

Jurisdictional Federalism and Formal Federalism: Levels of Political Centralization on American and Brazilian Models

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Abstract : This paper promotes a comparative analysis of American and Brazilian models of federalism assuming their levels of political centralization as main criterion. The central problem faced herein is the Brazilian approach of Unitarian regime. Although the hegemony of federative form after 1989, Brazil had a historical frame of political centralization that remains under the 1988 constitutional regime. Meanwhile, United States framed a federalism in which States absorb significant authorities. The hypothesis holds that the amount of alternative criteria of federalization – which can generate political centralization –, and the way they are upheld on judicial review, are crucial to understand the levels of political centralization achieved in each model. To test this hypothesis, the research is conducted by a methodology temporally delimited to 1994-2014 period. Three paradigmatic precedents of U.S. Supreme Court were selected: United States vs. Morrison (2000), on gender-motivated violence, Gonzales vs. Raich (2005), on medical use of marijuana, and United States vs. Lopez (1995), on firearm possession on scholar zones. These most relevant cases over federalism in the recent activity of Supreme Court indicates a determinant parameter of deliberation: the commerce clause. After observe the criterion used to permit or prohibit the political centralization in America, the Brazilian normative context is presented. In this sense, it is possible to identify the eventual legal treatment these controversies could receive in this Country. The decision-making reveals some deliberative parameters, which characterizes each federative model. At the end of research, the precedents of Rehnquist Court promote a broad revival of federalism debate, establishing the commerce clause as a secure criterion to uphold or not the necessity of centralization – even with decisions considered conservative. Otherwise, the Brazilian federalism solves them controversies upon in a formalist fashion, within numerous and comprehensive – sometimes casuistic too – normative devices, oriented to make an intense centralization. The aim of this work is indicate how jurisdictional federalism found in United States can preserve a consistent model with States robustly autonomous, while Brazil gives preference to normative mechanisms designed to starts from centralization.

Keywords : constitutional design, federalism, U.S. Supreme Court, legislative authority

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