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## Research and Law Drafting Best Practices for Connected and Cooperative Parliamentary libraries

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*The increasing demand for comparative law analysis by national regulators (such as parliaments) requires comparativists and other researchers the availability of efficient information search tools. While the Internet provides access to infinite data sources, it is not always possible for the researcher to find valid, current and accurate foreign legal information, and clearly originated in a specific political, ideological, economic and social context.*

*This document contains a proposal in order to create an electronic information search tool of a collaborative nature, between researchers from different jurisdictions. Its aim is to facilitate the elaboration of adequate and reliable comparative analysis, as a useful input for regulatory bodies' decision making.*

**Keywords:** collaboration, comparative law, databases, information nodes, research, technology.

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### Introduction

Foreign law has grown to be increasingly present in the construction of legal rules at the national level. Regulators from different countries have discovered that “it is not possible to forge appropriate laws without the participation of comparative law, either in the form of general studies or of reports prepared especially around a specific topic” (Chamber of Deputies, Mexico, n.d.).

In 1960, at the inauguration of the Italian-Latin American Institute, Angelo Piero Sereni affirmed that the knowledge of foreign law allows the legislator to rely on other jurisdictions' experience, since legal systems, in their evolution, go through phases and face problems that more developed systems had previously faced. Thus, in the legislative setting, the idea the revising other countries legal systems and the comparative studies thereof, may also improve the quality of laws.

Now, how do we evaluate whether the adoption of a foreign solution is the right decision for our legal system or that it will improve its quality standards? While reviewing other legal realities gives the investigator a starting point (Gonzalez, 2010), this should not translate into

a mere copycat, by introducing into national legislation a foreign text, without further analysis (Williams and Harris, 2015, pp. 7-8). On the contrary, it is preferable to take it just as a reference model, which can aid in the development of an adequate solution to the local problem, provided that the foreign legal institution has already matured in its original system, and that decisions of legislative technique<sup>1</sup> are not based on “legal experiments”, but rather in successful legal formulas (Williams and Harris, 2015, p. 8). Consequently, the application of Comparative Law methodology<sup>2</sup> requires full knowledge and understanding of both foreign and national law.

In this sense, in order to have a complete understanding of the legal phenomenon under study, additionally, it will be helpful, and even necessary, to investigate its relationships to its own legal system and to any extralegal determinant elements, such as the political, ideological, economic and social environment in which it was drafted (Williams and Harris, 2015, p. 12).

So, the comparativist must abandon the strict legal framework, and continue to check how the latter works in different social conditions and socio-economic and social-historical realities, thus accounting for the complexity of the legal system (Williams and Harris, 2015, p. 12). The examination of the contour of the legal phenomenon has to consider that the extra-legal aspects will not be the same in every area of law, nor influence each part of the system in the same way. They are specific to each normative context, and to enable the foreign analyst to understand the reasons behind the chosen solution in the local setting.

At the Library of Congress of Chile (hereinafter, BCN), and particularly in the Parliamentary Advisory section, our experience as comparativists has evolved in this regard. A decade ago, research and analysis of foreign law, primarily (or merely) involved acts and regulations governing any specific subject. But, with the growing interest of congressmen in Comparative Law, our investigative requirements have increased, making the respective analysis more complex.

### **Current obstacles to the investigation of Comparative Law**

As mentioned, the comparative methodology consists of several steps, the first of which is to clearly draw the object of investigation. As in the method of field research and literature research, applicable in legislative drafting, which includes the necessary information concerning the matter (Muro, 2008, p. 67), today researchers resort firstly to Internet search engines, being Google the most commonly used.

Then, once there is complete clarity on the object being researched, we proceed to the revision of the official legal databases of the country or jurisdiction to which it belongs. Complementarily, other sources of information are reviewed, as the literature available in the

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<sup>1</sup> To understand the relationship between legislative technique and Comparative Law it should be remembered that in the latter converge technological, empirical, historical and scientific aspects, as well as various legal disciplines, such as constitutional law, theory of state and law, legal doctrine, philosophy of law, history of law and Comparative Law, among others (Muro, 2008, p. 77).

<sup>2</sup> Since a complete description of the comparative method used in the analysis performed at the Library of Congress would exceed the objectives of this document, it will only contemplate a reference to its research stage.

BCN, both physically (in the “Catalogue”) as electronic, composed of subscribed databases of academic journals and e-books.

Depending on the subject, it may also be useful to check previous documents elaborated by the researchers of the BCN, contained in another institutional database, the “Repository”. Other sources widely used are websites of specialized institutions or international organizations, such as the Organization for Economic Co-operation and Development (OECD), the various organizations of the United Nations or the World Bank; of parliaments and congresses from other countries; and of foreign universities, to name a few.

It is at this stage of the analysis that the specialist researcher (the “comparativist”) encounters various difficulties or obstacles in relation to the sources, such as: language diversity; foreign legal technicalities; unavailability of relevant literature; indeterminacy of legal information validity (including the accuracy and reliability of web pages); lack of knowledge on the normative hierarchy; and, over valuation of the legal norm as sole source of law, circumventing the influence of other sources like jurisprudence, doctrine and custom.

Therefore, as a basic methodological principle, it must be recognized that the legal text, on its own, do not show the complete “picture”, and transcribing provisions literally from a foreign act or regulation, without considering the regulation body as a whole, is simply not enough (Williams and Harris, 2015, p. 10-11).

Occasionally, whenever deadlines allow, and access to certain information has proved to be especially difficult, one may turn to specialists or public officers via telephone or email communication. Then, with the available information, we proceed to answer the parliament’s inquiry, by completion of the remaining steps of the Comparative Law methodology.

Plus, within a limited time frame, documents from the Parliamentary Advisory section must meet the following three criteria: validity, meaning that its content must respond to the inquiry posed; reliability, regarding the use of accurate data from trusted sources; and neutrality, which requires involves putting aside in the analysis partisan-political positions or ethical/moral judgments (BCN, 2015).

### **Proposal for a collaborative research online tool**

Today, the BCN possess an efficient legal information database called “*Ley Chile*”<sup>3</sup>, which provides free of charge access to all acts and regulations in force in our country. On this site, other related databases can be accessed too, also free of charge, such as “*Historia de la Ley*”<sup>4</sup>, which includes the reliable legislative history of each act, and the legislative information system from the Chilean Senate, which allows the revision, step by step, of bills currently being discussed in both chambers.

As previously mentioned, seeking legal information on the Internet has its own difficulties. For example, databases from different jurisdictions, although official, are not homogeneous in their characteristics, either because the document format does allow acknowledging its current validity (as happens with PDF documents); the databases are not linked to other

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<sup>3</sup> Ley Chile (BCN). Available at: [www.leychile.cl](http://www.leychile.cl) (july, 2016).

<sup>4</sup> Historia de la Ley (BCN). Available at: [www.bcn.cl/historiadelaley](http://www.bcn.cl/historiadelaley) (july, 2016).

related web sites (for example, of lower rank rules); or there is no free access to them, among other reasons.

Furthermore, since not all databases have the same functionalities, comparability between Chilean legal norms and other country's becomes difficult or limited. Then, how can the comparativist perform a thorough, valid, appropriate and timely research? Taking as a premise the preponderant use of online sources, we propose the creation of a technological, homogeneous, collaborative and open access tool, developed by libraries or other entities who provide permanent legislative assessment to parliament or government. This is what we will call, the project.

The proposed online tool is:

- i) Technological, because it consists of a software program installed in the web site of every project participant, which checks all other participants' databases;
- ii) Homogeneous, since the program would have the same characteristics in each web site where it was installed, both from the point of view of format and functionality, although reflecting each jurisdiction's legal uniqueness;
- iii) Collaborative, as continuous updating of the program's components is a task of each participant to the project (with no intervention from third parties); and,
- iv) Universally accesible, because the information provided would benefit even researchers not associated to the project.

In concrete, the project seeks to create nodes of information, and not just isolated legal data on the web. It would allow the researcher to access, not only to legal and the legislative process in each jurisdiction, but also to various aspects, both legal and extralegal, in a direct and clear way on a given research issue.

The project has taken the BCN's Bioethics Program as a model. One of the objectives of this Program is the establishment of a node between various stakeholders involved in bioethical issues, at the national and Latin American levels (Bórquez, 2014). To achieve this, the Bioethics Program included the future launching of a Bioethics Portal, as an interoperable digital platform of free and universal access, sponsored jointly by the Library of Congress of Chile and the Observatory of Bioethics and Law - UNESCO Bioethics Chair, at the University of Barcelona, and under an interagency cooperation agreement signed between both institutions (Bórquez, 2014). This platform aims to develop a software tool destined to know, understand and examine the national and international legal framework governing matters covered by the analysis of bioethics discipline (Bórquez, 2014).

The undeveloped Bioethics Portal is based on three pillars, which have been assumed by the project. The first pillar, its "interoperability" would permit constant access to updated information, retrieved directly from primary sources, without resorting to other search engines. Secondly, its "normative contextualization" would facilitate a better understanding of the legal provision or standard, and the system in which it is inserted, through short monographic explanations. Thirdly, the "integration" aspect would allow comparing how a norm harmonizes with others of the same national and international legal framework (Bórquez, 2014).

But, unlike the Bioethics Portal, which intends to bring together all the information on a particular area of law, the project seeks to observe the genesis and functioning of a legal institution or issue of particular legal relevance in each participant jurisdiction. In this way, in

order to facilitate comparative research of a third party, the local researchers should build up the respective information node under a same paradigm, but considering its own particularities. Hence, compared to some legal databases hosted by international organizations, where handling simultaneously many different jurisdictions prevents a constant verification of the validity of the information, the project requires each jurisdiction to update their own data.

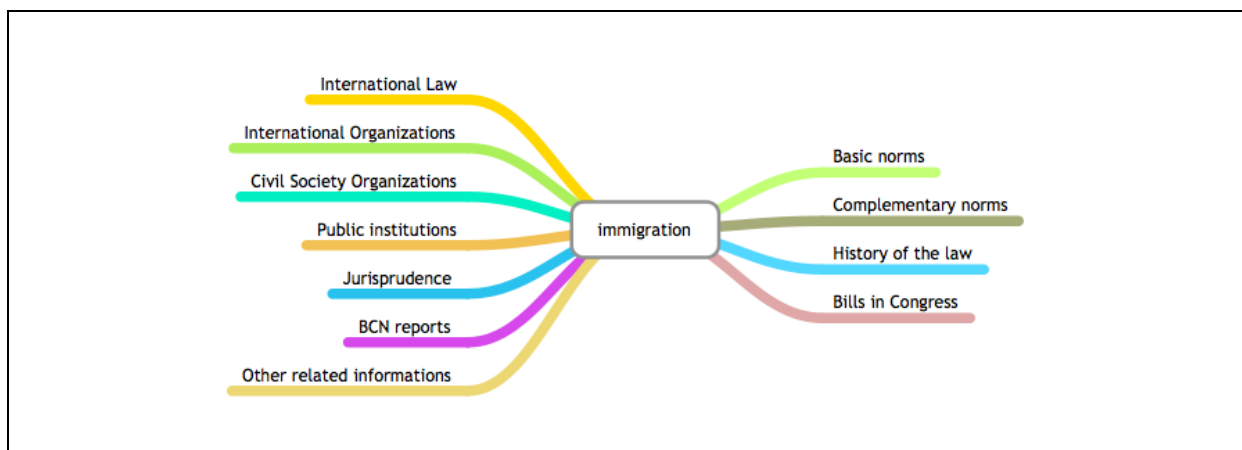
### Operationalization of the proposed online tool

To make the project operative and continuous over time, we suggest setting up a website that could bring together all the jurisdictions involved in the project, hosted on any of the websites of participating agencies (such as the BCN), but with a neutral presentation as a “.org” or “.info” domain, for example.

Then, the comparativist will only have to click on the country he is interested in, connecting directly to the relevant information, organized by topics (or vice versa). Those topics will have been previously defined by the participating countries, according to international standards on allocation of contents.

A graphic example of this tool will be shown on the topic “Immigration”, which is object of recurring research in Comparative Law, and therefore, of common interest between countries. The following figures display navigation maps that reveal relevant data from primary sources. The first one shows the basic model (a nominal map), applicable to any of the participating jurisdictions that nonetheless permit specific adaptations, and the second one shows the specific contents of the subject “Immigration” in the Chilean context.

Figure N°1: Navigation map for the topic “Immigration”.

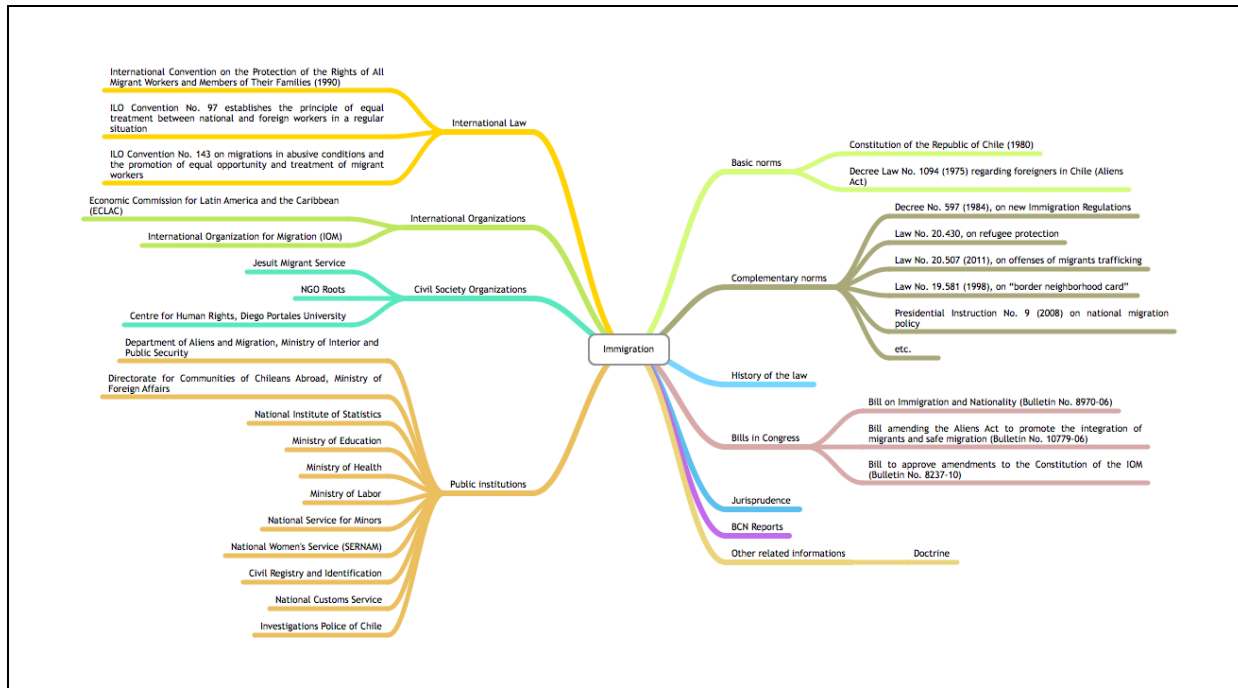


Elaborated by Patricio Pastor H., BCN (2016).

In the second map, each component of the map (whether norms, public and civil society institutions, bills, BCN reports, etc.), is filled with the registries (information) that each of the participants to the project decide to include, according to their expertise.

However, the researcher must always have in mind that the ultimate goal is to give a comprehensive view of all (or main) possible legal and extralegal aspects influencing the revised topic. So, the more complete the map is, the better the results in terms of valuable information for other researchers.

Figure N° 2: Navigation map for the topic “Immigration”, applied to the Chilean case.



Elaborated by Patricio Pastor H., BCN (2016).

To execute these navigation maps in a technically form, there are multiple displaying and data description options, without losing sight of the following axioms: “seek and find” and “navigate and discover”. Examples of this kind of instruments are the following websites: Latin American Thesis<sup>5</sup>, organized by the University of Chile, or the BCN webpage of Parliamentary Advisory<sup>6</sup>. In both cases, the sites are supported by information repositories which use the standardized communications protocol Open Archives Initiative (OAI)<sup>7</sup> to exchange data. This system has the ability to regularly consult the databases of the countries connected, verifying any changes made to the records at the said base.

## Conclusions... and an invitation

Finally, we can only emphasize that researching difficulties regarding the information on the Internet today is an ongoing challenge for comparativists who provide advice to the organizations to which they belong. In particular, the proposal of a technological, collaborative, homogeneous and open access tool seeks to answer, somehow, to the myriad of

<sup>5</sup> Portal de Tesis Latinoamericanas. Disponible en: [www.tesislatinoamericanas.info](http://www.tesislatinoamericanas.info) (july, 2016).

<sup>6</sup> Asesorías Parlamentarias, BCN. Available at: [www.bcn.cl/asesoriasparlamentarias](http://www.bcn.cl/asesoriasparlamentarias) (july, 2016).

<sup>7</sup> Open Archives Initiative (OAI). Available at: [www.openarchives.org](http://www.openarchives.org) (july, 2016).

data contained on the web, which obstacles resolving, in a quickly and timely manner, the requirements made by regulators on Comparative Law.

The project is fully perfectible and requires the expert opinion of lawyers, librarians, IT professionals, etc., from different countries. For this purpose, within the framework of the 2016 Annual Conference of the International Federation of Library Associations and Institutions (IFLA), we invite any researcher or comparativist interested in participating in its development, to join us in its pursue.

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