Federalism in the 21st Century

Park University

Kevin L Moore

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**Introduction**

From centuries, federalism has been the defining aspect of the United States of America's constitution. However, since the state has dramatically changed, its federalism has also improved with the national government's responsibilities. Throughout American history, federalism which forms the division of power between the state and the state has been a divisive issue throughout the history of America. In the 1990s, there was a new deal that conservatives of federalism argued against. Unlike the 1990s federalism, the government has added more responsibilities appertaining to income, economic stabilization, criminal justice, healthcare security and the education functions to the 21st-century federalism. The current pressures of increasing healthcare costs, an aging population, and challenging fiscal policies are shaping the American federal system.

**Statement of the constitutional issue**

Article 1 section 8 of the United States of America’s constitution addresses the overall scope of federalism and its power. In its practice, federalism has been waned and waxed since the adoption of federalism in the US. According to the American constitutional review history, federalism has undergone four different phases in four different eras; the post-founding, post-civil war, post-new deal and from Rehnquist court to the current form. In 1787, America adopted the constitution that replaced the formerly used, articles of Confederation that acted as a treaty amongst the American sovereign states (Joyce, 2014). The other difference between the two was that the constitution was ratified by people and not state legislatures. The adoption of the constitution gave the national government powers that were previously not in the articles of confederation and allowed the government to act on behalf of its people without consulting the state government. However, to some extent, the constitution of the 1990s preserved some of its powers to its citizens. The founders of this constitution maintained this balance by giving the new national government some few powers while keeping interstate commerce to states. In short, legislation procedures belonging to the state were exclusively limited by their constitution. Therefore the founding federalism can best be described as an enumerated powers kind of federalism since it only gave the national government some enumerated and limited type of powers. The current 10th amendment later came in to save the federal state and introduced the 21st federation system by stating that, “the powers that are not prohibited by the Constitution to the United States nor not delegated are respectively reserved to the federal state or its citizenry.”

**Discussion of research**

**State/federal statutes that have an impact on federalism and the Supreme Court**

Immense polarization of parties both at the federal and state level has negatively impacted the adoption and the implementation of several USA policies. Research has shown that federalism has been fragmented and occurs only in patches in numerous policies across the states and this has been attributed by the partial implementation of policies within conflicted institutions. Pushback, partisanships, and uncertainty have hindered adoption and implementation of these policies particularly healthcare and education policies within the state. Running under fiscal stress conditions and the federal budget has further complicated the planning and implementation of the statutes at all governmental levels. The statues of federalism in this 21st century include the Equal Opportunity to govern amendment that advocates for the eligibility of naturalized citizens for presidency, the federal marriage amendment that would define marriage and influence of same-sex marriages as well as the campaign finance reform amendment that touches on the people’s rights including independent expenditures (Brown, 2017). This constitutional amendment would be very problematic on laws regarding personal freedoms and civil rights. In today’s society, the amendment would create problems in the way people define gender, marriage and how they associate towards growth and development of the nation. Lastly, the decisions of the Supreme Court continue to be the major contributor to the current fragmented nature of the current federalism state. Its final decision of alternately safeguarding the sovereignty of the country from the intrusion of federalism and sometimes allowing the adoption of a broad preemption of federalism in state laws has also a hand in the promotion of fragmented federalism (Costello, 2015).

Documented research has shown that the separation of authority between the federal and state government are defined by the constitution of the United States of America and other relevant legal bodies like the Supreme Court. For example, in the past few years, the Supreme Court has been in the forefront making some critical decisions that have placed federalism at the center of the US constitution.

According to the constitution of the US, Congress has got the powers to oversee any commercial transactions among the various states and foreign nations. And this provision has been cited as a constitutional framework for an essential portion of the laws accented by Congress over the past 50 years in relation with proper and necessary clauses. Section 5 of the Congress outlines the powers of Congress and its provisions. However, in the case of Flores v. The city of Boerne, however, the Supreme Court did bring into the limelight the argument demanding the justification of the limit under which the Congress cannot rely further rely on the Commerce Clause as a federal jurisdiction basis (Lynch, 2011).

Constitution researchers have argued that the 21st federalism has been so broadly classified such that its powers in spite being limited by the constitution they have been so broadly classified so that they cause overlap with state powers. However, it is only the constitution that has been bestowed with the authorities to give certain specific limitations to these powers. For instance, the article I, section 8 clause 18 states that “[t]he Congress shall have powers…To make laws which shall be necessary and proper for carrying into Execution the foregoing powers and all other powers vested by this constitution in the government of the USA or any officer or department thereof." In American history, the Supreme Court has found that this clause rather than narrowing the Congress powers it enlarges them beyond their limits.

Therefore, to evaluate the legal framework of the state and federal government actions, the Supreme Court drafted a large body entailing judicial precedents or decisions that will help in the interpretation of the current constitution. However, how the court applies these precedents in making critical decisions on controversial federalism issues has prompted a debate over whether the supreme judicial organ should be allowed to use the previously identified rules or override them whenever making critical decisions. The court’s use of these precedents prompts implication of the longstanding issues of how the Supreme court can bring and sustain legal stability in law by sticking to these precedents under the norms of *stare decisis* while bringing justification of the wrong decisions resting on unworkable, faulty reasoning and outdated legal doctrines (Chemerinsky, 2018).

**Proposed solution**

The stake rests with the Supreme Court. In as much as the court has shown some insignificant reluctance in overruling its decisions on constitutional legality, the Court has done much to give special attention to some special justification and firm legal ground for making critical decisions. History has it that the court has made several pragmatic and prudential reasoning that brings a balance between the costs and benefits of the state by overruling or reaffirming the previous decisions.

The following is my proposed plan to resolve the current state of federalism in the US Constitution;

**Quality reasoning**: the Supreme Court should apply quality reasoning amongst its jury when determining whether to overrule or reaffirm the previous constitutional decisions.

**Workability**: this is another factor that the Supreme Court must consider whenever making decisions whether to uphold or overrule a particular precedent.

**Reliance**: the current constitution can it be relied on in thawing the line between state and federal powers? In history, the Supreme Court has found itself in cross-roads whenever thinking of overruling certain clauses. Some clauses even when flawed have been found to hold particular significant meaning such that revoking them is likely to injure the society or specific individuals and therefore has to be factored in.

A survey carried out by relevant authorities has argued that the application of these three factors will help solve the question of whether to overrule or reaffirm the entire Constitution. In fact, the kind of uncertainty currently witnessed arises because the Supreme Court in the land has not offered us an exhaustive list of things that should be used to determine whether a particular decision should be reaffirmed or overruled.

**Social policy implications of the 21st federalism**

Sometimes countries are faced with a hard decision whether to allow regions to federate and govern themselves or remain to be part of the central government? Politically, speaking federalism was the best decision for some states; however, in countries marked with dominant regional religious, linguistic and cultural differences, federalism is not a guarantee of national harmony. For example, in Spain, Canada, and former Yugoslavia are famously known for having severe federalism cases that led to continuous struggles of barbaric civil wars and periodical secessions. Iraq is another state having trouble with the current federalism.

The minority Sunni are resisting the constitutional draft that will federate regions and give autonomy to the Shiite in the oil-rich south and the Kurds in the north. To date, the 21st federalism in Iraq is proving to be the reason for social unrest in the country. In as much as America is considered to be the pioneer of federalism, the fact is that its adoption did not ease the state’s sectional tensions. Contrary, to its expectations, even the 21st federalism has not softened the harsh standings of the 19th century Civil wars. Considering the argument that federalism is what holds the state together seems undisputed however for a different reason. Culturally and socially, there are contemporary culture wars that to some extent have integrated the American society compared to other large nations like Nigeria, India, and Indonesia.

**Conclusion**

In summary, the thesis of federalism in the 21st century is a heated argument that has found itself entangled between the metrics of the constitution and interpretations of the Supreme Court. To some extent, federalism holds the country together through from a social context, but politically, the country seems divided upon this line. As said above, the Supreme Court has made several pragmatic and prudential reasoning that brings a balance between the costs and benefits of the state by overruling or reaffirming the previous decisions. Our federal system has evolved significantly since the national government has taken on additional responsibilities for economic stabilization, income, and health security, and functions such as criminal justice and education, which have previously been understood to fall within the powers of the police of the states. Therefore, it can be concluded that the constitution and the Supreme Court have a significant impact on the adoption and implementation of federalism.

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