IOSR Journal Of Humanities And Social Science (IOSR-JHSS)
Volume 29, Issue 5, Series 6 (May, 2024) 41-47
e-ISSN: 2279-0837, p-ISSN: 2279-0845.
www.iosrjournals.org

Comparative Law And Brazilian Legislation

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Abstract:
The article in question focuses on brief considerations about the emergence of comparative law, its history and finally, the Brazilian legislation. Objective: To carry out a brief reflection on comparative law and its influence on Brazilian legislation. Methodology: The study is a literature review related to the aforementioned theme. The research source of the article was Google Scholar, scientific articles and official websites. Discussions: Comparative Law has several legal systems (families) around the world, in addition to the undeniable influences in Brazil, being a branch of legal science that studies the differences and similarities between the legal systems of different States. The Brazilian legal system is influenced by Roman-Germanic law, and has a civil character. The highest law of the State is the Constitution of the Federative Republic of Brazil, Result: Evaluating the various legislative frameworks, it is noted that, in the Rule of Law, there is a search to provide equal conditions for all. The influences of comparative law in Brazil can be perceived, and it is clear that our law can only gain from the deepening of comparative law studies.
Key Words: *History, Comparative law, Brazilian Legislation.*

Date of Submission: 05-05-2024 Date of Acceptance: 15-05-2024

I. Introduction

This study focuses on comparative law, which is the expression that results from the combination of two terms: law, in reference to the legal system, and comparative, linked to comparison. As such, it looks for similarities and differences between the common objects being researched, be they a legal system or a legal institute. Comparative law has been of great interest to jurists.

For Ovídio (1984, p. 166) "Comparative Law has specific objectives, such as enabling a better understanding of the spirit that animates legal institutions, the techniques in force at the time and answering existing questions regarding the genesis of primitive legal systems". Still according to the author, the practical objectives are "notably with regard to efforts to unify private law at international level and to resolve conflicts of law in private international law". (OVÍDIO,1984, P. 166).

In his approach to his studies, Ovídio (1984, p. 166) complements the reasoning by pointing out that with regard to political objectives, "because in today's world it is impossible to think of 'Chinese walls' separating the legal systems of countries, even ideologically conflicting ones, thus contributing to the comparativist effort for a better understanding of international relations".

As for the evolutionary process of the juscomparativist doctrine, it can be distinguished according to Ovídio (1984, p.169) "in four progressive phases which, despite interpenetrating each other in certain aspects, have their own characteristics".

In order to understand Comparative Law, it is necessary to remember the main legal systems (families) around the world, which will be discussed in greater depth throughout this study. Initially, we will clarify the Roman-Germanic system, which is the most widespread legal system in the world (MEDEIROS, 2010, p. 326-327). Socialist law, on the other hand, is a system based on Roman-German law, but with modifications from Marxism and Leninism (MEDEIROS, 2010, p.24-25).

The aim of this study is to briefly reflect on the history of comparative law and its influence on Brazilian legislation, and its methodological procedure is to review the literature related to the aforementioned topic.

In view of these considerations, this approach is justified by the fact that it is a thought-provoking subject that has been little addressed, and we believe that it is a valuable contribution to the academic world.

II. Methodological Process

The research in question is bibliographical and qualitative in nature. This approach requires a broad study of the object of research, considering the context in which it is inserted and the characteristics of the society to which it belongs. The research's methodological approach is based on a bibliographical survey, with the aim of collecting data to elucidate the subject. And qualitative, which according to Poupart, et al. (2008, p.276) citing Becker and Geer (1960):

propose a data processing model based on a quantitative model: sequential analysis. This type of analysis involves three main stages: selecting and defining problems, concepts and indices; checking the frequency and distribution of phenomena; and incorporating the results into an organizational model. (BECKER; GEER,1960)

According to Flick (2009, p. 25) "Qualitative research is not based on a unified theoretical methodological concept. Various theoretical approaches and their methods characterize research discussions and practice". Qualitative research is a methodological approach that seeks to understand the meaning of individuals' experiences and social interactions. According to González Rey (2005, p.81), the researcher gradually builds up the different relevant elements that will shape the model of the problem studied, without following any criteria other than their own theoretical reflection. According to MINAYO (2001):

Qualitative research answers very specific questions. In the social sciences, it is concerned with a level of reality that cannot be quantified. In other words, it works with the universe of meanings, motives, aspirations, beliefs, values and attitudes, which corresponds to a deeper space of relationships, processes and phenomena that cannot be reduced to the operationalization of variables. (MINAYO, 2001, p.22)

According to Minayo (2009), qualitative research deals with a level of reality that cannot or should not be quantified, i.e. it works with the universe of meanings, motives, aspirations, beliefs, values and attitudes. Qualitative research seeks to understand the complexity of particular and specific phenomena, facts and processes.

As for the choice of data collection technique, it will be bibliographical, which according to Lakatos and Marconi (2001, p. 183), "covers all bibliography already made public in relation to the subject studied, from single publications, bulletins, newspapers, magazines, books, research, monographs, theses, cartographic materials, etc.".

According to Pizzani, (2012, p.54)

Bibliographic research is understood as a review of the literature on the main theories that guide scientific work. This review is what we call a bibliographic survey or literature review, which can be carried out in books, periodicals, newspaper articles, websites and other sources. (PIZZANI, 2012, p.54)

Bibliographic research is used in practically all types of academic-scientific work, as it gives researchers access to the knowledge already produced on a given subject. There is also the production of scientific research that is based exclusively on bibliographic research, seeking the necessary information in theoretical works that have already been published to provide answers to the study problems established by the investigation (BRITO; OLIVEIRA; SILVA, 2021, p.6). An important factor in carrying out scientific research is its proper classification according to the rules of methodology, which is an area that teaches the best methods practiced in a given field in order to produce knowledge. Therefore, all the steps outlined here are important guidelines for achieving the objectives of this research. We believe that this work can contribute to a greater understanding of the subject in question.

III. Theoretical Framework

This study focuses on the emergence, history and reflection on comparative law in Brazilian legislation. Reflection on this exciting subject has made it possible to elucidate comparative law, its origins, its development and a brief theoretical consolidation.

Comparative law: origin and history

According to Wikipedia, "the birth of modern comparative law is commonly attributed to Europe in the 18th century. In the legal history of Russia, for example, the comparative method dates back to the 16th century."

History points out that:

the ancient Greeks were already making an effort to compare the law in force in different city-states: Aristotle studied 153 constitutions of Greek city-states to write his Politics; Solon would have done the same before promulgating the laws of Athens. The Roman Decemvirs would only have prepared the Law of the Twelve Tables after consulting Greek institutions. (Free Wikipedia).

Cardoso (2010, p. 470) clarifies, quoting Maximiliano (2003), that comparative law was presented "as very modern until the middle of the last century, at the time of the empire of the School of Exegesis". Cardoso states that comparative law:

Invoked primarily in the field of hermeneutics and less in legal organization, this process of interpretation developed, especially, on the webs of private law, which proved to be the most prosperous for the postulate of uniform application, so that the charms of the new process seemed to allow for a common private law for the whole of civilized society (CARDOSO, 2010, p. 470 CITANDO MAXIMILIANO, 2003).

According to Cardoso (2010, p. 469) "it is not recent to recognize the intense use made of comparative law for theoretical or eminently doctrinal purposes". Complementing his observations, the author states that "the healthiest consequence has been and continues to be the development of contextualized approaches to problems common to various legal systems". As for the evolutionary process of the juscomparativist doctrine, it can be distinguished according to Ovídio (1984, p.169) "in four progressive phases which, despite interpenetrating each other in certain aspects, have their own characteristics". The author lists these phases as follows:

1) from the beginning to the middle of the 19th century, characterized by the examination and translation of foreign legislation; 2) from the foundation of the "Société de Legislation Comparée" in 1869 until the end of the 19th century, whose emphasis was the study of comparative legislation, the parallel and organized analysis of foreign and national laws; 3) from the beginning of the 20th century (International Congress of Comparative Law, in 1900, in Paris), with the improvement and expansion of comparative work; 4) from the foundation of the "Académie Internationale de Droit Compare", in The Hague, in 1924, extending to the present day, with the internationalization of Comparative Law. (OVIDIO, 1984, p.169)

The historical process marks "the creation of the chair of 'General History and Philosophy of Comparative Legislation' in 1830 at the Collège de France, under the direction of Leminier, which represented the recognition of the importance and necessity of the study of Comparative Law". (OVÍDIO, 1984, p.169). Later, more precisely in 1837, "another chair appeared at the Paris Law Faculty, under the direction of Ortolan. In this first phase, the main concern was the examination of foreign legislation, with the translation of works, the analysis and dissemination of codes and legal texts from other countries". (OVÍDIO, 1984, p.169).

According to the author, at the beginning of the current century, in 1900, there was a categorical influence on the growth of the juscomparativist movement and the formation of the field of scientific knowledge of the discipline. This happened at the time of the Paris International Exhibition, the "Société de Legislation Comparée" at an International Congress of Comparative Law, with the presence of the greatest jurists of the time (among them, Saleilles, Lambert and Pollock). (OVÍDIO, 1984, p.170).

In Brazil, during the Second World War, comparative studies declined, as they did in other countries. However, the arrival of the Italian jurist Tullio Ascarelli was significant, as his teaching activity at the São Paulo Law School left an indelible mark on the history of the traditional institution of higher education. (OVÍDIO, 1984, p.175). The author points out that:

Ascarelli had a deep knowledge of foreign law, especially Anglo-German law, and soon assimilated the spirit of Brazilian law. In 1945, he published "Problemas das Sociedades Anônimas e Direito Comparado", in which he dedicated the introductory part to the study entitled "Premissas do Estudo de Direito Comparado". His concern was to situate the legal phenomenon in its historical and sociological context, showing that in the interpretative task the "implicit premises" of every legal system must be considered. In his opinion, these premises do not appear clearly to national jurists, due to the fact that they are completely incorporated into the life of the law. Only the foreign scholar can reveal them more easily (OVÍDIO, 1984, p.175-176).

In 1948, when Haroldo Valladão, A. Medeiros da Fonseca, José Ferreira de Souza, Roberto Lyra, Pedro Calmon, among other renowned jurists, took on the responsibility of teaching comparative law in the Faculties of the Capital of the Republic, there was a resurgence of the teaching of Comparative Law, which had been extinct (OVÍDIO, 1984, p.176). In 1956, Cláudio Souto "defended his doctoral thesis at the Recife Law School under the title: "Da Inexistência Científico-Conceitual do Direito Comparado (Conceptualization of the more specific comparative inquiry of the science of law)". (OVÍDIO, 1984, p.177).

Ovídio mentions that Professor José Nicolau dos Santos of the Faculty of Law of the University of Paraná published a study on Comparative Law and Legal Geography in 1962. In this publication, he directed his studies towards analyzing the relationship between the two subjects, highlighting the affinities of methods, objectives and common history. In this vein, the professor ponders:

Comparative Law as a "(...) simple method, at best an auxiliary science", while Legal Geography is concerned with "(...) interpreting the legal phenomenon, which is the ethical-normative conditioning of social life, in its permanent relations with the anthropogeographic environment, which is the material conditioning of society." (OVÍDIO, 1984, p.177).

In 1974, the "International Academy of Comparative Law" was re-established in Rio de Janeiro under the chairmanship of Haroldo Valladão. After being founded in 1945 in Havana, it had been transferred in 1963 to Lima and finally to the former capital of the Republic. History records the emergence of new institutes and academies as a result of the high level of Brazilian juscomparativism, which made it possible to bring together enthusiasts in the field. In 1980, the "International Academy of Jurisprudence and Comparative Law" was founded

in Rio de Janeiro. Under the leadership of Prof. Custódio de Azevedo Bouças, its current president, the Academy brings together eminent Brazilian and foreign juscomparativists". (OVÍDIO, 1984, p.177). According to Ovídio:

Another organization that attests to the interest in comparative law in Brazil is the "Instituto de Direito Comparado Luso-Brasileiro", based in Rio de Janeiro. Created in 1981, its aim is to promote scientific exchange between Brazil and Portugal in the legal field, by holding periodic meetings between jurists interested in the comparative study of the two countries' laws. Its members include Orlando Gomes, Haroldo Valladão, Caio Mário da Silva Pereira, R. Limongi França and Francisco dos Santos Amaral Neto (Chairman of the Board of Directors), on the Brazilian side, and A. Ferrer Correia, Antunes Varela, Diogo Leite de Campos and Francisco Pereira Coelho, on the Portuguese side (OVÍDIO, 1984, p.178).

Every historical record points to the fact that juscomparativism in Brazil has put down deep roots and according to Ovídio (1984, p. 178):

being internationally recognized as an important center of study. The interest in the subject has led to work of the highest level, as we pointed out above in the summary presentation of Brazilian comparative law literature, as well as the creation of specialized institutions to bring together aficionados. There are even plans to expand the comparative law effort into new areas and countries (OVÍDIO, 1984, p.178).

Therefore, comparative law in Brazil points to some reflections, among them that it is not only an instrument for harmonizing legal systems, but also for preserving the elements that give national rights their identity.

Compartive Law

Taking a systematic approach to law as a starting point, in which one speaks of Civil Law, Criminal Law or Administrative Law in affirmation of the non-existence of Comparative Law as an autonomous legal science, it is considered that Comparative Law does not have its own element, as do the different branches of law. (MEDEIROS, 2010, p. 316).

According to Medeiros (2010, p.329) "Comparative Constitutional Law is a creation of the 20th century and represents a theoretical-conceptual effort within the scope of a General Theory of Law". The author mentions that:

Comparative Constitutional Law has its own object, which is the comparison between two or more constitutional systems; its problematization is related to the differences and similarities between systems; it uses a method, which is not exclusive to it, which is the comparative method. (MEDEIROS, 2010)

The author explains that the main aim of comparative law is to examine and compare legal orders or systems, making macro or micro comparisons. For Medeiros (2010, p. 330) "these expressions are understood both in the sense of the quantity of systems (several systems = macro-comparison) and the quantity of institutes (example: civil imprisonment for debts in ten systems, a hypothesis in which one can speak of macro analysis, or in two systems - micro-comparison)".

In addition, Medeiros (2010) explains that there is no ambition to determine precisely when it arose, and points out that there are two articles that "serve as an important milestone in Comparative Constitutional Law". (MEDEIROS, 2010, p.330). In this sense, we have the first article, entitled Lévolution recente du problème des delegations legislatives, by Carl Schmitt, which was published in the collection of studies in honor of Edouard Lambert, in 1938; the other article is A comparative study of the Austrian and the American Constitution, by Hans Kelsen, which was published in the Journal of Politics, in May 1942, with a Portuguese translation entitled: "O controle judicial da constitucionalidade (um estudo comparado das Constituições austríaca e americana)". (MEDEIROS, 2010, p. 330). Medeiros goes on to say that the authors of these articles "were not concerned with the study of Comparative Constitutional Law as a branch of Comparative Law or its scientific character, although they were inaugurating a new space for theoretical reflection". (MEDEIROS, 2010, p. 330).

It is important to note that in Brazil, despite being groundbreaking and unprecedented, the bibliographic studies published on Comparative Law are still in their infancy. After all, says Medeiros (2010) quoting Losano (2007, p. 15-40):

The first works date back to the end of the 19th century, at the Recife Law School, with the writings of Tobias Barreto, in the counterpoint between Brazilian legal theory and German theory, and the systematic studies of Clóvis Beviláqua". Portrayed in "Aplicação do methodo comparativo ao estudo do direito", from 1891, and "Resumo das Lições de Legislação Comparada sobre o Direito Privado", from 1897. At the beginning of the 20th century, Cândido Luiz Maria de Oliveira published "Curso de Legislação Comparada". (LOSANO, 2007, p. 15-40).

Then there was a new theoretical milestone in the doctrine of comparative law in Brazil with the publication of "Direito Comparado, Ciência Autônoma", by Caio Mário da Silva Pereira, published in 1952. Medeiros alludes that "as a critic of this perspective, we have Cláudio Souto, with 'Da Inexistência Científico-Conceitual do Direito Comparado', written in 1956". However, other works and authors have subsequently

appeared, but they are less important, but they are still worth mentioning, as they are part of the list of publications on Comparative Law:

such as Haroldo Valladão, with "O Estudo e o Ensino do Direito Comparado no Brasil: séculos XIX e XX", published in 1971, in the Revista de Informação Legislativa; José Cretella Junior, Droit Administratif Compare, 1973, translated into Portuguese in 1990, with the title "Direito Administrativo Comparado". As far as Comparative Constitutional Law is concerned, there have been just over a dozen publications in Brazil in recent years, including, for example, the article published by Ana Lúcia de Lyra Tavares in 1999, entitled "Notas sobre as dimensões do Direito Constitucional Comparado" (Notes on the dimensions of Comparative Constitutional Law); the work "Direito Constitucional Comparado. Introduction. Teoria e Metodologia", by Ivo Dantas, published in 2000, which is now in its third edition; there is also the book 'Um Pouco de Direito Constitucional Comparado', by José Afonso da Silva, published in 2009.

The importance of studying comparative law is now recognized, according to Medeiros:

The importance of Comparative Law in general, and Comparative Constitutional Law in particular, as another tool to help reflection in the legal field, since it provides a more global view of the law, promoting an integrative awareness, in its multiple differences and similarities between the various legal systems, breaking with a stance that takes the law to a certain "national legal ghetto", without worrying about the global challenges we have to face. (MEDEIROS, 2010, p. 331).

It is true that comparative law has its limitations, both as an autonomous science and as a method of comparing rights. Medeiros points out that "it may be able to help in the global solution to global problems. It is necessary to recognize the influence, or perhaps the approximation of the Civil Law and Common Law families, with the current European experience". (MEDEIROS, 2010, p. 331).

In order to study comparative law, it is necessary to remember the main legal systems (families) around the world. Firstly, we need to clarify the Roman-Germanic system, which is the most widespread legal system in the world, still known as Civil Law and based on the codification of law. This system is present throughout Latin America, in much of Asia and Africa and in continental Europe. Next up is the Anglo-Saxon system, known as Common Law, which develops from court decisions rather than the codification of laws. This system is practiced in the United Kingdom, most of the United States and Canada and the former colonies of the British Empire (MEDEIROS, 2010, p. 326-327).

Socialist law, on the other hand, is a system based on Roman-German law, but with modifications from Marxism and Leninism. In this system, public law prevails, and its practice was in the Soviet Union, but today it can be found in China and North Korea. Other systems, on the other hand, are groups structured differently from traditional families. Examples include Muslim Law (Islamic religious community) and Far Eastern Rights (based on conciliation), which are found mainly in Africa and Asia (MEDEIROS, 2010, p.24-25).

Comparative Law and Brazilian Legislation

With regard to Comparative Law, its interference in Brazilian legislation is very evident in Private International Law, mainly due to the nature of this field of knowledge. However, one cannot fail to point out that Comparative Law has had a significant influence on the Federal Constitution. The Magna Carta includes many precepts from the Universal Declaration of Human Rights. In fact, Article 5 of the Constitution contains precepts that endorse the influence of comparative law in the Brazilian legal system:

Art. 5, §2 The rights and guarantees expressed in this Constitution do not exclude others arising from the regime and principles adopted by it, or from international treaties to which the Federative Republic of Brazil is a party. Art. 5, §3 International treaties and conventions on human rights that are approved by three-fifths of the votes of the respective members of each house of Congress in two rounds shall be equivalent to constitutional amendments.

Therefore, in addition to legislative activity, this branch of legal science is used in jurisdictional activity to implement the principle of the logical completeness of the legal system. (TAVARES, 2006, p.59) states that:

Recently, there has also been a more frequent use of comparative law, with emphasis on its scientific nature, either as a supplier of data resulting from comparisons between legal systems, in the strict and broad sense, or as an indicator of peculiarities that should guide those who promote receptions of law. (TAVARES, 2006, p.59)

Regarding comparative law in Brazil, Tavares (2006, p.63) states that:

We therefore intend to emphasize that not only foreign law, but also comparative law, due to its scientific nature, contributes to the enrichment of the content of the sources of Brazilian law, which, as a result of the idea of obligation that is immanent to them, according to the lesson of Professor Miguel Reale, would be the following: legal customs, law, jurisprudence and legal business. (TAVARES, 2006, P.63)

Tavares mentions in his studies that in 1986, at the XII International Congress of Comparative Law, held in Australia, the reports on the role played by comparative law in the history of Brazilian law were exhibited

(TAVARES, 2006, p.64). The author clarifies that "based on the questions formulated by the eminent Yugoslav comparatist, Professor Blagojević, general rapporteur of the theme, who died shortly before the congress". (TAVARES, 2006, p.64). Tavares points out that "in the Brazilian case, the most appropriate expression would be 'foreign law', since the evolution of Brazilian law was more a matter of borrowing legislation from different legal systems than of resorting to the data and methods of comparative law, in its scientific nature". (TAVARES, 2006, p.64).

Tavares (2006, p.64) refers to Venâncio Filho (1982) and Valladão (1980):

Through this contribution, we would like to point out just a few examples, based on the sources of law - especially at the constitutional level - which show the openness of our legal system to alien influences in some fields of law, not without first recalling that since the establishment of legal courses in our country in 1827, according to the statutes drawn up for a provisional legal course in 1825 by José Luís de Carvalho e Melo, Viscount of Cachoeira (VENÂNCIO FILHO, 1982), the study of jurisprudence analogous to that of civilized nations was envisaged (VALLADÃO, 1980). This orientation dated back to the colonial period, more specifically to the advent of the Marquis of Pombal's Law of Good Reason of 1769, which restricted the reception of the Romanist hermeneutics of the doctors of the main European universities to that based on good reason, in accordance with natural law and the laws of enlightened and polished Christian nations (VALLADÃO, 1980).

The spirit of openness to foreign law gradually crept into history. The Republican Constitution of 1891 formalized the influence that had been exerted by American law since the second imperial period. The short-lived Constitution of 1934, the result of a revolutionary process that began in 1930, reflected the influence of the Mexican Constitution of 1917 and the Weimar Constitution of 1919 in terms of enshrining social and economic rights. The 1937 Constitution, granted during the dictatorial period of Getúlio Vargas, was drafted by jurist Francisco Campos, who was largely inspired by the Polish constitution of 1935, but included some elements from other texts, as in the case of the decree-law of Italian origin. The 1946 Constitution, on the other hand, despite its longevity, does not constitute a major example of the reception of law, since it incorporated a large part of the provisions of texts strongly influenced by foreign law, such as those of 1891 and 1934.After the brief parliamentary interregnum of the Additional Act of 1961, in 1967, the Charter granted by the Military Government that had taken power in 1964 came into force. (TAVARES, 2006, p66-67).

Numerous institutional and complementary acts coexisted with this Charter. From the perspective of foreign influences, it is worth noting the reappearance of decree-laws, of Italian origin, which had been introduced during the Estado Novo, as well as delegated laws, which were common in systems of collaboration of powers, but rare in presidential regimes. In 1969, this text was extensively revised, to such an extent that the global amendment that carried it out was considered by many to be a new constitution. The country's process of re-democratization culminated in the 1988 Constitution, which undeniably best reflects the extent of the influence of foreign law on the first of our formal sources of law. We had the opportunity to examine it from this point of view (1991), highlighting the various foreign legal systems that inspired it.

In the 1988 Magna Carta, Portuguese and Spanish sources prevailed. The Portuguese, for example, both in the order of constitutional matter (preamble, fundamental principles, fundamental rights, economic order and social order) and in the content. A predominance of these sources has also been observed in the Council of the Republic, the standing committee of Congress, the action for control of constitutionality by omission, etc. With regard to Spanish sources, the mechanisms of semi-direct democracy stand out (TAVARES, 2006, p.67-68).

From the Spanish doctrinal matrix came the habeas data, introduced into Brazilian constitutional law by Professor José Afonso da Silva, who drew up the Draft Constitution in 1986. As for the Italian doctrine, as is well known, provisional measures were derived, transposed from a parliamentary context, which caused distortions due to the inadequate preparation of the receiving presidential body, which resulted in the need for corrective measures, such as the one proposed in Constitutional Amendment 32 (TAVARES, 2006, p.66-67).

Continuing the influences drawn from the French source, the two rounds for presidential elections and the tax on large fortunes, which has not yet been regulated, have been taken advantage of. The usual recourse to Anglo-American law can be illustrated with the introduction of the injunction which, despite its peculiarities, has similarities with the writ of injunction (TAVARES, 2006, CITING SILVA, 1989) and the constitutional recognition of the requirements of due process of law. As for legislative sources, Tavares points out that: "with regard to legislative sources, one observes, especially in civil procedure, greater caution in the adoption of certain foreign institutes, seeking in the diplomas to provide rules for their acclimatization." (TAVARES, 2006, p.72).

In addition, Tavares (2006, p.72) states that "through enriching citations of judgments, a more accurate analysis was made, highlighting differential aspects of the foreign system in relation to ours". In this vein, the author points out that "this characterizes a stance indicative of a juscomparatist approach, rather than mere juxtaposition to the foreign matrix". (TAVARES, 2006, p.72).

III. Final Considerations

At the end of this study, it is clear that it explores the main legal systems in the world, and that the legal practitioner will use comparative law for effective and efficient compliance. After all, the judge cannot claim a gap or obscurity in the law when making a decision. Instead, they will use custom, analogy and general principles of law. This means, in other words, that comparative law can be used.

The influences of comparative law in Brazil can be seen, and it is clear that our law can only gain from the deepening of jus-comparative studies and their use in the development of our sources of law. The role played by doctrine as an informative source of our law and the constant updating of Brazilian jurists in relation to foreign thinking.

The influences of comparative law in Brazil can be seen, and it is clear that our law can only gain from the deepening of jus-comparative studies and their use in the development of our sources of law. The role played by doctrine as an informative source of our law and the constant updating of Brazilian jurists in relation to foreign thinking.

Considering the elucidations on comparative law, its basic objective is to broaden knowledge. Finally, from a more philosophical point of view, comparative law is a body used to achieve material international equality. Evaluating the various legislative frameworks, it can be seen that the rule of law seeks to provide equal conditions for all. After all, understanding all these phenomena, the influences between constitutional models, is of great relevance to the study of comparative law.