

The Relevance of the Generalist Judge's Discretionary Limits in the Institutional Debate

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Abstract : The judicial practice faces a tension between normative discretion and institutional capacities. There are clarity graduations of the statutory text that might induce different specialization levels of the judges. A major problem stemming from that tension is a greater discretion without a proportional specialization. The normative clarity, although its absence can be overcome through specialization, avoids problems related to disproportionate discretion and judicial dissonance. When judicial interpretation deals with the lack of legal clarity, a significant juridical insecurity frame is verified. Decisional uniformity mechanisms are created in order to surpass these problems. Brazil brings great examples, such as the súmulas, the enunciados, and the súmulas vinculantes. Despite of the resistance presented to the latter, mainly based on judges' independence, even countries of the Common Law tradition develop such mechanisms. The British Guidelines face the lack of legal clarity problem and promote a decisional consonance system.

Keywords : generalist judges, institutional capacities, normative clarity, normative discretion

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