

## PRESENTATION TO THE CONGRESS IPSA CHILE 2009

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### SIMPLIFICATION AND QUALITY IN STATUTORY LAW

Being the legislation the most important output of the political process, in recent times it has received special attention. There are two technical issues related with simplification of the legal system: the review and determination of the existing laws. If all this temporary accumulated laws cannot be eliminated, you can't say that you know which ones are in force and which ones are not (this we called legislative pollution). This is an important point. It has more to do with the ordering syntactic, that with semantics; and for that so many operations can be done automatically with the aid of computers.

The other issue has to do with the quality of legislation and refers to an old legal concept called *efficiency* and relates to compliance with the laws and their verification process.

#### 1. What is the legislative simplification?

##### 1.1. Introduction

Legislative simplification begins to be an important issue throughout the world due to some relevant facts: 1. the idea of simplification that toured many countries of the world from the 70s. 2. The trend of this type occurs in other branches of law as happened initially with tax law. 3. The problem of legislative pollution<sup>1</sup> produced and perceived in all legal systems of the western and eastern. 4. The determination of the European Union to establish committees of legislative simplification since the early'80s. 5. The solutions, which for some parliaments it began to improve the quality of law and policy that the OECD had developed through the AIR since 90s. 6. The ferment that runs between scholars and those involved because of their function or their work to resolve the legal tangle that drowns from supranational systems to local regulations.

Law operators and citizen are overwhelmed by the multitude of laws. They do not know which laws really exists. Lawyers, law operators and citizens across the globe, that's very frustrating for all of them.

A big multitude of laws it's call legislative pollution, different is "legislative inflation" - a term that has become very usual -. This is the disorderly growth of an

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<sup>1</sup> Antonio A. MARTINO, "La contaminación legislativa," Anuario de Sociología y Psicología Jurídicas, Barcelona, 1977, ps. 47-63.

element and the impossibility to eliminate waste. Meaning: Laws which are abrogated for other laws in a tacitly way, or those laws whose goal have become obsolete. A system can be polluted at not inflationary, and vice versa.

What can we do to resolve this issue? There are several ways to attack this scourge. The first is to try to reduce the number of laws which are embodied in the slogan: Legislation zero growth. Although that's not a possible objective, it marks a trend, but not enough. To put some order, you create a unique text, which is a compilation of laws from one sector of the legislation, neat and clean in some cases, are published as a criterion to follow in that area. Consolidation: This is the most effective but very complex and requires time and effort: it is by taking a field of law and reviews it in all legislative universe (*sensu lato*: laws, decrees, etc.). And remove everything which has become obsolete, or that its goal was already met or that was inconsistent with any rule from the branch itself. This is a mayor surgery that reduces dramatically the number of laws that effectively are in force but it is not approached with great caution or not addressed as it requires long times something unusual in the politics of the day to day governing our communities

The constant issue has been to obtain (get) that the law in force is a much smaller subset of the set up right, because unless it is abrogated or repealed law explicitly or implicitly. Hence the principle of simplification would be to do (build) an inventory of existing laws. But it is a much bigger task than it seems to enunciate.

Despite the diversity, the concepts on the simplification of legislation are, in general, reasonably acceptable to the definition in the glossary of the European Union. "The simplification of legislation aims to lighten the legislative instruments through rigorous application of the principles of necessity and proportionality that aim to contribute in particular the consolidation and codification of legislation."

Obviously, the simplification of legislation is linked to two of the most well known for its procurement, which are the consolidation, codification and its corresponding (the) building (of legislation). "The consolidation of legislation is the adoption of a new legal instrument which, when a new modification in a basic act to incorporate this change on the baseline, repealing it. Contrary to the encoding, involves substantive changes. It also allows us to provide an overview of a legislative matter. The new legislation is published in the Official Journal<sup>2</sup>. "Indeed the notion of consolidation comes from the European Union; while it has been modify a particular rule of a normative text, other parts have changes and it is been modified should both be shown simultaneously.

"The codification as it is for the official adoption of a new legal instrument, published in the Official Journal (L series), which incorporates and repeals the acts which are liable to codified (act / s core / s + acts amendment) without changing the core of them. The codification can be:

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<sup>2</sup> Always quote the European Union glossary's.

- \* Vertical: the new legal act includes the basic and those which modify it.
- \* Landscape: the new act into one integrated several parallel basic instruments, but on the same subject, and any amendments thereto. "<sup>3</sup>

"Uniform text" is a term commonly used in Italy, but not used in our country. In France they used a single word to explain this, "code" to indicate either what we call code, or to describe what the Italians call uniform text. Instead it is common to use the term "codification" in Castilian and "codification" in French, to identify the formation process of a "Code".

In English law the words "Codification" and "Consolidation" have clearly distinct meanings. Codification, rarely used, is more general and involves a substantial reform of the law that includes both common law and customary law. Consolidation is a change in the term refers and applies only to statute law, the legislature and would be right in the collection, formal coordination and systematization of existing laws without making substantial changes.<sup>4</sup>

Where there is genuine dispute between the classical and the new vision of Europe's glossary with regard to consolidation.

In Anglo-American and Latin America literature, the term consolidation points to major surgery in the legislation which implies to review all laws to find out which ones are obsolete, which have fulfilled their purpose, which are not the general sense of what is expressly and impliedly repealed by subsequent rules. This type of activity requires guaranteed by a number of rules that scholars set out to improve the quality of legislation in the future but it is essential to follow certain standards in the building and is called Manuals.

The consolidation may be made by the State or by an individual. What matters is whether the end of the work of separating the chaff from the wheat, the laws actually in force, they are a tiny number compared to those created, will be taken as a criterion of "legislation" by the regulatory authority corresponding supranational parliament, congress, regional or provincial legislature or municipal authority. If you do not have the political imprimatur of a legislative authoritative law, is merely a scientific work, which can be used and cited, but lacks the binding force for the legislation. Vale said that consolidation in this tradition of thought involves several actions: it is the main legislative body to give systematicity without changing the rules, the second is to give clarity to speech correcting past mistakes, the third and most important is to remove all laws or parts of laws that had become obsolete with time served, in order to fulfilled or repealed either explicitly or implicitly by subsequent legislation.

In the terminology of the European Union "The consolidation of legislative texts corresponded to a declaratory simplification of Juridical Texts. The inclusion of several

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<sup>3</sup> *Ibidem*.

<sup>4</sup> BRENNA, Ramón, "Tesis del Máster en Ciencia de la Legislación de la Universidad de Pisa", p. 19.

changes in the basic act does not imply approval of a new act. It is simply a clarification that the Commission carries out. The resulting text has no legal effect and may be published, in the Official Journal (C series), not seen or recitals.<sup>5</sup>

Now that we explain the terminology, it's necessary to add that also in the European Union their members are committed to simplifying the task in the sense that we attach to consolidate, coordination and systematization of existing laws without making substantial changes. Where there is genuine dispute between the classical and the new vision of Europe's glossary with regard to consolidation.

Now that we've clarified this, is necessary to add that the members of the European Union also work hard in the simplicity job in the way that we attribute to consolidate.

For example: The June 5 of 2002, the Commission publishes an action plan for "better legislation" and committed to "legislate less but better". The Minister Council is actually making a new work group in charge of apply this action plan.

At the same time this initiative runs, the Convention about the future of the European Union about the institutional reform, established as a consequence of the Laeken Declaration, has a work group dedicated to the "simplification of the instruments and procedures". These members have already drawn the attention of the Convention about the need of intensifies the effort to rework and codify the community law about the need of improving the legislation text, about the clarity of the language and the consistency with the already existing law.

This subject is very complex and broad. We want give a short view, comparing some cases that we know, without claim for completeness, we are going to draft just a first paperwork to add to others about this rich problematic.

## 1.2. The variety

Several authors took this subject till make a really large bibliography, witch for space reasons are resend to a former publication.<sup>6</sup> Many countries have faced the topics of legislative simplification with different criteria. In general it could be say the countries of the *common law* have dedicated particularly to the law language analysis, and actually exists truly applicative treated about it, for example the legislation of the state of Tasmania, New Zealand. In many states of the United States of America, automatic procedure is used for calculation and legibility of the laws, based in a formula for the English, invented by Felch. Consist in the countdown of the phrase in a determinate period and also count the words in each sentence. This usually is good to analyzing already written text, but not for being used before that. Since it has been demonstrated that legislators in that case use the rules to get good results of the Felch formula perfectly, leaving the comprehension so dark, as it's never been used<sup>7</sup>. A

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<sup>5</sup> European Union Glossary.

<sup>6</sup> Manual de Técnica Legislativa del Digesto Jurídico Argentino.

<sup>7</sup> For more information direct to A. A. MARTINO

[http://www.antonioanselmomartino.it/index.php?option=com\\_content&task=view&id=24&Itemid=88](http://www.antonioanselmomartino.it/index.php?option=com_content&task=view&id=24&Itemid=88)

special case is Canada, where legislators have an explicit prohibition to write personally the laws project. The project must pass for a Writers Commission, composed by 15 Anglophones and 15 Francophones. Their duty is to write the law project in the 2 official languages of the country<sup>8</sup>. In Italy there has been an interesting solution to improve the quality of legislation creating a special which takes its name in the Chamber of Disputes. It is a commission formed by 10 disputative. There are five disputative representing the majority and other five for the minority.<sup>9</sup>

Obviously, the adoption from the OCDE of a plan named Puma (Public administration) in side which, there is a special project called AIR (Impact of regulation). This last one change a lot of things, now, there are 38 countries who adopted it. We are going to refer specifically to the Italian case.

### 1.3. Some Particular Cases

The Argentina has treaty this subject since the creation of the law number 24.967, given different models and criteria for making a good and truly legislative consolidation. The first important thing that was made through this particular law, it was establish that in Argentina there are only 26 branches of law.<sup>10</sup>

To make the Argentine Juridical Digest the Ministry of Justice call to public tender, different groups apply.

A union between the University of Buenos Aires and the principal companies of juridical texts publication (*La Ley*, for example) won the tender to do the Legal Digest. The adventure started right there.

In August 1999, the company began its work divided in two groups: one refereed to the drafting of a Legislative Tecnic Manual, and other one, bigger, in charge of revising all the normative texts of the Constitution of 1953. All this is about of a real work of consolidation, as the title say, of the law 24.967.

The first part, coordinated by who's writing, had a group of lawyer-linguists, Italians, Argentine documentary jurists and Italian informatics jurists and members of

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<sup>8</sup> See also Article by Robert BERGERON en A. A. MARTINO, "Estudios sobre Ciencia de la Legislación", Buenos Aires, 2003.

<sup>9</sup>For a better analysis of this unique technical commission, watch the article by Di Capua and Panizza in the volume cited in previous footnote.

<sup>10</sup> Argentine law established that there are 26 subjects (or as he calls them the same law categories). Read "Article 7 - Categories. The laws and regulations that include the Argentine Legal Digest are identified by their category with the corresponding letter, which identified the branch of science of law to which it relates, namely: A) Administrative; B) Customs; C) Air-Space; D) Bank, Monetary and Financial Committee; E) Civil F) Commercial; G) Community; H) Constitutional I) of the communication; J) Diplomatic and Consular; K) Economic; H) Tax; F) Industrial; N) International Private; O) International Public P) Labor, Q) Environment; R) Military S) Criminal T) Political U) Civil and Commercial Litigation; V) Criminal Procedure ; W) Provincial Public and Municipal; X) Natural Resources; Y) Social Security; Z) Transportation and Insurance.

the *Institute per la Documentazione Giuridica* of the National Council of Italian Investigations, which I directed between 1983 and 1992.<sup>11</sup>

The revision of all the laws and regulation decrees has been a tedious but real monumental work made by specialize jurist, directed by Professor Atilio Alterini (general manager). This special crew it was formed by doctors Ramon Brenna (technical manager), Daniel Altmark (executive coordinator), and Horacio Alvarez (Academic manager).

In order to be able to work this enormous gear a new part was created in the building of the Faculty of Law of the University of Buenos Aires. This was possible thanks to the audacity and the tenacity of the dean, Dr. Andrés D'allessio.

In these seven years several presidents and ministers of Justice went through power. However, is correct admit that all public gestations had recognized the transcendental importance of the work, and they kept their support.

The Manual, was finished and delivered in 2001, and it is available in the *Colegio Público de Abogados* of the City of Buenos Aires (9000 copies)<sup>12</sup>. It has 25 definitions, 71 rules and examples of Argentine legislation. It also has a check list, and the theoretical foundations of its redaction. The manual it's already been used by the jurists, and is starting to be a standard of legislation.

The rest of the important work of selection, comparison, elimination of all the obsolete texts, and reorganization, it has been delivered in May by the College of Law to the Ministry of Justice and to the bicameral Commission of 5 deputies, and 5 senators. Now is the Congress the one who has to make a move. They have to decide if they approve and adopt this extraordinary Legislative for not making the same mistakes again.

All this work it have been done according the ideals and procedure mark by law 24.967, conceived for "have a consolidation regime of national existing laws and their regulation".<sup>13</sup>

Nearly 27 thousand laws and 22 thousand decrees were checked, managing to reduce them after 7 years of work to 3700 laws and two thousand decrees, having discarded the laws expressly abrogate, the obsolete ones, and all those abrogated laws or part of them as tacitly abrogated or derogated.

In this moment, the scientific masterpiece it's in the Congress, where a bicameral Commission is examine it, so they could determinate after if it's ok to make a new way of legislation for the Republic.

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<sup>11</sup>Directed by Antonio A. Martino and the team: Carlo Biagioli, Pietro Mercatali, Manuela Sassi, Roberto Brocchini, Maria Cristina Pagano and Silvia Pfarherr.

<sup>12</sup> It can be found online at <http://www.antonioanselmomartino.it/index.php>.

<sup>13</sup>This is the title of the law of the Argentine Statuto the Law Digest.

It's interesting stand out that the regions had started their Digest work in San Luis, Chubut<sup>14</sup>, Rio Negro<sup>15</sup>, and now the city of Buenos Aires and Tucuman<sup>16</sup>. The paradox will be to have all the provincial legislation consolidated and not the national that was made first!

In Germany, the Bundestag and the Bundesrat approve the most important reform in the Fundamental Law of Bonn of 1949. The point of the reform was to cut the numbers of laws that need approve of the Länder for expedite the Legislative's power work, and reorganized work between the Federation and the Länder. The constitutional decision in favor of the Federal State, was taking with the finality of counteract the state centralism.

The constitutional order of the Länder must respond to the beginning of the republican, democratic and social Constitutional state in the sense of the Fundamental Law. This revision of the Federalism, correcting accumulated defects for more than 50 years, has been possible because the consent of the parties members of the Grosse Koalition (CDU/CSU-SPD).

The Federal Estate was blocked due to veto of Bundesrat (Constitutional organ of the Federation and not of the Länder). Despite the constitutional reforms to reinforce the power of the State, the power of veto of the Bundesrat reached 60 per cent of the federal legislation up to coming to the absolute blockade of the last governments of the chancellors Kohl and Schröder. As Länder election produced in different years, while a legislature form Bundestag is running, the changes that origins in the majority of the länder parliaments modify the composition of the Bundesrat and condition the legislative activity of the majority that the Federal Government poses. The vow emits uniform way in the Bundesrat, meaning, together, and they does not have independency. When members of the Bundesrat vote, they must follow the instruction of the respective Länder's government.

The coalition of both major parties, leading by the chancellor Merkel, has been capable of making important constitutional reform that strengthens to the federal State. The länder government has given the possibility of veto the legislative proposal for bigger competitions in work areas like welfare, education or a regimen of officials in the recruitment and remuneration. The session of the educative competition has been specially criticized, instead of have maintained a uniform system for all Germany. On the other hand, the green ones, fear that welfare, icon of the German social politics, be relegated to a second place.

Many constitutional reforms had been realized without putting in danger the unity of the State, which is guarantee with the Ewigkeitsgarantie. Any constitutional modification which affects the organization of the länder Federation is not allowed. In

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<sup>14</sup> For more information go to [www.legischubut.gov.ar](http://www.legischubut.gov.ar)

<sup>15</sup> It is the Provincial (State) Law 4270, Legislative Consolidation since November 29 of 2007.

<sup>16</sup> For more information go to <http://www.hlt.gov.ar/noticias/nota93.htm>

the beginning of their participation in the legislation, to the protection of humans dignity or State structures its self. (arts. 1, 20 y 79 LF). The Bundestreue has always inspired the political parties in the constitutional reforms. On the other hand, the Fundamental Law states that the political parties which tend to distort or eliminate the existence of the German Federal Republic, *are unconstitutional*. (Article 21 LF). The Constitutional Court declares unconstitutional two political radical parties in the late fifties. (SRP en 1951, BVerfGE 2, 1 ff y KPD en 1956, BVerfGE 5, 85 ff). The political party near the Nazism NPD rises at present serious problems of constitutionality

In Spain, the Constitution must be reform to fit in the new realities and develop in all his extension. It has been only modify in one occasion to fit in the exigency of Community Law (art. 13.2 CE). Besides, the history of Spanish constitutionalism, the constitutions has not been reformed; instead, they have been replaced for other ones. Like it happened with Constitutions of years 1812, 1834, 1837, 1845, 1869, 1876, 1931 and 1978.

If, like in the German case, is capable of link together the fitness to the new realities with the essential maintains, without put in risk the unit and structure of the State, and also protection of humans dignity, the system will allowed the simplification and reduction of the norms actually existing.

The next Constitutional reform, it should make reference to a European construction, and to the Hispano-American. Behave toward the territorial model with a mention to the autonomous communities, achieve a balance between the State and the autonomous communities, reaching in this way the maximum decentralization and achieve reduce the national laws as the autonomous. Even, independently of the constitutional reform, It could adopt a system very similar to the Argentinean to face a truly digest that cuts of the Spanish legislative contamination.

In Peru, the Chamber of Deputies, also announce a Legislative Simplification Commission, but it is hard to find the documentation.

- I. Having certainty of the work realized between 1988 and 1989, you can see the amount of activities truly commendable.
- II. The Commission of Legislative Simplification and Regulation of the Congress is installed in August 6 of 1998, and during the first legislature 1998-1999 a total of 15 ordinary sessions had taking place.
  - A. Quality control has been made of all the titles of the norms in the yearbooks and the revision of the legal texts, meaning, it had compared if this texts and images match with the original of the law.
  - B. Since November 11 of 1998, it republishes on Internet the System of Digital Document about Peru's Legislation (*Sistema de Archivo Digital de la Legislacion Del Peru*). This one is available for national and former user.
  - C. It has been incorporated all the dates of creation, promulgation and publication for all the Laws in Peru.

D. An identification process of the states norms is being done. The following periods has been analyzed.

- From 1904 to 1924: Law 1 to 5167.
- From 1955 to 1975: Law 12.385 to 13.000.

In Peru, Alistair will repeal 20 thousand laws in three rounds. The political decision is taken. Before July, the Congress will drop about 20 mil-laws of the almost 34 thousand rules that are currently part of the national legal system, because these just are no good.

This one will be the first reduction of the current legal normative spectrum, since after this purge there will be a more exhaustive review of each one of 14 thousand surviving laws, since our final aim is that in our legal classification only more than five thousand procedure remain in force -possibly for the summer of 2010- no more than five thousand rules.

As the Congress member Juan Carlos Eguren said yesterday to The Commerce, (of the ranks of National Unity), and Santiago Fujimori, (Fujimori's Parliamentary Group), that the Congress intended is to help clean up the current statutory regulatory system that was branded "lush and disorderly" - those provisions that already served its purpose.

The elimination of these "garbage" laws - since Fujimori qualified these as a useless procedure - it will be done in three shifts. The first will be next March, with the purge of 2900 and the other two laws purges will occur in May and July next, coinciding with the end of the current parliamentary term.

Among the rules, anyway not form part of the current legal spectrum, are about four thousand laws dictated by previous Congresses, with the only purpose of regularizing the promotion of generals, for example. The chairman of the Justice Committee of Congress, Juan Carlos Eguren (UN), explained that the relationship of these rules shall be expressly repealed by the legislature and shall be published in a separate special gazette "El Peruano" for the purpose of receiving comments, suggestions or probably to detect some mistakes in the creation of this list.

When asked, the expert in constitutional law Natale Amprimo Plá appreciated the parliamentary initiative, but was immediately asked who is qualified to act out what is current or not.

"While this measure is prudent, it should be the result of coordination between branches of government: Government, Congress and Judiciary, as well as the Constitutional Court, because there may be discrepancies between the two powers of the State in which a rule is in effect or not.<sup>17</sup>

As can be ascertained it is difficult to obtain the theoretical sources of this work.

There is no doubt that the Commission has read my definition of pollution

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<sup>17</sup> "El Comercio" Lima, Perú. Monday February 23 2009

legislation since the term "spam" legislation, which is my definition of that term, but attempts to communicate with the Commission have been in vain<sup>18</sup>.

Total identify norms, 6.061. This last ones, refers to the following matters.

- The expansion of the Digital Archive Systems about Peru's Legislation, for the work of the Commissions and the administrative office of the Legislative Palace, Complex and Azangaro's Offices and Reyser, thought the installation of the programs of support like the Acrobat Reader, Internet Explorer 5.0 and modulo of quick question.

E. The inscription and registration before INDECOPI has been requested, of the Digital Archive of Laws of Peru, to the name of the Congress of the Republic. This paperwork is in charge of the Officially Mayor.

II. The initiatives for the improvement of the Regulatory of the Congress had disserved priority treatment which explains the need to do the necessary adjust for a permanent dynamic legislative work, and so, trough the opinion of the Commissions, several useful modifications to the Congress Regulatory has been made. This modification has been finally incorporated to a new Unique Ordered Text.<sup>19</sup>

The Italian situation is deeply interesting because of the initiative that they put in to it. That's why we are going to dedicate them a very large space. While the numbers of laws that once reached the 200 thousand, is ridiculous, likely the 32.000 that they have now are too many, interspersed of course, and passage of a monarchy to a democracy, with a dictatorship in the mean time.

Each country and each juridical culture, face this subject with the best strategy that they can come up with, the best way possible. The Italians give this the name of Legislative Simplification, taking it from a primitive law of simplification of the administrative procedures which carries the name of his proponent: Senator Bassanini.

Two simplification laws have been given. The first was the 229 in the 2003, and the last and second, the 246 from 2005. It was published in the *Gazzetta Ufficiale* shortly after the publication of the law of budget for the 2006/7 which had one article and 612 points, why? This way, with just one vote all the law is liquid. The Legislator gives a terrible example of legislative drafting.

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<sup>18</sup> But have proof they have received my orders for clarification. Is remarkable the ignorance of the journalists who were dealing in the same newspaper there is a box of Jorge Saldaña Ramírez "What is a law? It is to ensure the welfare of common citizens. It is a key tool to meet the needs of a society. An important aspect in the process of recommendation of any law is the cost-benefit analysis of the future standard. For some time progress was made in Peru with the computerization of the national legal system. Now we are about to attend another angle of the so-called reform of the state with legal simplification so that ordinary people know their duties and defend their rights. Of course when this sort of universe in national legal gift of transparency and legal certainty - passing more laws will continue, but hopefully with better legislative techniques we continue reading the paragraph that is always repeated across proposed law? "That is the manual for the future. The question is whether they have manuals to simplify existing laws continue to approach?"

<sup>19</sup>For more information go to <http://www.congreso.gob.pe/comisiones/1998/simplificacion/informe.htm>

This means that the same legislator which gives laws for simplification because he knows that it is essential, actually does not have any problem in using all the little tricks he knows when they are politically useful.

The law is very complex, in its first part it handles a very interesting subject, but in Italy, is very disordered: The AIR, meaning, the impact of regulation. The OCDE has started up a project named PUMA (*Public Administration*) and inside it, there's a subproject about the quality of legislation, measured with economical criteria. Is a subject of the law's quality, and now there are 38 countries that adopted it, and they are already experiencing the results. The goals and achieves that every country make, is shared with the other ones.

In Italy the implementation of this program has been thought article 5 of law 50 of 1999. But still it is in experimental state because the Parliamentary commission has been using it only twice during all this years. What matters to Air, which its slogan is "know to deliberate" is to introduce criteria of empirical knowledge in all legislation areas. In fact, it is necessary to recognize that Regions<sup>20</sup> are those entities who take care of the application of the program.

Article 14 of law 246 is the last attempt to give a concrete actuation to an instrument which has been discussed for years, and that always has more demonstration sent, than aplicated. Without any doubt, this tool is extremely valid, but while Anglo-Saxons countries have an old application experience, in Germany and France there's still a little bit of shock, especially about the application of the calculus of the Impact of the Law.

In a last effort, the Italian legislator disserve particular attention given that for the very first time he appealed to a discipline with general vocation, and above all, of primary range. In the future, the results will be seen.

Taking into an account article 14, point C, number 1 of the commented law, the Air consist in the "preventive evaluation of the hypothesis effects and normative intervention that falls over the citizen activities and business. Also handles the organization and working of the public Administration through comparisons of alternatives options."

The author of this note completely agrees with the Air introduction in the previous contemporary studies and successive legislative creation. For this reason you can find a check list in the Argentine Digest Manual. But if you are taking into an account the definition recently provided, you must tell that it is not a good example of "simplification": Is an important corollary, but separate. Beside there is a problem of costs: this law establish Air for all primaries and secondary norms. Germany reveals that a correct *Gesetzesfolgenabschätzung* costs between 30 and 300 thousand Euros.

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<sup>20</sup> They are comparables to Americans States.

Because of this, it is reasonable to make a distinction between different norms. Some justifies it, and some don't.

Italy followed the criteria of article 24 of Spanish law number 50 of 1997 which foresights AIR application to all norms emanated from the executive chamber indiscriminately. For this reason it would have been better to separate these two things. But let's go back to the main topic of simplification.

Coordinate actual law and the old one with legislative tours to the present, you can determinate a series of dates that for Italy will be turning points.

1. December of 2007. NIR's conclusion: NIR is for "*norma in rete*", and the Italian technique answer to the plurality of juridical banks in the peninsula: 64 to the time of birth of NIR, which proposed us the only Italian Juridical Portal. It's true, it is about a big database bank system, and it does not eliminate any of this, allow you to consult them with an only sicker system. Besides NIR is supported in a software election, this allows a great classification. This Software systems is call XML and it's based in definitions of different kind of documents (*the Data Type Definition*).<sup>21</sup>

In reality it is about the activation of article 107 of law 388 of 2000. The budget law of 2001 establishes in the Presidency of the Ministry Council, a trust fund destined to the financing of initiatives promotions of the information and classification of the existing regulation, with the idea of getting things easier and cost free for the citizen. Also provides tools for the activities of legislative reorganization for which 5 billons of old pounds (2700 thousand Euros) were destined.

2. December 2007. Using these resources to form the NIR, now the Government undertakes to indicate in a relationship that will transmits to the Chambers before two years of having the law under effect of the state disposition, showing the incongruence and antinomies of the norms.

3. December of 2009, the "guillotine" norm starts to work. We will discuss this norm right away.

4. December of 2011. End of the review period for those decrees made to confirm or revise all others who establish an extension for the "guillotined" law, except for the codes, the texts and the reforms made By the European Union.

The "guillotine" law works this way: All laws that were approved before 1970 are automatically abrogated if there's no special law that recognizes the validity of such law. This can be done till December of 2009.

This law exclude of this abrogation "disposition of the Civil Code, Civil Procedures, and penitentiary Procedures..." This guillotine norm does not covered cases like relatives to obligations under community norms. These ones are UN-abrogates.

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<sup>21</sup> A *Check list* is foregoing of the AIR, although the last one is more complex and complete.

As the first legislative simplification law, like the current 246/2005 do not establish the adoption of some kind of rules about abrogation, it center seems to built the elements of legislative reorganization using what is known as the sector codes.<sup>22</sup>

The first wave of legislative organization produced by the first simplification caused a reaction of the doctrine and of the State Counsel<sup>23</sup>. Point 1 of law 246 allows the Government to complete the process of each subject, if keep in between the limits of article 117 of the Constitution second point “emanating even contextually the legislative decree of reordering an organic recollection of the regulatory norms which rule the subject itself, if that’s the case, appropriate it for the new discipline of primary level and simplifying” It can be intuit that what’s more important here is the code sector, and this new law introduce a big important letter in point 3 of article 20 of law 59 of 1997, a letter, in which authorizes the Government to operate trough legislative decrees which contain the sector codes, the “formal coordinating and substantial of the texts of current dispositions, making the necessary modification to guarantee the legal consistency, logic, and systematic of the norm, and in order to adapt, update and simplify the normative language.

Like Lupo<sup>24</sup> said, the problem it is not the traditional: distinguish between codes, unique texts and compiled unique texts. The real problem is to see if the “sector codes” itself, are some way or how, distinguished of the legislative decrees that can call reform or whatever of which proceed to intervention of profound revision of current discipline, inspired by different principals, for which the current law exists.“

This distinction seems reformed in favor of a deeply reform transform of a simple revision with the faculties which gives the government about a year after release the “code sector”, the emanation of legislative decrees, integrative and corrective refer to delegations inside law 246/05 as the ones inside law 229/03 in article 18.

It’s necessary to say that all government decrees should be adopted in a complex procedure which provide a binding opinion witch the bicameral commission refers to in article 14, point C number 19 which took the place of that one provided by law 59 of 1997. Must be respected the several principals and those not that clear indicates in article 14, point C, number 14 and the articles 20 of the law 59 of 1997.<sup>25</sup>

In Italy a constitutional reform took place, with the V Title about the relation between National State and Regions: substantially the relationship between this two turn itself around. Till the reform, everything that was not expressly handover to the Regions, it belonged to the National State. Since the reform, the systems turn itself around taking a solution familiar to the old article 104 of Argentine Constitution: The

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<sup>22</sup> Note that the very title of the Act is "Simplification rules and Systematization ".

<sup>23</sup> Apparently 2 / 2004 of October 25, 2004. See Lupo, Nicola, When proposing statuto lay of simplification, but it was not possible. A proposito della legge 246 of 2005 (Legge di semplificazione 2005)" in Rassegna parlamentarism, 1, 2006, Jovene editore, Roma

<sup>24</sup> See previous note.

<sup>25</sup> Lorenzo CUOCOLO, "Aspetti problematici della legge di semplificazione per il 2005" in [www.associazionedeicostituzionalisti.it](http://www.associazionedeicostituzionalisti.it).

Regions hold all legislative powers that haven't gave expressly to the National State. But one thing is to start from states and unite them in a federal constitution, and a very different thing is to start of a unitary state, with the local autonomies, but without a big, strong and clean juridical structure.

What's left to know is what can each of us do. The regions dedicated to reform their respective statutes, along the constitutional reform, but still more complete strategies from the legal point of view are needed to make effective a lot of the measures already existing in the Regional Statutes.

The legislative simplification in which the Regions had practiced with more enthusiasm and conviction of the national government it is a good proof of the possible collaboration to give the country a certain system existing rules.

The Constitutional Corte said that article 117 of the constitution cannot be interpreted delineating the rigid competitions between the National State and the Regions. In general the major part of the laws that legislators are making in this moment, are related, with several competitive areas: State competence: the competence, the tutelage of the environment and the essential levels. Because of his transversal character, and his purpose of tutelage in unitary instance, they can decide above areas of regional competition. The same distribution of administrative functions in the different levels of the government could influence up on the cast of legislative competitions.<sup>26</sup>

By putting these two subjects together gives as a result the first intention of joint action between the Presidencies of the Ministers Council and the congress.

With the region a new project was born: The Inforegioni project. This project is about "the information of current laws and common projects between the State and the Regions."

This project is essentially about the actualization and improvement of the Nir Project, explained before: this is the creation of a unique portal with an only search system of all laws, national and regional's trough Internet.

In this is trying of follow the community directives of the Institutional Consent between the European Parliament, the Council, and the Commission. This portal it's called EUR-Lex.

Without judgment this commissions work, the last law of simplification, create a new commission which is essentially all this group together. It must take care of:

1. Determination of current laws, national and regional's, under the criteria of manual of legislative Italian technique. Unfortunately there's not a Unique Manual, there's one for each chamber, another for the Presidency and other for the regions. Happily the differences are not that big, but they do complicate

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<sup>26</sup> This is the famous 303 sentence of the 2003, by the Constitutional Italian Court.

work anyway. This is way I've used the plural, "manuals".

2. Relative actualization of the juridical data base.

3. The application of Impact of the Regulation rules, above all laws and decrees approved by the Executive, the Legislative, or the regions.

The Info-regions project propose: "Make accessible through a portal with a single mode of consult of normative production of the regions. Make a gestation support of the elaboration process. And also approval of normative acts which produce the format XML. Make the technological budgets for consent the promulgation of normative acts<sup>27</sup>. Another project must be added to this last one. The project talks about article 107 of the Constitution that for the budget law of 2003 has been endowed of 25 millions of old lira sterling.

The initiative is great. It comes from concrete needs and it's realized by a very competent staff. The Italian bibliography in subject of legislative technique and rationalization of law it's completely impressive. The purposes are more than acceptable and enter in the general canon that all occidental culture is going trough of putting in order the legislation and giving their self certain rules for the future legislation,

May be this can be questionable: the fact of want to melt in just one, tree things that are interdependent but separate. **One:** the inventory of all current laws and the elimination of all other belonging to an abrogated or derogated legislation. For all of this, and for it make it trough the future is necessary to adopt a Manual of Legislative Technique. **Two:** The creation of a unified portal for all those normative dispositions reaching national levels, regional, and local. And in this case, the possibility of consulting also the supra national normative, like the European Union or the Mercosur. **Tree:** The measuring of the Impact of the legislation before enacts a law, during its validity and in the end as a result. This is Air.

More questionable is the fact of legislating "too little". Having several laws about simplification is very different from having a law like the digest, the law 24.967. It may have several defects, it's obvious. Besides, there's luck of a central authority who says to witch branches of the law, the all legislation must adjust. All the search for general normative is this one: ... Like the Argentinean Law did, introducing 26 arbitrary subjects. While they do not take this step, all the Italian legislation will be at the mercy of the jurist that the country posses.

Finally, establishing dates without having the hold subject clarify, is more a promise that a normal normative act. The general impression that the jurist had, is that when they raid to the final date, December of 2011, there's going to be extensions because the possible damage of a constitutionally protected right, with abrogation and guillotines law.

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<sup>27</sup> This is the inter-agency project called "Better Legislation" (2003 / C 321/01).

We hope to be wrong about this.

#### 1.4. Conclusions

All the above points are to fortify the rule of law as a guarantee for a better life<sup>28</sup> of the individual and for the society. It's clear that strengthens the criteria of legislative less, but better; used by the European Parliament, The Council, and the Commission.

Meaning, not only the National States, but also the institutions of supra national states worn the need of very tiny legislation, but doing it excellent conditions.

The anachronism and the covered intentions must open road to certain and clearness. We should not forget that the State legitimates serving the citizen correctly. One condition of every "good democracy" is the acceptance that achieve by the citizens and collective subjects, which are governed by the same laws that are created. A clear norm does not eliminate the interpretation, but it facilitates. Know what to do, it means an essential port for pace and develop of towns. There's no way that a clear norm, can fit in a contaminated juridical system.

## 2. Improving the quality of legislation

### 2.1 What is the improvement of the quality of legislation?

It is about the jurist calls "efficacy of the law". A law has a good determinate function and it is to conditional, direct, encourage, discourage the human behavior in Society. Any other thing asked to the law is accessory. Her principal function (law) is to be watch, and to be fulfilled. In matters of politics is frequent to hear how the government can lie about the approve law during their presidency, telling that they are completely respected while at the same time the opposition sais that the laws are bad and that no one respect them.

In view of this political dialectic, the function of the political science, against the frustration and global unrest, must find a way for measure this compliance of the most certain way us possible, with the objective of given an indication to the governments and politics in general, and also, a guide for the population.

Luckily It is not necessary invent anything on this subject, because an international organization like OCDE has been taking care directly of this subject. The OCDE prepare two programs that already been named in the first part of this work: Puma Program and its subprogram Air (legislation Impact).

It's interesting that were economist who went directly to raise these problems, well they applied the bases of the rational decision theory, so important for the economy

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<sup>28</sup>2003 / C 321/01. Published in the Gazzetta ufficiale dell'Unione European 31.12.2003

since Kenet Arrow's book: *Individual Values and Collective Elections*, 1951. Also, *Scelta razionale e azione politica*<sup>29</sup> written by whose spiking.

## 2.2. The OCDE

The OCDE, Organization for the Cooperation and Economic Development, board 30 countries together, they are committed members and promote democracy and market economy. OCDE provides statistics and comparative data, analysis and economic perspectives. Also does research on social changes and evaluative patrons in the economy, environment, agriculture, technology, fiscal politics, and others.

OCDE help governments to compare politics experiences, to search for answers to common problems, to identify good practices, coordinate international and domestic politics.



- OCDE has partners all over the globe. 30 member countries.

Germany, France, New Zealand, Netherlands, Greece, Australia, Austria, Hungary, Poland, Ireland, Belgium, Portugal, Canada, Iceland, United Kingdom, Italy, Korea, Czech Republic, Denmark, Japan, Slovakia, Luxembourg, Spain, Sweden, the European Union, Mexico, Switzerland, Norway, Finland and Turkey

- Countries who had initiated the incorporation process:

Chile, Israel, Russia, Slovenia and Estonia

- Enhanced cooperation:

Brazil, China, India, Indonesia, South Africa.

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<sup>29</sup> A. A. Martino & F. Rugeri (editores) *Scelta razionale e azione politica*, Franco Angeli, Milano, 1995.

OCDE missions: Article 1 of the OCDE Convention: Establish its mission approach to:

- Support economic growth
- Increase the employment
- Increase the quality of life
- Maintain financial stability
- Help other countries reach economic development
- Contribute to the global market's growth

### 2.3. PUMA program

The comparison of the international experiences still is a key thing to do for the exchange of good practices. The Public Administration Service of the OCDE (PUMA) search how to adapt better the public administration and the government election of their country members, to the particular needs of the countries in development and transition.

The OCDE, Public Management Service (Puma) is the promotion of their works on the important matters for the right work of the Government. Also, Puma promote the good governance. To reach this objective, PUMA, has develop a new mandate and a program of work that reflex the priorities of the States Members. Under the title of "Strengthening the public sector capacity", PUMA is actually working in 4 big projects: Leadership development, Public employee competition, knowledge management and Public Service Ethics.

### 2.4. AIR

Air is the impact of the regulation. "Know for deliberate", this mean: Offer an empiric base for the decision taking. The OCDE can be defined like an international panel discussion of AIR. Several had been the application from the OCDE to his members to adopt a system of assessment to regulations.

In particular: "*Recommendation on improving the quality of Government regulation*", adopted on March 9 of 1955 and contains a Check List of 10 points. Also: "*OECD Report on Regulatory Reform*", approved on 27/05/1997 by the Ministers of the Countries Members. The Publication: "*RIA: Best Practices in OECD Countries*".

In the OCDE countries, the regulation, in different ways, represent one of the most important instruments of the government.

Actually, the quality of the regulation is vital for the good development of the economy. The quality it's also good for more efficient the government intervention in the quality of life of the citizen. In a global level, the experiences and problems which go handed with the regulation are common in many Countries, despite of being characterized by tradition of government very different: the high cost, the quality of the laws, and the clarity of the decisional process.

### Objectives

- Improve the quality of regulation
- Sustain the development of a regulatory system more effective, sustaining the principles of " good decision-making "
- Promote a clear regulation, flexible and efficient in the process of politics decision, in all government levels.
- Strength the efficiency and legitimating of the international regulatory system.

## 2.5 Check list

The OCDE, "*Reference Check List for Regulatory decision-making*" is part of the *recommendation*. The principles of the Check List are a guide for the *performance* test, and for measure the quality of the political process. This one, respond to the demand of develop a better regulation. The check list consists of 10 inherent regulatory questions, applied to all levels of the policy-making.

The check list must be used in gestation context of a global system of the regulation.

### 3.2.1 Check list- *details*

1. The problem to resolve, has been correctly defined?
2. Is the Government action justified?
3. Between government actions, the regulation, is better?
4. Is there a legal base for the regulation?
5. Which government level/s is better to initiate the normative action?
6. The benefits resulting of the regulatory act, justify the costs?
7. Is it clears the distribution and the regulator effects about social groups.
8. Is the regulation clear, coherent, understandable and of easy access for the users?
9. Does the interest parts had the chance of establish their point of view?
10. How are they planning to gather up the consent of the recipients?

The OCDE has presented a catalog with the steps to follow for the AIR. The "*Best practices*" was born as a result of comparison of many, and different national experiences. For this, it makes sense introduce them in a compared context.

The E.O. 12866 applies only to review the significant rules: those who can exercise over the annual economic impact of at least U.S. \$ 100 million or that may interfere with the rules generated by another agency. It is necessary for the Agency to define a standard as "more or less" significant and, therefore, begin the process of revision, yet the final verdict is not entirely binding on the director of OIRA. The agency, on the basis on a proffer for intervention "definitely" significant, you must provide OIRA Andalusia (see Guide to the OMB AIR - 1996) an analysis of two phases, the preliminary and final. Preliminary analysis: Identify the requirements and options for intervention Final Analysis: Implementation of cost-benefit analysis to the choices

Different standards in E.O. 12866 ensure transparency of the process of external review. The OIRA must have a public register containing the status of the rules that are covered, names and titles of persons who have participated in meetings; etc.... Then the regulator has been published in the Federal Register, the OIRA's duty to make public all documents relating to the review.

The AIR is also applied to existing standards, in fact they do a periodic scheduled review of all existing rules to eliminate or modify existing laws.

Perhaps the most difficult task in estimating the effects of regulatory change is to specify the factual: What would have happened without that change? When comparing the effects of the counterfactual with the change induced by the regulation, it is possible to estimate the differences in costs and benefits between the two conditions and to calculate the impact on producers and consumers. Once a counterfactual is specified, there are five general approaches to estimate the cost of regulation-econometric analysis, cost evaluation studies, engineering cost analysis, productivity studies, and analysis of general equilibrium.

- *The econometric studies* tend to assess the production market and the cost functions to measure the impact of regulatory changes. Although such studies provide a formal statistical apparatus with which to test various hypotheses, the formulation is usually quite general, glossing over the exact nature of actual production functions. Macroeconomic models are sometimes used in conjunction with econometric estimation to assess the effects of the economy.
- *Assessments of costs* often depend on surveys of firms or companies to determine costs of compliance. Surveys produce easily quantified estimates of the costs of regulation, but these studies face serious problems. The first involves potential respondent bias. For example, a firm or corporation may inflate the estimated cost with hopes that politicians consider providing regulatory assistance. Most important studies of direct costs not specified a factual control. For example, an automobile company can choose to install stronger bumpers on cars, without the need for a regulation that required doing so. Attributing the cost of such a government regulation exaggerating the impact of regulation.
- *The approaches in engineering cost estimate aggregates* add directly to changes in quality equipment. Again, the question is what kind of car would be built in the absence of specific regulations.
- *Studies of graphic products* difference between the observed changes in productivity over time and those that have occurred in the absence of one or more federal regulations. These studies suffer from serious problems and the dependence of information on costs and the inability to specify the determinants of macroeconomic performance over time.
- *General equilibrium models*, which have become very popular recently, look like a perfectly competitive market responds to a new policy, as well as a change in regulation. But the overall balance also has its problems, including substantial information requirements; the results provide a better notion of the effects of regulation in some cases. Simply, the methodology is reduces to define the conditions under which it is reasonable to assume all of the major effects.
- The regulation receives relatively little scrutiny, both because politicians wish to hide the cost of regulating the public and because estimating the costs and benefits of regulation is difficult. A better information base on the economic impact.

- The most important point to emphasize is that effective policies can differ in different countries. Appropriate tools for the regulation will depend on several factors, including bureaucratic fields, availability of resources, and economic impacts.
- There is a general need to improve the evaluation of the local and national regulation. The countries should seek to develop a "regulatory budget" that showed the economic impact of regulation and would be published together with the government fiscal budget. This ability takes a long time to develop.
- This analysis should not be too burdensome. For the regulations that have a limited impact, no need for any analysis. For regulations with large economic consequences, more resources should be allocated to evaluation. Ideally, these studies should be prospective and retrospective; these way analysts can learn how to improve their impact assessments, comparing their predictions with the current policy. To begin with, it is recommended to develop low-cost information to highlight some of the most important impacts of regulation. The lead agencies need to be involved in the process, so that this will become more sensitive to the economic impacts of their proposals.
- As long as the administrative capacities develop, a more thorough cost-benefit will be required to maintain regulatory reforms. Because the economic regulations often result in economic inefficiency, the burden of proof should be on those who wish to maintain such regulation. In this case of social regulation, flexibility should be encouraged so that consumers and producers are able to innovate in response to regulations. Of course, the amount of flexibility in a regulatory policy should be based in part on the ability of the administrative agency to implement it effectively (Hartman and Wheeler 1995).
- To consider the reforms, policies need to give much thought to the design of regulatory frameworks. In some cases, partial deregulation may not lead to an improvement in the status quo. The point is that the regulatory strategy of reform is crucial to its effectiveness. Another set of problems stems from a tendency for a mission of one agency (health or education, for example) to consider its terms of reference only and overstate benefits and understate its costs. As noted above, one way of addressing this problem is to require the agency to develop more data on the costs of specific regulatory proposals. The second is to limit the agency's mandate.
- Other options include sunset requirements that an agency the authority to limit a fixed period unless renewed by legislative mandate and requiring the approval of an independent central agency that refers mainly to the economy from the effects of Regulations (Hahn 1997). Because officials are concerned about issues of equity and efficiency, the regulations they write tend to be unduly complicated. This complexity not only the bureaucrats and lawyers control over decisions, but also makes it difficult for average people to understand the economic impact. The more transparent the rules, more likely to reduce the potential for corruption and increase the perceived legitimacy of the system. Simple language makes the study of the possible and limits the risk that interest groups will gain political benefits. A move toward greater transparency will

occur as people begin to understand some of the hidden costs of regulation.

- Developing countries have begun to realize the benefits of economic regulation, but much remains to be done in the field of social regulation. However, it is beginning to appear on the political agenda, but internal pressure, then interest groups in industrial countries.
- The general lesson is that regulation is generally undesirable, but often has undesirable economic consequences. Furthermore, these effects results in part from political forces that lead to unequal distribution of wealth (Stigler 1971). We
- We believe these forces can be mitigated by more clearly assessing the consequences and trade-offs involved before a regulatory policy is set in stone.
- In Chile there is a committee that never ends to form.<sup>30</sup>

### 3. Conclusion

Improving the quality of legislation, through the Air and Puma programs are already mandatory in 38 countries and there are technical means to implement them. The disadvantages are that most of these countries, especially Italy and Mexico, forced the authorities (all stations of legislation, regulations, directives, ordinances) ignore this obligation and obviously do not bother to practice. Until this doesn't become an administrative practice, it will be only a well organized intellectual exercise.

The second problem is the cost of making the grid evaluation before making the regulation or ordinance or resolution and then follows it throughout the period of compliance. The Germans and the French have calculated in thousands of euros a monitoring well done. If multiplied by the number of decisions to keep the cost is very high and unbearable for the government.

Which is the solution? As always a bit of common sense: do not make this assessment on all regulations, directives and orders but simply the most important. It is true that moves the problem to know what are the most important, but again, a reasonable common sense, without leaving too many spaces advised to speculation. III. Final conclusion: The discomfort that comes with the waste of legislative work is the home of Executive's own legislation, the "pollution legislation" and the lack of standards is clear that a necessary condition for democracy is rule of law, lack.

But can be remedied: the technical means exist and there has been proved that the research realized in the last part of last century is perfectly applicable, always keep in mind that they are two different problems.<sup>31</sup>

How about giving preference? For scientific reasons the first is to separate the straw of the wheat, in the juridical order, looks to me a priority. It is necessary to leave only the procedure that are really in force and then check the fulfillment of these laws. But definitively it is a political problem that - as Machiavelli would say - the princes have to resolve. We, as advisors to the prince, we know that means there are (can be upgraded) and there are concrete experiences in different parts of the world.

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<sup>30</sup> Assessment Act (or How the sausages and laws must fulfill its mission) - by Hernan Ampuero Public Affairs. Org.

<sup>31</sup> Italy for instance want to address together is in a Bret.

Let people know that this issue can be resolved and be prepared to get dirty hands, accepting charges in which we are nominated, directors or responsible for any equipment that we have prepared ourselves with regard to special courses about it.

The steps to follow are clear: First, dictate a law which establishes legislative consolidation of all existing juridical order. Second, write a manual to realize the operation of legislative consolidation, and for avoid future legislative pollution. Third, make the revision whit local equipment (It cannot be delegated to foreign that unknown the contexts were the law will be finally applied to. These equipments, not only must be specialized jurist, but also, linguists, computer specialists, etc. But all of them have to be trained in Legislation Science, which is a discipline already known all over the world. Fourth, to achieve a legislative empire act, which establish that from X day, the new legislation current will be the one specified for these teams. Fifth, now is when legislative quality makes the necessary acts to adapt to the OCDE standards.

I would not set right to put at the end of the paper a new matter, but to consider, if you see the subject of human rights, international criminal courts, commercial law, banking law, the corporate social responsibility and the defense of consumer, not to indicate the more active we slowly but inexorably towards a new *jus gentium*, a product of globalization and the need to standardize everything possible and even the right to control your criteria.