

10-1-2001

O Jeito na Cultura Juridica Brasileira, by Keith S.
Rosenn

Norman Nadorff

Follow this and additional works at: <http://repository.law.miami.edu/umialr>

Recommended Citation

Norman Nadorff, *O Jeito na Cultura Juridica Brasileira*, by Keith S. Rosenn, 32 U. Miami Inter-Am. L. Rev. 605 (2001)
Available at: <http://repository.law.miami.edu/umialr/vol32/iss3/8>

This Book Review is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

BOOK REVIEW**O JEITO NA CULTURA JURIDICA
BRASILEIRA****by Keith S. Rosenn****(Rio de Janeiro: Renovar 1998)***Reviewed by Norman Nadorff**

The best way to convey the remarkable insights contained in this concise masterpiece is by describing the way Brazilian lawyers react to it at first and second glance. First comes the approving grin for the way the title "says it all." Next follow the confirmatory nods and contemplative chuckles as the reader thumbs through the pages. Finally, upon learning the nationality of its author, the following remark emerges, "why does it take a *gringo* to point out to *brasileiros* what we should have noticed ourselves?" Of course, the author is not a typical *gringo*, but rather a uniquely insightful U.S. professor who has dedicated a major part of his career to analyzing the enigmatic legal culture of the country that he so obviously loves and admires.

Unfortunately, *O Jeito* has not yet been translated into English.¹ If it were, the translator would no doubt wish to

* Senior International Counsel, BP Americas Inc. The Author would like to thank his family for their constant and understanding support during frequent travels to far-flung lands. He also acknowledges those who inspired his interest in Brazil and provided him valuable insights before, during and after his Fulbright Fellowship there during the early 1980's, including, Professors Marcia Leite, Robert D. Herron, and Keith S. Rosenn, as well as his colleagues Ricardo C. Salles and Rogerio Alves de Barros."

include a lengthy preface explaining the many meanings and nuances of the word, *jeito*. This and numerous other equally untranslatable Portuguese words enhance the unique character and texture of this rich language. A prudent translator would not even attempt to translate this moving target of a word, as its English meaning constantly changes, depending upon the context. A more reasonable approach would be to simply insert *jeito* into the English translation, after adequately establishing its origins and meanings.

A book review such as this can accommodate only a truncated explanation of the term. Reference to even the most respected Portuguese/English dictionary is futile, as none of meanings of *jeito* proffered (including, *aptitude, dexterity, skill, manner, kind, appearance*) even approximates the *jeito* referred to in Professor Rosenn's book. Suffice it to say that in the present context, *jeito* can mean, among other things: *a way around, a solution, a favor received (out of compassion, friendship or corruption), or a loophole*. In short, *jeito* is a uniquely Brazilian word that reflects a uniquely Brazilian way of achieving a desired legal result.

A non-Brazilian lawyer might well conclude from its title that *O Jeito* is some sort of esoteric etymological analysis of the term. Nothing could be farther from the truth. Rather, the book reveals how in many ways, the Brazilian legal system *revolves around the jeito*, rather than the *jeito* being a separate or discrete aspect thereof. The author effectively demonstrates that one must appreciate the *jeito* in order to understand the Brazilian legal system, much as one needs to understand *stare decisis* in order to understand Anglo American law. This point is so fundamental that *O Jeito* should be required reading for any foreign lawyer wishing to acquire a basic understanding of how the Brazilian legal system works, and why, in some respects, the *jeito* manages to work relatively well.

O Jeito not only describes how the *jeito* permeates the Brazilian legal system, but also explains, in a very entertaining fashion, the historical context in which the *jeito* arose. The Portuguese fondness for form over substance, rooted firmly in

1. Parts of the book appear in English in *Brazil's Legal Culture: The Jeito Revisited*, 1 FLA. INT'L L. J. 1-43 (1984).

Roman and Canon law, resulted in an incredibly formalistic legal system. Similar to the Soviet system, where the workers pretended to work, and the Government pretended to pay them, under the Portuguese legal system, the Crown pretended to rule and the subjects pretended to obey. Thus, 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 virtually from the start. Unfortunately, modern day Brazil has inherited a similar formalistic practice—upon identifying a problem, the Government often enacts unrealistic legislation and then moves on, erroneously equating laws with solutions. Brazilians actually have an expression to describe such *desencontros*²—“*A lei não pegou*”(the law did not take hold). Such legislative shrugging of the shoulders ignores a fundamental problem—unworkable laws that do not “take hold” must nevertheless be digested, agonized over, and perhaps ultimately ignored, all at a high cost to society in the long run. In recent years, legislative reforms have somewhat reduced this problem, although significant room for improvement still exists.

One might presume that the *jeito* has a uniformly negative connotation, since the *jeito* basically circumvents the legal system and the original intentions of the legislator. In many instances, this is simply not the case. In point of fact, the *jeito* can have a negative, positive or benign effect on the legal system, depending on the particular situation. On the one hand there is the *jeito* that results directly from outright corruption (bribe taking), or from generally accepted, yet technically illegal “administrative fees.” There is no doubt that over time, a system that endemically operates on this level is doomed to inefficiency and waste. As Professor Rosenn notes, “[t]he corrupt aspects of the *jeito* inhibit the efficiency of the public sector in general, and specifically, the efficiency of the administration of justice.” In effect, the public quickly loses faith in a system that can be easily subverted, thereby eliminating any concept of a level playing field.

Running in parallel with the corruptly generated *jeito*, is

2. “*Desencontro*” – another uniquely Portuguese word meaning, roughly, “an event that should have happened but never did – or in some contexts, “a failure to connect.” See, *Historias do Desencontro (Stories of the Conflict)*, Lygia Fagundes Telles, Rio de Janeiro, Olympio (1958), for a delightful collection of short stories that bring to life the meaning of the term.

another form of *jeito* that effectively corrects fatal flaws in the excessively formalistic Brazilian legal system. According to Rosenn, “[w]hen the formal legal structure presents serious impediments for development, the *jeito* can play a positive role by permitting obstacles to be removed at a relatively small price.” A good example of this is the way in which Brazilians have created an ingenious device known as a “*consorcio*” for financing expensive consumer durables, such as automobiles, during a period of high inflation and astronomical interest rates. Buyers enter a form of lottery system in which they agree to pay a determined number of monthly quotas, sufficient to buy enough cars over time so that each participant eventually receives one. The timing of actual receipt of cars by recipients is determined by a monthly lottery. To a non-Brazilian accustomed to abundantly available car financing, such a system would be totally unacceptable. For a Brazilian wanting his first *carro zero*³, this imaginative but bizarre system is certainly better than no affordable financing system at all.

As the saying goes, there is more than one way to skin a cat, and Brazilians, by necessity have become excellent cat skimmers over time. The *jeito* has proven to be an effective skinning tool, allowing the Brazilian economy and society in general to function, and at times even thrive, notwithstanding the formidable hurdles created by an overly formalistic legal system. Naturally, efforts should continue to decrease the reliance on the *jeito*, and to eradicate its more insidious forms, through thoughtful and effective reforms. In the end, however, the *jeito* will never totally disappear, any more than will other venerable and uniquely Brazilian institutions such as *bossa nova*, *feijoada*, and *carnaval*. Nor should it, since in its positive form, the *jeito* is a minor yet essential ingredient in a complex and savory recipe that makes Brazil the vibrant, alluring and incomparable nation that it is.

3. “Zero car” (a new car — i.e., an automobile with no mileage).