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Characterizing the Judicial Decision Making Relationship between the U.S. Federal and State Governments under the New Judicial Federalism Perspectives,

The Study of Court Cases from 1970 onwards

A Dissertation submitted to the Department of Letters and English Language in Partial Fulfillment of the Requirements of Master's Degree in Anglophone Language and Civilization.

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Dedication

I dedicate this work to the soul of my dead father; to my mother who has sustained me both materially and spiritually. All the beautiful words go to you my mother. I would also like to thank my brothers, sisters, and friends for their endless motivation.

Abstract

The United States of America has adopted the federal system based on the distribution of powers and prerogatives between a central government known as the federal government or the national government, and state governments or local governments. Each one has its own constitution and legislations. This paper analyses how theorists often disagree over powers granted to each government. It is believed that the federal government has dominated state governments in the process of decision-making which led to the rise of conflicts between both governments especially during the 20th century, which is analyzed in this dissertation through well selected court cases announced by the United States Supreme Court. The latter has been the authority charged with disputes between the federal and state governments and the interpretation of the U.S. Constitution. Furthermore, this work clarifies that the U.S. Supreme Court decisions have been different. On the one hand, it has supported the supremacy of the federal law; on the other hand, the protection of state's rights to preserve the equilibrium of power between both governments has been the intended aim of such an institution. Similarly, the present research evaluates the importance of the U.S. Supreme Court's intermediate decisions which allow the political co-existence between the national and state governments, but those decisions need further improvements. In the light of this research paper, the Obama administration during the 21st century has worked to overcome some of the federal system's inadequacies and to promote the complementary role between both governments.

ملخص

تعتمد الولايات المتحدة الأمريكية على النظام الفدرالي القائم على توزيع السلطة في اتخاذ القرار بين حكومة مركزية تسمى الحكومة الوطنية أو الحكومة الفدرالية، و بين حكومات محلية، إذ أن لكل منها دستورها الخاص و تشريعاتها الخاصة. البحث العلمي يحلل كيف يختلف الباحثون غالبا حول توزيع السلطات بين الحكومتين. حيث أنهم يعتقدون أن الحكومة الفدرالية لوحدها تهيمن على الحكومات المحلية في تسيير شؤون البلاد، وذلك في سلطة اتخاذ القرار، هذا الأخير أدى إلى نشوب خلافات كثيرة بين الحكومتين خصوصا خلال القرن العشرين، و التي كانت بدورها محل تحليل في هذه المذكرة من خلال الإختيار المحكم لبعض الأحكام القضائية الصادرة عن المحكمة العليا بالولايات المتحدة الأمريكية، هذه الأخيرة التي تعتبر صاحبة الإختصاص للفصل في النزاعات المتعلقة بتفسير الدستور الأمريكي، أو تلك المتعلقة بتعارض تطبيق القانون الفدرالي و قوانين الولايات. هذا العمل يوضح كيف أن قرارات المحكمة العليا كانت متأرجحة، فمن جهة، عملت على تأييد تفوق القرار الفدرالي، و من جهة أخرى، عملت على ضمان حقوق الحكومات المحلية بهدف خلق توازن في القوى بين الحكومتين، و هو ما يمثل الهدف الذي تسعى إليه هذه المؤسسة القضائية. كما أن هذا البحث يقيم أهمية الأحكام الصادرة عن المحكمة العليا بالولايات المتحدة الأمريكية التي كان لها رأي وسطي مما يدعم فكرة التعايش السياسي التوافقي بين الحكومة الوطنية و الحكومات المحلية، غير أن هذه الأحكام لازالت في حاجة إلى إدخال تحسينات عليها. في ضوء هذا البحث العلمي، حكومة أوباما خلال القرن الواحد و العشرون عملت على تخطي بعض نقائص النظام الفدرالي و تشجيع الدور التكميلي بين الحكومتين.

Résumé

Les Etats-Unis adopte un système fédéral basé sur la répartition du pouvoir dans la prise de décision entre un gouvernement central appelé le gouvernement national ou le gouvernement fédéral, et entre les gouvernements des États. Chacun avec sa propre constitution et législations. Le thème de ce mémoire analyse comment les théoriciens sont souvent en désaccord sur les pouvoirs accordés à chaque gouvernement. Ils croient que le gouvernement fédéral domine la conduite des affaires du pays dans la prise de décision, ce dernier a conduit à l'émergence de nombreuses conflits entre les deux gouvernements en particulier au cours du 20ème siècle, qui est analysé dans cette dissertation à travers des cas judiciaires bien choisis et annoncés par la Cour Suprême des États-Unis. La Cour Suprême a la compétence juridique pour statuer sur les conflits concernant l'interprétation de la Constitution des États-Unis, ou bien les conflits découlant de l'incompatibilité entre des deux législations. Les décisions de la Cour Suprême ont été différentes, d'une part, pour la supériorité de la décision fédérale, et d'autre part, pour le soutien de la souveraineté des États gouvernementaux afin de préserver l'équilibre du pouvoir entre les deux gouvernements, qui a été l'objectif d'une telle institution judiciaire. De même, la présente étude évaluée l'importance des décisions intermédiaires de la Cour Suprême des États-Unis qui supportent la coexistence politique entre le gouvernement fédéral et les États gouvernementaux. À la lumière de ce mémoire de recherche, l'administration d'Obama au cours du 21ème siècle a travaillé à surmonter certaines insuffisances du système fédéral et à faire courager le rôle complémentaire entre les deux gouvernements.

List of Abbreviations and Acronyms

AABD	Aid to the Aged, Blind, and Disabled
SAMTA	San Antonio Metropolitan Transit Authority

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Introduction

The United States of America is a federal republic of fifty states. The framers of the Constitution which was drafted in 1787 described the structure of the national government and specified its powers and activities. Therefore, the present work's contribution to the American politics remains an effort to broaden the discussion about the relationship between the federal and state governments beyond its controversial understanding.

In 1787 the American society was divided into federalists and anti-federalists. The former supported the adoption of a stronger central government known as the federal government with more specific powers. Those powers included the process of conducting relations with foreign nations, and no longer asking states military power or money for operating expenses. In contrast, the latter opposed the idea because it endangered the sovereignty of states as well as it lacked the necessary measures for protecting individuals.

Scholars often disagree over powers granted for each government whether the federal or the state governments. Therefore, the American political system seems as a puzzle, full of complexities, ambiguities and contradictions, especially concerning decision-making. In other words, the relationship between the federal and the state governments is often characterized by domination especially in the presence of The Property or Territorial Clause within the American Constitution, which have given the federal government the power to control and maintain all lands existent within each state residing as federal properties. The latter have stimulated the rise of conflict between both governments, therefore, the following issue is going to be studied: characterizing the judicial decision-making relationship between the U.S. federal and state governments under the new

judicial federalism perspectives. Such theme is evaluated in the light of the following court cases: “Kleppe v. New Mexico (1976)”, “Runyon v. McCrary (1976)”, “Sporhase v. Nebraska ex rel. Douglas (1982)”, “Oregon v. Mitchell (1970)”, “Younger v. Harris (1971)”, “Apodaca v. Oregon (1972)”, “Edelman v. Jordan (1974)”, “Lefkowitz v. Newsome (1975)”, “Garcia v. San Antonio Metropolitan Transit Authority (1985)”.

The distribution of powers in the United States between the federal and the state governments has been a controversial subject among researchers and politicians alike. The choice of the topic is generally motivated by a desire to study the American political system of government. In addition, the analysis of the problematic questions of the present work highlights some of the key features differentiating the federal and the state governments from each other. In the same time, how decision-making is done in the light of one national Constitution is presented in this work.

During the 20th century the United States Supreme Court announced many decisions that involved debates between the federal and the state governments, mostly because it has been the authority charged with these matters. The first, was established under the Article III of the United States Constitution. It has ultimate and largely discretionary appellate jurisdiction over all federal and state court cases involving issues of federal law. Moreover, it is considered as the final interpreter of the federal constitutional law and the provider of solutions where disputes between both governments occur.

In 1982 and after the announcement of the plan of new federalism 1970, a conflict had risen between both governments. It turned around the Commerce Clause. The state of Nebraska provided that any person who intended to withdraw groundwater from any well located in the state and transport it for use in an adjoining state must obtain a permit from the Nebraska department of water resources. Legislators of the Nebraska government

justified that this issue falls under the state's internal laws, but the U.S. Supreme Court declared that its action was unconstitutional and violated the Commerce Clause. Such disputes spread throughout the United States territory and threatened to split off the nation. The core of the debate turned around the issue of distributing powers and responsibilities among the federal and state governments.

This work aims to discuss some important questions about the relationship between the federal and the state governments. Therefore, it answers some inquiries related to the study including: does the federal government possess the right to regulate the internal affairs of the states in the presence of their local legislations/laws? Do states lose their supremacy in the process of decision-making under the federal system? What changes does the new judicial federalism brought for the federal system? What is the United State source of political stability in the presence of two separate governments? Can the Obama's government be considered more responsive than its predecessors in dealing with states demands?

Before this study can be further examined, and to display more its importance, it is necessary to state a sort of literature review by focusing on some previous works that have investigated the subject of U.S. federalism and the controversial debate between the federal and the state governments. Numerous books and articles have tackled the issue of the conflict between the federal and state governments. In his article entitled "The Political Science of Federalism", Jenna Bednar has highlighted some political science interests concerning the distribution of authority between federal and state governments. He also discussed how federalism can help societies reach particular goals, such as improved defense or a stronger economy, better than the alternatives of unitary governance or an alliance.

In the same context, Ute Wachendorfer-schmidt in his book *Federalism and Political Performance* has discussed the distinction between federal and unitary governments. Furthermore, he clarifies what this distinction can make for public policy and policy outcomes. Moreover, it has explored the prospective effects of the territorial division of power on peace, freedom, democracy, economy, wealth, and social security; the division of power between two separate governments.

Nathan J. Kelly, in his article entitled "Federalism and American Inequality" has acknowledged the reality that the United States is suffering from high levels of inequality and the power reserved to its sub-national governments known also as state governments. He also anticipates that if the political power of the federal government shifts toward the state governments, they will have a greater influence on the distributional processes. To illustrate this inequality, he examined the effect of federal and state politics on state-level income in the period from 1976 to 2006.

In his book *American Federalism and Intergovernmental Relations*, Alberta M. Sbragia has focused on the role of state governments in the process of decision-making, he states: "some scholars have valued the autonomous role of state (and local) governments in legislative decision-making for reasons having to do with a defense against the abuse of power, as an avenue of democratic participation, or as a way to provide choice for taxpayers. . ." (243).

Furthermore, the present dissertation analyzes some financial reports delivered by the United States Department of Commerce Economics and Statistics Administration during the Obama's administration between 2009 and 2010. The provided censuses illustrate federal aid towards state governments in different fields such as: health, education, transportation, and how this aid has increased during Obama's rule in considerable amounts.

The present topic is based partially upon the information provided in the books and articles mentioned above. With the aim of characterizing the relationship between the federal and the state government in the United States, the analysis of some judicial decisions held by the U.S. Supreme Court takes the crucial part of the evaluation section. Mainly, because it is the authority charged with solving disputes between both governments. In addition, those judicial decisions provide clear and appropriate interpretations of some acts passed by the U.S. legislative body.

This research makes use of the historical analysis to deal with the origins of the U.S. Constitution and the emergence of the federal system. Furthermore, it is based on the interpretative and qualitative research methodology. The latter emphasizes on court cases delivered by the U.S. Supreme Court showing debates between the U.S. federal and state governments in decision-making. Besides, interpretation is employed to clarify some acts passed by the U.S. Congress.

Chapter One

Perspectives of the New Judicial Federalism

The colonization of the American continent stood against providing rights and liberties pushing the American people to plan their future in the light of a legitimate governing regime. The history of the United States and its constitution was basing on the balance of citizens' rights and the requirements of an effective government. At first, the application of federalism and the separation of powers and responsibilities between the federal and state governments were uncoordinated, and proved little to fit the ambitions of the American people, the former led to contradictions of laws, thus, legislations did not serve individual profits.

Federalism was described as an extremely complex pattern of simultaneously inter-related processes of work (Vile 200) a system that was perceived by scholars and politicians alike as encouraging the domination of one part over the other, based on the reality that the national government was allowed to intervene in state's internal affairs. Federalism was given the opportunity to expand its powers and authorities through the use of clauses which was a weakness for states. By 1970's and after the emergence of the new judicial federalism, the aim was to find a new trend that allowed the interaction of both governments with each other. Proponent of the new view confirmed that federalism should base on the dual concept; strong federal government and strong states (Abrahamson 346).

1.1. The New American Constitution and its Enduring Principles

The need for the creation of a powerful nation pushed the Founding Fathers to write down the American Constitution. Oppressed by the British authorities, the American

inhabitants were ordered to establish political institutions, but institutions that took control over internal affairs no more. The anxiety of self-governance and equal rights inspired the independence movement which led to the creation of the Constitution as written by the Founding Father Thomas Jefferson, "the declaration is a moral justification of the American Revolution aimed not only at the colonists themselves but also at non-committed European powers" (Fontenilles and Labat11).

The first American Constitution known as the Articles of Confederation (1781-1788) established a loose league of independent states under a very weak central government. The new Constitution was drafted in Philadelphia in 1787 within a whirlwind of debate. It was not a successive attempt that might achieve the diverse interests of the states. Furthermore, the latter was a quantum leap in history of the United States that worked to pave the way for the foundations of a democratic country, and the establishment of constitutional institutions, it is said that:

> The Declaration of Independence is a famous document for many reasons. It declared the colonies independence from Great Britain. It stated basic rights and liberties for Americans. The French used the ideals behind the Declaration as a model for their own revolution in 1789. ("Jefferson and the Declaration of Independence").

After the above constitution came into existence, it led to the emergence of part rivalries. On the one hand, members of the merchant classes had supported a strong central government; they were under the authority of Alexander Hamilton as Washington tried to take a non-partisan stance since they got a large influence in the north east, as well as coastal Virginia and South Carolina. On the other hand, anti-federalists feared and opposed the new Constitution because it threatened the sovereignty of the states. These people became democratic-republicans and were stronger especially in New York,

Virginia, and the southern part. They were in favor of Jefferson who envisaged small independent framers living in a country with minimal government interference.

Unlike its predecessor the new American Constitution created modern political institution; the legislative, the judicial, and the executive branches, which most scholars view them as the fundamental base for most democratic societies. Both the federal and state governments came into existence with different powers and the loose confederacy transformed into a federation "four fifth of the original text of the Constitution remains unchallenged, and only seventeen amendments have been added after the Bill of Rights" (Mauk and Oakland 117). In addition, the Constitution's thought and language remained flexible enough to be interpreted by succeeding generation in order to fit their changing needs and in response to changes that may occur in the political system as a result of circumstances being internal related to the states themselves or external related to relations with foreign nations.

The idea behind the separation of powers in the new Constitution was that individuals could not serve in more than one branch. Furthermore, it introduced a new system called Checks and Balances. The latter included: a federal system under which the domination of a central government is evaded. In other words, Checks and Balances as a governing system is based on the co-existence of two independent governments issuing the adaptation of bicameral Congress; in which the president can veto its laws (Spiller et al. 11), and a Supreme Court; the apex of the judiciary in the United States and the court of last resort, sitting in Washington.

1.1.1. Republicanism

Generally speaking, the concept republicanism can be used into two different contexts. In the first one, "it refers to a loose tradition or family of writers in the history of western political thought" (Spiller et al. 11). It includes: Machiavelli and his fifteenth-century Italian predecessors Milton, Harrington…etc who have emphasized common ideas and concerns, such as the importance of civic virtue, political participation, the dangers of corruption the evil of third world countries, the rule of law also known as the supremacy of law, and the establishment of modern democracies. The above principles reveal a government without social classes, privileges, families or inherent titles.

The second context deals rather with modern politics; it is often associated with the interpretation of the classical republican tradition such as the work of Quentin Skinner into an attractive contemporary political doctrine. Additionally, Articles IV, Section 4 of the United States Constitution dealt with this matter. It granted each individual state within the union republic form of government (Maukand and Oakland 117). The major focus of republicanism can be summed up into two principles.

On the one hand, the empire of law insists on applying laws to everyone despite his social class or his position, in addition laws must be well identified to the public before their application as it has been described. They should be known in advance to the people or institution concerned (Pettit 174). In addition, any government agency must work under the authority of law in whatever decision it takes. Those agencies are required to conform to the founded procedures and protocols (Pettit 175). On the other hand, it emphasizes the counter-majoritarian condition which insists on the majority vote or choice for a given decision; no individual or party can apply his/its theories or his/its

trends without a majority approval. The application of this principle satisfies citizens as well as, it gives laws more legitimacy both in terms of legislation and implementation.

To sum up, republicanism forbids any inequalities within the society; thus, the American people should be judged merely for their actions on the bases of well-structured laws. In other words, the United States Constitution seeks to enshrine the state of justice and law, and guarantees more rights and freedoms for the people, as well as to establish political institutions functioning in the light of a democratic state governed by law.

1.1.2. Federalism

One of the key principles designed in the American Constitution was federalism, the latter has been defined by scholars in different ways, among these definitions, Dr. K.C. Whereas, a federal theorist, states an important one in his book *Federal Government* as follows: the way or the method in which powers are divided between the general and regional governments, each one working within its sphere independently, but at the same time they co-ordinate (qtd in Vile 193). "…Each of the members of the Union must be wholly independent in those matters which concern each member only… All must be subject to a common power in those matters which concern the whole body of members collectively…" is another definition provided by E.A. Freeman (qtd in Vile 193). Therefore, the American political system has performed the bases for two governments each working within its legal sphere.

American federalism was created by the Tenth Amendment where the governing power was divided between the national and state governments. The above Amendment stated that powers not delegated to the federal or national government, nor prohibited to the state governments, are reserved to the states or to the people of the United States

(McPherson 254). One of the most important researchers in the field of federalism known as William H. Riker stated that Federalism is a political institution where activities and decisions are divided between central and regional governments in a way that allows each government to take final decisions in areas of its concern (Soder 10), thus, the federal system protected the sovereignty of each government.

Furthermore, federalism in the United States has established two different governments with different powers reserved for each one. On the first place, powers reserved for the federal government are for instance mentioned within Article I, Section 8, known as the Elastic Clause. The latter has expanded Congress powers through giving it the right to make all laws necessary and proper, in addition to those powers vested in the government of the United States granted by the U.S. Constitution ("The Reach of Congressional").

Nevertheless, scholars debated that the above article within the United States Constitution has enlarged rather than narrowed those powers reserved to Congress. Moreover, the latter possesses financial powers, such as: the power to tax and spend in order to pay debts and provide for the common defense and general welfare of the United States, to borrow money, and to appropriate money from the United States treasury. As well as, Congress has no power to regulate "for the general welfare", but may only tax and spend for that purpose, it has the authority over the commercial interests of the nation, including the power to regulate commerce under the interstate commerce laws, to establish bankruptcy laws and to coin money.

While, on the second place, states powers are prescribed negatively within the American constitution; they are limited in regard to the regulation of foreign affairs (imports and exports). They are obliged to respect the decisions of courts of other states and not to intervene in their internal matters, as well as, to burden interstate commerce

which is to be regulated by the federal government. States powers are limited or confined to their territories.

To reveal what kind of relationships ties the federal government to state governments during the 20th century, the notion dominance[1] has to be clarified. In politics the term refers to the use of one part of the absolute authority over the other in decision-making; even with the presence of the second part's legislations, the first is always the dominant or the leader; the former legislations are more superior to the latter in the process of decision-making.

In fact, the structure of American federalism lies between two extremes. The first, "if the regional governments are dependent upon the central government, but the latter is independent of them, this represents a unitary rather than a federal pattern", the second "if the central authority is dependent upon the regions, but they are independent of it, then we really have a confederation rather than a federal system" (Vile 197). Beside these two governments, there is another authority which is higher and stronger. It is the power of the people prescribed in the Preamble of the Constitution[2]. The latter stresses the power and will of the people in decision-making. Although the U.S. Constitution has established two governments and has given them the power to make decisions regarding the conduct of the American people's affairs in different fields, it has considered the will of people above all authority, which glorifies the idea of how sovereign in the American people and how the Constitution has paved the way for the foundation of a democratic state.

The flexibility of the federal system allowed the U.S. Supreme Court to change the balance of power or to broaden the federal powers over states. This point has been a subject of debate among scholars for a long period of time. It seems like an inadequacy in the governing system itself, for example: Congress has used special tools to expand its

powers through clauses, which have given it the authority to regulate commerce (Mauk and Oakland 118).

A flesh back to the American history clarifies that federalism has gone through three main stages. The first one is called Dual federalism, also known as layer cake federalism. This stage has mandated a separation between the federal and state governments, where each of them would legislate in its own sphere of action. Thus the main working principle under the latter is that each government, whether the federal or the state governments, are sovereign within their own borders.

Simultaneously, when the federal government declared its authority to legislate in areas like: public health and safety, was confronted with local legislations related to the states where the U.S. Supreme Court announced that those areas of regulation were purely matters reserved for the states. Thus, scholars often characterize the relationship between both governments under the latter by tension, rather than cooperation. The distribution of powers and responsibilities between them had been already confirmed by the U.S. Supreme Court. The court emphasized that each government has its sovereignty and its separated sphere of working (Mauk and Oakland 157).

Cooperative Federalism or marble-cake came into existence between 1930-1960. It was the second stage of American federalism. The aim of political leaders was to look for ways where the federal state governments can interact cooperatively and collectively in the process of decision-making. The non-concentration of power at any level in addition to the division of responsibilities may allow people and groups to access to many political venues. This collaboration presupposes political stability and better conditions of life. Cooperation within the American governments can be drawn in the following example: "the federal government…encouraged applications for aid directly from the local governments and private community groups, frequently by passing the state authorities in

its decision on financing" (Mauk and Oakland 158). In few words, Cooperative Federalism was demonstrated by a marble cake to illustrate the difficulty of defining the scope of each government; where the federal government ends and where the state governments begin.

The U.S Supreme Court tried to interpret the Tenth Amendment and the elastic clause in a different way; it focused on the ways where both governments can work together, rather than the division of powers (Mauk and Oakland 158). Therefore, both governments began to be closer to each other than before, the national government for example worked on: low-rent, housing projects, urban mass-transit, health services, and job training.

The third stage is the New Federalism. Under the scope of such federalism, states and local governments reject the expansion of federal power. The main purpose behind the latter was the restoration of state's autonomy. During this stage presidents Nixon and Reagan confessed to the states their rights to ran themselves, in addition, they recognized the necessity to reduce the federal power ("Federalism. . .").

Moreover, American federalism is much wider than what has been mentioned above. Some scholars related it to interdependency, which supported the idea to prevent any abuse of power in the one hand, rather, it aimed to perform a kind of mutual work between the two governments. The framers of the American constitution wanted to perform two governments in order to prevent the abuse of power in the one hand, moreover, they wanted to create interdependence between the national and state governments for the welfare of the American people (Ville 197).

1.2. Power Division within the U.S. Constitution

1.2.1. The Legislative Branch

For the purpose of preventing abuse of power on the one hand and safeguarding freedom for all on the other, the Americans preferred the separation of powers into three branches: the legislative, the executive, and the judicial one. The legislative branch consists of the House of Representatives and the Senate; both form the United States Congress. Congress has enormous enumerated powers in the Constitution; the most important ones are listed in Article I, Section 8, Clause 1. "The Congress shall have power to lay and collect taxes… to pay the debts and provide for the common defense and general welfare of the United State". So, only Congress can make laws. Furthermore, it has the authority to regulate and manage foreign and interstate commerce ("The Reach of Congressional").

The majority in both chambers are of middle-aged white men. It is the authority, the legislative body, charged with legislating laws. According to the United States Constitutions, Congress has been granted the sole authority to deal with certain functions such as: enact legislations, declare war, confirm or reject many presidential appointments, and substantial investigative powers ("Legislative Branch"). Besides these two chambers the Congress collaborates its work with other agencies such as: the House Works, the Senate, Library of Congress, Architect of the Capitol, Congressional Budget Office, Congressional Research Service, Government Printing Office, and Government Accountability Office; their major role is to supply assistance and services when necessary.

It is worth mentioning the formation of both chambers that qualification for each Congress chamber has different requirements. For the first chamber, a person must be

twenty-five years old, seven years a citizen and a resident of their district, in contrast for the second one, where the person must be thirty years old, a citizen for nine years, as well as a resident of the state where elected. Currently, the first chamber is made up of 435 elected members, divided among the 50 states in accordance to their population, in addition to the 6th non-voting members representing: the District of Columbia, the Commonwealth of Puerto Rico, and four other territories of the United States of America. The presiding officer of the chamber is the Speaker of the House, elected by the representatives. Today the Speaker of this house is the Republican Paul D. Ryan.

The Senate, the second room in the legislative branch or the U.S. Congress, is composed of one hundred Senators, two for each state. Members of this chamber are to be elected six-year terms by the people of each state. Senator's terms are staggered so that about one-third of the Senate is up for re-election every two years. The Senate has the role to confirm those appointments passed by the President, as well as to ratify treaties. The Vice President of the United States serves as President of the Senate.

The law making legislative processes are similar in both houses, the process starts first by introducing a Bill to Congress, "anyone can write it, but only members of Congress can introduce legislation" ("Legislative Branch"). In addition, they can be introduced on one chamber first or in both simultaneously (Mauk and Oakland129).

1.2.2. The Executive Branch

The second branch in the American government is the executive branch. The President is the highest authority in the former. The most important functions vested in the President are the following: the implementation and enforcement of laws enacted by Congress, the appointment of the heads of the federal agencies including the Cabinet, and the nomination of the highest officials in the branch (the secretaries of the departments,

officers of American embassies, as well as the chief administrators of agencies and of commissions). The Vice President is the second stone in the executive branch, he manages his work from two offices: one situated in the West Wing of the white house and the other in the Eisenhower Building. His role is to provide the necessary support for the United States President is unable to serve. The latter can be elected and serve an unlimited number of four-year terms, even under the reign of a different president (“Branches of Government”).

The third component of the executive branch is the Executive Office of the President; it is composed of two parts: White House Communication Office and Press Secretary office. The latter is responsible to communicate the message of the American President to his people (“Executive Branch”). The last component is known as the Cabinet; its members are called the President's advisors, or his closest confidents. Their main role is to help the President in managing federal agencies and provide advice where necessary. It includes the Vice President and the heads of executive departments; they are nominated by the President himself after the approval of the Senate.

1.2.3. The Judicial Branch

The judicial branch is the third part of the federal government. Members of this branch are appointed by the American President, and confirmed by the Senate. The first American constitution has not specified the number of justices on the U.S. Supreme Court; rather, it was the Congress in 1801 to take this role. At first, their number has been fixed to five justices only, but it changes over time from five to ten. Currently, the Court is consisted of the Chief Justice of the U.S. Supreme Court and such number of Associate Justices as may be fixed by Congress.

The number of Associate Justices is actually fixed at eight members. It is the highest authority localized in Washington responsible for appeals filed by courts of last resort whether federal or state courts, as well as the interpretation of laws that may be subject of contradiction or ambiguity. Article III, Section 1 stated that the judicial power shall be vested in the U.S. Supreme Court and the other inferior courts ("U.S. Constitution. . ."). Justices of U.S. Supreme Court can work for unlimited terms. They are allowed to remain in office till they resign, pas away or in the case they are convicted by Congress ("Judicial. . .").

Federal judges can only be removed through impeachment by both houses. The American courts system is composed of: U.S. local and District Courts, U.S. Circuit Courts of Appeal, U. S. Court of Appeals for the Federal Circuit and U.S. Supreme Courts. They can be divided also into: Trial Courts of General Jurisdiction, Intermediate Appellate Courts, and Highest State Courts. For example, in criminal or civil cases, proceedings pass as follows: "a criminal legal procedure typically begins with an arrest by a law enforcement officer… Then, the case is brought to trial and decided by a jury". Yet, if the defendant is not satisfied with the court's decision, he/she can appeal to a higher court (a court of appeal), whether a state appellate court or a federal appellate court, any litigant who wants to file an appeal, must prove that the trail court made a legal error which affected the outcome of the decision ("The Judicial Branch. . .").

The federal courts hear cases arising out of the Constitution. The most important ones are those related to: federal laws, international treaties maritime cases, cases related to foreign citizens or governments, as well as the regulation of interstate commerce, while, the United States Supreme Court is the highest judicial authority in the country, its main role is to deliver its opinion on cases that may differ from the Constitution, its decisions can only be changed by a later U.S. Supreme Court decision or by amending the Constitution.

The process by which the United States Supreme Court receive cases is when a person loses in a federal court of appeals, or the state's highest court through a procedure known as "writ of certiorari", but in fact, the United States legislator has given the U.S. Supreme Court discretion whether to accept reviewing a case or not. Generally the court may accept to deal with cases if they involve newly important legal principles not treated before by the court; or in the case when two federal appellate courts provided different interpretations of the law.

Furthermore, the Founding Fathers have realized the necessity of creating a system that can control each power and prevents the expansion of one branch over the other. In fact, the framers of the American Constitution were influenced by ideas belong to Montesquieu and William Blackstone. This system led to the creation of a kind of cooperation between the different parts of the American government. The Constitution gave each branch certain powers to judge works or decisions of the others and to prevent any abuse of power, and it can be implemented as follows: the legislative makes laws while the executive implements them, and the judicial review and evaluate laws. For example, the president may veto a law passed by Congress, but a veto can be overridden by two-thirds majorities of both houses. Also, the Senate confirms the president's

nominations while the Court can declare laws passed by Congress unconstitutional. Therefore, the major aim behind the separation of powers can be explained as below:

> The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but, by means of the inevitable friction incident to the distribution of governmental powers among three departments, to save the people from autocracy. (Rubin 72).

1.3. The Structure of the New Judicial Federalism in the United States

1.3.1. Federal Jurisdiction

In his article "the Past and Future of the New Judicial Federalism", G. Allan Tarr stated that "… the new judicial federalism, the increased reliance by state judges on state declarations of rights to secure rights unavailable under the U.S. Constitution, represents not a return to an earlier federalism but rather something new…"(63). The new judicial federalism appeared during the early 1970s, after the appointment of Chief Justice Warren Burger to succeed Earl Warren on the United States Supreme Court. The relationship between the states and the federal government in the United States is governed by the interactions between state and federal judiciaries[3] as well as by the interactions between states and the federal legislatures. It has been argued that the regulation of the relationship between the national and state governments contains the recognition of behavioral norms which impose the duty to take into consideration the other level of government whenever exercising authority (Copeland 559).

Historically, to regulate areas of interactions between national and state courts, the Anti-Injunction Act of 1793 was passed. The latter was enacted when Congress decided

to allow jurisdiction[4] on lower federal courts over matters the states had the authority to decide on too. The nation has faced the problem of how to divide decision-making authority between the federal courts and states courts; when to apply the federal law and when to apply the state law. The act prohibits a federal court to decide on proceedings in state courts; it limited the scope of the federal intervention in local matters.

By the spread of the new judicial federalism, states supreme courts have even declared that they will address state constitutional claims first and consider federal constitutional claims when cases could not be resolved on state grounds (Tarr, "New Judicial Federalism"1098). In other words, the new judicial federalism means that state courts will rely on state bills of rights to provide greater protection than was available under the federal Bill of Rights which is a new trend towards giving priority to the implementation of domestic legislations related to the states first, as well as paves the way for promoting state's rights.

In contrast to federal jurisdiction which is limited to the types of cases mentioned within the U.S. Constitution and specifically provided for by Congress such as: cases involving violations of the United States Constitution or federal law, cases between citizens of different states, and cases in which the United States is a party ("Federal vs. State Courts"). State constitutional law and jurisdiction is said to be increasingly becoming an independent body of law rather than determined and related to the federal law. This is reflected in the highly sophisticated literature on the distinctive problems of state constitutional interpretation that has developed over the last years.

1.3.2. State's Judicial Power

The states which constitute the union are not totally independent; in fact, they are political communities occupying separate territories with self-government where each

single state has its own constitution, laws, and government. The judicial structure in the United States supposes the existence of two separate judicial systems; federal and state courts. State courts are said to be the base for any initial hearing. These courts can be divided into two categories. On the one side, courts of original jurisdiction; with general authority to hear and decide the great mass of cases, are specialized in hearing evidence, facts and the application of law. On the other side, courts of appeal are taken into consideration. The idea behind the establishment of appellate courts is that there should be a uniform interpretation of the law, in the United States these courts function without neither juries nor evidence.

The United States constitution stated that all residual powers lie with the states, the state judicial power extends to all cases that do not fall under the federal law and therefore, federal courts. This encompasses most legal disputes. Besides, in determining what constitutes a case, states are not bound by the justiciability limitations imposed on federal courts by Article III, section 2 of the United States constitution (Tarr, "Judicial Federalism"10). Rather, state constitutions determine what sorts of claims can be litigated in state courts.

Thus, whereas federal law imposes strict standing-to-sue requirements, states have more freedom and flexibility on dealing with this issue. Justice William Brennan, who served on the New Jersey Supreme Court before his appointment to the United States Supreme Court has stated that State's courts work has greater significance in measuring how well the United States achieves the ideal of equal justices for all the American people than that of the Supreme Court (Tarr, "Judicial Federalism" 10).

Scholars agree that even when the United States Supreme Court reviews state rulings/decisions, only a miniscule percentage receives federal judicial scrutiny, therefore, state courts possess the final determinative decision in almost all the cases they consider

after the emergence of the new judicial federalism. Accordingly, when two separate independent governments rule the same land and people, each one within a sphere, thus, it is called a federal constitution. They have the ability to manage their own affairs autonomously (Riker 11).

Under the umbrella of the new judicial federalism, some state supreme courts have even indicated that they would address state constitutional claims first and consider federal constitutional claims only when cases could not be resolved on the state grounds. This may lead to understand the promotion of state's rights and sovereignty, as well as the creation of a kind of equivalence between two different governments in order to achieve the public benefit as much as possible in different fields. A new era in the history of the federalism in the United States is taking control.

Endnotes

1**.** According to the online etymology dictionary, the term derives: from Latin dominat means: ruled or governed, also from dominus which means: lord or master. Dominance also refers to a situation in which a being or a group is in a position where he/it can impose his/its authority by any means: laws, ideas, rules, beliefs... Harper, Douglas . "Domination." *Etymonline.com*. N.p., 2017. Web. 14 Jan. 2017.

2. Preamble of the Constitution stated that: We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America ("Preamble to the"). "Preamble to the Constitution of the United States." *Conlaw.org*. Constitutional Law Foundation, n.d. Web. 14 Feb. 2017.

3. Article III, section 2 "… controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states…" "Article III and the Courts." *Judiciallearningcenter.org*. The Judicial Learning Center, 2015. Web. 26 Feb. 2017.

4. Jurisdiction refers to the kinds of cases a court is authorized to hear. "Jurisdiction." *Law.cornell.edu*. Legal Information Institute , n.d. Web. 24 Feb. 2017.

Chapter Two

Characterizing the Relationship between the Federal and the State Governments

After presenting a background about the federal system, its different institutions and how it works, in the present chapter, the below court cases will be evaluated, which are founded via Cornell University Law School website (Legal Information Institute), the United States district court for the eastern district of California (Government Publishing Office [U.S.]), and addition formal legal websites to characterize the nature of the relationship that ties the federal government to the state governments with providing appropriate justifications for each case. The court cases are divided into three main axes, and here is a brief summary of each one.

Therefore, the choice of the below court cases can be justified as follows: Firstly, they demonstrate some weaknesses of the American judicial system during the 20th century in the decision-making process. Secondly, they are contributed to change the public opinion on the nature of the political relationship between the federal and state governments, as well as how they interact with each other to fit people needs. Thirdly, they have led to considerable improvements in the American judicial system.

2.1. Court Cases for the Domination of the Federal Government over the States in Decision-Making

American scholars often disagree over powers granted for each government, they believe that the federal government is the dominant authority. The following court cases show how decision-making is strictly dominated by the national government.

2.1.1. Kleppe v. New Mexico (1976)

Congress passed the Wild Free-Roaming Horses and Burros Act, which made it a crime to "capture, brand, harass, or kill" wild horses or burros on federal lands. The question to be asked is whether the federal government exceeded its powers under the Constitution in enacting the act mentioned above. Based on its laws, the New Mexico Livestock Board refused to apply the act, but rather legislated its own. It argued that the act passed by Congress was unconstitutional unless the federal government could show that the horses and burros were items of interstate commerce and thus, could be regulated by the Interstate Commerce Clause[1].

Although, the wildlife was not federal property and therefore, should not be governed by the Property Clause, the U.S. Supreme Court ruled in favor of the federal government based on Article IV, Section 3 within the American Constitution[2]. Nonetheless, technically Europeans do not consider horses as a natural and indispensable part of the ecosystem. The Court interpreted the Act mention above as follows: "the wildlife was an indispensable part of the ecosystem, so protecting the animals is a part of protecting the land, even if the federal government did not technically own the wildlife" ("Natural Resources Law").

To better explain the case, the United States Supreme Court refused to accept New Mexico's narrow reading of the property clause limited to two acts which might stand against Congressional power. On the one hand, there was the power to dispose and make rules regarding the use of federal property. On the other hand, the power to protect that federal property was stood. The Court insisted on federal power without a limitation which violated the state's supremacy, as well as, it contradicted with the conduct of their local affairs.

Moreover, the property clause itself was interpreted in favor of the federal government. The Court noted that the clause mentioned above gave the federal government the power and authority to dispose and make all needful rules and regulations. The concept "needful" has been interpreted very broadly (Fischman and Williamson 104), to include protecting the wildlife living within the state boarders which can be considered as an intervention in the internal legislations normally protected by the constitution. Besides, the Supreme Court made a reference to the Supremacy Clause Article IV, Section 2 which over rides any state laws in areas where Congress has acted regardless of states internal laws and legislations.

2.1.2. Runyon v. McCrary (1976)

Michael McCrary and Colin Gonzales were black children who were denied admission to Bobbe's and Fairfax- Brewster schools. McCrary and Gonzales's parents filed a class action against the schools, suspecting the denials were due to their children's race. A federal district court ruled for McCrary and Gonzales, finding that the school's admission policies were racially discriminatory.

Although, the case happened within the state borders and under its jurisdiction, based on a section enacted during 1981 which prohibits racial discrimination in the making and enforcement of contracts which was one of the most important measures enacted by the reconstruction Congress to defeat racist restrictions against blacks after the Civil War (Motley 653), the United States Supreme Court held that federal law has the power to prohibit private schools from discriminating on the basis of race. This can be considered as a violation of state's rights concerning the regulation of schools within their borders. From another side, the Court referred to the 13th Amendment"… shall exist within the

United States; or any place subject to their jurisdiction..." ("13th Amendment to the U.S. Constitution").

Although, Congress has other sources of power to intervene in private schools sector, their regulation by states as a part of their internal policy, would appear to be subject to no greater constitutional limitations than are applicable to federal regulation of private schools. "Protections of private schools as applied to the states through the fourteenth amendment are … identical to the first amendment freedom of association as they limit federal regulation of the same schools" (Upson and Michelle 750).

To sum up, the United States Supreme Court announced the unconstitutionality of Virginia legislator without taking into consideration the state's right to regulate private schools networks granted to it by the tenth amendment. Again, this decision has revealed the dominance of the federal authority in decision-making over states; the freedom and sovereignty of the state in making its decisions to regulate its local affairs were marginalized in a way that promotes the domination of one authority over the other.

2.1.3. Sporhase v. Nebraska ex rel. Douglas (1982)

A Nebraska statute provides that any person who intends to withdraw groundwater from any place in the state and transport it for use in an adjoining state must obtain a permit from the Nebraska Department of Water Resources. Neither the defendants nor their predecessor had applied for a permit to transport ground water from the Nebraska well across the border into Colorado as required by the state's law, through the Nebraska Department of Water Resources ("Sporhase v. Nebraska ex rel. Douglas").

The state of Nebraska brought this action in the District Court of Chase County to enjoin defendants from transporting Nebraska ground water into Colorado without a

permit. After trial on the merits, the District Court issued the injunction, holding that the action did not violate the Commerce Clause of the U.S. Constitution (Article I, Section 8)[3], since under Nebraska law, water is not an article of commerce. The judge Stephen F. Williams stated "the Commerce Clause empowers Congress to regulate interstate commerce, and for over a century the Supreme Court has inferred from that grant to Congress a judicial power to strike down state legislation" (Williams 89). The district Court also held that even if ground water is an article of commerce[4], the statute does not impose an unreasonable burden of interstate commerce. The U.S. Supreme Court held: a Nebraska statute forbidding commercial exportation of water from Nebraska was unconstitutional in that it violated the dormant commerce clause[5]. Thus, the latter can be considered as a real violation of the state's rights.

In the following court cases, the United States Supreme Court's decisions were not always in favor of the federal government during the 20th century, but rather it worked to protect state's rights in many situations.

2.2. Court Cases for the Domination of the States over the Federal Government in the Process of Decision-Making

2.2.1. Oregon v. Mitchell (1970)

The case raised another difficult question about the division of powers between the national and state governments. Oregon, Texas, and Idaho brought suit in the Supreme Court against the federal government to challenge the Voting Rights Act Amendments of 1970. They claimed that only the states have the authority to establish qualification rules for voters in state and local elections. Therefore, the following questions are highlighted: did the authority vested in the national government by the Fourteenth Amendment give Congress the right to regulate age requirements in state elections? Or, was it a violation on the state's rights to manage their local affairs?

The term voting includes all the necessary action starting from the time of registration till the actual counting of the votes in order to make a vote for public or party office effective. Even though, four justices agreed with Justice Black that the Constitution gave Congress broad powers to regulate federal elections and that states have no legitimate interest in excluding 18 to 21years-old voters "the Equal Protection Clause"[6], the U.S. Supreme Court final decision was in favor of the state government. On the one side, it stated that only states could regulate the minimum age in state and local elections. In addition, Congress lacked the power to set the voting age for federal elections; the 1970 reauthorization reduced the voting age in federal elections from 21 to 18 years of age, therefore, only states have the right to set voter qualifications. On the other side, the ban on literacy tests and state residency requirements for voting in federal elections was upheld.

Due to the U.S. Supreme Court's decision, state's rights were increased over the federal government. The decision stated that "the Amendments to the Voting Rights Act abolish long-term residency as a precondition to voting for the President and Vice President… also establish national standards for absentee registration and absentee balloting in presidential elections" ("United States Commission"). Supporting the same view Justice Stewart supported that Congress violated an area reserved to the states where it has no supervisory control over state elections ("Oregon v. Mitchell").

2.2.2. Younger v. Harris (1971)

California's Criminal Syndicalism Act prohibited advocating, teaching, or aiding the commission of a crime or unlawful acts of violence or terrorism. Criminal syndicalism as a concept dates back to the growth of a syndicalism and other revolutionary labor movements during the twentieth century. It became embodied in a series of state laws; the California law has been but one of twenty-four similar acts enacted during the strenuous

war and post war years (Whitten 3). John Harris, was charged with violating California Penal Code known as the California Criminal Syndicalism Act for distributing leaflets advocating a change in industrial ownership through political works ("Comity: Younger"511). Harris claimed the law had a "chilling effect" on his freedom of speech guaranteed by the First and Fourteenth Amendments to the U.S. Constitution. The case focused on the following question: did the federal court, in stopping a prosecution in a state court, violate power division among the two governments as established within the federal system?

While a California state court upheld Harris's conviction, a federal district court struck down the Act because of vagueness and over breadth. The federal government intervention into the state affairs was under the pretension of securing the civil rights of various petitioners. "The district court felt that federal interference with the statute would be a massive emasculation of the last vestige of dignity of sovereignty" ("Comity: Younger" 510). After a series of proceedings, the case achieved the U.S. Supreme Court. The latter found that a part of federalism was the non-interfere with
the legitimate activities of the states as well as, federal courts should not interfere in state proceedings or hearings where the petitioner has an adequate remedy in the state courts to protect all his constitutional rights.

The United States Supreme Court also referred to the basic doctrine of equity jurisprudence where federal courts were required to show proper respect for state functions and notions of comity. Thus, it promoted state's rights in the presence of a strong federal government. In other words, federal judges were required to show proper respect for states functions and legislations which made equivalence in the process of decision-making between the national and the state governments. During the trial the majority opinion discussed the traditions of comity between the national and state

governments as a concept occupying a highly important place in both the past and the future of the United States and the establishment of its political institutions.

2.2.3. Apodaca v. Oregon (1972)

Robert Apodaca, Henry Morgan Cooper, and James Arnold Madden were convicted of assault, burglary, and grand larceny. The defendants were found guilty of committing felonies, by less than unanimous jury verdicts, which were permitted under Oregon law in noncapital cases. They claimed that their convictions, upheld on appeal, contravene with their rights to a trial by jury guaranteed by the Fourteenth and Sixth Amendment [7] to the United States Constitution. Therefore, it is worth asking the following question: is a defendant's right to a trial by jury in criminal cases in state courts will be violated if the accused is convicted by a less-than-unanimous jury in accordance to the state's internal legislation?

After the case achieved the United States Supreme Court, it stated that the Sixth Amendment right of a jury trial was applicable to the states by the Fourteenth Amendment and did not require that the jury's vote be unanimous. The requirement of unanimity was based in custom, rather than in the Constitution. Furthermore, it held that the most important function of the jury was to provide "commonsense judgment" in evaluating the respective arguments of accused and accuser ("Apodaca v. Oregon"), thereof, there was no difference between juries required to act unanimously or of majority rule. In other words, the purpose behind the creation of trial by jury is to prevent any kind of oppression exercised by the government through providing a safeguard against the corrupt or overzealous prosecutor and the eccentric judge.

Therefore, it held that state juries may convict a defendant by less than unanimity even though the federal law required that federal juries must reach criminal verdicts

unanimously. States are free to regulate their internal matters even if it does not go the same way as the federal procedures. Though, the defendants should not stick to the federal rules because they were under the direct conviction of the state's law which is totally sovereign within its own boarders and its own courts.

Justice White concluded that: "the Sixth Amendment guarantee of a jury trial made applicable to the states by the Fourteenth Amendment does not require that the jury's vote be unanimous" (Supreme Court, U.S). Justice Powell has confirmed that all the elements of a jury trial within the meaning of the Sixth Amendment does not necessary require jury unanimity, therefore, Oregon's ten of twelve rule applied in Apodaca v. Oregon court case cannot be considered as a violation of the due process proclaimed by the defendants. The case analyzed above makes a strong relationship to a similar one known as: Williams v. Florida (1970). In the latter, justices discussed whether the right to a trial related to the Sixth Amendment requires that all juries must consist of 12 men. They concluded: it was not of constitutional stature (Linder). Therefore, they have given the right to the state internal laws, because the way national interests are to be done is different from local matters.

2.2.4. Edelman v. Jordan (1974)

Respondent brought class action for injunctive and declaratory relief against the Illinois officials administering the federal-state programs of Aid to the Aged, Blind, and Disabled AABD ("Aid to the Aged"), which are funded equally by both governments, contending that they were violating federal laws and regulations by initiating payments later than was required by federal legislations. As well as they denied equal protection of laws by following Illinois's internal regulations that did not comply with the federal time limits within which participating states had to process and make grants with respect to the

AABD applications. In other words, the federal regulations required an applicant's eligibility to be determined and the first aid to be ensured within 45 days. The state took up four months or more to decide on applicant's eligibility which contradicted with the federal law.

The Trial Court entered a permanent injunction requiring Illinois to comply with the federal regulations in the future. The trial court also ordered the state officials to pay all benefits wrongfully withheld since the implementation of the federal regulations. On its part, the United States Court of Appeals for the Seventh Circuit, affirmed when the case reached the U.S. Supreme Court, it held that because of the sovereign immunity recognized in the Eleventh Amendment[8], a federal court could not order a state to pay back funds unconstitutionally withheld from parties to whom they were due. Among the interpretations provided for the amendment mentioned above is that nobody can sue a state in federal court without the consent of the state concerned even in the presence of the federal law. Therefore, state governments are supreme in their decisions.

Supporting the United States Supreme Court's view, a similar decision took place in 1996, between the Seminole Tribe of Florida ("The Seminole Tribe of Florida") and the state of Florida, which is a federally recognized Indian tribe who never signed a peace treaty in the United States and the state of Florida. The case named "Seminole Tribe of Florida v. Florida". It is considered to be the latest contribution of the court to the confusing course of decisions attempting to balance the supremacy of federal law with the state's sovereign immunity from suit in federal courts (Young 1411).

The Seminole Tribe brought suit against the state of Florida for violating the good faith negotiations requirement of the Indian Gaming Regulatory Act[9]. By the end of the proceeding, the U.S. Supreme Court stated that under the Eleventh Amendment

mentioned before, states are regarded and considered as sovereign entities and their sovereignty inherently implies that states may not be sued by parties without their consent, even when they are given authority to regulate those activities through receipt of federal funds. The case gave evidence for the supreme decisions of states in the presence of federal legislations. Based on the above case, the United States Supreme Court accorded the right to the state and forbade the federal government pretension to intervene in such matters. This reveals that the Court was applying constitutional legislations as well as respecting the state's rights.

While in the previous cases the dissertation presented how the right was given to one government whether the national or the state governments, in the following cases new and different decisions will be revealed.

2.3. Court Cases for the Complementary Role between the Federal and the State Governments in the Process of Decision-Making

2.3.1. Lefkowitz v. Newsome (1975)

Leon Newsome was arrested on the charge of loitering in the lobby of a New York City Housing Authority apartment building. Upon search, a small quantity of heroin and narcotics paraphernalia was found with him. As well as, he was charged with possession of several dangerous drugs and a criminal possession of a hypodermic instrument. Newsome was convicted of loitering, but he pleaded not guilty on all charges, claimed the loitering law was unconstitutional.

Although the case falls under the state's law and thus, the state's jurisdiction, the Supreme Court in the United States held that when the state law permits a defendant to plead guilty without giving up his right to judicial review of specified constitutional issues, such as: the lawfulness of a search, the voluntariness of a confession…etc, the

federal law can review the case. In other words, "…when a defendant pursuant to state law, pleads guilty without waiving his right to state appellate review…preserves his right to review of these issues through federal habeas corpus…" ("Lefkowitz V. Newsome" 225; "In the United States District" 2). In the same time, the federal law cannot be considered as a violation of New York state laws. For better explanation, the person who is convicted for breaching the state law and who has unsuccessfully presented to the state's courts (court of appeal) his federal constitutional claim will be allowed to raise such claim in a federal habeas corpus proceeding, and therefore, leads to the application of the federal law (both governments can be involved in the process).

2.3.2. Garcia v. San Antonio Metropolitan Transit Authority (1985)

The San Antonio Metropolitan Transit Authority SAMTA which is the main provider of transportation in the San Antonio metropolitan area claimed it was exempt from the minimum-wage and overtime requirements. According to the Fair Labor Standards Act[10], the following issues are treated: minimum wage, recordkeeping, overtime pay, in addition, to youth employment standards affecting employees in federal and state governments ("Wage and Hour Division"). The latter argued that it was providing a traditional governmental function, which exempted it from federal controls according to the doctrine of federalism established in National League of Cities[11].

Joe G. Garcia, an employee of SAMTA, brought suit for overtime pay under Fair Labor Standards Act. In its decision, the U.S. Supreme Court found that rules based on the subjective determination of "integral" or "traditional" governmental functions provided little or no guidance in determining the boundaries of federal and state power ("Garcia v. San Antonio"). Justice Blackmun concluded "to draw the boundaries of state

regulatory immunity in terms of traditional governmental function is not only unworkable but is also inconsistent with established principles of federalism"(Linder).

Instead of re-dividing the power of regulating minimum-wage and overtime requirements between the federal and state governments, the United States Supreme Court took an intermediate position. The Court argued that the structure of the federal system itself, rather than any discrete limitations on federal authority, protected state sovereignty. It declared that the regulation of the activities of state and local governments in areas of traditional governmental functions would neither violate the Tenth Amendment to the United States Constitution nor the state's sovereignty; rather both governments could legislate to regulate this field of work.

In the previous chapters, an introduction of the federal system and the new judicial federalism in the United States have been presented, as well as the analysis and the deduction of the relationship that ties the federal government to the states governments. The following chapter is an attempt to present some proposed solutions which may help federalism to become more effective in the process of decision-making coupled with highlighting its vital role in protecting the nation from division.

Endnotes

1. The Interstate Commerce Clause, also known as the Commerce Clause, the latter has given Congress the power to regulate and manage international trade i.e. with foreign nations, as well as among states. "An overview of the Interstate Commerce Clause." *Constitution.laws.com*. N.p., 2017. Web. 15 Apr. 2017.

2. Article IV, Section 3"the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state." "Article 4 of the US Constitution." *Government-and-constitution.org*. N.p., June 2015. Web. 23 Mar. 2017.

3. Article I, Section 8 "…to regulate Commerce with foreign nations, and among the several states, and with the Indian tribes…" "U.S. Constitution - Article I, Section 8." *Thoughtco.com*. N.p., n.d. Web. 12 Mar. 2017.

4. According to the legal dictionary, commerce used in the constitution, means business or commercial exchange in any and all of its forms between citizens of different states. "Commerce." *Legal-dictionary.thefreedictionary.com*. N.p., 2017. Web. 15 Feb. 2017.

5. The Dormant Commerce Clause involves not federal power to act but the restrictions on state power which are inherent within the Commerce Clause. The United States Constitution did not mention the above clause directly, but rather, restrictions imposed on state's actions have been inferred by the Supreme Court from the Commerce Clause. "The Dormant Commerce Clause." *Nationalparalegal.edu*. National Paralegal College, 2007. Web. 23 Feb. 2017.

6. The Equal Protection Clause prohibits states from denying any person within its borders the equal protection of the laws. That's to say, the state must treat all individuals in the same manner under the same conditions and circumstances. "The 14th Amendment Equal Protection Clause." *Public.getlegal.com*. Law Connect LLC., 2017. Web. 12 Feb. 2017.

7. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed. "The United States Bill of Rights, the 10 Amendments to the Constitution ." *Aclu.org*. ACLU, 2017. Web. 25 Feb. 2017.

8. The Eleventh Amendment "the judicial power of the United States shall not be constructed to extend any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state or by citizens of any foreign state." Thomas, Kenneth R. "Federalism, State Sovereignty, and the Constitution: Basis and Limits of Congressional Power." *Congressional Research Service* (2013):01-26. Fas.org. Congressional Research Service. Web. 25 Apr. 2017.

9. An act enacted by the Congress to regulate the conduct of gaming on the Indian Land (casino gambling), it established the National Indian Gaming Commission. Q. Akee, Randall K, Katherine A Spilde, and Jonathan B Taylor. "The Indian Gaming Regulatory Act and Its Effects on American Indian Economic Development." *Journal of Economic Perspectives* 29.3 (n.d.): 185-208. *Dx.doi.org*. 2015. Web. 12 Feb. 2017.

10. The Fair Labor Standards Act (FLSA), is the act who established minimum wage, overtime pay and child labor standards affecting full-time and part-time workers both in federal and state governments. "Wage and Hour Division (WHD)." *Dol.gov*. U.S. Department of Labor, n.d. Web. 12 Mar. 2017.

11. When Congress passed amendments to the Fair Labor Standards Act in 1938, the National League of Cities was founded to challenge the constitutionality of the amendments. "National League of Cities v. Usery." *Oyez.org*. IIT Chicago-Kent College of law, n.d. Web. 21 May 2017.

Chapter Three

New Trends in Judicial Federalism

Federalism as a system of government was related to both divided and shared sovereignty between the federal and state governments with multi-level political institutions, as well as, two different judicial bodies, one related to the federal government and the other to the states. In addition, federalism dealt with issues such as: loyalties, identities, and governance (Knop et al. 1). Each government has the right to legislate its own laws according to its policy within a well defined sphere, where the abuse of power in the one hand can be prevented, as well as, it allowed the possibility of conducting national and local affairs in a well controlled manner.

Conflicts that arise over the contradictory interests of each government would be normal issue because of so many reasons, such as: diversity of legislations, police makers, and different views whether at the national or local levels. Accordingly, new judicial federalism would promote collaboration and complementation between the national and state governments, rather than supplant or separation. The latter, will contribute to political stability, economic growth, and reduces tension and differences that covers the relationship between the two governments. Moreover, it opens the way for a further and deep democratic dimension concerning the freedom of exercising the legislative activity by the states which conform to their internal supremacy. Therefore, it performs the bases of a democratic state.

3.1. Rethinking Judicial Federalism and its Principles

3.1.1. New perspectives

The research for ways to make federalism an ideal political system where a mixture of state and federal decisions will be better done, was the motif that pushed scholars and politicians alike to rethink again about federalism and its principles, as well as, how decisions will be better taken in the light of two separate independent governments. The expression "rethinking federalism" means rethinking how sovereign states together with the federal government can form a more perfect union. Several questions have been subject of controversy, among them: "how many local and state governments there should be? How policy responsibilities should be allocated between the central government and the lower tiers" (Inman and Rubinfeld 43). Therefore, the re-structure of the relationship between both governments forms the core nucleus for the elaboration of the federal system.

In fact, in modern societies where many issues are changing rapidly in different fields such as: economy, global forces, education, social welfare, and commerce necessitate a rethinking of the role of the central government with authority diffusing both downwards to local and state institutions. Accordingly, the division of the governmental job between two levels of government, each one working within its legal sphere, is said to be stronger than ever in application with the intention to discover the advantages and disadvantages (pros and cons)[1] of operating elementary and secondary education, as well as taxes at the hands of the state governments (Rivlin 388).

Historically, scholars consider the American president Ronald Reagan as the first initiator of the framework that covers the re-shaping of federalism especially the judicial branch in the United States; the responsible for the protection of people rights and

responsibilities when disputes arise whether among individuals or the other U.S. administrations along with individuals. In his new federalism proposal, the president based his policy on the turnover of many grant programs to state governments and the cutback and elimination of many federal domestic programs, which marks a clear change in his policy towards performing a real equilibrium between the federal and state governments at the level of power division (Levine et al. 196).

Later, a new project of federalism, called "democratic federalism", has been introduced. It takes an intermediate position between "economic federalism" and "cooperative federalism". Under the former only one single planner is required to provide public goods and to solve interstate economic conflicts, it can be applied into two ways; on the one side, by "mandate outcomes," and on the other, to impose taxes on state governments in order to provide an efficient level of activity made by them. On its turn, "cooperative federalism" focused on sharing powers and responsibilities between the federal and state governments in all fields, where the process of decision making is based on "majority rule" (Inman and Rubinfeld 46).

Democratic federalism has introduced a new ideology; an ideology that can maintain equilibrium and justice in dividing efficiency gains against any ill-management or imperfections the national planner may be exposed to, taking into consideration conflicts that may arise between the national and state governments. It seeks to establish a balance between a centralized government and local legislators. The application of "democratic federalism" will permit the federal and the state governments to converge their views, likewise to fit the needs of the American people, through the enactment of legislations and laws which complement each other and reduce the emergence of disputes that may arise between the two governments, in order to support and promote the right of each side to make appropriate decisions.

"Democratic federalism" convinces the public of how effective is there political system; a system that prohibits the abuse of power in the one hand and promotes democracy and justice in all aspects of their lives. In other words, the federal government operates when it comes to national concerns, while state governments are required to deal with local matters (Bodenhamer). Consequently, they can avoid any confrontations or contradictions that may occur between the upper decisions and the lower ones. It should be based on rules of jurisdiction, where each legislative body operates on its own level, without infringing or arbitrating the use of authority by one party, which guarantees the legitimacy of the actions taken by each government.

In the same context, political scientists have asked for which principles the federal system would be based on in the future. They have found that the federal constitution has to specify the number of lower-tiers governments, their representation to the national government, as well as, the assignment of policy responsibilities between the upper and lower governments; the federal and the state governments. Furthermore, they encouraged promoting cooperation between the two independent governments rather than a complete separation or independence. To build a strong nation, more than one government needs to be involved in the process of decision-making.

A better explanation of what has been mentioned above can be shown through Inman and Rubinfeld's illustration. They have provided a sophisticated model arguing that a strong national government based on the principles of democratic federalism with a small body legislature is said to be more efficient federal structure. The model may change the valued goal of political participation which is best served through giving small local governments stronger central government representation with more policy responsibilities (54).

Unlike political institutions in both federalism's concept (economic and cooperative) mentioned before, "democratic federalism" was supposed to operate on two different percepts. Firstly, "assigns agenda-setting power" vested in "the speaker of the house or a key legislative committee", other members will be required to vote with/against predictable policies/decisions no more. Secondly, "share agenda setting power" granting for each member the right to choose appropriate policies within its own working area. This power is considered positive when it is shared between the executive and the legislative branch (Erik and Tsebelis 198).

From another corner, federalism as a governing system changes from one generation to another. In fact, the changing realities of the American society and the rapid growth of the nation especially in the field of public relations have made federalism a flexible and dynamic system of government. It has allowed politicians to fit the needs of their people according to those circumstances and to keep pace with the nation's continuous development. There are no direct solutions to solve problems between the federal and state governments, but rather it depends on the contribution of each generation coming to power, and to what circumstances they will be faced; how they can adapt their perspectives and ambitions to the existing system.

The above issue can be illustrated in the following examples: firstly, the Civil War (1861-1865) turned mostly around slavery and the formulation of Confederate States of America. The latter contributed to change some principles within federalism based on war consequences. It settled the dispute about the nature of the union and the supremacy of the national government in it. As a result a strong national government was needed for the unification of the north to the south. Secondly, several factors were behind the alteration of the United States from an agricultural nation to an industrial power. Among those factors: the growth of urban population, natural resources, and transportation networks.

As a consequence, corporate monopolies emerged; which for the Americans were a source of threat and uncontrolled governmental power. The problem was not solved at the states level, hence, the need for a unique government was the most effective solution to control interstate commerce, and the national government began to maintain this responsibility (Bodenhamer).

Similarly, policy makers have insisted that some issues in reality need to be managed by the two governments at the same time for the welfare of the American citizens. Among these issues is "minimum wages". Both the national and state government have the responsibility to take the initiative in order to ensure that wages do exist at a level that enables workers to meet their basic needs, not just virtual wages that allow them to survive; the significant criteria for the development of the state, and therefore, the nation as whole.

The living wage outlined by the law requires employers to pay wages that are higher than the national or the local minimum wages. The latter would help support workers and their families to live above the federal poverty line. Furthermore, by passing the living wage legislation/law, state governments prevented the race towards the bottom in an attempt to find the cheapest labor. In brief, federalism is a complicated system of government. It has been evaluated as a response to the rapid change brought throughout the United States, thus, its principles remained flexible enough for the following generations to be modified according to their needs (Smith et al. 171).

3.1.2. The U.S. Supreme Court Needs a New Philosophy

The United States Supreme Court has been criticized a lot for its decisions. Lawyers, judges, and scholars pointed out that the latter has several inadequacies which have prevented it from assuming the role it is established to perform. These inadequacies can be summed up in the following points. On the one hand, the courts lack of craftsmanship.

It refers to judges' lack of experience in interpreting the American constitution. In fact, law interpretation is not an easy task; it is the judicial process through which U.S. Supreme Court follows different ways and methods to clarify the meaning of a constitutional text or a legislation passed by Congress or a state government. The Court may overturn laws passed by states which can be considered as a violation of their sovereignty. This impactful trouble happened several times in the history of the United States such as in "Dred Scott decision" where the court decided the legality of slavery (Finkelma 3-4). Moreover, the interpretation of laws may reveal some ambiguous concepts or expression for example: the use of "judicial conservatism" [2] which signifies more than one meaning.

It can also refer to judge's ill-application of constitutional laws. Decisions have been made according to "the social and political sympathies of the judges". As it is analyzed in the second chapter, decisions were not well reasoned, therefore, they should have been done differently at least to have a sense of legitimacy, which constitutes one of the most important foundations of the state of law and order. On the other hand, the court has involved itself in areas where it has not supposed to operate; it has assumed an omnicompetence (Fontenilles and Labat 248). The latter is defined by the Oxford Dictionary as follows: having power to legislate on all matters. In other words, the Supreme Court intervened in areas where it was not allowed to do which made it far from its original functions. Consequently, the United States Supreme Court itself needs a new philosophy.

To solve the above inadequacies, the American legal scholar Robert H. Bork has suggested two solutions: "judicial restraint" and "activism." These philosophies may help the U.S. Supreme Court to assume its pivotal role, as well as, to be more practical in the process of decision-making. Judicial restraint has originated from "the division of labor or

competence in government". Under this principle the Supreme Court must acquiesce to the different institutions within the federal government, as well as to limit its scope and manner of intervention, thus, it will not involve in further subjects, or in areas where it is allowed to "…deal with the processes by which the policies of representative institutions are made and applied, rather than with substance of the policies" (Fontenilles and Labat 248-249).

Therefore, the United States Supreme Court should participate in the following fields: firstly, "political speech" to accumulate enough information for its opinions, secondly, "apportionment"; to be active in the process where an opinion becomes a law. Finally, "procedural safeguards", it will be required to apply pre-determined policies in the process of decision-making without any modification. In other words, in the case of laws enacted by state governments, it is only required to clarify ambiguities and to apply those laws without infringing on the state's rights to issue their decisions concerning their local affairs, taking into consideration that state's legislations should not contradict to those rights granted to the federal government.

The second philosophy activism intends to give a sort of legitimacy to the U.S. Supreme Court's decisions, thus, it will require devise new procedures from existing constitutional laws (Fontenilles and Labat 250). Accordingly, the judge has to extrapolate new principles that may help him/her explain previous laws/legislations especially in ambiguous cases (jurisprudence). This may be more effective if the case has not pre-determined by a direct text within the Constitution. Through time, the United States Supreme Court has became more interested in the content of regulation rather than the content on speech when issuing its jurisprudence, which confirms its intention to study cases more and more deeply (Zoller 906).

Moreover, the philosophy of activism allows him/her to make a deep insight about the nature of laws standing for judge's professionalism in which the judge can construct principles that explain constitutional rights. Henceforth, these new procedures will serve to convince the public, as well as, to reduce the intensity of conflicts between the federal and state governments, which is considered as one of the long-term goals that seeks to co-operate federal courts alongside with state courts in checking and controlling some dangerous issues that may threaten property, business and trade in the United State (Hovenkamp 379).

Even though, the United States Supreme Court continues to review the constitutionality of laws and legislations, Congress and the states have hold some power to influence what cases come before the Court. To illustrate more, Article III, Section 2 of the U.S. Constitution[3] gives Congress power to make exceptions to the Supreme Court's appellate jurisdiction. Additionally, the Supreme Court has historically acknowledged that its appellate jurisdiction is defined by Congress, thus, it is the Congress which has the power to make some or executive actions non-reviewable. This is known as jurisdiction stripping. The latter is defined in the light of jurisprudence as the acts of sovereignty, such as regulating the government's relationship with Congress, which cannot be reviewed by courts, or regulating the foreign policy of the United States with other countries.

To sum up, what theoretically can be seen as dominance led by the federal government is proved practically as complementation based on priority. The latter seeks to fit people needs according to their living conditions whether at the national or state government level.

3.2. The Obama's Government and the New State's Position

3.2.1. Power Division under Obama's Rule

Barack Obama or the first non-white president was a democrat candidate who came into authority in 2009 as the 44th president of the United States of America. During his reign federalism has witnessed many considerable changes in different fields, and states have become involved in a wide range of activities. They have played a primordial role in implementing the new federal health insurance legislation, through creating and operating the health insurance exchanges to monitor the premium rate increases to running expanded Medicaid programs. Moreover, under the Obama administration, state governments have increased regulatory responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act[4]. Instead of emphasizing on federal power at the expense of the state's powers, states governments were given significant room to shape their participation in the new federal initiatives.

Eventually states who preferred to play a major regulatory role and to support the federal legislations and policies are supposed to gain much more, but those states that have chosen to stay on the sidelines, faced the prospect of direct federal intervention. In addition, their ability to pursue their own strategies without any cooperation may be curtailed (Metzger 568-569). Under the Obama administration, states have given priority to pass their own regulations concerning "the Clear Power Plan"[5] under specific conditions. In the first place, states are required to provide an approved plan to meet its emission reductions goal, if they fail to do so, then, it will be the responsibility of the federal government to pass its own plans to regulate state's emission and this does not contradict with state's internal legislations nor it will be considered as a violation of their laws/rights. Also, the administration worked for the states by enabling them to take a part

in setting the content of federal regulatory standards not just as a part in the implementation of federal programs.

3.2.2. Obama's Contributions towards the States

In an article published by the Public Policy Institute of the state university of New York, entitled "The Rockefeller Institute of Government", the most important issues achieved concerning federalism during Obama's reign are the following: first, the federal government became deeply engaged with states more than any time since the 1960s. Second, in certain circumstances, it offered states more funding and flexibility to promote more and more their sovereignty in taking their own decisions. Third, the president Obama used states to identify and diffuse effective practices across the entire system.

From the two figures mentioned below (fig .1 and fig. 2), which are related to two different years during the Obama' rule, an interesting realities can be deduced. The federal aid to state and local governments has increased between 2009 (the year of the election of Obama as a president) and 2010. Aids differ from one field to another, the highest ones are: health and human services 324.8 billion dollar during 2009 (58.8%), while, 348.2 (55.3%) billion dollar during 2010 in addition to transportation. Housing and education, during 2009, were respectively 47.1 (8.5%), 45.2 (8.2%) billion dollars, while they increased to 55.3 (8.8%), 73.2 (11.6%) billion dollars in 2010. These numbers prove that the Obama government has supported the state governments, rather than violated their legislations or profited from their sources. Furthermore, the financial aid provided by the Obama's government would help the way to achieve political stability within the states and create a consensus between local and central government legislations throughout the country. Therefore, the role between the federal and state governments is a complementary as intended by scholars.

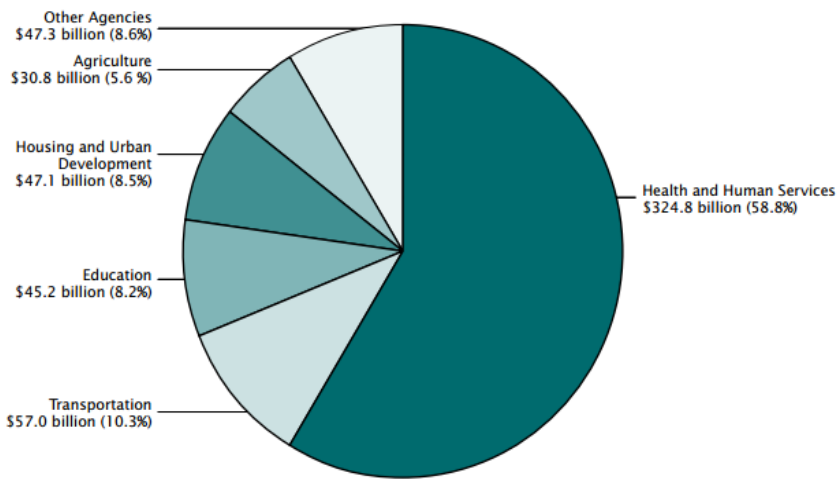

Fig. 1. Federal Aid to States for Fiscal Year 2009, U.S. Department of Commerce. *Census.gov*. Tech. U.S. Department of Commerce Economics and Statistics Administration, Aug. 2010. Web. 12 Mar. 2017.

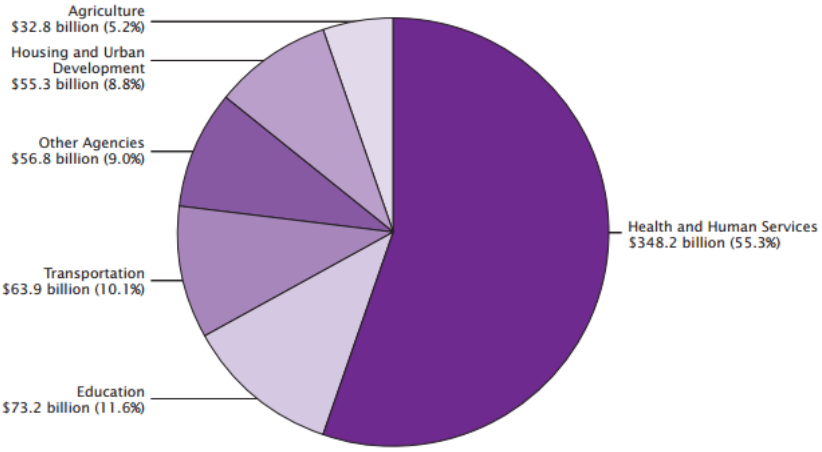

Fig. 2. Federal aid to States for Fiscal Year 2010, U.S. Department of Commerce. *Census.gov*. Tech. U.S. Department of Commerce Economics and Statistics Administration, Sept. 2011. Web. 12 Mar. 2017.

3.3. Contributions of Judicial Federalism to the United States Political Stability

3.3.1. The Promotion of Cooperation between both Governments

It is worth mentioning that federalism is a very complicated system of government, it needs certain conditions to be applied, and therefore, it can only be applied in few countries. Having double government within the same country requires federal democracy to provide for the distribution of powers and responsibilities among them, as well as, those effective mechanisms and procedures to solve disagreements and conflicts when they arise. The United States judicial system is unlike the other judicial systems that exist in other federal countries such as: Canada or Australia. It is rather a system built upon fifty court systems in contrast to one national government. Full panoply of trial and appellate courts is possessed by each government whether the federal or the state one. The national government plans the structure and functions of the federal courts in a well-organized hierarchy, as well as, states do. Besides, it is the federal law which primarily determines the division of authority between these courts reflecting the scope of jurisdiction.

After the study of judicial federalism in the first chapter, the former relies on the fact that the judiciary has a place in the federal government under the check and balance system. Judicial federalism makes a strong relationship to judicial review. It refers to the power of a court to review the constitutionality of a treaty or law. It can be also defined as:

> Judicial review, only supposes that the power of the people is superior to both the legislature and the judiciary, and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than by the former. (Rubin 72).

The national government has possessed many powers; it is called a government of delegated powers. To explain more, the latter means that the government has only certain powers granted by the United States Constitution ("Delegated Powers"). They can be divided into three main categories: first, the expressed powers which are embodied directly in the U.S. Constitution. The latter mentioned the three branches of the federal government (legislative, judicial, and executive one). For example: among those powers reserved to the president, his authority to appoint cabinet officials and Supreme Court justices.

Second, the implied powers, known also as the suggested powers, cannot be found in the Constitution directly. For instance: the United States Constitution allows Congress to raise an army ("Implied Powers of Congress"). Finally, the inherent powers are necessary for each branch to carry on its functions. For example: Article II within the American Constitution has specified the role of the American president or the head of the executive branch, but it has not revealed that the president is responsible to ensure that laws are faithfully executed after they are being legislated by the legislative branch. Furthermore, when state courts -who served as the primary forums for resolving civil disputes, as well as, chief tribunals for enforcing the criminal laws- declared a federal status invalid or when a state upheld a state statute against a claim that it has been repugnant to the Constitution, it is the role of the United States Supreme Court to hear such appeals.

Hence, state and federal courts together comprise an integrated system for delivering justice in the United States. Although, in the presence of two separate organs with different jurisdiction scopes, scholars in the light of the new judicial federalism has argued that the role of the federal courts should be complement, not a supplant to the state courts especially through various improvements. The latter can be illustrated as follows: in state judicial systems which necessitate significant federal financial assistance to state

courts, through law enforcement agencies, by legitimizing concurrent state, and federal jurisdiction in some federal crimes. This could be done by encouraging prosecution of federal crimes within state's courts such as in drug activity or violent crimes.

Furthermore, by enhancing dialogue between states and federal courts concerning constitutional rights, a strong judicial system at the national and local levels can be better performed. Particularly, the United States as a nation will achieve dual benefit: on the one side, federal courts embodying their core values, one the other, local and state courts will remain vital and efficient forums to deal with matters that belong to their internal affairs in the light of history and sound division of authority. Louise Weinberg described the situation before the emergence of the new judicial federalism as follows: "it seemed that federal court orders governing our state agencies had become a curious characteristic of our country, our federalism, our time" (129).

After the analysis, the present work has deduced that the new judicial federalism combines both self-rule and shared rule in the presence of two independent judicial systems. The national government powers are defined by the United States Constitution, while state's constitutions determine powers among state's courts. Furthermore, the selection and compensation of federal judges or state's judges is also defined by their constitutions. While jurisdiction is well divided between the two judicial systems, most cases originate in state's courts where their decisions are not susceptible to federal review except rulings that contain a federal law which are subject to appellate and review by the highest judicial authority in the United States that is the U.S. Supreme Court.

Consequently, new judicial federalism has opened the way for state courts to rely on their own constitutions as independent sources of constitutional rights for the sake of providing greater protection to individual rights and liberties than under the interpretations of the federal government based on the federal constitution (Cornella and

Tarr 143). The internal state's constitutions should be larger sources of rights and liberties than those interpretations pronounced by the United States Supreme Court dealing with the federal law or legislation, and those constitutions are required to provide the necessary protection (Friedman 93).

3.3.2. The United States Political Stability

Despite all disputes and conflicts between the federal and the state governments, new judicial federalism in the United States has proved success in promoting both national uniformity and sub-national diversity in a modern organized way. Although the system has been a subject of controversy among scholars for a long period of time mainly because of the prejudice in the distribution of powers between both governments, but it has protected the nation from being divided. For example: if gambling was permitted by some state governments, while was prohibited by the others, it may lead to instability and disorder (Bodenhamer).

From another standpoint, the federal system as whole and judicial federalism in specific played a crucial role to boost stability within the United States. Most scholars agree it is the only political and judicial system that can maintain control over the American territory. A system based upon democratic rules and institutions in which the power to take decisions is shared between a federal and state governments. It is believed that imagining the United States without federalism is the same as imagining the body without soul. Morgan et al. have supported that by "With a federal system we have diversity, without diversity, there is no choice, without choice, there is no freedom… The great glory of the federal system is some damn fool at the top can't ruin it (20).

Due to its large geographical area and varied resources, the United States became the so-called paradise of immigrants. Its composition of different ethnic and cultural groups have made it too difficult to be controlled especially in the presence of fifty independent

states, each of them legislates laws according to its own needs. It has faced huge troubles in different fields such as: expropriation, internal, and external commerce affairs, bankruptcy, crimes, social and individual rights and liberties, private investment…etc. "States can adopt widely varying policies…there by providing the means for citizens to live in a state where the policy suits their moral or cultural values" (Bodenhamer). American federalism is not a merely a set of static institutional arrangements, frozen by the U.S. Constitution, it is a dynamic, multi-dimensional process that has judicial, executive, economic, administrative, political, and constitutional aspects (Katz).

Re-dividing powers between the federal and the state governments was not the ideal solution to make federalism effective enough in the process of decision-making, thus, loopholes dominated the twentieth century court decisions. A deep study of the previous court cases will contribute to avoid the occurrence of similar errors and to make decisions more legitimate, therefore, the re-formulating of the understanding of the real relationship that ties the federal government to the state governments.

Endnotes

1. Pros and Cons: according to the Oxford dictionary, it means to weigh both sides of a question or topic i.e. its advantages and disadvantages. "Pro-and-con." *Oxforddictionaries.com*. Oxford University Press, 2017. Web. 13 Mar. 2017.

2. The expression reveals that the role of judges is the application not the enactment of laws. It may also mean that Courts should interpret statutes according to either their literal meaning or the meaning ascribed by the legislative branch not according to the whims and fancies of judges. In simple words, judicial conservatism means that judges should follow the law and should not make the law (Barnett274). Barnett, Randy E. "Judicial Conservatism v. a Principled Judicial Activism: Foreword to the Symposium on Law and Philosophy." Scholarship and Georgetown Law (1987): 274-294. *scholarship.law.georgetown.edu*. Georgetown Law Library. Web. 12 Apr. 2017.

3. The Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make. "Article 3, Section 2, Clause 2." *press-pubs.uchicago.edu*. The University of Chicago, 2000. Web. 12 Mar. 2017.

4. The Dodd–Frank Wall Street Reform and Consumer Protection Act (21st July, 2010) commonly known as Dodd–Frank, stressed the role of states in two major areas: consumer financial protection and insurance regulation, which are traditionally areas of states involvement. Therefore, the act was not in favor of the federal government alone.

5. The Clean Power plan was an important project during the Obama's rule, its aim was to reduce carbon pollution know also as carbon emissions from power plants which takes a real action on climate change. "U.S. Supreme Court Blocks Obama's Clean Power Plan." *Scientificamerican.com*. N.p., 2017. Web. 23 Mar. 2017.

Conclusion

In the present paper, federalism has been investigated and analyzed as a controversial political system, notably where most scholars tend to characterize the relationship between the federal and state governments by dominance. In a country where the authority to decide is shared between two governments, the judicial court cases chosen above, amplified the tension between the two parts, especially when the national government has declared that it has the right to intervene in state's internal affairs. For this reason, opposition has emerged raging over what has been called betrayal of federalism in defense of state's rights.

To justify each court case, the present research is based on the substance of the United States Constitution, scholars and politicians points of view, judges' decisions, in addition, to an individual analyses based on logical reasoning. Results are classified according to a pre-determined methodology starting from a general issue till the arrival at a different conclusion about the nature of the relationship that ties the federal government to the state governments in the process of decision-making. Moreover, the present study has brought to the fore ample examples from twentieth century court decisions, with the aim to broaden the scope of discussion over the above issue (the relationship between both governments) and the working principles of this complex system of government.

This work is not intended to provide an exhaustive study on the American federal system, but an examination of the working of federalism, likewise to supply a clear understanding about its application in reality beyond theoretical analyses which focused only on inequality in the division of powers between the federal and state governments in decision-making, with a little interest in recognizing the uniqueness of the federal system.

Finally, this topic is available for expansion in different ways: on the one hand, if the researcher links between the information presented in this paper about the United States Supreme Court's decisions during the twentieth century and the next eras, on the other hand, to provide a study of the polarization between liberals and conservatives in order to determine which party has the most influence in the process of decision-making.

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