



# The Lesson from the Modern American Federalism: A Challenge to Effective Public Policy Performance

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## Abstract

Contemporary U.S. federalism particularly since the late 1960s has evolved over the course of pluralism alternating exercisable governmental powers between the federal and state governments. The complexity of the power relationship has been observed in a variety of policies during the past quarter-century as has the discussion of whether or not contemporary U.S. federalism has developed in a way that increase effective public policy performance. Focusing mainly on the period of the past 50 years of U.S. federalism history, this article suggests that federalism dynamics have not exercised either constant liberal or conservative influence on public policy performance. Instead, this article suggests that the clear functional responsibility between the federal government and state and local governments have characterized contemporary U.S. federalism—more federal responsibility for redistribution and more state and local responsibility for development, which in turn increased public policy performance. This feature has been quite substantial since 1970s. As a result, this article suggests that despite the increased complexity of the U.S. federal system, it has evolved in such an appropriate way that would increase the efficiency of federal system by dividing a clear intergovernmental responsibility on major policy platforms.

## Key-words

U.S. federalism, public policy performance, functional responsibility, policy-making process



## 1. Introduction

During the 20<sup>th</sup> century, there have been constant variations in U.S. federalism. The period of *cooperative federalism* (1913-1964) was subject to overlapping responsibilities between the federal and subnational governments, whereas the period of *centralized federalism* (1964-1980) showed a clear expansion of the federal government. The era of *new federalism* (1980-2001) was an attempt to transfer the power of the federal government to state and local governments, and the period of *representational federalism* (2001-present) does not contain any constitutional division of powers between federal and state governments. Contemporary U.S. federalism, particularly since the late 1960s, has evolved through pluralism, alternating exercisable governmental powers between the federal and state governments. The earlier phase of U.S. federalism has drawn a relatively clear form of cooperative federalism, which aims essentially to expand the supremacy of the federal government. Similarly, the period of contemporary U.S. federalism since the late 1960s has been characterized by the increasing coercive power of the federal government over state and local governments, but it has exhibited a more complex mixture of dual and cooperative elements than had been shown during earlier periods in the history of federalism (Kincaid 2008: 10-11; Zimmerman 2008: 2).

Although founding fathers were passionate enough to suggest an idealistic form of U.S. federalism based on stronger central power, the power relationship between the federal and state governments has become more complicated due to subsequent constitutional provisions based on the Supreme Court justices' view federalism. Looking at the important decisions of the Supreme Court between 1900 and 1980, the Supreme Court has been supportive of more federal power over states' sovereignty. Through the early 1900s, the Supreme Court had been divided between the limitation of the federal government's authority, as shown in the cases of *Hammer v. Dagenhart*<sup>I</sup> in 1918 and *United States v. Wheeler*<sup>II</sup> in 1920, and its expansion, as shown in the case of *Swift and Company v. United States*<sup>III</sup> in 1905, *Missouri v. Holland*<sup>IV</sup> in 1920, and *J. W. Hampton, Jr. & Co. v. United States*<sup>V</sup> in 1928. The Great Depression, however, influenced the Supreme Court to allow even more power to the federal government by extensively interpreting the Commerce Clause. In the *National Labor Relations Board v. Jones and Laughlin Steel*<sup>VI</sup> case in 1937, for example, the Supreme



Court ruled that the National Labor Relations Act of 1935 is constitutional, and thus the federal government can use its authority under the Commerce Clause to regulate interstate commerce. Other examples that showed the willingness of the Supreme Court to hold the supremacy of the federal government include the cases of *Steward Machine Company v. Davis*<sup>VII</sup> in 1937, *Wickard v. Filburn*<sup>VIII</sup> in 1942, *Cooper v. Aaron*<sup>IX</sup> in 1958, and *Oregon v. Mitchell*<sup>X</sup> in 1970.

Over the past quarter-century, however, the ideology of the Supreme Court has been back and forth between decisions in favor of increasing federal power and decisions in favor of defending state sovereignty. Supreme Court cases such as *Garcia v. San Antonio Metropolitan Transit Authority*<sup>XI</sup> in 1985, *South Dakota v. Dole*<sup>XII</sup> in 1987, *U.S. Term Limits, Inc. v. Thornton*<sup>XIII</sup> in 1995, *Gonzales v. Raich*<sup>XIV</sup> in 2005, and *Arizona v. United States*<sup>XV</sup> in 2012 has forced state governments to cooperate with the federal government. On the contrary, the rulings of *New York v. United States*<sup>XVI</sup> in 1992, *United States v. Lopez*<sup>XVII</sup> in 1995, *Printz v. United States*<sup>XVIII</sup> in 1997, *Clinton v. City of New York*<sup>XIX</sup> in 1998, and *United States v. Morrison*<sup>XX</sup> in 2000 have defended states' rights over the federal dominance. As a result, the late 20<sup>th</sup> and the early 21<sup>st</sup> centuries of U.S. federalism show that the lines between federal and state power have become blurred.

The complexity of the power relationship has been observed in a variety of policies during the past quarter-century as has the discussion of whether or not contemporary U.S. federalism has developed in a way that increase effective public policy performance. Indeed, this question has not yet been clearly answered, as U.S. federalism does not draw a clear line between what is great and aggregate and what is local and particular (Pagano 2007: 9; Walker 2000: 15). This unclear boundary of roles between the federal and state governments has caused slower policy-making processes and obscured the boundary of policy responsibility. This essentially increases political and administrative costs, and thereby producing untidiness, fragmentation, and inefficiencies in public policy performance (Nathan 2008: 13-25). In conservative periods, there has been a strong belief that states take substantial regulatory powers over the nation. Thus, states have exerted more independent political power and economic interest, which is not entirely curbed by federal power and the Constitution (Grodzins 2007: 57-58). However, in liberal periods, the federal government has taken many additional responsibilities because they believe that people can be bettered by the exercise of national governmental power. Leaving this



inherent and atypical complexity in the U.S. federal system, one substantial question arises: how effectively has the U.S. federal system evolved to increase public policy performance?

Based on the founding fathers' idea on U.S. federalism, the ideal shape of federalism might be result from coordinating the actions of subnational actors in policy subsystems. This in turn would increase effective public policy outcomes. Although the U.S. federal system could be successful when it has established a democratic institution by manifesting the separation of powers between the federal and subnational governments, it is challenging taking into consideration structural complexities that result from the division of powers and responsibilities among many different units of government. In terms of power relationships, U.S. federalism remains mostly a nation-centered one, but there has been a far more fluid division of power due to the institutional constraints, growing state operational responsibilities, and sometimes, critical social or economic changes since the Second World War. However, narrowing down our focus on U.S. federalism to public policy performance, the contemporary history of U.S. federalism clearly provides some important lesson about how effectively public policies have been managed in a federal system, regardless of the changing trends of U.S. federalism, whether in traditional *liberal* or *conservative* political cleavage.

Focusing mainly on the period of the past 50 years of U.S. federalism history, this article suggests that federalism dynamics have not exercised either constant liberal or conservative influence on public policy performance. Instead, the clear functional responsibility between the federal government and state and local governments have characterized contemporary U.S. federalism—more federal responsibility for redistribution and more state and local responsibility for development, which in turn increased public policy performance. This feature has been quite substantial since 1970s. As a result, this article suggests that despite the increased complexity of the U.S. federal system, it has evolved in such an appropriate way that would increase the efficiency of federal system by dividing a clear intergovernmental responsibility on major policy platforms.

## 2. The Definition of the U.S. Federalism

Under a unitary system of government, a central government possesses ultimate sovereign power over all other entities within the state. While the small city-states such as



Singapore and Monaco facilitate centralized policy-decision based on a single-tiered governing system, the vast majority of countries such as China, France, Italy, Japan, Korea, Sweden, and the United Kingdom have multi-tiered governments based on a unitary government system (Rodden 2004: 497; Shah 2007: 4). On the contrary, the federal system entails a distinctive territorial division of powers (national and subnational governments), the juristic device of giving legal protection to the authority of subnational governments of a polity, and certain attitudes embedded in the constitutional and political cultures (Beer 1973: 50-51). The different levels of government exercise separate and autonomous authority, electing their own officials, and taxing their own citizens. While this definition of federalism can be generally applied to most countries that adopt the federal system, U.S. federalism has distinct features in comparison with systems in other countries.

Countries with a federal system vary considerably in terms of the power relationship between the national and subnational governments. While the Constitutions of some establish a considerable power with the national government over subnational units of governments (e.g., Australia, Germany, India, and Mexico), some others delegate a substantial power, especially taxation power, to subnational governments (e.g., Brazil, Canada, and Switzerland) (Shah 2007: 4-6). In the form of cooperative federalism, some countries like Belgium and Brazil exercise a federal system in which all units of governments have autonomous and equal responsibilities (Shah 2007: 6). However, in the U.S., the federal government exercises somewhat moderate power over state and local governments, and the federal system has retained an effective balance that serves both the liberty of states and the stability of the nation. However, the U.S. federalism is close to a fluid concept, which does not clearly define the boundary of responsibility between the federal and state/local governments. Historically, the courts and Congress have defined the relationship between federal and state governments. Thus, the level of authority of the federal government has been changing. For this reason, the scholarship in U.S. federalism has focused more on issues of by which unit of government a policy decision should be made, rather than the substance of the policies themselves. This indicates that the challenge to effective public policy performance in the U.S. federal system would result in the effective policy coordination and accountability to manage policies between federal and state governments.



### 3. Federalism Dynamics: Getting More Liberal or Conservative?

In earlier periods, there was a strong belief that the states should reserve substantial powers, and each state ought to pursue a different mix of commercial, financial, and other economic policies. Traditionally public opinion has expressed distrust of the federal government and placed great value in the strength and reliability of state and local governments (Conlan 2017: 177). There was also the opinion that ‘[t]he constitutional restraints on the expansion of national authority are less important and less direct today than they were in 1879 or in 1936’ (Grodzins 2007: 59). As a result, states attempted to increase more independent political power as well as economic interests, which were not entirely curbed by federal power or the Constitution during the early 1900s. However, in recent years, political conflict over federalism has tended to follow traditional ‘liberal’ political cleavage, which means that liberals enhance the power of the national government because they believe that people can be bettered by the exercise of national governmental power. The Constitution also defines the superior power of the federal government, and there have been some decisive moments behind the incremental growth of the federal power since World War II. For instance, the regulatory power of the federal government during the decade following World War II was much greater than the previous era because ‘the agencies that had been expanded during the war to cope with unique war-related problems, were able to hold on to part of their new resources and authority by relying on pressure from special interests and inertia in the political process’ (Rockoff 1999: 261).

First, some critical events transformed decentralizing tendencies to centralizing tendencies. The serious financial crisis immediately following World War II forced the federal government to take more responsibility for economic recovery. The Great Depression lasted throughout the 1970s dramatically changed the role of the federal government to take more substantial policy responsibilities. More recently, centralizing statutes have been adopted in the aftermath of wars and natural disasters. These centralizing tendencies were highlighted in response to the terrorist attacks of September 11, 2001 and the U.S. occupation of Iraq. These events prompted the immediate passage of the USA Patriot Act of 2001 (Conlan and Dinan 2007: 280). Furthermore, the occurrence of Hurricane Katrina came with passage of the Defense Authorization Act of 2007, which



allows the president to federalize the National Guard without the permission of a governor (Dinan 2008: 383).

Second, constitutional constraints have affected the expansion of federal power. For example, the *Garcia v. San Antonio Metropolitan Transportation Authority* case in 1985 dealt with the Fair Labor Standard Act (FLSA), which ‘establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments’ (United States Department of Labor 2016: 1). In *Garcia*, the U.S. Supreme Court expanded the congressional power to directly exert its legislation in matters traditionally reserved to the states (Wright 1988: 40-42). The case arose after Congress directly ordered state and local governments to pay minimum wages to their employees. The decision was made by the Court’s belief that state interests will be protected by the political safeguards of federalism. In another sense, despite the constitutional restraints on the increase of the federal authority, the *Garcia* case indicates that the Supreme Court has flip-flopped on some major issues and does not draw a clear line of responsibility between the federal and state governments. Looking at four major previous decisions regarding FLSA including the *Garcia* case, first in *Maryland v. Wirtz*,<sup>XXI</sup> the Court held that FLSA can be applied to states, and then in *National League of Cities v. Usery*,<sup>XXII</sup> it held that it cannot be applied to states, but in *Garcia v. San Antonio Metropolitan Transportation Authority*,<sup>XXIII</sup> the Court reverted back to the decision that it can be applied to the states, and again, in *Alden v. Maine*,<sup>XXIV</sup> the Court ruled that it cannot be applied to the states (Friedman 2000: 249-250).

Third, public and interest groups have influenced the expansion of federal power. For example, the National Minimum Drinking Age Act of 1984 required all states to limit the legal age for alcohol to 21 years old. This Act was the result of a strong citizens’ lobby, including groups such as Mothers Against Drunk Driving. Thus, public opinion supports the federal government more than state governments when their interests can be better protected or enacted by the central authority.

Finally, the fiscal power defined by the Constitution allows for the expansion of federal power. Especially, the centralizing tendencies resulted from Congress restricting ‘the states from taxing much—such as the retirement income of nonresidents,<sup>XXV</sup> internet access,<sup>XXVI</sup> or interstate business with limited nexus’<sup>XXVII</sup> (Gamage and Shanske 2016: 547). The Tax Reform Act (1986) increased federal power over taxation although they possess their own





taxation authority protected by the Constitution (Pagano 1988: 37-38). While it can be seen that the sharp increase in the number of preemption statutes has substantially limited the discretionary authority of states over tax policies, it is noteworthy that the federal government has gradually increased spending on redistributive areas as well as increased its taxing authority. Indeed, '[a] series of tax acts starting with the 1986 Tax Reform Act—and running parallel to the erosion of the traditional welfare system—has increased assistance to the working poor through expansions of the Earned Income Tax Credit' (Eissa and Hoynes 2011: 689).

However, the evidence of centralizing tendencies of U.S. federalism does not necessarily mean that the federalism dynamic has exercised a constant liberal trend to increase federal power over states. This is because policy implementation and output in the policy process are not constant to one dominant power either by the federal or state governments. That is, as many scholars have observed in the pattern of policy changes in institutions, the power between the federal and state governments to influence policy outputs has changed over time (e.g., Baumgartner and Jones 1993: 25-38 ; Kingdon 1984: 1-17; Lindblom 1959: 79-80; Sabatier and Weible, 2007: 189-190). I suggest three phenomena of the federalism dynamics in public policies: first, the linkage between the federal and state governments is an interdependent relationship; second, the balance of power between two different units of government is unstable; and third, states and local governments have pushed for more discretionary power in policy making.

First of all, many public policy outputs show evidence that the federal and state governments interact with each other to make better policy. The interdependent relationship began with *cooperative federalism* that implies the existence of two planes of government. In this perspective, the federal government offers scores of assistance programs to states and localities in exchange for their agreement to implement a program. Department of Housing and Urban Development in the early 1970s and the mid-1980s is an example of successful bargaining between federal and local governments. The Great Depression of the 1930s forced the federal government to recover the national economy especially by taking more responsibility for poverty and unemployment, and states were also supportive of and cooperative with the federal policy to do it but by increasing their investment on economic development programs. Most recently, the state governments have been increasingly cooperative to the immigration and homeland security policy, and



this was particularly true in 2005, with the passage of the REAL ID Act requiring state driver's licenses to be brought into compliance with national standards (Dinan 2006: 334). These cases indicate that there has been no dominant power of either federal or state governments to drive public policy performance, but the power has been balanced between the federal and state governments to increase the efficiency of federalism.

Second, public policy output is not fixed by either federal or state governments. That is, a policy output is temporal according to the changing perspective between the federal and state governments. A good example is education policy. Traditionally, authority over public education is given to the discrepancy of states or local governments. The Elementary and Secondary Education Act of 1965 was narrowly targeted on inputs and contained few federal mandates. However, the federal government has increased control over education, because the quality of public schools has been low. Responding to the federal government's increasing responsibility to ensure quality public education, President George W. Bush signed into law the No Child Left Behind (NCLB) Act, which dramatically expanded the federal role in elementary and secondary education policy.<sup>xxviii</sup> However, NCLB's performance has been the subject of extensive criticism due to a lack of consensus on policy details between different units of government (Krane and Koenig 2005: 2; MaGuinn 2005: 60). This example shows that there is temporal variation of federalism, which may cause intergovernmental conflict.

Third, subnational governments have exercised their own power over public policy making. An era of *new federalism* was a critical time that Richard Nixon shifted power away from Washington and expanded the power of state and local governments. One of Nixon's most ambitious initiatives was to establish a program of revenue sharing from the federal level to state and local governments. Likewise, Ronald Reagan pledged to reduce the size of the national government, in part, for the purpose of reducing the increased government deficit. One of his practices to this end was administrative simplification. While Nixon preferred a system that provided more extensive federal aid to states, Reagan's variant of *New Federalism* was a transfer of national responsibility to the states as well as significant cuts in federal grants (Bohte and Meier 2000: 40). In the early 1980s, federal aids were reduced, some programs like General Revenue Sharing and anti-recession fiscal assistance grants were eliminated (Stephens and Wikstrom 2007: 132-137).



As an example of policy output, states have dramatically increased their power over even international commerce. Some economically interdependent states have attempted to take the economic incentives from the global market into their own market (Fry 1998: 67-76; Kline 1999: 112-113). States often act to address problems when the federal government has failed to do so. Partial preemption statutes have been enacted in an innovative manner to increase the discretionary authority of states. Examples of such laws include the Marine Sanctuaries Act Amendments of 1984 and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

#### 4. Lessons from Modern U.S. Federalism

Overall, the federalism dynamic did not exert a steady and inexorable liberal influence during the past several decades. The reality of U.S. federalism is that all levels of government have independent power over public policy performance. Although the federal government is firmly established by exercising its power in the U.S. government, state and local governments have also enhanced their power. The Tenth Amendment has significantly expanded the state power by designating ‘in whose favor (the states) powers not delegated to the United States are reserved, contingent, however, on each state government’s ability to meet the affirmative demands of its own constitution’ (Van Alstyne 1987: 770). Although state governments influence local governments, they have considerably influenced ‘street-level’ policy performances (Lipsky 2010: 48-53). Local governments have exerted independent power over even international affairs. Some good examples are the economic sanction impositions of the city of San Francisco against Myanmar. More recently, New York City’s comptroller banned certain Swiss banks from bidding on billions of dollars in bond offerings. In contrast, in fiscal policy, state and local governments remain dependent on the fiscal support of federal government. It is indisputable that the fiscal role of the federal government may limit the subnational governments’ discretionary power to implement public policies. For example, the Economic Growth and Tax Relief Reconciliation Act of 2001 was introduced by President Bush to cut the federal income-tax, and it caused revenue decline for those states that base their income-tax amounts on taxpayers’ federal income-tax payments.



The fact that neither centralizing nor decentralizing tendencies on public policy performance has been constant suggests that the interaction between federal and state governments has not been so well coordinated. However, this does not necessarily mean that the U.S. federalism has evolved in the considerable structural complexity and thus has produced ineffective public policy performance. As seen in the cases of major policies, policy making and output have consistently changed along with the power shifts between national and subnational government, but the policy responsibility has been clearly divided between the federal and state governments. This raises an important but unanswered question: what lessons do we learn from the changing U.S. federalism during the particular past 50 years?

From colonial times through much of the early nineteenth century, state and local political institutions played a large role in shaping their economies. By the time of the revolution, the American colonies were accustomed to practice English mercantilism, which stressed centralized forms of authority in order to promote commerce and industry. Although the new nation was willing to sustain a government intervention in nurturing economic development, the early U.S. colonial governments attempted to mitigate a shortage of capital resources by providing such incentives as stimulating legal frameworks and direct aids to private enterprise (Brace 1993: 1-3). States became active in promoting economic development through the first third of the nineteenth century. For example, the state of New York achieved enormous economic success by constructing the Erie Canal. This brought about a large economic growth in the state by reducing the cost of transportation from the farm to the market transportation costs. The success of this canal encouraged other states, including Ohio, Indiana, Illinois, Virginia, and South Carolina, to build an extensive infrastructure in order to facilitate the growth of their economies. In the middle of the nineteenth century, however, states experienced a fiscal crisis due to ‘the result of substantial government expenditure without fiscal coordination’ (Brace 1993: 20).

During the late nineteenth century, the states’ ability to control their economy was strongly limited by federal intervention. After the Civil War, federal revenue increased as a result of industrialization and a higher protective tariff allowed the federal government to pay off the Civil War debt. The aftermath of the Civil War increased federal governmental spending. This era has been described as ‘the era of national subsidy’ (Schlesinger 1999: 234). Furthermore, a decade after the *Granger* cases—a series of cases in 1877 which



concluded that states have the power to regulate businesses that served a public interest—the Supreme Court took a conservative turn and started to limit states' role in economic development. In the *Wabash* Case in 1886, the Court declared that an Illinois statute violated the exclusive power of Congress over interstate commerce. In *Chicago, Milwaukee and Saint Paul Railroad Co. v. Minnesota* in 1890, the Supreme Court held that the railroad rate regulation by a state legislative commission is unconstitutional (Brace 1993: 21). By the 1890s, the Supreme Court had greatly curtailed the regulatory power of states, and thus, increased the role of federal over the U.S. economy.

By the beginning of the twentieth century, the federal government exerted even more power in the economic realm. Theodore Roosevelt expanded the regulatory role of the federal government when facing both an economic depression and a banking panic in 1907. Woodrow Wilson also maintained the strong role of the federal government in order to preserve fair competition. The Great Depression through the 1930s affected the federal government to adopt more substantial responsibilities at the expense of the states. As noted by Webber and Wildavsky (1986: 411), 'the New Deal was acceptance by the U.S. public of the doctrine that the federal government has ultimate responsibility for the economy.' Furthermore, after World War II, the economic role of the federal government dramatically increased. Paradoxically, however, the increased poverty rate after the Great Depression motivated Washington to achieve their economic goal in a way that transferred the increased economic gains to the underrepresented regions or citizens lacking in economic resources. Indeed, states have been delinquent to increase the redistributive efforts in an ever more integrated economy (Peterson 1995a: 92-93).

The Great Recession between the late 2000s and early 2010s caused many state governments to compel Congress to pass an economic stimulus measure in excess of three quarters of a trillion dollars. The Obama administration established 'legislation to reform the entire federal economic regulatory structure, including provisions to consolidate federal regulatory responsibilities, enhance the power of the Federal Reserve, and create a new systemic risk overseer for the marketplace as a whole' (Kantor 2010: 3). However, as shown in the details of the enactment of the American Recovery and Reinvestment Act, the stimulus package allocated more than 60% of total funds to welfare programs and tax cuts. This means that a significant portion was not spent directly in stimulating the growth of physical infrastructure or providing financial incentives to the existing industries and



businesses. Rather, federal money was spent on increasing economic growth indirectly by helping temporarily economically underrepresented populations to re-enter the labor market. Instead, state governments have been more willing to take initiatives in stimulating economic development because their decisions were driven by market forces and political pressures (Brace and Mucciaroni 1990: 152-154; Eisinger 1989: 9).

Based on an objective perspective, many scholars assert that ‘policy problems occur because intergovernmental hierarchy, in terms of communication or organization, breaks down, because member of the Congress play politics with intergovernmental programs, or because local governments are not committed to federal policies’ (Ellison 1998: 36). As such, the solution to coordinate different levels of government can be achieved by exercising effective governance and by structuring a pivotal institution. Good governance can enhance the balance and coordination among levels of government. ‘Governance generally refers to the means for achieving direction, control, and coordination of wholly or partially autonomous individuals or organizations on behalf of interests to which they jointly contribute’ (Lynn et al. 2000: 235). Good governance requires agreement about common goals, clear communication, and a division of labor to make use of scarce resources (Roberts 2008: 3-14). However, it is difficult to define how to achieve it. One argument is whether centralization or decentralization can enhance coordination and accountability among levels of government. Although none of scholars confirm which type of government structure is better, there is the inclination to believe that a clear functional and operational dispersion helps to coordinate different units of government in policy subsystems (Peterson 1995a: 50). This leads to policy responsibility of all units of government and to more effective public policy performance.

Throughout the history of American federalism, we can observe that the policy examples of changing power between the federal and state government can be explained by three larger policy roles of governments, national security/safety, redistributive and developmental policies. While there have been few challenges that states take more authority on defense and security policies over the federal government throughout the U.S. history, the contemporary history of U.S. federalism has shown that two different units of governments have exercised cooperative and divided responsibilities largely in two different forms of public policies: redistributive and economic development policies. Functional theory provides a potentially powerful explanation of how the federal and state



governments have been cooperative based on policy implications. According to functional theory, each level of government establishes the function that it can run more effective and efficient. Traditionally, the federal government has focused more on redistributive policy reallocating economic resources from the rich to the poor—the elderly, the disabled, the unemployed, the sick, the poor, etc.—while state governments have been more interested in pursuing economic growth policy including developmental programs—physical infrastructure such as roads, mass transit systems, public parks, etc.—and social infrastructure such as personal property protection, education, etc (Peterson 1995b: 8). In this sense, there is no dominance of either the federal or state governments in driving policy making process. In other words, although the past several decades have shown that the federal government has increased its coercive power over states, its increase was just the growth of federal power to take more responsibility on social welfare programs in that states have been reluctant to participate.

As a result, the U.S. federalism can be viewed as a substantial contribution to the growth of both the federal and state governments by exercising comparative advantages that each level of government can best perform. In particular, the practice of democratic values and improvement in the efficiency of U.S. federalism has increased the extent of the role of all units of governments on public policy. This is basically a byproduct of advantages inherent to U.S. federalism. The federal system clearly has the advantages of enabling state and local governments to develop and to implement programs that they want to develop more. ‘Uniformity of policy and administration can be achieved in national affairs to the extent needed while states retain control over their respective internal affairs’ (Zimmerman 2008: 5). The U.S. federal system as democratic institution of pluralism has increased cycles of activism alternating between federal and state governments, depending on the goal of achieving effective governance and maximizing democratic values (Nathan 2008: 13-25). The overall effect of these variations over time has increased the roles and responsibilities of both the federal and state governments in major public policies as a whole. Looking at the past 50 years, indeed, the U.S. federalism draws a clear line between what is general and aggregate and what is local and particular. As probably Peterson (1995: 191-195) wanted to see, the U.S. federal system at least for the past 50 years has been evolving in a way that respects the comparative advantages of each level of government. Both federal and state governments have strengthened the cooperative intergovernmental



relationship that produces efficiency policies and performance. This essentially decreases political and administrative cost.

## 5. Conclusion

Looking back to the past 50 years, the U.S. federal system was characterized by ‘the increasing concentration of political powers in national government flowing from congressional preemption statutes removing completely or partially regulatory powers from subnational governments and generally broad U.S. Supreme Court interpretations of the scope of the delegated powers of Congress’ (Zimmerman 2008: 2). The U.S. federal system, however, has not clearly exercised any one direction of traditional liberal or conservative political cleavages on policy-making processes. Such complexity is more obvious in recent decades. *National Federation of Independent Business v. Sebelius*<sup>XXIX</sup> in 2012 upheld congressional powers to enact provisions of the Patient Protection and Affordable Care Act. Regarding a landmark civil rights case, however, *United States v. Windsor*<sup>XXX</sup> in 2013 and *Obergefell v. Hodges*<sup>XXXI</sup> in 2015 cases suggest that the federal recognition of marriage to apply only to opposite-sex couples is invalid, but that the marriage is not yet clearly defined by the Supreme Court. Based on the Court decisions, in *United States v. Windsor* case, any same-sex couples who were married in states that permitted same-sex marriage legally are treated the same under federal law as married opposite-sex couples, and in *Obergefell v. Hodges* case, all fifty states must recognize the same-sex marriage on the same conditions as the opposite-sex marriage (Harr et al. 2018: 104). As a result, while the former cases meant the respect of the federal government to states’ autonomous interpretation on marriage as the Court recognized states that permitted the marriages of same-sex couples, the latter case indicates the increase of the federal authority as the Court decision enforced states that are against the legitimacy of same-sex marriage. However, this trend does not mean that the U.S. federal system has been evolving in ineffective ways to design and administer public policies. Rather, the U.S. federalism has become ‘a dynamic and flexible one characterized by fluidity in the distribution of formal political powers between Congress and states over time’ (Zimmerman 2008: 55). I agree with Walker’s argument: after World War II, ‘the direction of U.S. federalism does not tend to any one direction, as many have contended, but is of an ambiguous nature, given the many





conflicting trends within various arenas of intergovernmental action. In the regulatory, judicial, program, and fiscal areas, no one tendency is consistently dominant' (Walker 2000: 2).

However, such a conventional debate whether the U.S. federalism dynamic is getting more liberal or conservative does not provide any useful information to evaluate the efficiency of U.S. federalism on public policy performance. From Montesquieu to Madison to Riker, there have been issues of whether U.S. federalism should be centralized or decentralized, and whether it should be more cooperative or competitive. Popular attitudes on domestic policy issues still vary according to a local-by-local and a state-by-state basis. The U.S. federal system shows, however, that a mix between more federally- and state-driven policy initiatives has produced both directly and indirectly beneficial policies to increase policy outcomes. As the functional theory of U.S. federalism suggests, American states have proven to be more resourceful than the federal government on economic development ventures. However, such growing globalization issues as national security, environmental protection, and the growing volume of trade expand the role of the federal government, which would benefit regional governments. Paradoxically, the decentralizing features of contemporary U.S. federalism caused by the financial crisis necessitates that the federal government leans more toward a state-centered creed by delegating to the states, a substantial amount of power to manage economic development policies, while the federal government takes more responsibility for taking care of the poor by increasing its spending on social welfare areas. As a corollary, the complexity of issues makes it much simpler to expect that in the future U.S. federalism will be evolving to increase its efficiency by separating the functional responsibilities on such policies that each unit of government can best perform.

Perhaps, a better evaluation for the contemporary as well as future U.S. federalism dynamic might be made, as many federalism scholars have done, by examining 'how government should look according to some normative benchmark, be it efficiency, democracy, or representation' (Erik 2006: 166). In another way, the character of the future federalism dynamic would be evaluated by examining the extent of operational federalism such as 'the funding, running, and accounting of public programs, whether inter-governmentally or by separate levels' (Walker 2000: 321). It still needs, however, to clarify not only how well U.S. federalism based on many varieties balances or harmonizes



distribution of policy responsibility among different levels of governments, but how effectively it reflects changing public demands in the democratic creed. Justice Louis Brandeis describes federalism as ‘the laboratories of democracy’ (Pagano 2007: 6). The federal system, grounded in democratic values, can improve political and policy performance on all levels of government. Although scholars and politicians contest whether federalism is still a core value in American political culture, no one may disagree that the American federalism should be rooted in a healthy and balanced intergovernmental association by increasing the cooperative production of public policy.

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<sup>I</sup> 247 U.S. 251 (1918). The Court ruled that ‘the Keating-Owen Child Labor Act was outside the Commerce Power and the regulation of production was a power reserved to the states via the Tenth Amendment.’ <https://www.oyez.org/cases/1900-1940/247us251>

<sup>II</sup> 254 U.S. 281 (1920). ‘In all the states, from the beginning down to the establishment of the Articles of Confederation, the citizens possessed the right, inherent in citizens of all free governments, peacefully to dwell within the limits of their respective states, to move at will from place to place therein, and to have free ingress thereto and egress therefrom. A consequent authority resided in the states to forbid and punish violations of this right. P. 254 U. S. 293.’ <https://supreme.justia.com/cases/federal/us/254/281/>

<sup>III</sup> 196 US 375 (1905). In this case, the Court held that ‘congressional power under the Commerce Clause justified regulations of the meat trust.’ <https://www.oyez.org/cases/1900-1940/196us375>

<sup>IV</sup> 252 U.S. 416 (1920). The Court held that ‘the national interest in protecting the wildlife could be protected only by national action.’ <https://www.oyez.org/cases/1900-1940/252us416>

<sup>V</sup> 276 U.S. 394 (1928). The Court held that ‘Congress, within ‘defined limits,’ could vest discretion in Executive officers to make public regulations and direct the details of statutory execution. The Court argued that the same principle that allowed Congress to fix rates in interstate commerce also enabled it to remit to a rate-making body under the control of the Executive branch.’ <https://www.oyez.org/cases/1900-1940/276us394>

<sup>VI</sup> 301 U.S. 1 (1937).

<sup>VII</sup> 301 U.S. 548 (1937). The Court held that ‘the tax under the Social Security Act was a constitutional exercise of congressional power.’ <https://www.oyez.org/cases/1900-1940/301us548>

<sup>VIII</sup> 317 U.S. 111 (1942). The Court ruled that ‘Congress may use its Commerce Power to regulate or prohibit activities provided the economic effects of such activities are substantial.’ <https://www.oyez.org/cases/1940-1955/317us111>

<sup>IX</sup> 358 U.S. 1 (1958). The Court held that ‘the Arkansas officials were bound by federal court orders that rested on the Supreme Court’s decision in *Brown v. Board of Education*.’ [https://www.oyez.org/cases/1957/1\\_misc](https://www.oyez.org/cases/1957/1_misc)

<sup>X</sup> 400 U.S. 112 (1970). The Court held that ‘Congress had the power to enact the amendments that changed the voting age for federal elections, abolish literary tests at the polling station, and abolish state residency requirements for presidential and vice presidential election.’ <https://www.oyez.org/cases/1970/43-orig>

<sup>XI</sup> 469 U.S. 528 (1985). The Court held that ‘the guiding principles of federalism established in *National League of Cities v. Usery* were unworkable and that SAMTA was subject to Congressional legislation under the Commerce Clause. The Court argued that the structure of the federal system itself, rather than any ‘discrete limitations’ on federal authority, protected state sovereignty.’ <https://www.oyez.org/cases/1983/82-1913>

<sup>XII</sup> 483 U.S. 203 (1987). The Court held that ‘Congress, acting indirectly to encourage uniformity in states’ drinking ages, was within constitutional bounds. The Court found that the legislation was in pursuit of ‘the general welfare,’ and that the means chosen to do so were reasonable.’



<https://www.oyez.org/cases/1986/86-260>

<sup>xiii</sup> 514 U.S. 779 (1995). ‘The Constitution prohibits States from adopting Congressional qualifications in addition to those enumerated in the Constitution.’ <https://www.oyez.org/cases/1994/93-1456>

<sup>xiv</sup> 545 U.S. 1 (2005). The Court held that ‘the commerce clause gave Congress authority to prohibit the local cultivation and use of marijuana, despite state law to the contrary.’ <https://www.oyez.org/cases/2004/03-1454>

<sup>xv</sup> 567 U.S. 387 (2012). The Court held that ‘the federal immigration laws preclude Arizona’s efforts at cooperative law enforcement and preempt the four provisions of S.B. 1070 on their face.’ <https://www.oyez.org/cases/2011/11-182>

<sup>xvi</sup> 505 U.S. 144 (1992). It was a decision of the Supreme Court, ‘reasoning that Congress had the authority under the Commerce Clause to use financial rewards and access to disposal sites as incentives for state waste management. The third provision, the ‘take-title’ qualification, stipulated that states must take legal ownership and liability for low-level waste or by the regulatory act.’ <https://www.oyez.org/cases/1991/91-543>

<sup>xvii</sup> 514 U.S. 549 (1995). The Court held that ‘the 1990 Gun-Free School Zones Act is, forbidding individuals from knowingly carrying a gun in a school zone, unconstitutional because it exceeds the power of Congress to legislate under the Commerce Clause.’ <https://www.oyez.org/cases/1994/93-1260>

<sup>xviii</sup> 521 U.S. 898 (1997). ‘Using the Necessary and Proper Clause of Article I as justification, the Court held that Congress can temporarily require state CLEOs to regulate handgun purchases by performing those duties called for by the Brady Bill’s handgun applicant background-checks.’ <https://www.oyez.org/cases/1996/95-1478>

<sup>xix</sup> 524 U.S. 417 (1998). The Court ruled that ‘the President’s ability to selectively cancel individual portions of bills, under the Line Item Veto Act, violate the Presentment Clause of Article I.’ <https://www.oyez.org/cases/1997/97-1374>

<sup>xx</sup> 529 U.S. 598 (2000). The Court held that ‘Congress lacked the authority to enact a statute under the Commerce Clause or the Fourteenth Amendment since the statute did not regulate an activity that substantially affected interstate commerce nor did it redress harm caused by the state.’ <https://www.oyez.org/cases/1999/99-5>

<sup>xxi</sup> 392 U.S. 183 (1968). The Court held that ‘the inclusion of commercial enterprises is constitutional because otherwise commercial enterprises that utilize substandard wages and excessive hours would have an advantage over other companies.’ <https://www.oyez.org/cases/1967/742>

<sup>xxii</sup> 426 U.S. 833 (1976). The Court held that ‘Congress may not regulate the labor market of state employees. The Tenth Amendment prohibits Congress from enacting legislation which operates to directly displace the States’ freedom to structure integral operations in areas of traditional governmental functions.’ <https://www.oyez.org/cases/1974/74-878>

<sup>xxiii</sup> 469 U.S. 528 (1985). The Court held that that the guiding principles of federalism established in National League of *Cities v. Usery* were unworkable and that the San Antonio Metropolitan Transit Authority was subject to Congressional legislation under the Commerce Clause. <https://www.oyez.org/cases/1983/82-1913>

<sup>xxiv</sup> 527 U.S. 706 (1999). In response to ‘a group of probation officers that sued their employer, the State of Maine, in 1992 alleging that the state had violated the overtime provisions of the 1938 Fair Labor Standards Act,’ the Court held that ‘Congress may not use its Article I powers to abrogate the states’ sovereign immunity.’ <https://www.oyez.org/cases/1998/98-436>

<sup>xxv</sup> 4 U.S.C. section 114.

<sup>xxvi</sup> Internet Tax Freedom Act, 47 U.S.C. section 151 note.

<sup>xxvii</sup> P.L. 86-272

<sup>xxviii</sup> NCLB was replaced to the Every Student Succeeds Act on December 2015, which basically returns the substantial power to manage education policy to state governments.

<sup>xxix</sup> 567 U.S. 519 (2012). The Court held that the Patient Protection and Affordable Care Act, commonly called Obamacare, was ‘an unconstitutional assertion of Congress’ power to regulate commerce among the several states, but was nonetheless sustainable under Congress’ power to tax’ (Reynolds and Denning 2012: 807)

<sup>xxx</sup> 570 U.S. \_\_\_ (2013).

<sup>xxxi</sup> 576 U.S. \_\_\_ (2015).



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