptions about law in society, and general attitudes toward the formal legal system. It is thus an explanation of the manner in which law operates in practice, as opposed to theory, in the Brazilian society.

II INEFFECTIVE LAW

The Brazilian legal system is based on the civil-law tradition of Continental Europe. Accordingly, the lawmaker in Brazil introduces legislation in an attempt to predict, in advance, every scenario of social conflict. A corollary of this is the tendency to regulate all aspects of human life and society. The legislator looks upon society as his artificial creation; as inert matter that receives all its life, organisation, and morality from the legislative power of the Brazilian state. As Keith S Rosenn explains:

The Brazilian legal culture is highly legalistic; that is, the society places great emphasis upon seeing that all social relations are regulated by comprehensive legislation. There is a strong feeling that new institutions or practices ought not to be adopted without a prior law authorizing them. As

has been said with reference to German legalism, there is a ‘horror of a legal vacuum’. Brazil has reams of laws and decrees regulating with great specificity seemingly every aspect of Brazilian life, as well as some aspects of life not found in Brazil. It often appears that if something is not prohibited by law, it must be obligatory.¹

The excess of legalism in Brazil comes as a legacy of the convoluted legal system introduced by the Portuguese colonizers. Thus, even when judges in Brazil were honest, the rather chaotic legal system would provide infinite scope for delays in appeals, of which lawyers took full advantage. As Norman Nardoff indicates:

The Portuguese fondness for form over substance, rooted firmly in Roman and Canon law, resulted in an incredibly formalistic legal system... Under the Portuguese legal system, the Crown pretended to rule and the subjects pretended to obey... Lisbon found great comfort in issuing reams of esoteric and unrealistic laws, while its Brazilian subjects took equal pleasure in finding ways around these ill-conceived edicts from the state.²

As a result, people in Brazil acquired the tendency to soften laws by not applying them properly. On the other hand, they have also inherited, via Portugal, the naïve belief or hope that laws can function as panaceas for every sort of social disease.³ This hope maintains that one day everybody will suddenly start respecting the existing laws, and when this ‘miracle’ happens, laws will solve all the country’s social, economic and political

¹ Keith S Rosenn, ‘The Jeito: Brazil’s Institutional Bypass of the Formal Legal System and its Developmental Implications’ (1971) 19 *American Journal of Comparative Law* 514, 528.

² Norma Nardoff, ‘Book Review: O Jeito na Cultura Jurídica Brasileira’ (2001) 32 *University of Miami Inter-American Law Review* 605, 607.

³ Keith S Rosenn, *O Jeito na Cultura Jurídica Brasileira* (Renovar, 1998) 54.

problems. Thus a common witticism in Brazil says that the only thing the country needs is a new law to put all the existing ones into practice.⁴

Since colonial times, the excess of legalism has made it impossible ‘to distinguish with certainty the laws that were applied from those which were not applied, or which were not applied as they ought to have been’.⁵ Because of this old tradition of overabundance of positive laws, the normal procedure during the passing of new legislation has been to vaguely declare as revoked any injunction to the contrary. The reason for such vagueness is that nobody really knows which laws would have to be repealed.⁶

It is also an indubitable fact that the lawmaker in Brazil exhibits the quite undesirable practice of introducing legislation, which are often too abstract and unrealistic to be put into practice. During colonial times, one might say, laws in Brazil were merely copied from those already applied in Portugal, without being adequately adapted to the new destination. For three centuries, the principal Portuguese law adopted in Brazil was the *Ordenações Filipinas* (1603).⁷ This codified body of laws was notorious for its confused and contradictory provisions. Although it was obviously not designed with Brazil’s conditions in mind, it remained the nation’s basic civil law until the adoption of a new civil code in 1917.⁸

⁴ Manoel de Oliveira Lima, *The Evolution of Brazil Compared with that of Spanish and Anglo-Saxon America* (Russell & Russell, 1966) 58.

⁵ Ibid.

⁶ Rosenn, above n 3, 84.

⁷ The Portuguese law was codified, or rather compiled, first in the *Ordenações Afonsinas* (1446–1457), revised in 1521 as the *Ordenações Manuelinas*, and finally in the *Ordenações Filipinas* (1603), also known as the *Código Filipino*.

⁸ Rosenn, above n 3, 35–6.

One might say that the case has ever since been that Brazilian laws are often inspired by legislation enacted in other countries, especially in the United States and Western European nations.⁹ However, legislators in Brazil usually fail to properly consider the social context in which laws are to be applied.¹⁰ The result is an abysmal distance between law and social reality; for copycat laws have been introduced without a more careful attention to the prospects for their practical implementation in Brazilian society.¹¹ Indeed, the problem with utopian legislation occurs even at the level of the nation's basic law: the constitution. In Latin American countries such as Brazil, Rosenn points out:

Constitutions typically contain a substantial number of aspirational or utopian provisions that are either impossible or extremely difficult to enforce. Some of these provisions contain social rights that seem far more appropriate in a political platform or a sermon than in a constitution.¹²

The problem can be attributed to a lack of realism, which causes pragmatic solutions to be sacrificed to utopian postulations. The late historian José Honório Rodrigues noted that, regrettably, 'the most persistent element in Brazilian political life seems to have been the habit of adopting solutions that fit principles rather than situations'.¹³ He concluded that this lack of

⁹ John W F Dulles, 'The Election of 1950' in L Hanke, *History of American Civilization*, (University of California Press, 1961) vol 2, 468.

¹⁰ Nestor Duarte, *A Ordem Privada e a Organização Política Nacional* (Cia Editora Nacional, 1950) 221–2.

¹¹ Raymundo Faoro, *Os Donos do Poder: Formação do Patronato Político Brasileiro* (Globo, 1975), 745–45. ****

¹² Keith S Rosenn, 'The Success of Constitutionalism in the United States and its Failure in Latin America: An Explanation' (1990) 22 *University of Miami Inter-American Law Review* 1, 36.

¹³ *Ibid* 57.

realism on the part of the legislator was caused by their incapacity for meeting challenges with real solutions, not with theories.¹⁴

A *A lei não pegou (The law did not take hold)*

One would be quite right in asserting that many laws have been introduced in Brazil with the almost certain knowledge that they will never be respected. Thus, as Rosenn explains: ‘Brazilians refer to law much in the same manner as one refers to vaccinations. There are those who take, and those who do not’.¹⁵ He gives the insightful example of a Minister of Justice, Francisco Campos, who in the 1930s responded to criticisms about the enactment of a new law that was absolutely identical to another enacted by the same government only a year earlier by saying: ‘There is no harm done, my son. We are going to publish this one because the other *não pegou* (did not take hold)’.¹⁶

A lei não pegou (the law did not take hold) is the phrase that Brazilians commonly apply to the numerous instances in which laws can exist in theory but never in practice. Such laws are ineffectual despite their putative validity. They do not take hold when they supposedly contain unrealistic provisions related to such things as price controls, labour laws, or interest rates. A good example of such unrealistic provision is found in the original text of the Brazilian Constitution, which contained a section fixing the level of interest rates in the country at 12% a year. The provision was never truly enforced, because doing so would paralyse all the country’s economic activities.

¹⁴ Ibid 63.

¹⁵ Rosenn, above n 1, 530.

¹⁶ Ibid 531.

Perhaps the clearest example of a well-known legislation not taking hold involves the prohibition of a popular gambling raked called *jogo do bicho* (animal's game). The law was enacted more than one hundred years ago, but this absolutely illegal activity still employs more than 700,000 people and grosses more than \$150 million dollars a month. Although the game still remains illegal, candidates for public office have sought support from gambling bosses, 'who are known to contribute heavily to political campaigns'.¹⁷ In Rio de Janeiro, gambling bosses sponsor official events, such as the world-renowned carnival, as well as the electoral campaigns of many politicians, including high-ranking government authorities.¹⁸

III *PARA INGLÊS VER* (FOR THE ENGLISH TO SEE)

Para inglês ver (for the English to see) is a curious expression, important in helping reveal crucial aspects of Brazil's legal culture. It was coined in the first quarter of the nineteenth century, and now refers to any situation where something on the surface appears for all intents and purposes to have been done, while beneath nothing has, in actual fact, changed. Since it is quite an illuminating expression, it is worthwhile giving a short account of its origins.

Under pressure from the British government, which had helped Brazil in its negotiations for independence from Portugal, the Brazilian government signed a treaty in 1826 promising to abolish the slave trade within four years. On 7 November 1831, the pledge appeared to be honoured, with the enactment by the Brazilian Parliament of a statute declaring the freedom of

¹⁷ Joseph A Page, *The Brazilians* (Addison-Wesley, 1995) 248.

¹⁸ Guido Groeschel, *Brazil and the Jeitinho: A Cultural Lesson in Bahia* (1 November 2003) Brazzil <<http://www.brazzil.com/component/content/article/21-november-2003/1152.html>>.

all Africans entering Brazil as slaves. But what the British government did not know was, that the 1831 Brazilian statute, as Brazilians started saying amongst themselves, ‘it is only for the English to see’. The elite in Brazil did not really wish to stop the slave trade, as they thought its end would eliminate the supply of cheap labour.¹⁹

Behind the façade, over a twenty-year period following the enactment of the 1831 legislation, around one million Africans were illegally brought to the country as slaves.²⁰ In the 1880s, most of the slaves in Brazil were people, or relatives of people, who were brought to the country after 1831 and therefore illegally. Slaveholders bypassed the law by registering the slaves as having been imported before the enactment of that legislation.

Slaves who disembarked on the coast of Brazil found no one to set them free as the law required. According to Joaquim Nabuco, the great leader of the Brazilian anti-slavery movement, ‘the only pleas on their behalf were made by British ministers and were heard in the British Parliament’.²¹ Thus, in 1845 the British Parliament decided to enact the Aberdeen Bill, authorizing the British admiralty courts to judge and condemn any Brazilian ship involved in slave-trading.

The British action was legally justified on the basis of a treaty signed by both countries in 1826 condemning the slave trade as a form of piracy. Under huge pressure from powerful Great Britain, the Brazilian Parliament, on 4 September 1850, rushed to pass new legislation establishing harsher penalties for anyone involved with the slave trade. This law was much

¹⁹ Guy Burton, *Fooling the British, The Brazilian Way* (1 May 2004) Brazzil <<http://www.brazzil.com/2004/html/articles/may04/p106may04.htm>>.

²⁰ Ibid.

²¹ Joaquim Nabuco, *Abolitionism: The Brazilian Antislavery Struggle (1883)* (Chicago University Press, 1977) 76.

better applied, being not merely, in this case, ‘for the English to see’. Nevertheless, in 1851 alone, more than 3,000 Africans were still illegally brought to the country as slaves.²²

Unfortunately, the Brazilian government has ever since been enacting numerous laws that are just ‘for the English (or anybody else) to see’. In such circumstances, a law is enacted so as to confer the impression that authorities are willing to do something about the matter of concern, while in practice nothing is done at all. The Brazilian Constitution actually has many such formal provisions, which are only ‘for the English to see’.

One of them is Article 196, which declares the following: ‘Health is a right of every citizen and a duty of the state, which shall be guaranteed by means of social and economic policies aimed at reducing the risk of illness and other hazards and at the universal and equal access to actions and services for its promotion, protection and recovery’. In practice, public hospitals in Brazil are overcrowded, understaffed, badly equipped, and poorly maintained. ‘They often provide indifferent care and more than occasionally subject patients to additional risks, such as infection from contaminated blood’.²³

IV SUBORDINATION OF LAW TO SOCIAL STATUS

Brazil is a nation suffering from a substantial lack of commitment to legality. Although the law recognises that the individual citizen has a vast number of ‘fundamental’ rights, such rights are often trumped by the more

²² Richard Graham, *Britain and the Onset of Modernization in Brazil: 1815–1914* (Cambridge University Press, 1968) 164.

²³ Page, above n 17, 179–80. For more examples of constitutional rights that are currently violated in Brazil, see Augusto Zimmermann, ‘Constitutional Rights in Brazil: A Legal Fiction?’ (2007) 14 (2) *Murdoch University Law Review* 28–55.

non-egalitarian, authoritarian structure of the Brazilian society. One of the reasons for the violation of these rights is impunity, a critical factor contributing to the declining faith in the rule of law.²⁴ Indeed, Brazilians often say that there is only one ‘law’ which is always respected when you are rich or have ‘powerful’ friends: *a lei da impunidade* (the law of impunity).

In fact, most of what really happens in a country like Brazil lies outside the statute books and law reports. There is a very sharp contrast between, on the one hand, statutes and the written texts of the constitution, and, on the other hand, the daily life as demonstrated in the dealings between individuals and public authorities.²⁵ As such, Brazil is a typical example of a country where the ‘laws’ of the society can easily overrule the laws of the state.²⁶ Socially speaking, the former can be far more institutionalised than the latter, which means that state law can easily be undermined by the lack of connection between its formal precepts and observed behaviour.²⁷

Due to the extent to which positive laws are not always respected in Brazil, Roberto DaMatta, an anthropology professor at Notre Dame University, has argued that Brazilian society is pervaded by a ‘double ethic’. Thus, in theory people seem ruled by general and abstract rules of law, but in practice they are far more regulated by unwritten social norms, which, as

²⁴ William C. Prillaman, *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law* (London: Praeger) 76.

²⁵ Eder, Phanor J. *Law and Justice in Latin America* (New York: New York University Press, 1937) 57.

²⁶ Roberto DaMatta, ‘Is Brazil Hopelessly Corrupt?’ in R M Levine and J J Crocitti (eds), *The Brazil Reader: History, Culture, Politics* (Duke University Press, 1999) 296.

²⁷ Guillermo O’Donnell, ‘Illusions about Consolidation’ in L Diamond, M F Plattner, Y Chu, and H Tien (eds), *Consolidating the Third Wave Democracies: Themes and Perspectives* (The Johns Hopkins University Press, 1997) 46.

DaMatta states, ‘promulgate and protect the ethic of privilege and those who act on it’.²⁸ Accordingly, ways around the state law can be eventually obtained through a range of factors related to conditions of wealth, social status, and ties of family and friendship.²⁹

The non-legal rules of Brazilian society are based on historical and cultural precedents which have led to social practices in which some individuals can easily regard themselves as being above the law.³⁰ In contrast to the rule-of-law tradition in countries such as Australia and the United States, social relations in Brazil are established according to the more informal and deeply relational rules of society itself. Such rules are based on society’s unwritten practices, and are key contributors to the subversion of the rule of law, fostering corruption and distorting the normal delivery of public services as prescribed by state law.

The greatest fear of any Brazilian is that of eventually becoming an isolated citizen. The isolated citizen is an inferior individual who is reduced to the condition of being merely ‘under’ the law. Brazil’s society stresses direct relations based on personal liking as opposed to formal relations. ‘Personal liking is above the law’.³¹ Therefore, people without the necessary ability to develop such relationship ties are regarded as inferior citizens. They have ‘only’ the law on which to depend, whereas a person with ‘good’

²⁸ DaMatta, above n 26, 296.

²⁹ Roberto DaMatta, *Carnivals, Rogues, and Heroes: An Interpretation of the Brazilian Dilemma* (University of Notre Dame Press, 1991) 187–8.

³⁰ Roberto DaMatta, ‘The Quest for Citizenship in a Relational Universe’ in J D Wirth, E O Nunes, and T E Bogenschild (eds), *State and Society in Brazil: Continuity and Change* (Westview, 1987) 317.

³¹ José Honório Rodrigues, *The Brazilians: Their Character and Aspirations* (University of Texas Press, 1967) 57.

friends can also obtain any ‘special’ treatment from the state and other institutions of prestige.

A phrase that is typically applied by people who expect such special extra-legal treatment is *Você sabe com quem está falando?* (‘Do you know whom you are talking to?’). It is often used by all those who wish to somehow disobey formal rules, and as such can be applied to a vast range of situations. A common application is when a police officer is trying to apply a fine for a parking infringement. In such a case, it is the officer himself who risks being punished if he tries to enforce the law.³² Another phrase is *filhinhos de papai* (the father’s dear sons), an expression which implies nepotism and abuse of influence.³³

Basically such phrases are adopted when someone is trying to impose their will on other individuals, and the law. It is not so much that the person declaring exemption from the law in question necessarily views it as being wrong or unfair; it is just that he believes the law does not apply to a person like him. To obey it would be beneath him. The premise is that he possesses the privilege of being ‘more equal’ than others, and so exercises his prerogative to ignore the law with impunity and utter arrogance.

In Brazil, social status is far more important than legal protection, because law is generally perceived as not being necessarily applied to everyone. Unlike a typical American citizen who would use the law to protect himself against any situation of social adversity, a Brazilian citizen would instead appeal to his social status; respecting the law in his country implies a condition of social inferiority and disadvantage that renders one subject to

³² José Murillo de Carvalho, *Pontos e Bordados: Escritos de História e Política* (Universidade Federal de Minas Gerais, 1998) 135.

³³ Robert M Levine, ‘How Brazil Works’ in Levine and Crocitti (eds), above n 26, 406.

it.³⁴ The fact that many people often consider themselves above the law may be a legacy of the institution of slavery infecting contemporary Brazilian society. According to Joseph A Page:

There are... societal ills that can be traced at least in part to slavery. For example, the slave owner could do as he pleased with his slaves without having to answer to anyone for the consequences of his actions. The master-slave relationship replicated the medieval relationship between Portuguese king and his subjects, and it came to define the link between the powerful and the powerless in Brazil... Indeed, a sense of being above the law became a prerogative of the nation's haves. The notion of impunity – the avoidance of personal responsibility – became deeply ingrained in Brazilianness and has proved a barrier to development.³⁵

As can be seen, one explanation for the devaluation of legality in Brazilian society is the legacy of slavery. This hypothesis posits that slavery may have contributed to a low value being placed on compliance with legal rules. While slavery was abolished more than a century ago, in May 1888, a master-slave mentality may still permeate Brazil's social relations. This sort of mentality, explains history professor José Murilo de Carvalho, is responsible for the mixed nature of the Brazilian individual which he describes in the following terms:

Master and slave live together inside him. When occupying positions of power he exhibits the arrogance of a master, when outside power he oscillates between servility and rebelliousness. A true citizen conscious of his [legal] rights and mindful of the rights of others did not develop... This

³⁴ Carvalho, above n 32, 277–8.

³⁵ *Ibid* 235.

cultural trait may help to explain the persistence of [social] inequality whose major victims are the descendents of the former slaves.³⁶

If the powerful uphold the law only when it suits them, other members of society will endeavour to do the same. In an important survey conducted by DaMatta in the mid 1980s, citizens in Brazil were asked how they would classify a person who obeys the law. The common answer was that such a person must be an individual of 'inferior' social status. But when asked about a wealthy person who wishes to obey the law, the common answer to this situation was that this person is a *babaca* (fool). DaMatta concluded from his empirical research that in Brazil, 'compliance with law conveys the impression of anonymity and great inferiority'.³⁷ Hence, the idea that laws should be applied indiscriminately clashes with deeply rooted values in Brazilian society.

On the other hand, it is universally known in Brazil that some bureaucratic 'inconveniences' can only be solved through the extra-legal 'favours' provided by public servants in state agencies. Indeed, part of the importance given to relationship ties stems therefore from the failure of the bureaucratic sector to work satisfactorily. State agencies can, of course, work quite well, but only for those with the right connections.³⁸ Brazilians, therefore, have needed to place a stress on direct personal relations that are based upon liking rather than on the formalities of the law. As the late historian José Honório Rodrigues observed, in Brazil, 'personal liking is

³⁶ José Murillo de Carvalho, *The Struggle for Democracy in Brazil* (University of Port Harcourt, 2000) 8.

³⁷ DaMatta, above n 30, 317.

³⁸ Charlotte I Miller, 'The Function of Middle-Class Extended Family Networks in Brazilian Urban Society' in M L Margolis and W E Carter (eds), *Brazil: Anthropological Perspectives: Essays in Honor of C Wagley* (Columbia University Press, 1979) 136.

above the law'.³⁹ And so the familiar Brazilian maxim: '*Para os amigos tudo, para os indiferentes nada, e para os inimigos a lei*' (For my friends, everything; for strangers, nothing; for my enemies – the law!)⁴⁰

V THE 'JEITO' – INSTITUTIONAL BYPASS OF LAW

American historian Robert M Levine, director of Latin American Studies at the University of Miami, has made the interesting comment that Brazilians are a kind of people who 'pride themselves on being especially creative in their array and variety of gambit suitable for bending rules'.⁴¹ In fact, they have so much pride in it that they have elevated the bending of legal norms to the status of a highly prized institution: the *jeito*.

This term can be roughly translated as a 'knack' or a 'clever dodge'. *Jeito*, explains Page, 'is a rapid, improvised, creative response to law, rule, or custom that on its face prevents someone from doing something'.⁴² It always involves a conscious act of breaking formal rules so as to 'personalise a situation ostensibly governed by an impersonal norm'.⁴³ According to sociologist Fernanda Duarte:

[Jeito]... is inherently personalistic. It requires a certain type of 'technique' involving the conscious use of culturally valued personal attributes (eg: a smile, a gentle, pleading tone of voice); it seeks short-term benefits; it is explicitly acknowledge and described by Brazilians as part of their cultural

³⁹ Ibid 57.

⁴⁰ DaMatta, above n 30, 319.

⁴¹ Robert M. Levine, *Jeitinho Land* (January 1998) Brazzil <<http://www.brazzil.com/blajan98.htm>>.

⁴² Page, above n 17, 10.

⁴³ Ibid.

identity... So deeply entrenched is this practice in Brazil that it has become intertwined with constructions of Brazilianness.⁴⁴

One must become fully aware of the reality of *jeito* in order to properly understand the Brazilian legal system. Whereas the bending of legal rules for the sake of expediency occurs, to a certain degree, in any country of the world, Brazil has curiously institutionalised it. The institution of *jeito* is, therefore, the uniquely Brazilian way of achieving a desired result amid the adversities of the formal legal system.

The social mechanism known as *jeito* can be adopted in many legal and non-legal situations. A *jeito* can be applied, for instance, when the queue in a bank is too long and a person argues that he cannot wait for his turn. Lawyers can also apply it in the form of a ‘favour’ (legal or illegal) requested to court employees. Finally, a *jeito* can also be granted by a public inspector who condones the failure of a company to comply with a statutory provision which is somehow considered to be uneconomic, unjust or unrealistic.

Because of the many instances in which *jeito* can be applied, the bypassing of legal norms has become more the rule rather than the exception in Brazil. In fact, the bending of laws bears no stigma in the country if it acts as a solution to unfair laws or absurdities of bureaucracy. *Jeito* means, in this situation, figuring out a fair solution over such inconveniences, acting as a tool by which people can avoid the many obstructions and barriers the convoluted legal system places in their path. It can be seen society as a

⁴⁴ Fernanda Duarte, ‘The Brazilian Jeitinho as a Structural Fix: A ‘Snapshot’ from an Urban Sustainability Partnership Program’ (Paper presented at the X APROS International Colloquium, Oaxaca, Mexico, 7–10 December 2005) 3–4 <<http://aeo.uami/apros/papers/043.pdf>>.

‘fair’ solution in the face of the unreasonable barriers created by the highly complex and convoluted legal system.⁴⁵ As Rosenn argues:

The *jeito* may be considered a way of temporizing to avert, or at least postpone, civil strife. By preserving the façade of legitimacy in the face of rapid social and economic change, the *jeito* has been invaluable in enabling the Brazilian system to operate without violent conflict.⁴⁶

Although *jeito* has such understandable justifications, it nevertheless produces quite undesirable consequences. There is no doubt that a system that features such an endemic and astonishing level of informality is obviously inimical to the generation of the rule of law. As Rosenn points out, [o]nce the principle that officials and private citizens may reinterpret or ignore laws they deem overly restrictive or unwise is condoned, its limitation is extremely difficult. Unjust, discriminatory law enforcement and the breakdown of legitimacy may well be the result’.⁴⁷ Indeed, when Brazilians simply ignore laws they deem restrictive or unfair, ‘unjust discriminatory law enforcement and breakdown of legitimacy may well be the result’.⁴⁸ The cost of the constant resort to *jeito* is therefore widespread disregard for the Brazilian legal system.⁴⁹

Of course, such a reality of *jeito* tends to favour the wealthier and more powerful elements of Brazil’s society. Although anybody can request a *jeito*, one might deduce that a rich person has obviously more *jeito* than a poor person, in the sense that it is far easier to obtain a *jeito* if one can

⁴⁵ John Linarelli, ‘Anglo-American Jurisprudence and Latin America’ (1996) 20 *Fordham International Journal* 50, 7.

⁴⁶ Rosenn, above n 1, 548.

⁴⁷ *Ibid* 545.

⁴⁸ *Ibid*.

⁴⁹ *Ibid* 544.

somehow reward the person who is providing it.⁵⁰ Moreover, *jeito* is often entwined with corruption, because ‘some civil servants become aware of a law’s uneconomic and unjust aspects only after their palm has been greased’.⁵¹ Bribery is indeed the common recourse to *jeitos* not otherwise provided by personal acquaintance.⁵² According to Robert M Levine:

Jeitos fall halfway between legitimate favours and out-and-out corruption, but at least in popular understanding they lean in the direction of the extralegal. Favours, in addition, imply a measure of reciprocity, a courtesy to be returned. One never pays for a favour, however; but a *jeito*, which is often granted by someone who is not a personal acquaintance, must be accompanied by a tip or even a larger payoff.⁵³

VI CONCLUSION

This article is a basic attempt to explain relevant aspects of Brazil’s society and legal culture. It focused on explaining how the rules of society can differ remarkably from what one may have supposed had he, or she, simply looked at the statute books. Whereas, in all countries, we can observe gaps between law and social practices, the circumvention of laws in the country is so extensive that it has become institutionalised by means of *jeito*.⁵⁴ It is impossible therefore to understand the obstacles facing the realisation of the rule of law in Brazil if we confine ourselves to a purely legalistic and less sociological analysis of the country’s legal system.

⁵⁰ Carvalho, above n 32, 322.

⁵¹ Rosenn, above n 1, 516.

⁵² Levine, above n 33, 403.

⁵³ Levine, above n 41.

⁵⁴ John C Reitz, ‘How to do Comparative Law’ (1998) 46 *American Journal of Comparative Law* 67, 630.