

Abstract - Marian Ahumada on “Judicial Federalism in the Light of the American Experience”

Dear Colleagues:

I start with a sort of caveat about the paper that I am presenting and you are graciously to read. I would like to say simply that it is the tentative product of a work in progress, or even very much in progress. Yet, I am afraid it is still not. What I am offering to you is rather the first “stammerings” of my research work, and I kindly ask you to take it as such. You know only too well what an exciting and painstaking process research is. For the time being, I am at that preliminary phase of working on intuitions with the grandiose research plan still intact. I am aware that it is only a question of time for the candid scheme to take real shape and to be reduced to earthly proportions. To this end, I practice the old scientific method of stumbling forward in empirical fashion hoping to blunder into wisdom. So, let’s put the intuitions to the test.

My research is about “judicial federalism.” More specifically, my aim is to explore the rationale of and particular problems and consequences associated with judicial federalism. For initial purposes, I will crudely define judicial federalism as a scheme of distribution of judicial power or jurisdiction (according to a variety of criteria and purposes) between state and federal courts or (from a perspective outside the American context) between judiciaries acting at different governmental levels. As I will try to explain, my basic intuition is that, although judicial federalism would be unthinkable and meaningless in unitary states, the foundations for judicial federalism are neither coincident nor immediately derived from those of federalism. Would a federal system be possible without a system of federal courts, or without a system of state courts?

My attempt is to describe in broad brush the singular development of American judicial federalism. I do not consider American judicial federalism “typical,” but my working hypothesis is that it will be possible to single out some patterns and conclusions that, with appropriate elaboration, could be projected onto the case (for instance) of the relationships between national courts and supranational “European” courts, against the background of the building of, say, a European constitutional system.

I will not be simply trying to trace parallels, nor looking for fixed rules of judicial behavior. As you will see, I try to explore the reasons for the changing quality of the relationships between state and federal courts, how these dynamics were influenced at different points in time by the working (or the malfunctioning) of the constitutional system and, in turn, how and to what extent judicial “federalism” contributes to the singular shape of the American federal and constitutional model.