# 2020-2021 - Federalism disad

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#### Federalism high now – COVID 19 proves

Gerstle May 6, 2020

The New Federalism: In a crisis defined by erratic leadership in Washington, D.C., the states, as much out of desperation as by design, find themselves asserting long-dormant powers. MAY 6, 2020 Gary Gerstle, Professor of American History at the University of Cambridge An illustration of a map of the United States with the Capitol behind it. Published in THE ATLANTIC (https://www.theatlantic.com/ideas/archive/2020/05/new-federalism/611077/)

Suddenly, the relationship between the federal government and the states seems to be at the center of U.S. politics. Defying Donald Trump’s claims of “total authority,” states throughout the country have been banding together to plot their own return to normalcy in the COVID-19 era. This follows weeks of growing rancor between some governors and the president over the alleged failure of the federal government to funnel crucial medical supplies and testing to the places where they are needed. And last month, another institution of the federal government, the U.S. Supreme Court, blocked an attempt by the governor of Wisconsin to extend the state’s mail-in-ballot deadline in order to prevent further spread of the contagion at the polls.¶ In fact, this relationship has been at the center of things all along. But in a crisis defined by erratic leadership in Washington, D.C., the states, as much out of desperation as by design, find themselves asserting long-dormant powers. A new era of federalism is unfolding before our eyes.¶ Prior to the Civil War, the fiercest defenders of the states were white southerners who feared that the federal government, at the behest of northern states, would impinge on and even destroy the South’s slave system, much of it underpinned by the laws of various southern states. The Union’s triumph in the Civil War was supposed to end this era of states’ rights. It did, up to a point. America would never again confront a serious threat of secession by constituent states. But by the 1890s, southern state legislatures, with the sanction of the Supreme Court, had imposed segregation and subordination on their states’ black citizens. States’ rights now took the form of Jim Crow, America’s apartheid.¶ This governing philosophy rebounded in part because it suited the interests of southern white supremacists. But a belief in states’ rights was also an expression of a long-standing conviction, common among northerners and southerners alike, that the Constitution endowed the states with an authority broader than that of the federal government. The courts called this authority the “police power,” by which they meant something far beyond the law-enforcement oversight that each state had. The police power conferred on states the right and the duty to look after the economic, social, and moral welfare of their citizens. Protecting citizens from epidemics ranked high on states’ to-do list; so did improving the moral fiber of the population, regulating corporate behavior in the public interest, and keeping suspect groups—single women living outside patriarchal arrangements, minorities, and “vagrants”—in line.¶ One can readily see the coercive dimension of the police power, and why southern states used it to buttress the legality of Jim Crow. But Supreme Court Justice Louis Brandeis was one of many who saw progressive potential in such authority. Brandeis hailed the states as America’s “laboratories of democracy.” A state may, Brandeis wrote in 1932, “try novel social and economic experiments without risk to the rest of the country." A leading figure in the Progressive movement before he joined the Supreme Court in 1916, Brandeis had been involved in several of these state experiments himself, reforming the life-insurance industry in Massachusetts, defending laws regulating female labor in Oregon, and improving employer-employee relations in New York. He discerned in these state-level experiments the building blocks of a more just and egalitarian America.¶ Brandeis’s progressive vision of state rule was never fully realized. Patchworks of state laws failed to provide effective regulation over a tightly integrated capitalist economy spanning the entire continent, especially once the Great Depression struck. Meanwhile, the regressive version of states’ rights persisted in laws denying freedom of religion, reproductive rights, and racial equality. As the nation reckoned in the 1940s and ’50s with the horrors of totalitarianism and the Holocaust, these state violations of civil liberties came to seem intolerable to many Americans. Thus, in the 1960s, the Supreme Court, under the leadership of Chief Justice Earl Warren, took on the states, throwing out virtually every state law seen as contradicting the Bill of Rights or the Fourteenth Amendment. The Warren Court’s actions, aimed at the states’ police power, also undercut the Brandeisian vision of states leading the way in social reform. Brandeis’s heirs now looked to Washington, D.C., for leadership.¶ Many white southerners never forgave the Warren Court for empowering the central government at the expense of the states. They joined Republicans in the North and West who were convinced that the expansion of federal-government power across the New Deal, World War II, and Great Society eras had violated the Constitution and was destroying American liberty. This was the Republican Party that Ronald Reagan forged. Over time, Reagan’s successors Newt Gingrich and Mitch McConnell stripped the central state of its dynamism, frustrating the efforts of Democratic Presidents Bill Clinton and Barack Obama to build on the legacies of Franklin D. Roosevelt and Lyndon B. Johnson. The federal government’s dysfunction, so evident in Trump’s handling of the pandemic, is not solely of his own creation; rather, his administration is a symptom of the paralysis that Republicans have sowed at the federal level for decades.¶ It is hardly surprising, in these circumstances, that the fabled Centers for Disease Control and Prevention laboratories have failed the American public; that the states are rising again; and that governors, not the president or senators, have emerged as heroes in the coronavirus pandemic. Day by day now, states are creating a new federalism: pushing back against ill-conceived directives from Washington, D.C. (as in Maryland Governor Larry Hogan’s case with National Guard troops); developing new competencies; launching schemes of interstate and private-public cooperation; browbeating the federal government into supplying vital resources and establishing necessary partnerships. At no other time in the past 100 years has Brandeis’s call to individual states to launch “novel social and economic experiments without risk to the rest of the country" seemed as relevant as it does now.

#### States have pushback now – Colorado proves

Grewe-Keith 2020

By Lindsey Grewe & Tony Keith both reporters for KKTV news in Colorado Springs. “Colorado officials respond to Trump warning of military deployment if violence at protests continue” by By Lindsey Grewe &Tony Keith Jun 02, 2020 <https://www.kktv.com/content/news/President-Trump--570936591.html> -VL

Colorado officials are pushing back on a threat by President Donald Trump to send in the U.S. military if states didn't put a stop to violence breaking out at protests across the country. "If a city or a state refuses to take the actions that are necessary to defend the life and property of their residents, then I will deploy the United States military and quickly solve the problem for them," the president said in a speech Monday evening while calling himself an "ally of all peaceful protesters." Many cities and states have pointed out that the rioters and looters are not the people legitimately protesting, but are people taking advantage of the opportunity to commit violence for violence's sake. "What's happening in this environment … all these issues are getting blurred," New York Gov. Andrew Cuomo said at his daily press briefing. "COVID-19 is one issue, the outrage over Mr. Floyd is another issue, looters are another issue. ... The president doesn't want to distinguish between the looters and the protesters. He doesn't want to talk about the killing of Mr. Floyd, and he doesn't want to talk about reforming the justice system." Several protesters in Colorado Springs Monday told 11 News they were doing everything they could to keep the bad actors away. At the very end of the night when police began ordering the crowd to disperse, many protesters could be heard urging everyone to leave. Colorado Gov. Jared Polis and Denver Mayor Michael B. Hancock issued the following joint statement Monday following Trump's remarks. “Denver police, our mutual aid partners and a small contingent of Colorado National Guard have been working for the past four days and nights to support peaceful demonstrations in Denver. They have worked long hours under difficult conditions, especially as day turns to night. But there is no need for the deployment of US troops to maintain order in our city. The president's threat to deploy federal troops is counterproductive and will only stoke the potential for worse violence and destruction. Denver is not Little Rock in 1957, and Donald Trump is not President Eisenhower. This is a time for healing, for bringing people together, and the best way to protect civil rights is to move away from escalating violence.” Colorado Attorney General Phil Weiser issued a strongly-worded statement Tuesday threatening legal action if Trump went through with his threat: "The constitutional right to peacefully assemble and protest is core to our laws and democratic values. Those who would attempt to hijack peaceful protests and engage in illegal activity should and will be held accountable by local and state authorities. It is not necessary, wise, or appropriate for the president to order the military to perform this civilian role. “The threat to order the military to take over policing in our cities and states is illegal, an abuse of power, and exactly the opposite of what our nation needs. Our states have sovereign authority and the right to exercise the police power under the 10th Amendment of the U.S. Constitution. If necessary, as we have before, the state of Colorado is prepared to take the federal government to court to defend our sovereignty and the rule of law."

#### Federalism high for CJR now – First Step Act proves

Prison Fellowship 2018

Prison fellowship releases state legislator first step act support letter” published by the Prison Fellowship on December 17th, 2018 (https://www.prisonfellowship.org/2018/12/prison-fellowship-releases-state-legislator-first-step-act-support-letter)

As demonstrated by this letter signed by nearly 50 state legislators, the FIRST STEP Act is federalism at its finest," said Craig DeRoche, senior vice president of advocacy and public policy. "This FIRST STEP Act will align the federal system with the criminal justice reform success already experienced in the laboratories of democracy, particularly red states. All eyes are on Washington to get this done. Prison Fellowship believes this bill can pass with an overwhelming bipartisan vote and that the enactment of the FIRST STEP Act will pave the way for more values-driven reforms to come.

#### CJR Federalism high now – First Step granted lead to states

Gleason 18

Patrick Gleason, Vice President of State Affairs at Americans for Tax Reform. “First Step Act Was This Past Year's Second Example Of Federalism At Its Finest” published via Forbes on 12/31/18. (https://www.forbes.com/sites/patrickgleason/2018/12/31/enactment-of-the-first-step-act-was-the-past-years-second-example-of-federalism-at-its-finest/#197c1341184e)

One of the benefits of the federalist system set up by the Founders is the creation of what Supreme Court Justice Louis Brandeis dubbed the 50 laboratories of democracy, which provide optimal venues for policy experimentation before trying proposals on a national scale. As Levin explains, the experience in the dozens of states that passed criminal justice reforms, which served as a model for the First Step Act, demonstrated in practice how increasing alternatives to incarceration for non-violent offenders, when done properly, saves taxpayers dollars and keeps families together, all without jeopardizing public safety: Overall, in the 10 states that have reduced incarceration the most over the last decade, crime has fallen more than the national average and more than in the 10 states that increased incarceration the most,” Levin says. “Federal policymakers could act on the First Step Act knowing that it is not an experiment, but rather legislation that is grounded in successful reforms on the state level.” For those who think it’s best to first test policies in the states to prove that they work as intended before going national, the past year has provided, with federal enactment of the First Step Act and Right To Try, two quintessential examples of how it’s done.

# Links

#### Law enforcement is key, federal lead flips away from federalism, now is key

Colvin July 22, 2020

“Trump has been on both sides of the states' rights argument” by Jill Colvin, journalist for the Associated Press, Jul 22, 2020. Published via the Philadelphia Tribune (https://www.phillytrib.com/news/trump-has-been-on-both-sides-of-the-states-rights-argument/article\_895c5b8e-abff-59a9-9f62-24e75596068d.html)

When it comes to states' rights, President Donald Trump is all over the map.¶ To battle the coronavirus, he's told states they're largely on their own. But when it comes to stamping out protests in cities led by Democrats, Trump is sending in federal troops and agents — even when local leaders are begging him to butt out.¶ It's a driven-by-expedience approach that's been a hallmark of his stormy presidency, one that has little to do with ideology and more to do with reelection efforts.¶ "After seeing Trump in the White House for three and a half years, anyone expecting to find classical ideological consistency is bound to be mistaken," said Andrew J. Polsky, a political science professor at Hunter College. "All of this is done for partisan political purposes with an eye toward the election."¶ For months now as he's tried to skirt responsibility for the nation's flawed response to the coronavirus, Trump has put the onus on states, first to acquire protective gear and testing agents and then to scale testing and contact tracing.¶ "The federal government is not supposed to be out there buying vast amounts of items and then shipping. You know, we're not a shipping clerk," Trump said in March when testing in the U.S. severely lagged behind other countries and governors were pleading for help as they competed against one another on the open market.¶ Just a month later, Trump flipped to asserting vast executive authority as he pushed states to reopen their economies fast.¶ "When somebody is the president of the United States, the authority is total," he declared in April, in an inaccurate interpretation of the Constitution.¶ He quickly reversed course, saying he'd leave reopening plans up to the states, but continued to threaten to intervene if he didn't like what they were doing. Now, he's pressuring schools to fully reopen in September, saying he'll pull funding from school districts that continue to keep kids home.¶ That approach stands in stark contract with Trump's view of "law and order," the mantle under which he's decided to run his 2020 race.¶ After National Guard troops were deployed to Washington, D.C., to quell protests near the White House following the police killing of George Floyd, the Department of Homeland Security now has agents patrolling Portland, Oregon, to protect federal buildings, despite pleas from the mayor, governor and local activists to leave.¶ And DHS is poised to deploy about 150 Homeland Security Investigations agents to Chicago to bolster local law enforcement, according to an official with direct knowledge of the plans who wasn't authorized to speak publicly and spoke on condition of anonymity.¶ "Keep your troops in your own buildings, or have them leave our city," Portland Mayor Ted Wheeler said Friday.¶ "We are trying to help Portland, not hurt it," Trump tweeted in response. "Their leadership has, for months, lost control of the anarchists and agitators. They are missing in action. We must protect Federal property, AND OUR PEOPLE."¶ Chad Wolf, the acting DHS secretary, whose agency was created after the Sept. 11 attacks to protect the country from terrorist threats, said Monday on Fox News the agency had every right to protect some 9,000 federal facilities across the country.¶ "I don't need invitations by the state, state mayors or state governors to do our job," Wolf said. "We're going to do that, whether they like us there or not."¶ But Jann Carson, interim executive director of the American Civil Liberties Union of Oregon, said federal agents dressed in camouflage, indiscriminately using munitions and abducting people in unmarked vans have escalated tensions and made the situation worse.¶ "What the federal agents are doing in Portland should concern people everywhere in the United States," she said. "We know that the president is trying to change the narrative (and say) that cities like Portland are in crisis, that he's got to send in federal agents to bring about law and order, and that couldn't be further from the truth.¶ "He wants to be a law-and-order president," she said. "But he is not bringing law and order. This is lawlessness and needs to be stopped."¶ Oregon's two U.S. senators and two of its House members have demanded U.S. Attorney General William Barr and Wolf immediately withdraw "these federal paramilitary forces from our state." And top leaders in the U.S. House said Sunday they've called on federal inspectors general to investigate.¶ Still, Jennifer Selin, an assistant professor of constitutional democracy at the University of Missouri whose work has focused, in part, on the separation of powers, said that, while Trump has been unusually blatant in his efforts, presidents have relied on politicized interpretations of federalism since George Washington and the Whiskey Rebellion over taxes.¶ Selin pointed to the 1950s and 1960s as the country grappled with the extent to which it should be up to states to integrate schools and allocate housing.¶ "I think that the short answer is that federalism can be used strategically and politically, which, to be 100% honest, is nothing new," she said.¶ Polsky said that, when it comes to the virus, Trump has attempted "to displace responsibility for dealing with the pandemic onto states, onto governors. I don't think that was driven by ideology. I think that was driven by wanting to keep responsibility as far from him as possible."¶ But when it comes to law enforcement, Polsky sees an attempt to stoke "unrest in sites that can then be broadcast on television, at least in the conservative and right-wing media" to rouse the Republican base and scare suburban voters into believing a strong approach is needed.¶ "It's selective federalism," added Julian Zelizer, a historian at Princeton University. "I think obviously when it comes to closing and how to do reopening, he has been incredibly hands-off ... he hasn't used his presidential hand in ways that he could have. And then you have protests in the city of Portland, which really shouldn't be a center of discussion right now, and then you have these troops being sent."¶ "Obviously with President Trump, there's no logic to it," Zelizer said — other than what may serve his political interests.

#### The link is reverse causal – states taking the lead on justice protects federalism

Kaufman 20

Emma Kaufman, Assistant Professor of Law, New York University School of Law. “THE PRISONER TRADE” published via the Harvard Law Review, April 2020. (https://harvardlawreview.org/wp-content/uploads/2020/04/1815-1883\_Online.pdf)

The 1920s was also a decade of increasing optimism about regional administration of American laws. Across domains from transportation and waste disposal to education and criminal justice, government officials touted the benefits of regional governance, specifically interstate compacts.54 Compacts, these officials argued, could address the policy concerns wrought by increased mobility without sacrificing cultural variation and local control.55 For opponents of federal law enforcement and skeptics of the fledgling administrative state, regional agreements served as a means to “stave off federal intervention.”

#### Federal lead on CJR erodes constitutionalism

Walsh 2011

Brian W. Walsh, fellow at the heritage foundation. “Doing Violence to the Law: The Over-Federalization of Crime” published by the Heritage Foundation on 6/9/2011 (https://www.heritage.org/crime-and-justice/commentary/doing-violence-the-law-the-over-federalization-crime)

The rapid expansion of federal criminal law, beyond almost all prudential and constitutional limits, may not be the first thing to leap to mind when one thinks of key problems with American criminal law. But the existence now of over 4,450 federal criminal offenses is itself a problem that implicates the foundations of the criminal law. The number of federal offenses is too great for Ameri­cans to be familiar with all of the conduct that is criminal, and many of the offenses themselves are deeply flawed, omitting essential substantive elements necessary to pro­tect the innocent. As a result of these flaws, the federal criminal code fails to serve what may be its most impor­tant function, which is not to expose and punish the relatively few persons who consciously choose to engage in criminal conduct, but to inform citizens of the law's requirements, thereby equipping them to avoid the con­duct deemed worthy of society's most severe penalty and moral censure.¶ The explosion of the federal criminal law—both in the number of offenses and their overall scope—demands that legal reformers revisit basic assumptions about what crimi­nal law is and how best to rein in its actual and potential abuses. Over the last forty to fifty years, government at all levels has succeeded in convincing Americans that the criminal law is whatever legislators define it to be. Ill­ conceived new criminal offenses occasionally raise an eye­brow or two, but Americans generally accept their legitimacy. The result is that Americans have come to rely, consciously or not, on the good graces of prosecutors and the laws of probability to shield them from prosecution. When lightning does strike and an otherwise law-abiding citizen is charged and convicted for conduct that is not traditionally criminal or necessarily even wrongful, most Americans convince them­selves that the accused must have done something to warrant the prosecutor's attention. Yet while Americans remain incredulous that improper criminal laws could be used to convict someone who had no intention of doing anything wrongful, the reality is otherwise.¶ I. Substantive Protections¶ "An unjust law is a code that is out of harmony with the moral law," wrote Martin Luther King, Jr., who had no lit­tle experience with unjust law. Many federal criminal offenses fall far short of this standard because they do not require an inherently wrongful act, or even an act that is extraordinarily dangerous. In the days when average citi­zens were illiterate, they could still know and abide by the criminal law. At that point, most criminal offenses addressed conduct that was inherently wrongful­—malum in se—such as murder, rape, and robbery. That is no longer the case. Most of today's federal offenses criminalize conduct that is wrong only because it is prohibited—malum prohibitum.¶ Worse, many of these prohibitions are actually contrary to reason and experience, giving average Americans little notice of the content of the law. For example, few would imagine that it is a federal crime for a person to violate the terms of service of an online social networking site by reg­istering with a fake name, as a recent federal indictment in Los Angeles alleges. Indeed, many Americans might instead expect this behavior to be protected, for it pro­motes privacy and anonymity and, by extension, the personal safety of vulnerable users. Another example: Unauthorized use of the 4-H organizations logo is a fed­eral crime. There are undoubtedly reasons that these laws are on the books, but they are not reasons that average law-abiding Americans would be likely to anticipate when trying to conform their conduct to the law's requirements.¶ Exacerbating the criminalization of an ever-increasing array of behavior that is not inherently wrongful is the crumbling of traditional protections in the law for those lacking wrongful intent. Historically, a criminal conviction required that a person both¶ committed an inherently wrongful act that consti­tuted a serious threat to public order, and did so with a guilty mind or criminal intent, that is, mens rea.¶ These two substantive components were essential for con­viction in almost all criminal cases from the time of the American founding through the first decades of the 20th century.¶ But over the past few decades in particular, Congress has routinely enacted criminal laws that lack mens rea requirements or that include mens rea requirements that are so watered down as to provide little or no protection to the innocent. As a result, honest men and women increas­ingly find themselves facing criminal convictions and prison time. This happens even when their "crimes" are inadvertent violations that occur in the course of otherwise lawful, and even beneficial, conduct.¶ Despite increasing attention to this problem in recent years, the trend is for fewer and weaker mens rea require­ments. In a recent study, Professor John Baker found that seventeen of the ninety-one federal criminal offenses enacted between 2000 and 2007 lacked any mens rea requirement whatsoever. The Heritage Foun­dation and the National Association of Criminal Defense Lawyers will soon publish the results of their joint research into the mens rea provisions in bills introduced in the 109th Congress. Preliminary findings reveal that the majority of those offenses lack a mens rea require­ment sufficient to protect from federal conviction anyone who engaged in the specified conduct but did so without criminal intent.¶ Many lawyers seem to accept uncritically the idea that any act made criminal by a legislature is, by that fact alone, an actus reus. But to accept that definition is to obliterate the meaning of actus reus, for the term would be a mere synonym for "act that has been made criminal." The prob­lem may be best illustrated using some of the "criminal" laws made and enforced by totalitarian regimes. For exam­ple, in some communist countries it was deemed a "criminal" act for relatives of politically or religiously perse­cuted persons to discuss their relative's persecution, even in private and even with other family members. In some regimes, any type of unauthorized communication with a foreigner was deemed a "crime." Regardless of any elabo­rate (or convoluted) logic and rhetoric that may be used to justify criminalizing such conduct, it is evident that there is no actus reus in these so-called crimes.¶ Similarly, but to a lesser extreme, when Congress makes it a federal crime to violate any foreign nation's laws or regulations governing fish and wildlife—as it has done in the Lacey Act—many violations will be "crimes" that include no actus reus. Some of those foreign regula­tions may do nothing more than protect the foreign nation's local business interests. For example, the fishing regulations of a small Central American nation might require fishermen to package their catch in cardboard, perhaps only in order to stimulate business for a domestic cardboard manufacturer. If a fisherman then packs his catch taken in that nation's waters in plastic rather than cardboard and imports into the United States—in viola­tion of the express terms of no federal or state law of the United States—is there a real actus reus? Answering yes leads to the absurd conclusion that Congress could, with a single sentence in a single legislative act, make it a crime to violate any and every law of every nation on earth—and that every such offense thereby includes a meaningful actus reus. Such may be positive law, but they are not "crimes" in the truest sense of the word; they are merely legislatively created offenses that are unworthy of any free nation's criminal law.¶ The size of the federal criminal law compounds these problems and undermines other protections. The Principle of Legality, for example, holds that "conduct is not criminal unless forbidden by law [that] gives advance warning that such conduct is criminal." The sheer num­ber and disorganization of federal criminal statutes ensures that no one could ever know all of the conduct that has been criminalized. Those who have tried merely to count all federal offenses—including both Professor Baker and the Justice Department itself—have been able to provide only good estimates. The task proves impossible because offenses are scattered throughout the tens of thousands of pages of the United States Code (not to men­tion the nearly 150,000 pages of the Code of Federal Regulations). If criminal-law experts and the Justice Department itself cannot even count them, average Amer­icans have no chance of knowing what they must do to avoid violating federal criminal law.

#### Every instance of the erosion of federalism matters, it spills over

Somin 20

Ilya Somin is Professor of Law at George Mason University. “Seventh Circuit Rules Against Trump Administration in Major Sanctuary City Decision” published via Reason.com on 5-1-20 https://reason.com/2020/05/01/seventh-circuit-rules-against-trump-administration-in-major-sanctuary-city-decision/

The decision, written by Judge Ilana Rovner, also emphasizes the broader stakes for constitutional federalism. If the executive can get away with using vaguely worded statutes (in this case, a requirement that grant recipients obey "applicable federal law") to impose its own new conditions on state and local governments, it would enable the president to bully them on a wide range of issues:

Interpreting that language as potentially incorporating any federal law would vest the Attorney General with the power to deprive state or local governments of a wide variety of grants, based on those entities' failure to comply with whatever federal law the Attorney General deems critical. Yet there is nothing in those statutes that even hints that Congress intended to make those grants dependent on the Attorney General's whim as to which laws to apply, cabined only by the requirement that the laws apply generally to states or localities.

#### Yes, Spillover

Somin 19

Ilya Somin is Professor of Law at George Mason University. “Making Federalism Great Again” published via the Texas Law Review in 2019 (https://texaslawreview.org/making-federalism-great-again/)

Even congressionally authorized grant conditions can undermine diversity in policy and reduce opportunities for foot voting. But giving the power to set grant conditions to the president greatly exacerbates the danger. It is much easier for the Executive to enact coercive grant conditions at odds with the preferences of numerous state and local governments than for Congress to do so. The latter generally has far greater partisan and ideological diversity than the former, and the prevalence of divided government also makes it harder for it to adopt dangerous new grant conditions.¶ In this way, the potential threat to federalism is heightened by the threat to separation of powers. By intruding on Congress’s power of the purse, the Administration also makes it easier for the federal government to coerce states and localities.

#### Spill over – now is key

Farias 17

Cristian Farias, Journalist. “A New Romance: Trump Has Made Progressives Fall in Love With Federalism” Published at NY Mag on 8/24 /17 (http://nymag.com/daily/intelligencer/2017/08/trump-has-made-progressives-fall-in-love-with-federalism.html])

To this day, Republicans haven’t forgiven Chief Justice John Roberts for casting the deciding vote that upheld the core of the Affordable Care Act. But along with his tie-breaking vote in the 2012 decision, Roberts also did something conservatives give him far less credit for, and he even convinced two of his more liberal colleagues to join him. He dealt a crippling blow to Obamacare’s Medicaid expansion, declaring that the requirement was essentially extortion: Agree to expand health-care coverage or lose all of your existing Medicaid funding. This, Roberts wrote, was akin to “a gun to the head” of the states, and thus unconstitutional. Blocking that kind of unlawful coercion is federalism in action, which conservatives have fought long and hard to defend as a local check against federal overreach. And now that Donald Trump is running the federal government, it’s a principle that liberals and progressives are embracing with open arms, as Democratic-leaning states and localities mobilize to shield themselves from federal policies they consider retrograde or just plain damaging to their residents and interests. Hand over undocumented immigrants to Trump’s deportation machine? Perish the thought. Let the chief executive faithlessly sabotage the health-insurance market in an otherwise liberal bastion? Over our dead bodies. Or how about Jeff Sessions’s intended crackdown on local marijuana laws? Get out of town. “Progressive federalism” is not a phrase you hear often, but the Trump era may have prompted a liberal awakening to the benefits of local pushback against centralized executive fiat. When the president announced his ill-begotten travel ban a week after he took office, it was up to states like Washington and Minnesota to score the first major victory against the executive order’s implementation. And so it’s been with other hotly contested legal battles — over sanctuary cities, clean air, the payment of certain subsidies under Obamacare. It has fallen to Democratic attorneys general and municipal leaders to be standard-bearers for the legal resistance against Trump, who otherwise seems committed to trampling on states’ rights, conservative principles be damned. For Heather Gerken, the new dean of Yale Law School and one of the leading scholars in support of progressive federalism, Republican control of Congress and the presidency has given new urgency to her work. In the aftermath of the election, she co-authored a user’s guide in the journal Democracy on how localities can best harness the power of federalism to serve progressive ends. That’s not to say Democratic enclaves will necessarily carry this flag for the long haul. In an interview, she told me that people on both sides of the political spectrum tend to opportunistically wield federalism for their partisan ends — and not because of some high-minded constitutional commitment. “Both sides are fair-weather federalists. Both sides use it instrumentally to achieve their goals,” she said. The leaders of the liberal resistance, naturally, won’t just cop to favoring federalism because it now suits them. During a recent press conference to announce a new lawsuit challenging Sessions’s war against jurisdictions that won’t turn over undocumented immigrants to the feds, Xavier Becerra, California’s attorney general, suggested his effort wasn’t about opposing Trump, but rather about standing up for our founding document. “I don’t see this as a fight against the federal government,” Becerra said, according to the Recorder, a legal publication. “We’re fighting to protect the Constitution.” That’s the kind of lofty and legalistic talking point that Republicans have elevated to an art form. For example, Becerra’s counterpart in Texas, Ken Paxton, has insisted time and again that the scores of lawsuits his office felt compelled to file against President Obama were all about the rule of law and preventing federal encroachment in local affairs. “To protect civil liberties and prevent the concentration of power, the Constitution divides authority through the separation of powers and federalism,” Paxton wrote in a recent letter defending his decision to threaten more litigation over an Obama-era program aimed at protecting young undocumented immigrants who were brought to the U.S. as children. If Texas really cared about federalism, it should’ve gone after the federal program that helps these kids years ago. Now that the shoe is on the other foot, Democrats are the ones relying on similar litigation tactics and conservative precedents to oppose Trump. And they’ve won some significant victories so far, which in turn have had the effect of slightly moderating the administration’s stance on some issues. In April, a federal judge in San Francisco admonished the Department of Justice that it can’t just threaten to strip funding from cities and counties simply because they refuse to do the government’s bidding on immigration. And he did so borrowing from Chief Justice Roberts’s language in the first Obamacare challenge before the Supreme Court: “The threat is unconstitutionally coercive,” wrote U.S. District Judge William Orrick about Trump’s executive order against immigrant-friendly sanctuary cities. More dramatic still is what’s been happening in the second most powerful court in the country, the federal appeals court in Washington, where the Trump administration has been waging a fierce regulatory battle with New York’s Eric Schneiderman and other state attorneys general who insist that their states have skin in the game of how the federal government should enforce its own laws. In back-to-back decisions earlier this month, judges in that court recognized that these states should be able to intervene in cases where Trump, if left to his own devices, could simply decide that ozone pollution standards don’t matter, or stop making millions in cost-sharing payments to insurers that make coverage affordable to poor Obamacare beneficiaries. In these court confrontations, tellingly, lies a key difference in how progressives and conservatives employ federalism. For conservatives, it’s all about stopping executive policy they don’t like: Texas alone spearheaded efforts to invalidate federal rules and directives aimed at protecting transgender students and patients, workers considering joining a union, and the undocumented parents of American citizens and permanent residents — all in the name of upholding the Constitution and laws and their state budgets and businesses. Progressives, on the other hand, really like some of these policies and have jumped in the fray to save them from non-enforcement or outright repeal by the Trump administration. And in the face of new actions by Trump’s team, their strategy has been to play offense, as in the bid by “sanctuary” states and localities to get the federal government to leave them alone on immigration. These interventions have emboldened the Democratic base and maybe even contributed to the political aspirations of attorneys general and other local politicians. Federalism is now a tool to #resist. But is there a principled way for progressives to seize the moment and learn to love federalism for federalism’s sake, rather than just as a means to score political points against Trump or salvage a policy they favor? Writing in National Review, Ilya Somin, a George Mason University law professor and longtime libertarian scholar of federalism, expressed hope that the Trump era could well be the time to “make federalism great again” for both progressives and conservatives — a moment for politicos and legal thinkers from both sides to find common ground and form a “new bipartisan and cross-ideological appreciation for limits on federal power.” Yale Law’s Gerken, for her part, is skeptical that one can make a bright-line rule for federalism, but she says that there are issues, such as national security and the enforcement of federal civil-rights laws, that everyone should agree belong in the realm of the national government vis-à-vis the states. “I’ve never met a [federalist who says] that a state should control our nuclear arsenal,” she says. “There are always things no matter what side you’re on that you believe should be centralized. And there are almost always things that you think should be decentralized. The real question is, how much weight do you put on the scale for the values of federalism, and what you think federalism can achieve, given your goals?”

# Scenarios

## Pandemic/Public Health

#### Federalism now key to pandemic response

Gerstle May 6, 2020

The New Federalism: In a crisis defined by erratic leadership in Washington, D.C., the states, as much out of desperation as by design, find themselves asserting long-dormant powers. MAY 6, 2020 Gary Gerstle, Professor of American History at the University of Cambridge An illustration of a map of the United States with the Capitol behind it. Published in THE ATLANTIC (https://www.theatlantic.com/ideas/archive/2020/05/new-federalism/611077/)

Given how the federal government has been hollowed out, the work of the states has been nation-saving. They are a kind of strategic reserve, the gift of Founding Fathers who believed that concentrating too much power in one branch of government or one man might someday destroy the republic. Though diminished across the middle third of the 20th century by a Warren Court rightly intent on making them subservient to the federal Bill of Rights, the states, even before the pandemic hit, had begun to discover that their police power was still robust. On one issue after another, ranging from gay marriage and increases in the minimum wage to climate-respecting laws and immigrant-rights decrees, states have started to show America how it might find its way to a progressive future.¶ And now states are leading America out of the pandemic abyss. In New York, Governor Andrew Cuomo demonstrates a level of commitment, focus, and grit absent from a rudderless national government. In Massachusetts, Governor Charlie Baker is putting in place a mass testing and tracking system that will, if it succeeds, show every other state (and Washington, D.C.) how it can be done. In California, Governor Gavin Newsom has called on healthy residents to form a volunteer corps to help the needy, a move inspired by a spirit of common purpose and shared sacrifice that President Trump has shown himself incapable of summoning. As even one advisor to the Trump administration recently admitted to The Washington Post, “The states are just doing everything on their own.”

#### Federalism key to healthcare accessibility and cost reduction

Boehm 17

Eric Boehm is a reporter for Reason. He writes about state government, pensions, licensing, regulations, and civil liberties., Reason, "Federalism in the Age of Trump", 2017/01/19, https://reason.com/2017/01/19/federalism-in-the-age-of-trump-three-are/

Like state policymakers everywhere, Justin Owen, president and CEO of the Nashville, Tennessee-based Beacon Center, a free market think tank, doesn't know what will come of Republican efforts to replace Obamacare. He's hoping part of the solution will include Medicaid block grants to state governments. That would mirror the approach the federal government took in the early 1990s with welfare reform—handing "blocks" of money to the states and letting each set their own budgets. "It really comes down to a question of whether you want your state to decide these things or have a one-size fits all approach from the federal government," says Owen. Trump's pick to run the federal Department of Health and Human Services, Congressman Tom Price (R-Georgia), is an advocate of doing exactly that. Changing Medicaid to a block grant program would put states in charge of health insurance for their poorest residents and would potentially allow for cost savings as programs could be better tailored to the needs of each state's population. Still, it would be a fundamental change to the structure of Medicaid and would certainly face opposition from Democrats and progressive advocacy groups. The Center on Budget and Policy Priorities, one such group, warns that block granting Medicaid means "states would likely have no choice but to institute draconian cuts to eligibility, benefits, and provider payments." Owen says states would benefit from increased budget flexibility in a block grant system. About one-third of Tennessee's annual budget is connected to Medicaid already. "Despite [Medicaid] being so central to our state budget, many of those decision are made in Washington and are out of our hands," he says. Other changes at the federal level could increase competition and lower prices in some health care markets—by letting individuals buy insurance across state lines, for instance—but state lawmakers can get to work too. Health providers in many states are able to freeze out competition because of licensing rules known as Certificate of Necessity (CON) laws. Those CON laws, on the books in 36 states, give bureaucrats the final say before hospitals and other health care providers can buy new equipment, upgrade facilities, or offer new services. At best, those laws only drive up prices or limit access to care, but at worst they can allow major providers to become cartels that capture regulatory boards and block medical innovations. "CON laws raise considerable competitive concerns and generally do not appear to have achieved their intended benefits for health care consumers," the Federal Trade Commission said in 2015, as part of a statement encouraging states to repeal these often anticompetitive measures. Other state level reforms can help increase access to care by authorizing nurse practitioners, dental therapists, and other mid-level providers to do more hands-on work with patients. Some states have embraced licensing reforms to allow those providers to see more patients, though such changes have been met by stiff opposition from special interests like state-level trade associations for doctors and dentists. Like with CON law reforms, the FTC encourages states to open up health care markets to more competition among providers, arguing that they can "increase the output of basic dental services, enhance competition, reduce costs, and expand access."

#### Health Disparities have a massive magnitude

Evans et al 20

Michele K. Evans, M.D., Lisa Rosenbaum, M.D., Debra Malina, Ph.D., Stephen Morrissey, Ph.D., and Eric J. Rubin, M.D., Ph.D., written in association with the National Institute on Aging, Baltimore (M.K.E.); and Brigham and Women’s Hospital, Boston (L.R.)., Diagnosing and Treating Systemic Racism, Published by The New England Journal of Medicine, https://www.nejm.org/doi/full/10.1056/NEJMe2021693)//LED

For physicians, the words “I can’t breathe” are a primal cry for help. As many physicians have left their comfort zones to care for patients with Covid-19–associated respiratory failure, the role of the medical profession in addressing this life-defining need has rarely been clearer. But as George Floyd’s repeated cry of “I can’t breathe” while he was being murdered by a Minneapolis police officer has resounded through the country, the physician’s role has seemed less clear. Police brutality against black people, and the systemic racism of which it is but one lethal manifestation, is a festering public health crisis. Can the medical profession use the tools in its armamentarium to address this deep-rooted disease? The role of the physician in times of social injustice and societal distress is difficult to navigate. Since the importation of enslaved Africans as chattel to provide the labor that built this country began, Americans have functioned within the intricate injustices that are the vestiges of that institution. Slavery has produced a legacy of racism, injustice, and brutality that runs from 1619 to the present, and that legacy infects medicine as it does all social institutions. Slaves provided economic security for physicians and clinical material that permitted the expansion of medical research, improvement of medical care, and enhancement of medical training.1 This long and troubled history has permeated the physician–patient relationship with mistrust, reducing the potency of one of medicine’s most powerful tools for healing and changing behavior.2 In an effort to engender trust in what they would like to see as a “postracial” society, some U.S. clinicians proclaim that they “don’t see color.” But color must be seen. By looking through a racially impervious lens, clinicians neglect the life experiences and historical inequities that shape patients and disease processes. They may inadvertently feed the robust structural racism that influences access to care, quality of care, and resultant health disparities. At times, we fail to make even the simplest efforts: for instance, even though Covid-19 disproportionately affects black Americans, when physicians describing its manifestations have presented images of dermatologic effects, black skin has not been included. The “Covid toes” have all been pink and white. In the review of systems, we query patients about exposure to toxicants, but we never ask about one of the most dangerous toxicants: racism. The work of David Williams details the morbidity and risk of death related to perceived discrimination.3 Discrimination and racism as social determinants of health act through biologic transduction pathways to promote subclinical cerebrovascular disease, accelerate aging, and impede vascular and renal function, producing disproportionate burdens of disease on black Americans and other minority populations.4-7 Such research is part of a growing body of literature on health and health care disparities and their manifestations at every level of care. One recent study, for instance, found racial bias baked into a commercial algorithm used to predict the needs of patients with uncontrolled illnesses. Using health spending as a proxy for gravity of illness, the algorithm ignored the fact that disparities in access result in lower spending on black patients and thus failed to identify black patients with complex needs.8 Such studies, if prioritized by health care institutions and journals — and approached with the same rigor we expect for the treatment of any disease — could lead to critical evidence-based interventions, whether medical or social. Other research shows that in a world still shaped by systemic racism, black patients are more likely to trust, and heed the advice of, black physicians: a randomized, controlled trial found that black men assigned to a racially concordant doctor sought more preventive care than those assigned to a racially discordant one.9 The investigators estimated that black doctors could reduce the cardiovascular mortality gap between black and white patients by 19%, but structural racism in medicine and medical education continue to compromise our ability to deliver the best culturally competent care. Black patients, who are already affected by health inequities and impaired health care access, have a much lower chance than white or Asian-American patients of finding a racially concordant physician. Correcting this disparity requires bringing more black people into the medical workforce, beginning with early messages sent to black children about their abilities and possible careers, and working to remove racial bias all along their educational path. Even as the social contract between the government and the American people has frayed in the complex struggle over the pandemic, racial injustice, and police brutality, physicians must reflect on the condition of medicine’s own contract with society. Our society expects physicians to live up to standards of professionalism, deliver state-of-the-art, timely care with competence and integrity, and promote the public good.10 To carry out these duties, physician-citizens must recognize the harm inflicted by discrimination and racism and consider this environmental agent of disease as a vital sign — alongside blood pressure, pulse, weight, and temperature — that provides important information about a patient’s condition. Medical skill has allowed us to respond rapidly to a novel virus to save lives; we must also use our expertise to address racism and injustice and to protect vulnerable people from harm. Now, amid an acute public health crisis that is transforming medicine, perhaps we have an opportunity to reset our priorities to face this deeper, more chronic crisis as well. It is time to reimagine the medical interaction and the doctor–patient relationship, recommitting ourselves to the quiet work of doctoring and building trust with individual patients. We can become more conscious of our biases when we care for minority patients and push ourselves to go the extra mile. Even if we can’t change the social determinants of health for any individual patient in any given encounter, we can think more seriously about how they affect what the patient can and can’t do, tailor the patient’s care accordingly, and show that we’re invested. As the vulnerability and inadequacy of our health care system are once again exposed, it is also time to reconceive that system, including the development of its workforce. Our actions must be driven by the data highlighting inequity in medical school admission and graduation rates, the dearth of black medical faculty, and the low grant-funding success rates for black biomedical researchers. We must also acknowledge past injustices and the persistent pain experienced by minority trainees and faculty, by listening and openly discussing racism and its health effects on rounds and at conferences and by broadening medical school curricula to include cultural sensitivity, cultural humility, and upstander training to equip students with advocacy tools to assist their patients and colleagues. Direct action to eliminate persistent health disparities obliges us to redouble our demands for a system that recognizes health care as a human right, providing an avenue to health equity for all. Although effecting such fundamental transformation may feel impossible, the energy, idealism, and visions of young people have long fueled movements for change. Martin Luther King, Jr., was 26 when he led the Montgomery bus boycott and 34 when he delivered his powerful “I have a dream” oration. If we blend our voices with those of the newest members of our profession to advocate for the most vulnerable and to reinvigorate every aspect of their care, perhaps we can use our current public health crisis as a catalyst to, as Reverend Al Sharpton put it, “turn this moment into a movement.”

#### Impact of COVID is structural violence and death

Keshavan 20

Meghana Keshavan covers biotechnology industry trends for STAT., ‘The direct result of racism’: Covid-19 lays bare how discrimination drives health disparities among Black people, Published by Stat 6/9/20, [https://www.statnews.com/2020/06/09/systemic-racism-black-health-disparities/)//LED](https://www.statnews.com/2020/06/09/systemic-racism-black-health-disparities/%29//LED)

The disparities have long been documented. Black people are more likely than white people to die from cancer. They are more likely to suffer from chronic pain, diabetes, and depression. Black children report higher levels of stress. Black mothers are more likely to die in childbirth. Those findings are part of a mountain of research cataloguing the complex and widespread effects that racism has on the health — and the medical care — of Black people in the U.S. Those effects stretch back centuries and take different forms, from discriminatory diagnostics to institutional barriers to care, all of which affect a person’s health. But while the problem has been studied for decades and improvements have been made, many disparities persist unchecked. The demonstrations sparked by the killing of George Floyd in Minneapolis have prompted a reckoning over racism and police brutality. But, among those in the medical communities, there have also been calls for urgent action to address the role that systemic racism plays in health disparities among Black people. Related: My nightmare: Covid-19 meets racism meets the killing of a Black person by police “Health disparities still exist because nothing has truly changed,” said Ashley McMullen, an assistant professor of internal medicine at University of California, San Francisco. The Covid-19 pandemic has only made those disparities — and the structural discrimination they are rooted in — all the more apparent. Black Americans have been dying at about 2.4 times the rate of white Americans. As medical anthropologist Clarence Gravlee put it in Scientific American: “If Black people were dying at the same rate as white Americans, at least 13,000 mothers, fathers, daughters, sons and other loved ones would still be alive.” “People of color right now are more likely to be infected, and we’re more likely to die. What we’re seeing here is the direct result of racism,” said Camara Phyllis Jones, an epidemiologist who recently served as president of the American Public Health Association. “That’s the thing that is slapping us in the face. Actually, it’s lashing us like whips.” The systemic discrimination that has impacted Black health so inordinately dates back to the first ships carrying enslaved Africans that crossed the Atlantic. The colonial narrative of hierarchy and supremacy exists to this day, Jones said, and has translated, centuries later, into gaping health disparities. Today, Black people in the U.S. are more likely than white people to live in food deserts, with limited access to fresh fruit or vegetables. They are less likely to be able to access green spaces, and more likely to live in areas without clean water or air. Black children are more likely to grow up in high-poverty areas. Black adults are more frequently exposed to greater occupational hazards, often working in frontline jobs across many fields. The list goes on. All of these factors shape health, and all are shaped by structural racism. “The air you breathe, the food you eat, the visual representations of what your future could look like — all are distorted by structural racism.” JESSICA ISOM, PSYCHIATRIST AND RESEARCHER “The air you breathe, the food you eat, the visual representations of what your future could look like — all are distorted by structural racism,” said Jessica Isom, a community psychiatrist in Boston who studies health disparities in the Black community. “Other kids have internalized ideas of white supremacy — and that will have deep effects on a Black child’s psyche and body.” And Black individuals often face baked-in barriers to accessing the resources that could help offset, even in part, the impacts of those effects, such as high-quality health care. “The fact that the Black body experiences so much more harm, in so many ways, compared to other bodies — it really explains how racism continues to hurt people,” said Roberto Montenegro, a psychiatrist at Seattle Children’s Hospital who studies how perceived discrimination affects mental health. Related: Beyond words: medical institutions must act to support Black lives Studies have shown that long-term discrimination can lead to a disruption in the stress hormone cortisol, leaving people with less biological energy and more fatigue, said Elizabeth Brondolo, a psychologist at St. John’s University who researches the issue. That type of chronic, sustained stress contributes to health conditions like diabetes, obesity, and depression. It can also take a significant toll on mental health. “Everyone feels stress, but we forget how many more resources some people have to mitigate stress when they’re not a member of a discriminated group,” Brondolo said. And structural social and economic disadvantages don’t account completely for health disparities, Montenegro said. One study compared childbirth outcomes of wealthy, educated Black women against white women with less income and education and found Black women have worse outcomes than white women with fewer resources. “This is clear evidence that racism, and its biological and social impact, transcend a lot of the things we say we should work on — like education and income and poverty,” Montenegro said. “Black women experience racism; white women do not.” The American Academy of Pediatrics last year published a policy statement on how racism is a core cause of health problems in children and adolescents. What wasn’t? Race itself. The paper drove home a crucial point: Racism, not race, affects health, and race shouldn’t be used to explain away disparities caused by racism. “People think of race as a biological factor in health outcomes, when it is not,” said Jacqueline Dougé, medical director of the Howard County Health Department in Maryland and a co-author of that statement. Related: Women and Black patients are poorly represented in clinical trials, analysis finds But that fact is not always carried over to medical education. In her coursework for medical school, Isom, the psychiatrist and health disparities researcher in Boston, said she was taught about disease risk factors grouped by age, sex, and race. Students weren’t, however, taught about racism itself. It’s a gap in the curriculum that other researchers and students have pointed out before. “There’s an explicit lack of mentioning that it’s racism, as opposed to race, that is the root cause of vulnerability to disease,” Isom said. “We were taught that to be Black was a risk factor for these diseases, without any context — because they think the Black body is flawed,” she added. McMullen, the UCSF internal medicine professor, said her medical education focused on the most well-known examples of racism and mistreatment in medicine — such as the Tuskegee syphilis experiments on Black men or the story of Henrietta Lacks’ cell line — but did not involve a deeper exploration of why such stark health disparities persist today. The remnants of racist ideology, too, can be found in certain medical devices. Take the spirometer, a tool that measures lung capacity. There’s often a button on it that “corrects” for race. Black people are measured on a different rubric than white people, based on rationale that dates back to when physicians on plantations used the tool to unjustly rationalize why slaves were fit only for field labor. The same settings are still in use today. “That button came from medical racism,” Isom said. It’s one of a number of medical tools — from algorithms used in hospital care to tests for kidney function — that have been inaccurately shaped by racism against Black people and that can harm their health. “Racist practices of medicine lead to worse outcomes.” ROBERTO MONTENEGRO, PSYCHIATRIST AND RESEARCHER, SEATTLE CHILDREN'S HOSPITAL “Racist practices of medicine lead to worse outcomes,” Montenegro said. For that to change, the entire health care field — from medical schools and professional societies to hospitals and medical device manufacturers — needs to work to unravel and address racism within the system. “I think health care is protected from this broader discourse because the narrative is that we’re all heroes,” said McMullen, who is working on an audio documentary about the issue. “We don’t actually address that the structure being perpetuated in health care is the same dynamic that’s playing out in the criminal justice system.” While the effect of racism on health is well-established, progress will take time — and has to occur on a societal level, Dougé said. That has to involve a wide range of actions, including improving wages and closing pay gaps, improving access to health insurance, and ensuring more diversity in the health care system so that practitioners can provide culturally competent care. “There has to be a systemic change,” Dougé said, “because racism — not race — has a profound impact on our health outcomes.”

#### Health Disparities have high magnitude

Al-Agba 20

Niran S. Al-Agba, MD and writer for Medpage Today, How Structural Racism Affects Healthcare, Published by Medpage Today, 1/14/20, https://www.medpagetoday.com/blogs/kevinmd/84362)//LED

In the U.S., the health of African Americans lags behind most other racial minority groups. Compared with whites, black men and women face higher risks of chronic illness, infection, and injuries. Taken together, the average lifespan for African Americans is 6 years less compared with whites. If we can begin to acknowledge that health outcomes are often dependent on factors outside of the control of individual patients, their physicians, or their health coverage, then we can begin to understand why reforming the healthcare system is proving to be an indomitable task. The strongest predictor of health is socioeconomic status (SES). While financial instability is considered the fundamental cause of health disparities, this association between socioeconomic status and health is dependent upon race. For instance, the mortality rate for babies born to black mothers with a master's or doctorate degree is far worse than the mortality rate for babies born to white mothers with less than an eighth-grade education. And black women are far less likely to have breast cancer, yet are 40% more likely to die from it. These differences in mortality rate are unrelated to SES. Actually, health disparities are paradoxically greater between middle- to upper-class African Americans when compared with middle- to upper-class whites. Why does upward mobility so minimally alter the health status of African Americans in particular? This has been a topic of much scientific debate. One possibility is that different genetics lead to different outcomes; however, the degree of health disparity with regard to race does not hold true for most other countries of the world. A more likely factor is that financial stability does not guarantee fewer encounters with discrimination. And, in fact, racial minorities report unfair treatment more frequently in higher SES than lower SES groups. Structural racism is the biased societal approach to housing, education, employment, healthcare, and criminal justice. As scientists study racial health disparities in depth, a picture begins to emerge that there are bigger, stronger, and more insidious forces at play than economics alone. The psychological stress generated by unfair treatment may trigger a biological series of events that lead to worsened health outcomes in the long term. For instance, in the 6 months after September 11, 2001, women living in California who were of Arab descent were far more likely to give birth to a low birth weight or preterm infant than in the 6-month time period prior to September 11. As a group, Arab-American women consistently have low rates of low birth weight or preterm infants. These findings lend support to the possibility that increased activation of the stress response system has a tangible effect on health outcomes. In addition, there is a growing body of evidence that shows it is the chronicity rather than the severity of exposure to unfair treatment that most strongly correlates with higher morbidity or mortality rates. It makes sense that over a lifetime, repetitive discriminatory encounters can exact a heavy toll. In order to address the root cause of racial health disparities, we need to take an honest look back at previous attempts of the government to care for marginalized minority populations. One example is "The Tuskegee Study of Untreated Syphilis in the African American," conducted by the U.S. Public Health Service from 1932 to 1972. In collaboration with Tuskegee University -- a historically black college in Alabama -- 600 impoverished African-American sharecroppers from Macon County, Alabama, were enrolled in a study with the purpose of observing the progression of untreated syphilis while providing free healthcare to the underserved. By 1947, penicillin had become the standard treatment for syphilis, yet researchers continued to observe the ill men while intentionally withholding antibiotic treatment. No care was provided when the men went blind, insane, or experienced severe complications. By the time this unethical study was terminated in 1972, 28 men had died from syphilis, 100 more had succumbed to complications of the disease, 40 spouses contracted the disease, and 19 children had been born with congenital syphilis. All the victims were African American. President Bill Clinton issued a formal apology to the Tuskegee victims on behalf of the U.S. government on May 16, 1997: "What was done cannot be undone. But we can end the silence. We can stop turning our heads away ... what the U.S. government did was shameful, and I am sorry ... it is in remembering the past that we can build a better present and a better future." More than 20 years later, have we really built a better future? In a word, no. Today, a black woman is 22% more likely to die from heart disease than a white woman. A black woman is 71% more likely to die from cervical cancer than a white woman. A black woman is 243% more likely to die from pregnancy or childbirth-related causes than a white woman. Even after controlling for age, gender, marital status, region of residence, employment status, and insurance coverage, African Americans have worse health outcomes than whites in nearly every illness category. Expanding healthcare coverage is more of a temporary Band-Aid than a long-term solution. Instead, reducing racial health disparity requires acknowledging the effects structural racism has on health status and then working toward sweeping, transformative change in our society as a whole.

#### Pandemics escalate social disparities

DeWitte 20

Sharon DeWitte (a professor of anthropology at the University of South Carolina.) “Social Inequality in Times of Pandemics” anthropology-news.org (June 19, 2020) <https://www.anthropology-news.org/index.php/2020/06/19/social-inequality-in-times-of-pandemics/> / AG

In past weeks, innumerable false comparisons have been made between COVID-19 and the Black Death. Let me be clear, there is no direct analogy between the fourteenth-century plague and the current and worsening COVID-19 pandemic. There are many differences between their causative pathogens, pathophysiology, and social and medical contexts. As with everything else that anthropologists study, context is crucial to understanding the experience and outcomes of disease, and we should not expect COVID-19 to behave in the same way as historical pandemics of plague. But one parallel that should be drawn between the two is the role that social inequality can play in worsening the outcomes of a pandemic.¶ As noted in the New York Times, Time, and elsewhere, social distancing and self-isolation are less likely to be possible for lower-income people, putting them at higher risk of exposure to COVID-19 (see Blow 2020; Vesoulis 2020). People with lower incomes are also more likely to suffer from the underlying health conditions (for example, diabetes, obesity, cardiovascular disease, and respiratory disease) that elevate risks of severe illness and mortality from COVID-19 (see Miranda et al. 2019). The terrible effects of structural racism are evident, for example, in the dramatically disproportionate deaths of Black and Latinx Americans and BAME (Black, Asian, and minority ethnic groups) in the United Kingdom (see for example, Pirtle 2020; Forrest 2020; Lerner 2020). Studies indicate that air pollution is associated with elevated risks of death from COVID-19 (Wu et al. 2020; Conticini, Frediani, and Caro 2020), and poor communities are more likely to be exposed to higher concentrations of air pollution compared to wealthier communities (Hajat, Hsia, and O’Neill 2015). Homeless people without regular access to clean water and people unable to pay their utility bills and who have thus had their water service turned off are unable to wash their hands frequently, preventing them from engaging in one of the main measures recommended by health experts to prevent the spread of the disease. The current pandemic is making obvious on an alarming scale the disastrous effects inequalities have on health, but this interaction between pandemics and inequality is not new.¶ For over 15 years, I have studied demography and health before, during, and after the fourteenth-century Black Death, a pandemic that was caused by the bubonic plague bacterium Yersinia pestis (Haensch et al. 2010). The Black Death swept across Afro-Eurasia in the 1340s and killed an estimated 30–60 percent of affected populations. This high level of mortality is even more shocking when you consider that the pandemic only lasted a few years in total and was even more short-lived at the local level; in London the Black Death lasted for less than two years, ca. 1349–1350. This devastatingly high overall mortality rate likely reflects an even higher underlying (but currently inestimable) case fatality rate.¶ Some of my work focuses on people who lived and died in the centuries before the Black Death, all of whom were buried in a handful of cemeteries (St. Nicholas Shambles, St. Mary Spital, Guildhall Yard) that were located within a square mile of each other in the heart of London. Some of these people were born and raised in London, but many were immigrants from rural areas of England or farther afield. I don’t know the identity of any of the people I study, but based on contemporary records, I know that there are rich and poor people, monks and lay people, and individuals of all ages and sexes in these cemeteries. In the Centre for Human Bioarchaeology at the Museum of London, seated at a table surrounded by the carefully curated remains of approximately 20,000 people who died in England over the course of more than two millennia, I looked at the skeletal remains of hundreds of medieval Londoners, evaluating size and shape variants that allow me to estimate their ages at death and sex. I also examine their teeth and bones for signs of exposure to stress during childhood, such as bands of thinner enamel on the teeth (linear enamel hypoplasia) or leg bones that are shorter than average. These skeletal stress markers can reflect episodes of malnutrition or infectious disease that interfered with growth and development, and which would have potentially made those people more susceptible to disease later in life.¶ By analyzing these data, I’ve found that fewer people survived to late adult ages and more people had signs of developmental stress in the thirteenth century compared to their predecessors in the eleventh to twelfth centuries—this points to worsening health, in general, prior to the Black Death (DeWitte 2018; 2015). These changes in health occurred in the context of increasing social inequalities in England. Population growth prior to the Black Death outpaced agricultural production, and by the end of the thirteenth century, an estimated 70 percent of the English population was living at or below the poverty line (Campbell 2016). Conditions for poorer households were made worse by recurrent famines, including the Great Famine of 1315 to 1317. Increasing numbers of people likely experienced severe malnutrition before the Black Death, and given the powerful effects of nutritional status on health, this likely negatively affected health for the majority of the English population. Deterioration in health, which is reflected by the pathologies and decreasing life expectancies in the skeletal remains I examined, might have exacerbated mortality outcomes during the Black Death, making it deadlier than it would have been if more people had enjoyed access to adequate food and better health before the epidemic.

#### Pandemics create risk vectors and destroy the healthcare system

Rosenbaum 20

Lisa Rosenbaum is a national correspondent for the New England Journal of Medecine. The Untold Toll — The Pandemic’s Effects on Patients without Covid-19, Published by NEJM 6/11/20, https://www.nejm.org/doi/full/10.1056/NEJMms2009984)//LED

In late March, Zoran Lasic, an interventional cardiologist at Jamaica Hospital Medical Center and Lenox Hill Hospital in New York, was finishing afternoon clinic when he was approached by a nurse colleague seeking his advice. Her husband — a 56-year-old whose father died of sudden cardiac arrest at 55 — had been feeling chest pressure. The pressure radiated down his arms and occasionally to his neck and, the previous day, had been accompanied by dyspnea and diaphoresis, making him worried enough to call an ambulance. The emergency medical technicians did an electrocardiogram, said it looked OK, and told him to call his primary care doctor. He did, and he was advised that given New York’s Covid-19 outbreak, it was not a good time to go to the hospital. Now, a day later, his colleague asked Lasic, what should they do? Nearly apoplectic, Lasic advised urgent coronary angiography, which he performed a few hours later. The man had a thrombus extending from his proximal-to-midleft anterior descending artery and became hemodynamically unstable during the procedure. Nevertheless, revascularization was successful, and he was discharged the following day with preserved left ventricular function. Lasic, describing a precipitous decline across the New York region in patients presenting with acute coronary syndromes, worries that others won’t be so lucky. “I think the toll on non-Covid patients will be much greater than Covid deaths,” he said. As the coronavirus pandemic focuses medical attention on treating affected patients and protecting others from infection, how do we best care for people with non–Covid-related disease? For some, new risks may warrant reconsideration of usual standards of care. For others, the need to protect caregivers and preserve critical care capacity may factor into decisions. And for everyone, radical transformation of the health care system will affect our ability to maintain high-quality care. As Michael Grossbard, chief of hematology at New York University’s Langone Hospital, told me, “Our practice of medicine has changed more in 1 week than in my previous 28 years combined.” Cancer care, which often involves immunosuppressive therapy, tumor resection, and inpatient treatment, has been disproportionately affected by Covid-19. Like other oncologists I spoke with, Grossbard, who primarily treats lymphoma, has been tasked with revising chemotherapy protocols to minimize both the frequency of chemotherapy visits and the degree of immunosuppression. For example, though patients with low-grade lymphoma typically receive maintenance therapy, it will not be recommended for now because it requires an office visit, worsens immunosuppression, and improves progression-free but not overall survival. Other protocol modifications have arisen because of cancellations of elective surgeries. For instance, some patients with solid tumors, such as breast and rectal cancers, are being offered systemic therapy before, rather than after, surgery. Many modifications may not affect long-term outcomes. Eric Winer, a breast oncologist at Dana-Farber Cancer Institute, believes, for instance, that giving antihormonal therapy to women with hormone-receptor–positive breast tumors and delaying surgery probably won’t alter overall survival, though this approach hasn’t been formally tested in Stage I disease. But even when there’s greater uncertainty about treatment modifications, Winer has been impressed by many patients’ graceful acceptance. I spoke to Ms. C., a 40-year-old patient of Winer who was recently diagnosed with inflammatory breast cancer. Treatment typically involves 4 to 6 months of chemotherapy followed by surgical excision, though as Ms. C. said, “When you have cancer, your first reaction is ‘Just get it out of my body now.’” But as she and Winer watched Covid-19 decimate Italy, they began discussing what the evolving situation would mean for her. She’d started receiving an anthracycline, which heightened her risk of infection, and was supposed to have surgery in May. When we spoke, it wasn’t clear whether or when her surgery would proceed, but she and Winer had agreed that if it was postponed, she would resume targeted systemic therapy. She seemed to take this uncertainty in stride, partly because the hallmark rash of inflammatory breast cancer disappeared after she began receiving Herceptin (trastuzumab) a few months ago. “I literally saw my cancer shrink,” she told me, “and I’m so thankful we are where we are now, as opposed to 25 years ago.” Suspending other aspects of cancer care will have graver consequences. David Ryan, chief of oncology at Massachusetts General Hospital (MGH), told me that three patient groups worry him most. The first are the subgroup of patients with lymphoma for whom CAR-T therapy is potentially curative. More than half these patients receive therapy in clinical trials, many of which have been paused amid society-wide shutdowns; even if enrollment could continue, there’s concern about the need for ICU care in a resource-constrained system. A related concern is for patients requiring bone marrow transplants, given their high risk of infection and potential need for ICU care. Finally, and most wrenching to Ryan, are patients with refractory tumors who are nearing the end of life, but for whom an experimental targeted therapy may hold promise; Ryan would otherwise offer these patients enrollment in an early-phase trial. One recent analysis suggests that such enrollment is associated with clinical benefit in nearly 20% of patients,1 and participation allows patients to have some hope in their dying days and to feel like they’re “giving back” to the scientific community. The individual toll, as clinical trials slow to a crawl, is mirrored by a societal one. As Ryan, who sent me an email message while serving a volunteer shift in the hospital’s Covid unit, lamented, “There’s no question that clinical research in cancer will be set back by at least a year as we all drop what we’re doing to take care of the surge of patients.” Protecting Our Patients, Preserving Ourselves Another distressing trade-off is that between patients’ needs for procedures and the need to protect caregivers from infection and preserve hospital capacity. A cardiologist friend, for example, told me about a woman in her 70s with some cardiac risk factors who developed chest pressure and shortness of breath. She was reluctant to go to the hospital, and when she presented (at a highly regarded institution), she needed urgent intubation. When chest radiography revealed bilateral interstitial edema, she became a “Covid rule-out” and was transferred to the ICU. As her team awaited the Covid test results, her troponin level climbed, causing increasing concern about an acute coronary syndrome. Though this suspicion would usually prompt more urgent coronary angiography, the uncertainty about Covid status delayed the procedure. When the Covid result came back negative, she underwent urgent coronary angiography, which revealed an acute coronary occlusion. By then, however, she had developed progressive cardiogenic shock, and she ultimately died. Though physicians must often make judgments amid uncertainty, we typically focus on the patient’s risk, not our own. In an infectious disease epidemic, our calculus must incorporate our own exposure risk — and how exposure would limit our ability to care for future patients. The agony and complexity of these decisions is currently compounded by shortages of personal protective equipment (PPE). Ajay Kirtane, an interventional cardiologist at Columbia who has coauthored recommendations for cardiac catheterization laboratories during the pandemic,2 told me that “People are being told to do procedures with inadequate protection.” Though these recommendations aim to minimize both staff exposure and resource utilization, Kirtane recognizes the potential consequences of caution. “One of the yet-to-be-told stories of the Covid-19 pandemic is the recognition that the (necessary) proscriptions on the performance of less urgent cases has led to collateral damage to so many patients with medical conditions that truly couldn’t wait.” Although canceling procedures such as elective hernia repairs and knee replacements is relatively straightforward, for many interventions the line between urgent and nonurgent can be drawn only in retrospect. As Brian Kolski, director of the structural heart disease program at St. Joseph Hospital in Orange County, California, told me, “A lot of procedures deemed ‘elective’ are not necessarily elective.” Two patients in his practice whose transthoracic aortic valvular replacements were postponed, for example, died while waiting. “These patients can’t wait 2 months,” Kolski said. “Some of them can’t wait 2 weeks.” Rather than a broad moratorium on elective procedures, Kolski believes we need a more granular approach. “What has been the actual toll on some of these patients?” he asked. Mr. R., a 75-year-old man with advanced heart failure, is another of Kolski’s patients for whom the toll has been great. Because he had progressive volume overload and delirium, Kolski referred him to a hospital for an LVAD workup in early March. Then, as his wife, Ms. R., told me, “the world went wonky, and everything went down the toilet.” Having begun admitting patients with coronavirus, the hospital told the couple it was kicking everyone else out. “They are telling me my husband has 6 to 12 months to live without this procedure,” Ms. R. said, “and now they are canceling it on us.” They were then quarantined at home — 2 hours away from the hospital — with no plan in place. Mr. R.’s health quickly deteriorated again, but his wife had been advised to keep him out of the hospital. When they finally had a video visit on April 9, he’d become so ill that the heart failure physician didn’t recognize him. Mr. R. was promptly admitted, and the LVAD was placed. Though Ms. R. is relieved, ongoing challenges include her husband’s persistent delirium, a visitor policy that allows her to be at the bedside only intermittently, and the need for nearby lodging that they can’t afford. As painful as these stories are, the degree of uncertainty renders calculated risk–benefit analyses impossible. Should hospitals schedule LVAD placements when ICU and ventilator capacity may soon be exceeded? Is a patient with severe aortic stenosis more likely to die from his underlying valvular disease or from a valve-replacement hospitalization that leaves him with coronavirus infection? How many times can you expose a cath-lab team to patients with Covid-19–associated myocarditis, which can mimic an acute coronary syndrome, before so many staff members are infected that no one remains to treat patients with real myocardial infarction? No one knows the answers to these questions because modern medicine has never faced them before. Indeed, as Robert Yeh, an interventional cardiologist and health services researcher at Boston’s Beth Israel Deaconess Medical Center, emphasized, “there perhaps has never been a greater gap between what we need to know urgently and what is actually knowable.” From policy questions, such as how long to postpone elective procedures, to treatment decisions, such as whether to treat Covid-19 with investigational therapies, the stakes of “failing to understand the universe we don’t pursue” have increased. Referring to the global reduction in patients presenting with acute coronary syndromes, Yeh worries that our emphasis on social mitigation measures makes people who truly need care afraid to seek it. Equally worrisome is how we treat people with myocardial infarction who do reach the hospital. Concern about proceduralists’ exposure has led some physicians to advocate using thrombolytics rather than the standard revascularization strategy, but Yeh asks, “Are we protecting ourselves at the cost of worse patient outcomes?” Yeh and his colleagues plan to attempt to answer some of these questions empirically, but as we await epidemiologic data, he cautioned against dismissing anecdotes emerging from around the world in the name of scientific purity. Right now, he emphasized, “the sum total of what we hear from our colleagues at other institutions is the best data we have.”

#### It could be much worse than Covid, pose a similar threat to nuclear weapons

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We fear it is only a matter of time before we face a deadlier and more contagious pathogen, yet the threat of a deadly pandemic remains dangerously overlooked. Pandemics now occur with greater frequency, due to factors such as climate change, urbanization, and international travel. Other factors, such as a weak World Health Organization and potentially massive cuts to funding for U.S. scientific research and foreign aid, including funding for the United Nations, stand to deepen our vulnerability. We also face the specter of novel and mutated pathogens that could spread and kill faster than diseases we have seen before. With the advent of genome-editing technologies, bioterrorists could artificially engineer new plagues, a threat that Ashton Carter, the former U.S. secretary of defense, thinks could rival nuclear weapons in deadliness. The two of us have advised the president of Guinea on stopping Ebola. In addition, we have worked on ways to contain the spread of Zika and have informally advised U.S. and international organizations on the matter. Our experiences tell us that the world is unprepared for these threats. We urgently need to change this trajectory. We can start by learning four lessons from the gaps exposed by the Ebola and Zika pandemics. Faster Vaccine Development The most effective way to stop pandemics is with vaccines. However, with Ebola there was no vaccine, and only now, years later, has one proven effective. This has been the case with Zika, too. Though there has been rapid progress in developing and getting a vaccine to market, it is not fast enough, and Zika has already spread worldwide. Many other diseases do not have vaccines, and developing them takes too long when a pandemic is already under way. We need faster pipelines, such as the one that the Coalition for Epidemic Preparedness Innovations is trying to create, to preemptively develop vaccines for diseases predicted to cause outbreaks in the near future. Poinkt-of-Care Diagnostics Even with such efforts, vaccines will not be ready for many diseases and would not even be an option for novel or artificially engineered pathogens. With no vaccine for Ebola, our next best strategy was to identify who was infected as quickly as possible and isolate them before they infected others. Because Ebola’s symptoms were identical to common illnesses like malaria, diagnosis required laboratory testing that could not be easily scaled. As a result, many patients were only tested after several days of being contagious and infecting others. Some were never tested at all, and about 40% of patients in Ebola treatment centers did not actually have Ebola. Many dangerous pathogens similarly require laboratory testing that is difficult to scale. Florida, for example, has not been able to expand testing for Zika, so pregnant women wait weeks to know if their babies might be affected. What’s needed are point-of-care diagnostics that, like pregnancy tests, can be used by frontline responders or patients themselves to detect infection right away, where they live. These tests already exist for many diseases, and the technology behind them is well-established. However, the process for their validation is slow and messy. Point-of-care diagnostics for Ebola, for example, were available but never used because of such bottlenecks. Greater Global Coordination We need stronger global coordination. The responsibility for controlling pandemics is fragmented, spread across too many players with no unifying authority. In Guinea we forged a response out of an amalgam of over 30 organizations, each of which had its own priorities. In Ebola’s aftermath, there have been calls for a mechanism for responding to pandemics similar to the advance planning and training that NATO has in place for its numerous members to respond to military threats in a quick, coordinated fashion. This is the right thinking, but we are far from seeing it happen. The errors that allowed Ebola to become a crisis replayed with Zika, and the WHO, which should anchor global action, continues to suffer from a lack of credibility. Stronger Local Health Systems International actors are essential but cannot parachute into countries and navigate local dynamics quickly enough to contain outbreaks. In Guinea it took months to establish the ground game needed to stop the pandemic, with Ebola continuing to spread in the meantime. We need to help developing countries establish health systems that can provide routine care and, when needed, coordinate with international responders to contain new outbreaks. Local health systems could be established for about half of the $3.6 billion ultimately spent on creating an Ebola response from scratch. Access to routine care is also essential for knowing when an outbreak is taking root and establishing trust. For months, Ebola spread before anyone knew it was happening, and then lingered because communities who had never had basic health care doubted the intentions of foreigners flooding into their villages. The turning point in the pandemic came when they began to trust what they were hearing about Ebola and understood what they needed to do to halt its spread: identify those exposed and safely bury the dead. With Ebola and Zika, we lacked these four things — vaccines, diagnostics, global coordination, and local health systems — which are still urgently needed. However, prevailing political headwinds in the United States, which has played a key role in combatting pandemics around the world, threaten to make things worse. The Trump administration is seeking drastic budget cuts in funding for foreign aid and scientific research. The U.S. State Department and U.S. Agency for International Development may lose over one-third of their budgets, including half of the funding the U.S. usually provides to the UN. The National Institutes of Health, which has been on the vanguard of vaccines and diagnostics research, may also face cuts. The Centers for Disease Control and Prevention, which has been at the forefront of responding to outbreaks, remains without a director, and, if the Affordable Care Act is repealed, would lose $891 million, 12% of its overall budget, provided to it for immunization programs, monitoring and responding to outbreaks, and other public health initiatives. Investing in our ability to prevent and contain pandemics through revitalized national and international institutions should be our shared goal. However, if U.S. agencies become less able to respond to pandemics, leading institutions from other nations, such as Institut Pasteur and the National Institute of Health and Medical Research in France, the Wellcome Trust and London School of Hygiene and Tropical Medicine in the UK, and nongovernmental organizations (NGOs have done instrumental research and response work in previous pandemics), would need to step in to fill the void. There is no border wall against disease. Pandemics are an existential threat on par with climate change and nuclear conflict. We are at a critical crossroads, where we must either take the steps needed to prepare for this threat or become even more vulnerable. It is only a matter of time before we are hit by a deadlier, more contagious pandemic. Will we be ready?

## Immigrant Rights

#### Federal supremacy endangers undocumented immigrants

Somin 19

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The most dramatic examples of the new political valence of federalism are the legal battles over the Trump administration’s efforts to make sanctuary cities do its bidding — those jurisdictions, including San Francisco, Chicago and Philadelphia, that refuse to cooperate, in various ways, with federal efforts to deport undocumented immigrants. These cities typically refuse to help apprehend and detain undocumented immigrants who have not committed crimes (beyond illegally entering the United States), and they sometimes refuse to share people’s locations and identities, arguing that such cooperation undermines trust in local government and hampers broader law enforcement. The legal battles over sanctuary cities can get technical, but the court rulings are creating freedom for states and towns to go their own ways when they disagree with national policies. Ironically, given the solace liberals are taking from these decisions, many of the new opinions are rooted in precedents written by conservative Supreme Court justices. The sanctuary cities’ stance puts them at odds with U.S. Code Chapter 8, Section 1373, a 1996 law that bars states and localities from instructing their employees to withhold from federal authorities any “information regarding the citizenship or immigration status . . . of any individual.” To force compliance, in January 2017, Trump issued an executive order seeking to deny virtually all federal grants to states and localities that did not obey that statute. Six months later, then-Attorney General Jeff Sessions announced that states and cities that receive certain federal law enforcement grants for training police, treating drug offenders and other purposes had to obey three conditions: They must comply with Section 1373, allow Department of Homeland Security officials access to detention facilities to determine the immigration status of any noncitizens being held, and give DHS 48 hours’ notice before a jail or prison releases a person whom the agency had asked to detain. The potential implications went far beyond immigration policy. State and local governments depend on federal grants for nearly a third of their total funding. If the president could impose new conditions on those grants, the White House would suddenly have a powerful club to force states and municipalities to follow its orders.

#### Federalism protects undocumented immigrants

Somin 17

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 In addition to benefiting native-born minorities and the poor, foot voting under federalism also often protects vulnerable immigrants. In recent years, “sanctuary cities” that refuse to cooperate with federal government efforts to deport undocumented immigrants have been a major focus of political controversy. Sanctuary cities cannot, by themselves, prevent immigrants from being deported. But by refusing to cooperate with the federal government, they make deportation far more difficult. Federal agencies often lack the manpower and resources to target immigrants in areas where local authorities refuse cooperation. A recent federal district court ruling against President Trump’s executive order targeting sanctuary cities reaffirmed longstanding constitutional principles that prevent the federal government from forcing states and localities to assist in deportation efforts. These limitations also protect both immigrants and natives from a dangerous diversion of law enforcement resources away from combating violent and property crime; immigrants actually have much lower crime rates than natives. Sanctuary cities help protect undocumented immigrants from deportation to lives of poverty and oppression. But they only partially mitigate that danger. The fear of deportation by federal officials still consigns millions of immigrants to life in “the shadows,” as President Obama famously put it, and prevents them from contributing to the economy as much as they otherwise could. Federalism could enhance opportunities for immigrants even more effectively if Congress were to pass a bill recently submitted by Republican Senator Ron Johnson (Wisconsin) and Representative Ken Buck (Colorado). The Johnson-Buck proposal would give states the power to initiate work visas for up to 500,000 immigrant workers initially, and possibly more over time. Unlike current federal work visa programs, Johnson-Buck state visas would not be tied to a particular employer. Workers would be free to change jobs, if they wish. That would deter mistreatment of workers by employers and enable workers to seek out new positions where they would be more productive, and thereby contribute more to the economy

## Environment/Climate

#### State power over environmental policy key to spillover

Polimédio & Souris 19

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Indeed, there are lots of reasons to approach federalism with optimism. For one, in contrast to faith in the national government, 60 percent of Americans still trust their state government. At least in part, this is because state and local governments are closer to their constituents and have fewer public considerations to juggle. As Mendonca and Tyson point out, “important reforms often bubble up from below because the most successful innovations are often the ones that grow out of concrete needs in particular communities.” As a result, when states and localities seize opportunities to create political experiments, it also allows states—and citizens—to learn from each other, and to see what kind of democracy they want. On top of that, government activity is mostly local to begin with. Because states are crucial for carrying out basic services like public education, they also manage more money: a combined $2.5 trillion, in contrast to the federal government’s $600 billion. With these structural advantages, federalism can make significant changes. An example of how federalism can make policy waves includes California’s leadership on climate legislation. The state’s response to environmental problems stemming from greenhouse gas emissions has included eliminating coal-fired power plants and setting its own emission standards for passenger vehicles. It offers a sterling case for how states can set examples of progressive reform. California has long led the way on climate legislation, for instance by requiring, in 1976, that fridges be more energy efficient. Many other states followed suit and forced the fridge industry to adapt—without legislation at the federal level.

#### Federalism is key to challenging bad federal environmental policy

Coursen 19

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Trump’s EPA claims to support “cooperative federalism,” as a way to “rebalance the power between Washington and the states.” But its actual agenda appears to be halting the wave of bold environmental protections emerging from American cities and states. To that end, the EPA now seeks to limit states’ authority to protect our climate, while threatening budget cuts of nearly $1.4 billion in state environmental funding. If this effort succeeds, our towns and cities will face dirtier air, hotter summers and more extreme weather — and there will be less we can do about it. A centerpiece of EPA’s attack on climate protection is its proposal to freeze car emission standards at 2020 levels, which would increase greenhouse gas emissions by 1.7 billion metric tons. EPA also seeks to limit state power by revoking a waiver under the Clean Air Act that allows California and a dozen states that follow its lead to set their own more stringent standards. State authority to protect air quality has existed in one form or another for half a century. EPA has granted 50 waivers, but has never revoked one. So, it is hard to imagine a more brazen attack on state authority than rescinding this waiver, which was granted five years ago. In effect, Trump’s EPA is forcibly enlisting states in the administration’s war on climate protection. Another recent salvo in that war is new guidance that would limit state authority over energy pipelines. Under the Clean Water Act, a pipeline cannot be constructed unless the state certifies that it will not cause violations of any “appropriate requirement of state law.” But the new guidance would let the federal government and energy companies run roughshod over state laws aimed at reducing air emissions and addressing climate change. Along with shrinking state power, EPA’s conception of “cooperative federalism” also means shrinking state funding, with a proposed budget that cuts support for state environmental protection by $1.4 billion. This includes crippling cuts of $500 million in support for state environmental programs, which depend on EPA for more than a quarter of their operating budgets. The biggest cuts, $300 million, are to programs for clean and safe water, with the remaining $200 million directed at programs that protect air quality and manage hazardous waste, pesticides and toxics. These cuts would starve states of vital resources needed to carry out their role as EPA’s partners in administering our nation’s environmental laws and responding to emergencies like hurricanes, floods and severe storms. The budget also proposes $43 million in cuts to brownfields programs that are key to redeveloping our nation’s cities. Brownfields are contaminated or polluted sites, often in the heart of America’s downtowns and former economic centers. By cleaning and repurposing these sites, cities can improve the quality of urban life and increase property values. EPA calculates that approximately 129 million people (roughly 40 percent of the U.S. population) live within three miles of a brownfield site that receives EPA funding. As of November 2018, grants awarded by the program have reclaimed 77,000 acres of idle land for productive use, with over 141,300 jobs created and $26.8 billion leveraged. The EPA’s proposed budget would also slash more than $140 million from federal support for state and interstate programs to protect and restore nationally significant water bodies like the Chesapeake Bay, Puget Sound, Long Island Sound and Lake Champlain. America’s surface waters are an important source of drinking water for our nation’s communities. But the biggest cuts, a whopping $874 million, are to a pair of highly successful state revolving loan funds that have tremendously improved our nation’s water infrastructure by ensuring adequate sanitation and treatment for the water our communities depend on. These funds are needed now more than ever. Just ask the people of Martin County, Kentucky; Salem, Oregon; Toledo, Ohio; and Flint, Michigan — who had to stop using their contaminated tap water. They are not alone: More than 27 million Americans are served by community water systems that do not fully meet health-based drinking water standards. Every year our nation suffers a quarter of a million water main breaks, with sewer overflows that discharge billions of gallons of raw sewage into local surface waters. At the same time, some $660 billion will be needed to repair the country’s aging water infrastructure over the next 20 years. The good news is that cities and states are fighting back. Earlier this year, the House passed a budget that rejected all of the proposed cuts, and the Senate seems likely to follow suit. States are already preparing to challenge the regulatory cutbacks in court. As for water quality certification, the strong language of the Clean Water Act recognizing state authority likely means that any new EPA steps to undercut that authority will be rejected by the courts. For Trump’s EPA, “cooperative federalism” means that states cooperate while the federal government kneecaps state-level efforts to protect people and the environment. And this is from an administration that ostensibly supports states’ rights. It’s chilling to wonder how far EPA might go if it wanted to weaken the role of the states. Let’s hope we never find out.

#### Federalism is key to challenging bad federal energy policy

Klass 18

Alexandra B. Klass is the Distinguished McKnight University Professor at the University of Minnesota Law School, The Regulatory Review, "Federalism "Collisions" in Energy Policy | The Regulatory Review", Nov 19, 2018, <https://www.theregreview.org/2018/11/19/klass-federalism-collisions-energy-policy/> -CD

Like many areas of law, energy policy in the United States is both national and local. The boundary lines delineating federal and state authority are not always clear, leading to tension and disagreement between federal and state authorities. When tensions get too high, Congress can, and often has, stepped in to override state control in order to promote national interests. But when Congress faces partisan gridlock, an increasing number of disputes are resolved in the courts. Over the past century, Congress has slowly carved out significant swaths of energy policy for federal control: oil and natural gas exports; automobile fuel economy standards; interstate transmission of electricity; permitting approval and eminent domain for interstate natural gas pipelines; and permitting approval for hydropower facilities and nuclear facilities. But much activity remains under state control: approval of interstate and intrastate oil pipelines and electric transmission lines; retail electricity and natural gas sales; approval of electric power generation facilities other than hydropower and nuclear, like wind farms, solar farms, coal plants, and natural gas plants; mandates on electric utilities to generate or purchase power from renewable energy resources; and standards for oil and gas drilling off of federal lands. Legislation related to electricity and natural gas provides an example of how Congress has expanded federal jurisdiction in response to conflicts with states and between states. In the 1930s, Congress enacted the Natural Gas Act and Part II of the Federal Power Act, which created broad federal authority over the interstate movement and wholesale sales of natural gas and electricity. In these laws, Congress responded to market power concerns as well to the inherent limits on states’ ability to regulate interstate energy markets. Over 70 years later, in 2005, Congress again expanded federal authority over energy transportation, this time in response to conflicts with states over the import and export of liquefied natural gas. In the early 2000s, industry and energy experts expressed concern that the United States would soon run out of domestic natural gas and would need to import increasing amounts of liquefied natural gas across oceans to heat homes and to generate electricity. When California attempted to block a proposed liquefied natural gas import terminal in the early 2000s, the Federal Energy Regulatory Commission (FERC) contended that it had sole approval authority, and litigation ensued. Before the litigation could be resolved, however, Congress intervened and gave exclusive federal permitting authority for liquefied natural gas import and export terminals to FERC in the Energy Policy Act of 2005. Notably, only three years later, the fracking revolution was well underway and the fears of natural gas shortages disappeared. As a result, the federal permitting authority Congress created in 2005 was then used to approve an increasing number of proposed natural gas export facilities to capitalize on the nation’s now ample supply of natural gas. What is notable about this example is not that Congress acted in the case of a perceived crisis, but how seldom Congress acts in this way notwithstanding the inevitable and longstanding policy differences between particular states and the federal government over the direction of energy policy. Since the start of the Trump Administration, the gap between federal energy policy and many states’ policies has widened considerably. The Obama Administration’s more inclusive “all of the above” energy policy has been replaced by the Trump Administration’s policy of “energy dominance,” coupled with a strong preference for fossil fuel development and hostility to renewable energy. These strong policy positions have increased energy-related conflicts between the states and the federal government, including with states that otherwise support a broad range of Trump Administration policies. For instance, lawmakers from Florida and South Carolina have expressed vehement opposition to the Trump Administration’s proposal for expanded oil and gas development in federal waters off of their shores. Policymakers in Iowa favor increased wind energy development. Oil and gas states are wary of the Trump Administration’s proposed subsidies for coal. Then, of course, there is California, where the state government is ready and able to go to battle against the Trump Administration to protect its own energy policies, including its Zero Emission Vehicle Program and related clean car programs. On the east coast, New York has made it clear that fossil fuel pipelines are not welcome in the state and Governor Andrew M. Cuomo (D) has used his authority under the Clean Water Act to block these projects at every turn. Likewise, policymakers in Washington, Oregon, and Maine have rejected coal and oil export terminals that are critical to President Trump’s “energy dominance” policy. Certainly, Congress could resolve these disputes in favor of increased federal authority. It could, for example, eliminate California’s preemption waiver under the Clean Air Act for auto emissions, reduce or eliminate the ability of states to impose water quality standards on federally approved pipeline projects, and create federal permitting authority for coal and oil export facilities like it did for liquefied natural gas import and export facilities. But such actions seem unlikely in the face of a fiercely divided Congress with a preference for states’ rights. Thus, many of these federalism disputes will be resolved in the courts using familiar legal tools provided by the Supremacy Clause of the U.S. Constitution. The Supremacy Clause will loom large in ongoing environmental- and energy-related disputes between states and the federal government. For instance, as noted above, the Trump Administration has declared virtually all federal waters open to offshore oil and gas drilling, angering not only states like California and Massachusetts but also states in the southeast that otherwise favor many of the Trump Administration’s other policies. If the U.S. Department of Interior goes forward with its plan to issue leases for offshore drilling in the Atlantic Ocean, there will undoubtedly be litigation over the extent of federal authority under the Outer Continental Shelf Lands Act and the ability of states to impose their own environmental protection policies under the Coastal Zone Management Act. Likewise, the Trump Administration’s proposal to freeze fuel economy and vehicle emissions standards at 2020 levels and revoke California’s preemption waiver to set stricter standards will result in courts determining, among other issues, the extent of federal preemptive authority under the Clean Air Act and the Energy Policy and Conservation Act of 1975. As environmental law professor Ann E. Carlson has explained, the Trump Administration’s efforts could severely diminish California’s “role as a green technology innovator” and as a global leader in reducing greenhouse gas emissions. A May 2018 report by the Congressional Research Service, however, noted that major auto manufacturers may still adopt strict emissions standards similar to California’s in an effort to remain competitive in a global market that is moving toward more stringent standards. As states continue to enact policies to promote clean energy and to block fossil fuel transport projects, federalism tensions will only increase. The courts will be busy.

#### Federalism leads to inter-state cooperation with in climate policy

Malatras 18

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After years of strong federal regulatory action, climate change efforts are now left mostly to the states, which have been actively filling the void. Although the Trump administration has moved to have states be the center of energy policy, in many ways the stage was set when two dozen states sued the Obama administration’s authority to regulate power plants under the Clean Power Plan.[4] In response, the Supreme Court, in an unusual move against the government, blocked the Obama-era regulations from being implemented until the case was fully argued, so the federal rules were never executed.[5] Although partisanship largely dictated who sued the Obama administration over climate change regulation, the push for states’ rights under Obama to regulate the power sector has created opportunities for states to now oppose the Trump administration’s action to roll back federal climate change regulations. In other words, in the climate change fight, these states may have won the battle, but could lose the war. Other states have been eager to combat climate change, moving to enact strong carbon reductions and renewable energy programs, like New York State’s Clean Energy Standard[6] and California’s clean energy and renewable goals.[7] Most recently, modeled off of New York, New Jersey enacted its own clean energy program.[8] It’s not just states. Other large institutional players, like the State University of New York, have implemented aggressive carbon emission reduction and renewable energy programs.[9] However, given that the carbon emissions released in one state don’t necessarily remain confined to that state, regional approaches by states are also critical. Regional approaches also help level the playing field so states do not face competitive disadvantages. Even with the void created by the recent federal rollbacks, there are successful regional models states could follow. In the shadow of weak federal climate rules, how do we get sovereign states to cooperate with one another to take on the issue themselves? The Regional Greenhouse Gas Initiative (RGGI) is a collaborative regional program that could serve as a model for states wishing to slow greenhouse gas emissions, such as CO2. RGGI is the nation’s first mandatory regional market-based cap-and-trade program. The program works like this: the states collectively establish a cap on the amount of CO2 pollution emitted from power plants in the region. The states issue a limited number of tradeable carbon allowances — or paying for pollution — through a regional market. The revenue raised from the process is used to invest in clean energy and clean-energy technology. For example, in New York, power producers buy carbon allowances up to the cap through an auction and some of those proceeds have financed the carbon-free NY-Sun solar installation program, among other programs. RGGI applies to the electric generation sector[10] and it was adopted in 2005 by a Memorandum of Understanding (MOU) by the governors of seven states: Connecticut, Delaware, Maine, New Hampshire, New Jersey, New York, and Vermont.[11] Two years later, Maryland and Massachusetts joined.[12] Under the MOU, the actual cap-and-trade program commenced in 2009. Under the MOU, each state implemented the program through policy, regulation, and laws. In addition, a 501(c)(3), called RGGI, Inc., was created to manage the program and provide technical assistance to the states. Although all sovereignty remains with the states, RGGI, Inc. — which is made up of staff from each state — serves an important coordinating function for the program. Overall, the program has been successful in achieving its goal to lower CO2 emissions. A recent analysis found that CO2 emissions would have been 24 percent higher in the region if RGGI was not in place.[13] Moreover, about $2 billion in proceeds have been raised for the member states to invest in clean energy technology, energy efficiency, and other climate change mitigation initiatives. Like other states, in New York RGGI funds have been a large source of financial support to expand renewable energy, like solar and wind. A key to RGGI’s success has been bipartisanship. Even during gubernatorial transitions from one political party to another, membership has been fairly stable (see Table 1). In only one case has a state exited the program when a new party took control. In 2011, New Jersey announced it was leaving the consortium by 2012. The new governor, Chris Christie, called the program “gimmicky” and “a failure.”[14] However, earlier this year, New Jersey[15] announced it was re-entering the Regional Greenhouse Gas Initiative and Virginia[16] was taking steps to join as well. So, RGGI continues to grow through multistate cooperation.

#### Energy leadership is key to broader leadership

Grimmson et. Al, 2019

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The main story of the energy transition is the rise of renewables, particularly solar and wind, and the future decline of fossil fuels. Renewables differ in many respects from fossil fuels, and these differences will have geopolitical consequences. First, renewable energy resources are available in one form or another in most countries, unlike fossil fuels which are concentrated in specific geographic locations. This reduces the importance of current energy choke points, such as the narrow channels on widely used sea routes that are critical to the global supply of oil. Second, most renewables take the form of flows, whilst fossil fuels are stocks. Energy stocks can be stored, which is useful; but they can be used only once. In contrast, energy flows do not exhaust themselves and are harder to disrupt. Third, renewable energy sources can be deployed at almost any scale and lend themselves better to decentralized forms of energy production and consumption. This adds to the democratizing effects of renewable energy. Fourth, renewable energy sources have nearly zero marginal costs, and some of them, like solar and wind, enjoy cost reductions of nearly 20% for every doubling of capacity.42 This enhances their ability to drive change but requires regulatory solutions to ensure stability and profitability in the power sector. For two centuries, the geographic concentration of oil, natural gas and coal reserves has helped configure the international geopolitical landscape. Coal and steam power drove the Industrial Revolution which, in turn, shaped geopolitics in the 19th century. Since then, control over the production of and trade in oil has been a key feature of 20th century power politics. A transition from fossil fuels to renewable energy could transform global power relations no less than the historical shifts from wood to coal and from coal to oil. Countries that are able to take advantage of new renewable energy technologies can expect to enhance their global influence and reach. Three types of countries have the potential to emerge as new renewable energy leaders. First, countries with high technical potential for renewable energy generation stand to gain if they are able to become significant exporters of renewable electricity or fuels. Australia’s economically demonstrated solar and wind energy resources are estimated to be 75% greater than its combined coal, gas, oil and uranium resources.74 In the Atacama Desert, Chile has among the world’s best solar resources, as well as high potential for wind, hydropower, geothermal and ocean energy. In both cases, however, the remoteness of these locations will probably constrain electricity exports. Some countries are already net exporters of electricity generated by renewables. Brazil is already a major exporter of renewable electricity from hydro. Norway exports electricity to its neighbours and the Netherlands, and is building new transmission cables to Germany and the United Kingdom. Laos and Bhutan also export electricity generated from hydropower to neighbouring countries. Bhutan’s power exports to India raised more than 27% of government revenue and 14% of Bhutan’s GDP.75 Second, mineral-rich countries such as Bolivia, Mongolia, and the Democratic Republic of Congo (DRC) have an opportunity to become part of the global production and value chains necessary for renewable technologies. Doing so will boost their economic development, provided they put the right policies and governance frameworks in place. Third, leaders in technological innovation are positioned to gain the most from the global energy transformation. No country has put itself in a better position to become the world’s renewable energy superpower than China. In aggregate, it is now the world’s largest producer, exporter and installer of solar panels, wind turbines, batteries and electric vehicles, placing it at the forefront of the global energy transition. Figure 9 shows the total clean energy manufacturing value added by four technologies: wind turbine components, crystalline silicon PV modules, LED packages, and lithium-ion battery cells. It confirms that China is by far the largest global manufacturer of these clean energy technologies. In addition, it leads the world in renewable energy patents (see Figure 10). China’s concerted efforts to research, develop and invest in renewable energy and clean transport offer its industry the opportunity to overtake US and European companies, which have been dominant in sectors such as cars and energy machinery. This will give China a comparative advantage in trade and lend impetus to the country’s economic growth.

#### Energy leadership is key to soft power – China and India prove

Karakir, 2018

Irem Aşkar Karakır is a faculty member for Dokuz Eylül University, majoring in International Relations. “Environmental Foreign Policy as a Soft Power Instrument: Cases of China and India.” Published in Journal of Contemporary Eastern Asia on June 17, 2018. (<http://kpubs.org/article/articleMain.kpubs?articleANo=OSTRBU_2018_v17n1_5>) – AH

This study analyzed China’s and India’s climate-related environmental foreign policies evaluating their domestic climate-related policies as well. China and India are called as advanced developing countries, emerging economies or rising powers with growing power to shape global governance. Over the last two decades, environmental governance has grown in importance on the international agenda with alarming scientific reports on negative outcomes of environmental degradation on humanity. Among environmental concerns, climate change closely linked with global warming has been the leading issue to attract attention, triggering a series of global negotiations and agreements on the issue. Traditionally, starting with the 1992 Rio Earth Summit, China and India had adopted reactionary and largely defensive position in global climate change negotiations. Yet, their uncompromising negotiating position has transformed into a more flexible and constructive position in the 2000s. The Copenhagen Summit of 2009 can be regarded as a turning point for negotiating positions of both countries in this sense. Since the Copenhagen Summit of 2009, India and China have been highly relevant players in global climate change negotiations. Parallel to their rapid economic growth and increasing portion of global emissions, governments of these two populous states have faced internal and external pressures which have been influential in their shifting approach to the challenge of climate change. China’s contribution to environmental pollution was greater when compared with that of India. Yet, capacity of China to cope with climate change has been higher than that of India due to both greater economic capacity and more pressure by the Chinese public. To a greater or lesser extent, both countries have played active roles in global climate change negotiations. This activeness has been motivated by two key factors. On the one hand, both countries have undertaken ambitious initiatives and measures at domestic level to have positive outcomes. Secondly, both countries have sought to become global agenda setters, and climate change has constituted an increasingly significant place in international politics. Search for greater power in global governance have led China and India to contribute to solving global challenges like climate change. Shifts in China’s and India’s foreign policies in favor of greater responsibility in the management of global commons have clearly contributed to soft power capacities of these two states. Recent efforts of Chinese and Indian governments to address climate change, especially at a time when the Trump administration decided to pull out the US from the Paris Agreement, have increased the likelihood of these states achieving their desired outcomes in world politics through encouraging willingness in other states to agree with their foreign policies. Proactive standing of particularly China in climate-related environmental governance has contributed to its soft power potential in international politics. China’s climate-related environmental diplomacy has been more ambitious than that of India and thus it can be regarded as a greater soft power asset. One thing is clear: if a country seeks to construct or to strengthen its soft power, one of the best ways to do is through convincing the international community that it is a responsible political actor both willing to and able to cope with global challenges. For now, China and India seem to increase their weight in the international system through their constructive diplomacy on climate change, thus contributing to the strengthening of their soft power.

#### Dipping U.S. leadership risks nuclear war, only reasserting solves

Brands & Edel 19

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Each of these geopolitical challenges is different, and each reflects the distinctive interests, ambitions, and history of the country undertaking it. Yet there is growing cooperation between the countries that are challenging the regional pillars of the U.S.-led order. Russia and China have collaborated on issues such as energy, sales and development of military technology, opposition to additional U.S. military deployments on the Korean peninsula, and naval exercises from the South China Sea to the Baltic. In Syria, Iran provided the shock troops that helped keep Russia’s ally, Bashar al-Assad, in power, as Moscow provided the air power and the diplomatic cover. “Our cooperation can isolate America,” supreme leader Ali Khamenei told Putin in 2017. More broadly, what links these challenges together is their opposition to the constellation of power, norms, and relationships that the U.S.-led order entails, and in their propensity to use violence, coercion, and intimidation as means of making that opposition effective. Taken collectively, these challenges constitute a geopolitical sea change from the post-Cold War era.¶ The revival of great-power competition entails higher international tensions than the world has known for decades, and the revival of arms races, security dilemmas, and other artifacts of a more dangerous past. It entails sharper conflicts over the international rules of the road on issues ranging from freedom of navigation to the illegitimacy of altering borders by force, and intensifying competitions over states that reside at the intersection of rival powers’ areas of interest. It requires confronting the prospect that rival powers could overturn the favorable regional balances that have underpinned the U.S.-led order for decades, and that they might construct rival spheres of influence from which America and the liberal ideas it has long promoted would be excluded. Finally, it necessitates recognizing that great-power rivalry could lead to great-power war, a prospect that seemed to have followed the Soviet empire onto the ash heap of history.¶ Both Beijing and Moscow are, after all, optimizing their forces and exercising aggressively in preparation for potential conflicts with the United States and its allies; Russian doctrine explicitly emphasizes the limited use of nuclear weapons to achieve escalation dominance in a war with Washington. In Syria, U.S. and Russian forces even came into deadly contact in early 2018. American airpower decimated a contingent of government-sponsored Russian mercenaries that was attacking a base at which U.S. troops were present, an incident demonstrating the increasing boldness of Russian operations and the corresponding potential for escalation. The world has not yet returned to the epic clashes for global dominance that characterized the twentieth century, but it has returned to the historical norm of great-power struggle, with all the associated dangers.¶ Those dangers may be even greater than most observers appreciate, because if today’s great-power competitions are still most intense at the regional level, who is to say where these competitions will end? By all appearances, Russia does not simply want to be a “regional power” (as Obama cuttingly described it) that dominates South Ossetia and Crimea.37 It aspires to the deep European and extra-regional impact that previous incarnations of the Russian state enjoyed. Why else would Putin boast about how far his troops can drive into Eastern Europe? Why else would Moscow be deploying military power into the Middle East? Why else would it be continuing to cultivate intelligence and military relationships in regions as remote as Latin America?¶ Likewise, China is today focused primarily on securing its own geopolitical neighborhood, but its ambitions for tomorrow are clearly much bolder. Beijing probably does not envision itself fully overthrowing the international order, simply because it has profited far too much from the U.S.-anchored global economy. Yet China has nonetheless positioned itself for a global challenge to U.S. influence. Chinese military forces are deploying ever farther from China’s immediate periphery; Beijing has projected power into the Arctic and established bases and logistical points in the Indian Ocean and Horn of Africa. Popular Chinese movies depict Beijing replacing Washington as the dominant actor in sub-Saharan Africa—a fictional representation of a real-life effort long under way. The Belt and Road Initiative bespeaks an aspiration to link China to countries throughout Central Asia, the Middle East, and Europe; BRI, AIIB, and RCEP look like the beginning of an alternative institutional architecture to rival Washington’s. In 2017, Xi Jinping told the Nineteenth National Congress of the Chinese Communist Party that Beijing could now “take center stage in the world” and act as an alternative to U.S. leadership.38¶ These ambitions may or may not be realistic. But they demonstrate just how significantly the world’s leading authoritarian powers desire to shift the global environment over time. The revisionism we are seeing today may therefore be only the beginning. As China’s power continues to grow, or if it is successful in dominating the Western Pacific, it will surely move on to grander endeavors. If Russia reconsolidates control over the former Soviet space, it may seek to bring parts of the former Warsaw Pact to heel. Historically, this has been a recurring pattern of great-power behavior—interests expand with power, the appetite grows with the eating, risk-taking increases as early gambles are seen to pay off.39 This pattern is precisely why the revival of great-power competition is so concerning—because geopolitical revisionism by unsatisfied major powers has so often presaged intensifying international conflict, confrontation, and even war. The great-power behavior occurring today represents the warning light flashing on the dashboard. It tells us there may be still-greater traumas to come.¶ The threats today are compelling and urgent, and there may someday come a time when the balance of power has shifted so markedly that the postwar international system cannot be sustained. Yet that moment of failure has not yet arrived, and so the goal of U.S. strategy should be not to hasten it by giving up prematurely, but to push it off as far into the future as possible. Rather than simply acquiescing in the decline of a world it spent generations building, America should aggressively bolster its defenses, with an eye to preserving and perhaps even selectively advancing its remarkable achievements.

#### US Leadership solves prolif, wars, democracy, and markets

Brands & Edel 19

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As William Wohlforth has noted, American primacy and activism acted as a powerful deterrent to great-power conflict by creating enormous disincentives for Russia, China, or other actors to incur the “focused enmity” of the United States.11 The persistence and even extension of the U.S. security blanket smothered potential instability in unsettled regions such as Eastern Europe, while removing any possibility of German or Japanese revanchism—a prospect much feared in the early 1990s—by keeping those countries tightly lashed to Washington. American intervention helped extinguish bloody conflicts in the Balkans before they could spread to neighboring countries; U.S. diplomatic and military pressure kept aggressive tyrannies such as Iraq, Iran, and North Korea bottled up and helped slow the spread of nuclear weapons. U.S. support helped democratic forces triumph in countries from Haiti to Poland, as the number of democracies rose from 76 in 1990 to 120 in 2000; America crucially assisted the advance of globalization and the broad prosperity that came with it by promoting pro-market policies and providing the necessary climate of reassurance and stability.12

#### Climate change causes extinction – deadly heat, inequality, flooding, and biodiversity loss

Ramanathan and Xu, 17

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From the IPCC burning embers diagram and from the language of the Paris Agreement, we infer that the DAI begins at warming greater than 1.5 °C. Our criteria for extending the risk category beyond DAI include the potential risks of climate change to the physical climate system, the ecosystem, human health, and species extinction. Let us first consider the category of catastrophic(3 to 5 °C warming). The first major concern is the issue of tipping points. Several studies (48, 49) have concluded that 3 to 5 °C global warming is likely to be the threshold for tipping points such as the collapse of the western Antarctic ice sheet, shutdown of deep water circulation in the North Atlantic, dieback of Amazon rainforests as well as boreal forests, and collapse of the West African monsoon, among others. While natural scientists refer to these as abrupt and irreversible climate changes, economists refer to them as catastrophic events (49).¶ Warming of such magnitudes also has catastrophic human health effects. Many recent studies(50, 51) have focused on the direct influence of extreme events such as heat waves on public health by evaluating exposure to heat stress and hyperthermia. It has been estimated that the likelihood of extreme events(defined as 3-sigma events), including heat waves, has increased 10-fold in the recent decades (52). Human beings are extremely sensitive to heat stress. For example, the 2013 European heat wave led to about 70,000 premature mortalities (53). The major finding of a recent study (51) is that, currently, about 13.6% of land area with a population of 30.6% is exposed to deadly heat. The authors of that study defined deadly heat as exceeding a threshold of temperature as well as humidity. The thresholds were determined from numerous heat wave events and data for mortalities attributed to heat waves. According to this study, a 2 °C warming would double the land area subject to deadly heat and expose 48% of the population. A 4 °C warming by 2100 would subject 47% of the land area and almost 74% of the world population to deadly heat, which could pose existential risks to humans and mammals alike unless massive adaptation measures are implemented, such as providing air conditioning to the entire population or a massive relocation of most of the population to safer climates. ¶ Climate risks can vary markedly depending on the socioeconomic status and culture of the population, and so we must take up the question of “dangerous to whom?”(54). Our discussion in this study is focused more on people and not on the ecosystem, and even with this limited scope, there are multitudes of categories of people. We will focus on the poorest 3 billion people living mostly in tropical rural areas, who are still relying on 18th-century technologies for meeting basic needs such as cooking and heating. Their contribution to CO2 pollution is roughly 5% compared with the 50% contribution by the wealthiest 1 billion(55). This bottom 3 billion population comprises mostly subsistent farmers, whose livelihood will be severely impacted, if not destroyed, with a one- to five-year megadrought, heat waves, or heavy floods; for those among the bottom 3 billion of the world’s population who are living in coastal areas, a 1- to 2-m rise in sea level(likely with a warming in excess of 3 °C) poses existential threat if they do not relocate or migrate. It has been estimated that several hundred million people would be subject to famine with warming in excess of 4 °C (54). However, there has essentially been no discussion on warming beyond 5 °C. ¶ Climate change-induced species extinction is one major concern with warming of such large magnitudes (>5 °C). The current rate of loss of species is ∼1,000-fold the historical rate, due largely to habitat destruction. At this rate, about 25% of species are in danger of extinction in the coming decades (56). Global warming of 6 °C or more (accompanied by increase in ocean acidity due to increased CO2) can act as a major force multiplier and expose as much as 90% of species to the dangers of extinction(57).¶ The bodily harms combined with climate change-forced species destruction, biodiversity loss, and threats to water and food security, as summarized recently (58), motivated us to categorize warming beyond 5 °C as unknown??, implying the possibility of existential threats. Fig. 2displays these three risk categorizations (vertical dashed lines).

#### Biodiversity collapse risks extinction

Watson 19

Robert Watson (chair of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), and former chair of the Intergovernmental Panel on Climate Change (IPCC)), The Guardian, "Loss of biodiversity is just as catastrophic as climate change", May 6, 2019, <https://www.theguardian.com/commentisfree/2019/may/06/biodiversity-climate-change-mass-extinctions> -CD

Colleague recently described how fish would swim into her clothing when she was a child bathing in the ocean off the coast of Vietnam, but today the fish are gone and her children find the story far-fetched. Another recalled his experiences just last year in Cape Town – one of the world’s most attractive tourism and leisure destinations – when more than 2 million people faced the nightmare prospect of all taps, in every home and business, running dry. These instances, on opposite sides of the world, are two faces of the same problem; the relentless pressure we are putting on biodiversity and the contributions that nature makes to our wellbeing, and the way we humans are changing the Earth’s climate. The rich variety of nature provides us with the food we eat, the water we drink and the air we breathe, and countless moments of personal inspiration spent in forests and mountains, exploring beaches and rivers, or even listening to a simple birdsong in a quiet moment. We have all assumed that nature would always be here for us and our children. However, our boundless consumption, shortsighted reliance on fossil fuels and our unsustainable use of nature now seriously threaten our future. Environmentalists, scientists and indigenous peoples have been sounding the alarm for decades. Our understanding of the overexploitation of the planet has advanced with grim, sharp clarity over that time. We have entered an era of rapidly accelerating species extinction, and are facing the irreversible loss of plant and animal species, habitats and vital crops, while coming face to face with the horrific impacts of global climate change. In 2018 alone, there were deadly heatwaves across Europe and south-east Asia, while the US experienced floods and wildfires. Insurance companies went under, unable to bear the costs of rebuilding after extreme weather events. There is a rising wave of collective anger and anxiety. The spectre of such environmental damage has caused grave concern, especially among global youth, about our inability to sustain our health, productivity, security and wellbeing. New realities have pulled back the curtain and exposed initiatives such as the banning of plastic straws as the drop in the ocean they truly are when it comes to protecting the future for ourselves, our children and all the species with which we share our planet. We must now consider the animals, insects, plants and all the places in which they live. Despite the profound threat of biodiversity loss, it is climate change that has long been considered the most pressing environmental concern. That changed this week in Paris, when representatives from 130 nations approved the most comprehensive assessment of global biodiversity ever undertaken. The report, spearheaded by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), found that nature is being eroded at rates unprecedented in human history. One million species are currently threatened with extinction and we are undermining the entire natural infrastructure on which our modern world depends. Nature powers human endeavours – underpinning productivity, culture and even our beliefs and identities. But our economies, livelihoods, food security, health and quality of life worldwide are under threat. We are exploiting nature faster than it can replenish itself. The IPBES assessment has shown the strong interrelationship between climate change, the loss of biodiversity and human wellbeing. Climate change has been identified as a primary driver of biodiversity loss, already altering every part of nature. Likewise, the loss of biodiversity contributes to climate change, for example when we destroy forests we emit carbon dioxide, the major “human-produced” greenhouse gas. We cannot solve the threats of human-induced climate change and loss of biodiversity in isolation. We either solve both or we solve neither. The IPBES report shows that governments and businesses are nowhere close to doing enough. The world is on track to miss the targets of the Paris agreement, the Aichi biodiversity targets and 80% of the UN sustainable development goals (food, water and energy security), because of our poor stewardship of the natural world. However, the good news is that there are many policies and technologies that will limit global temperature rise and address the conservation and sustainable use of biodiversity. These will also offer our last, best chance to limit human-induced climate change and preserve the greatest amount of biodiversity possible. The way we produce and use energy, and farm, use our soils, protect coastal ecosystems and treat our forests will make or break our future, but it can also help us have a better quality of life. We still have time – though very limited – to turn things around. It won’t be easy. It requires massive changes, from removing subsidies that lead to the destruction of nature and future warming of the Earth, to enacting laws that encourage the protection of nature; from reducing our growing addiction to fossil-fuel energy and natural resource consumption, to rethinking the definition of a rewarding life. Our current agricultural system is broken. If we keep producing food using current unsustainable agricultural practices, we will undermine future food production. But we already have more than enough food to go around. Today 815 million people go to bed hungry, 38 million more than in 2015. Yet, if food waste were a country, its emissions would rank third in the world, after China and the US, producing 8% of manmade emissions. We need to redirect government subsidies towards more sustainable and regenerative farming. This will not only contribute towards absorbing carbon and reducing the emissions of other greenhouse gases, it can also halt a frightening trajectory where farmland is so overloaded that eventually it just stops growing crops. We simply cannot afford the cost of inaction. Change of the magnitude required will mean a different life for everyone, but the costs of doing nothing will be much higher. The G7 environment ministers, currently meeting in France, have the opportunity to return to their capitals with the freshly approved IPBES report. The world needs them to reflect our current level of crisis at the heads of state meeting later this year. The UK parliament has endorsed a motion to declare a formal climate and environment emergency, which is a start, but action and budgets from governments and business will need to follow. As policymakers around the world grapple with the twin threats of climate change and biodiversity loss, it is essential that they understand the linkages between the two so that their decisions and actions address both. The world needs to recognise that loss of biodiversity and human-induced climate change are not only environmental issues, but development, economic, social, security, equity and moral issues as well. The future of humanity depends on action now. If we do not act, our children and all future generations will never forgive us.

## Trump

#### Trump uses struggle over federal centralization to spark sectarian violence

[SCHULTZ](https://www.sun-sentinel.com/fl-rrscol-staff-staff.html#nt=byline) 2020

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Trump warned on Twitter that protesters at the White House could be “really badly hurt” by “some of the most vicious dogs and most ominous weapons I have ever seen.” Also on Saturday, Trump tweeted that it might be “MAGA NIGHT AT THE WHITE HOUSE,” encouraging his followers to arrive for a confrontation. Hoping that Donald Trump could try to heal the country is like hoping that Freddie Krueger could scrub up and assist during surgery. Trump has one playbook — divide and conquer. With the nation facing more civic peril than it has since the assassinations and riots of 1968, Trump fixates on his script. As Trump sees it, chaos diverts attention from his administration’s inept COVID-19 response. As Trump was tossing conspiracy-theory chum to his base, American deaths from the virus were passing 100,000. Trump once boasted that deaths might not pass 50,000, which would affirm his decisive action. Then he said 75,000. Now he won’t offer predictions of any kind. Administration officials won’t issue economic forecasts for this year. The president who had planned to run on a solid economy wants to avoid any truths about damage from the virus that he first ignored and still tries to wish away. With the Floyd murder, Trump’s diversionary tactic is to blame “anarchists” for the violence that has accompanied some protests. Those with standing on this issue — such as Floyd’s brother — have properly criticized arsonists and looters. The president does not have such standing. Trump began his presidential campaign with the racist lie that Barack Obama was not born in the United States. In August 2017, Trump declared that “very fine people” were on both sides of demonstrations in Charlottesville, Va., by white supremacists. A month later, Attorney General Jeff Sessions disbanded the Obama-era program that monitored police departments for, among other things, racial prejudice. Now, though, the man who has encouraged violence against protesters of any kind faces a reckoning. Police chiefs and sheriffs have condemned the Minneapolis officer. Seeking to show empathy, Trump invoked the similar words of Eric Garner — “I can’t breathe” — whom a New York City officer killed in 2014. But under Attorney General William Barr, Trump’s Justice Department declined to pursue a civil-rights case against the officer whose chokehold killed Garner. Before the virus, Trump claimed to have restored American greatness in three short years. The last four months, however, have exposed the fraud behind the man and the boast. Our COVID-19 death rate is three times that of Germany. All one needs to know about Trump’s dysfunctional response is that he deputized First Son-in-Law Jared Kushner to oversee testing and supply chains, with disastrous results. Every well-minded George Floyd protester knows that COVID-19 damage has been far greater among Americans of color. Well-minded Americans also know that the damage has been greater among migrants whom Trump has raged against but on whom the country depends for food and service. His rush to reopen presumes that white Americans don’t care that more minorities will continue to get sick. As with all demagogues, however, the problem is not Trump himself but his followers — Republicans who excuse what they never would from a Democrat. Sen. Tim Scott, R-S.C., is the highest-ranking GOP elected official in the country. He said only of Trump’s weekend rants, “Those are not constructive tweets, without any question.” Monday night, after National Guard troops used tear gas to roust peaceful protesters from in front of the White House, Trump finally appeared from isolation. He offered no calming words. He stood before St. John’s Episcopal Church, held up a Bible and called ours “the greatest country in the world.” It was blasphemy from a most un-Christian man. At this unprecedented crisis point, it’s scary enough that Donald Trump can’t unite the country. It’s scarier that he doesn’t want to unite the country.

#### Right wing extremism

Timberg 2020

Craig Timberg is a national technology reporter for The Washington Post, specializing in privacy, security and surveillance. “As Trump warns of leftist violence, a dangerous threat emerges from the right-wing boogaloo movement” By Craig Timberg June 17, 2020 <https://www.washingtonpost.com/technology/2020/06/17/trump-warns-leftist-violence-dangerous-threat-emerges-right-wing-boogaloo-movement/> -VL

A far-right extremist movement born on social media and fueled by anti-government rhetoric has emerged as a real-world threat in recent weeks, with federal authorities accusing some of its adherents of working to spark violence at largely peaceful protests roiling the nation. At a time when President Trump and other top U.S. officials have claimed — with little evidence — that leftist groups were fomenting violence, federal prosecutors have charged various supporters of a right-wing movement called the “boogaloo bois,” with crimes related to plotting to firebomb a U.S. Forest Service facility, preparing to use explosives at a peaceful demonstration and killing a security officer at a federal courthouse. Prosecutors even successfully argued before a federal magistrate in Texas last week that a drug possession suspect with alleged boogaloo ties should be denied bond because Facebook and Instagram posts advocating violence against National Guard members and threatening to kill looters showed he was a “threat to the community.” Boogaloo is more of a violent anti-government ideology than a formal movement, say those who study extremist groups. They say they cannot identify a leader, headquarters or command structure, just loosely affiliated social media pages ranging from explicitly violent to merely commercial, peddling boogaloo-themed merchandise. But the visibility of boogaloo supporters at recent protests — dressed in trademark Hawaiian shirts and carrying military-style rifles — had alarmed researchers who for months had warned about the danger the groups posed. U.S. Air Force Sgt. Steven Carrillo, 32, is seen in an image from surveillance video outside a business near the location where he was arrested in Ben Lomond, Calif., on June 6. (Justice Department/Reuters) U.S. Air Force Sgt. Steven Carrillo, 32, is seen in an image from surveillance video outside a business near the location where he was arrested in Ben Lomond, Calif., on June 6. (Justice Department/Reuters) Now federal prosecutors in California, Texas, Nevada and Colorado appear to be endorsing those concerns with a series of criminal charges against self-described boogaloo supporters, whose arrests often were accompanied by the seizure of weapons and explosives. One boogaloo supporter, Steven Carrillo, an active-duty Air Force staff sergeant, is charged with killing a security guard at the federal courthouse in Oakland last month. Court documents allege he scrawled the word “Boog” in blood on a car he had stolen. “The numbers are overwhelming: Most of the violence is coming from the extreme right wing,” said Clint Watts, a former FBI agent who studies extremist political activity for the Foreign Policy Research Institute, a think tank in Philadelphia. Two men charged in slaying of Oakland courthouse guard U.S. Attorney David Anderson announced on June 16 that two men had been charged for the May 29 murder of a federal courthouse guard in Oakland, Calif. (Reuters) Men wearing Hawaiian shirts and carrying guns add a volatile new element to protests The shooting that killed one security guard and injured another took place May 29, near where demonstrators had gathered to protest the police killing of George Floyd, an unarmed black man, in Minneapolis. Facebook posts also figure in Carrillo’s prosecution, with court documents quoting one attributed to him: “Use their anger to fuel our fire. Think outside the box. We have mobs of angry people to use to our advantage.” Carrillo also is accused of killing a sheriff’s deputy in a separate incident in California’s Santa Cruz County. Carrillo’s lawyer has cautioned against a “rush to judgement” on the charges. The boogaloo movement was born on fringe social media forums such as 4chan but migrated to more mainstream ones such as Instagram, Twitter and Facebook, where researchers have found some groups had at times hundreds of thousands of followers. The name of the group comes from a 1984 break-dancing movie sequel regarded as almost indistinguishable from the original — boogaloo supporters contend that a second civil war will resemble the one in the 1860s. Their names and symbols have evolved rapidly online, amid calls for violence against police and other authorities, with boogaloo becoming “Big Igloo” and “Big Luau,” which inspired a proliferation of movement symbols, including the Hawaiian shirts. Sen. Marco Rubio (R-Fla.) tweeted an image of apparent boogaloo supporters, carrying rifles, atop an overturned and vandalized police car in Salt Lake City last month. An officer was gunned down. The killer was a ‘boogaloo boy’ using nearby peaceful protests as cover, feds say. The boogaloo ideology has proved adaptive as well, with supporters appearing regularly at a rallies opposing government coronavirus restrictions before shifting to the Floyd rallies — sometimes in avowed support of the protesters, sometimes to allegedly quell unrest and sometimes as provocateurs seeking to inflame it. The role of social media in incubating the movement and spreading its ideology has prompted several researchers to compare boogaloo to foreign militant groups, such as the Islamic State, which used memes and other forms of online messaging to spread extremist rhetoric, raise money and recruit new members. “The extremism and the radicalism and the recruitment are nothing new. The methodology is new — that you can reach tens of millions of people with a click of a finger,” Paul Goldenberg, a senior fellow at Rutgers University’s Miller Center and a member of the Department of Homeland Security Advisory Council. Federal authorities this month accused three men in Nevada, all with U.S. military experience, of planning to use molotov cocktails and other explosives to trigger a violent reaction among protesters gathered in Las Vegas last month. An FBI SWAT team arrested the men with fireworks, accelerants, an AR-15 rifle, a 12-gauge shotgun and ammunition, according to charging documents. The men also were charged with crimes related to planning the firebombing of a Forest Service facility at Lake Mead, east of Las Vegas. Like Carrillo, these men were advocates of the boogaloo ideology, according to the charging documents, with a goal of causing “an incident to incite chaos and possibly a riot” among the largely peaceful protests. Denver police last month separately seized military-style rifles, handguns, ammunition and gas masks from the car of a man claiming allegiance to boogaloo ideas and attending a Floyd protest rally but did not charge him with any crimes. In Texas, a bodybuilder alleged to have run an illegal steroid distribution ring was being held without bond after prosecutors cited his social media posts advocating “guerrilla warfare” against National Guard members patrolling at protests and a Facebook post that included threats about killing “looters” and “hunting” supposed leftist agitators. In a video posted to Instagram and later submitted as evidence by federal prosecutors, the man, Philip Archibald, allegedly urged people to travel to St. Paul, Minn., to confront protesters and “bring that [expletive] heat” along with extra “ammo.” “You know, this is — this is the time we need to make a stand. So again, Saint Pauls, Minnesota, Minneapolis, Minnesota, this is where it’s going down. So if you got people, send ‘em there,” according to an account of the post provided by prosecutors. The flurry of boogaloo-related prosecutions underscores the growing threat posed by far-right extremists, say experts on such movements. Some question why Trump and other top U.S. officials appear more focused on antifa groups, a loose collection of leftists whose members have been responsible for few documented crimes during the recent unrest, instead of the boogaloo and other heavily armed groups on the right. “That question has no legitimate answer, to be honest,” said John Farmer, a former New Jersey attorney general and director of the Eagleton Institute of Politics at Rutgers, who has studied the boogaloo extremists and others. “There’s been no sense of urgency. I think it’s political neglect.” Scant evidence of antifa shows how sweeping the protests for racial justice have become Numerous independent research groups — including the Network Contagion Research Institute, for which Farmer co-wrote a report — have been warning for months about rising signs of boogaloo organizing and other activity on Facebook, Instagram, Twitter and other platforms. They have grown especially concerned that these extremists had become a disruptive and potentially dangerous element at political protests. Facebook, which owns Instagram, said it has removed numerous boogaloo-themed groups, pages and posts for violating the company’s policy against violence and incitement, and it has taken more targeted action against people affiliated with the boogaloo movement who have attempted to commit “mass violence,” under the company’s policy against dangerous individuals and organizations. Following the shootings of the security guards, which authorities say involved a second man who drove Carrillo to the courthouse, Facebook banned both men. “We designated these attacks as violating events and removed the accounts for the two perpetrators along with several groups. We will remove content that supports these attacks and continue to work with law enforcement in their investigation,” Facebook spokeswoman Sarah Pollack said. Federal authorities have traditionally treated domestic militant groups, even the most extreme, far differently from foreign ones, though there has been increasing recognition in some quarters of the threat posed by right-wing extremists. There has been an ongoing debate at the federal level about whether domestic terrorists merit more focus, along the lines of the formal designation that the State Department imposes on some foreign groups. U.S. officials have rarely mentioned boogaloo publicly but have said that they will act against violent extremists, regardless of ideology, when they commit crimes. Acting Homeland Security Secretary Chad Wolf said Tuesday, in announcing charges against Carrillo, “The assassination and injury of federal officers who swore an oath to protect the American public will not be tolerated. The Department of Homeland Security will continue its mission to end violent extremism in any form.” Marc Raimondi, a Justice Department spokesman, said he did not know of any directive specific to the boogaloo ideology that had been sent to prosecutors, and he said the department has been “focused on those involved in unlawful, violent or destructive behavior regardless of inspiration.” Despite Trump’s call last month to designate the antifa movement a terrorist group, there is no legal mechanism to do so. Federal authorities extend a degree of deference to militias and similar groups because much of what they do — making political statements, protesting, carrying firearms — is constitutionally protected. What is antifa? The recent violence has raised questions about whether a more focused and systemic response is warranted for groups like boogaloo, which openly espouse violence against the police and other government authorities. New Jersey formally designated white supremacist groups as a leading terrorist threat in a February report, in what officials there called the first such move in the nation. Boogaloo adherents, whom the state has singled out in periodic threat reports, sometimes espouse white supremacist views and sometimes express solidarity with all racial groups, including when some boogaloo factions expressed support for the Floyd protesters, researchers and officials say. “These types of groups, they just take advantage of the moment, and they spew some messaging, and it just gains traction,” said Jared Maples, director of homeland security and preparedness for New Jersey. “The people who are doing this are taking advantage of people’s fears. … One of the biggest things we can do is call it out.”

#### Trumps diversion goes nuclear = extinction

Harrington-Rofer 2019

Anne Harrington is a Lecturer in International Relations at Cardiff University. Cheryl Rofer writes scientific and political commentary. She was a chemist at the Los Alamos National Laboratory for 35 years. “There Is No Check on Trump’s Rage Going Nuclear” BY ANNE HARRINGTON, CHERYL ROFER May 22nd, 2019, <https://foreignpolicy.com/2019/05/22/theres-no-check-on-trumps-rage-going-nuclear/>

Donald Trump is taking the United States back to an earlier time—one most people thought had been left behind. His aggressive boorishness, entitlement, and belief that he can do whatever he wants are qualities from an age when men’s control was assumed, and others stayed silent. And nowhere is his retrograde masculinity more dangerous than in his control of the nuclear button. As president of the United States, Trump has absolute authority to launch nuclear weapons—without anyone else’s consent. In the past, it was taken for granted that the president would follow an established protocol that included consultation with the military, his cabinet, and others before taking such a grave step, but Trump is not legally bound to these procedures. Presidential launch authority is a matter of directive and precedent rather than specific law. Trump’s bravado, penchant for inflated rhetoric, and impulsive decision-making style—including catching his leadership off guard by informing them of policy directives via tweet—have stoked old fears about placing the authority to launch in the wrong hands. So has his constant violation of once cherished presidential norms, including refusing to make public his tax returns and failing to read his daily intelligence brief. Debates about launch authority have always been intimately bound up with whether we consider nukes’ function to be primarily military or political. Nuclear weapons are so destructive that, since the bombs were dropped on Hiroshima and Nagasaki, even the explicit threat of their use has been sparing. They have been used as political deterrents and levers, instead of direct weapons of war. Reserving launch authority for the president was a key way to emphasize the political nature of the nuclear mission. Historians trace the precedent of presidential launch authority to President Harry Truman’s decision tocheck his generals’ use of nuclear weapons.Historians trace the precedent of presidential launch authority to President Harry Truman’s decision to check his generals’ use of nuclear weapons. After destroying Hiroshima and Nagasaki, they planned to bomb a third Japanese city, but Truman forbade them to carry out the attack without his express consent and ultimately decided against it. According to Truman’s commerce secretary, Henry Wallace, the president thought killing “another 100,000 people was too horrible.”

## Progressive Federalism

#### Progressive Federalism allows states to challenge Trump/executive branch

Greken 2020

Heather K Greken is the Dean and Sol & Lillian Goldman Professor of Law at Yale Law School. Dean Gerken is one of the country’s leading experts on constitutional law and election law. A founder of the “nationalist school” of federalism, her work focuses on federalism, diversity, and dissent “Progressive Federalism: A User’s Guide” By Heather K Greken, Spring 2017, <https://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/>

Enforcing Federal Law Uncooperative federalism won’t work for everything progressives care about. The Trump agenda is largely deregulatory—coal companies and Wall Street alike are looking forward to less federal regulation and enforcement. Often, Washington Republicans won’t bother to repeal a statute or undo a regulation, because doing so takes time and risks legal challenges. Instead, they’ll simply announce that they won’t enforce the law, just as the Obama Administration has done with certain marijuana and immigration laws. If cities and states care about the laws that Trump plans to abandon, they should figure out how to enforce those laws themselves. Here, they might take guidance from California, the “superstate” of the progressive federalism pantheon. California prohibits businesses from engaging in unlawful, unfair, or fraudulent activities. Because “unlawful” is defined to include those that violate federal statutes and regulations, California’s Attorney General can sue over many violations of federal law; if he wins, he can shut down the unlawful practice and seek substantial fines. Better yet, California realized that its attorney general’s office cannot keep every business in the state in check all by itself. So it empowers all counties, as well as large cities, to bring suit to enforce this law. When these cities and counties do so, they act on behalf of the State of California and can seek the same expansive remedies as the attorney general. The San Francisco City Attorney’s Office, with which both of us work, has used this power to great effect: It has sued tax preparers, mortgage lenders, and prescription drug companies for violating federal law. California’s statute allows city and state officials to protect their residents from harms that a municipal ordinance or state law might not cure. It creates, in effect, a standing army of civil attorneys to enforce federal laws that have fallen through the cracks. These lawsuits often reach beyond California’s borders, allowing city and state officials to play a role in shaping nationwide policy. Blue cities and states can learn from the San Francisco model. If they were to pass a law like California’s, empowering state attorneys general and city attorneys to sue in order to enforce federal law, they could do the work that the Department of Justice might neglect in the coming years. Promising areas to start include the environment and consumer protection. For all Trump’s bluster about repealing the Environmental Protection Agency’s Clean Power Plan and other regulations, the rollback process may take years, if it happens at all. Until then, these regulations will remain on the books, and cities and states can work to keep businesses in compliance, even if federal enforcement is lax. Similarly, even if congressional Republicans succeed at neutering the Consumer Financial Protection Bureau, many of its rules will remain in effect, and state attorneys general will be able to enforce them. Protecting a state or city’s residents from financial fraud is an effective—and sure-to-be popular—method of progressive resistance. Spillovers Even when the Trump Administration repeals a statute or rescinds a regulation, leaving no law to enforce, states and cities can often make law themselves. As they do so, they can take advantage of another powerful weapon in the federalist toolkit: the “spillover.” When one state regulates, it often affects its neighbors. When Texas insisted that its textbooks question evolution, for instance, its market power ensured that textbooks used in blue states did the same. When Virginia made it easy to buy a gun, guns flooded into New York City despite its rigorous firearms prohibitions. When West Virginia failed to regulate pollution, toxic clouds floated over Ohio. Spillovers, like federalism, aren’t just the tools of conservative governments. Economists would call spillovers an “externality,” and externalities can be positive or negative depending on your point of view. Just as there are spillovers conservatives cheer, there are some spillovers for progressives to celebrate as well. Consider car emissions. Even if the Trump Administration were to lower environmental standards to protect gas-guzzling cars, it wouldn’t matter. Why? Because California has set higher emissions standards than the federal government. No company wants to give up on the California market. As a result, all cars, whether sold in San Francisco or Texarkana, meet California’s high standards. California is an unusual state. It is the biggest in the nation, with almost 40 million residents. Were it a country, it would be the sixth-largest economy in the world. Its economic significance means that it can enact sweeping nationwide regulation even though it nominally regulates only itself. Democrats have won a super-majority in both houses of the California legislature, and its governor, Jerry Brown, seems to be spoiling for the fight against Trump. The state is more than capable of sending some more spillovers other states’ ways. Like uncooperative federalism, spillovers are a form of agenda-setting—they force debate on issues Washington might want to avoid. But they are also a tool for encouraging compromise. If left to their own devices, politicians in red and blue states will rarely negotiate with their colleagues on the other side. But when a liberal policy spills over to a conservative state (or vice-versa), the other half of the country is impossible to ignore. Politicians must reach out across state or party lines to fix the problem. Spillovers thus force politicking, negotiation, and moderation. They force politicians to do their jobs, in other words. The possibility of progressive spillovers answers another progressive objection to federalism. Liberals are often concerned that federalism leaves too many people behind. They worry that those who are most in need of government action are unaided by blue-state policies. But sometimes that worry is misguided. If New York regulates lead in toys, children everywhere will be safer because of spillovers. If Illinois increases its minimum wage, that may pressure businesses to raise salaries nationwide. Cities can create spillovers, too. Here, liberal municipalities might take guidance from Portland, Oregon. Portland was concerned about income inequality and wasn’t willing to wait for Washington to act. So it enacted a tax surcharge on all publicly traded companies whose CEOs are paid more than one hundred times its median worker. The tax will affect hundreds of companies that do business in Portland and would be easy for other jurisdictions with business taxes to adopt. If enough cities do so, they’ll affect inequality far beyond their borders. Winning the War of Ideas As mentioned, many think of federalism as a means of entrenching the worst aspects of our politics. But it can also be a tool to change our politics for the better. Many of the best progressive ideas were born in cities and states, and social movements have long used state and local governments as testing grounds for their ideas. The most remarkable example in recent years has been the same-sex marriage movement. LGBT advocates realized that nationwide marriage equality would be a heavy lift. So instead they started local—first in Hawaii, then in Massachusetts, then in San Francisco. Some early state and local battles were lost, but same-sex marriage proponents used those fights as staging grounds for organizing and debate. This process built popular acceptance of same-sex marriage and explains why the Supreme Court’s nationwide ruling in Obergefell v. Hodges—a decision that would surely have caused intense controversy before states started to act—was greeted enthusiastically by an overwhelming majority of Americans. Many crown jewels of the national progressive agenda are similarly the product of progressive federalism. The Affordable Care Act, for example, has its origins in Massachusetts, where it was enacted by then-governor Mitt Romney. A regional initiative of ten northeastern states laid the groundwork for the Clean Power Plan. If the next Democratic presidential nominee pushes for universal pre-kindergarten, he or she can look to states and cities for support: Places as different as Oklahoma and New York City have successfully implemented the policy.

#### Progressive federalism is lost with a decrease in federalism

Gerken 2012

Heather Gerken is the Dean and Sol & Lillian Goldman Professor of Law at Yale Law School. Dean Gerken is one of the country’s leading experts on constitutional law and election law. A founder of the “nationalist school” of federalism, her work focuses on federalism, diversity, and dissent. Spring 2012 “A loss of federalism means backtracking progressive federalisms process” By Heather K Gerken, an excerpt from; <https://democracyjournal.org/magazine/24/a-new-progressive-federalism/> -VL

 Progressives are deeply skeptical of federalism, and with good reason. States’ rights have been invoked to defend some of the most despicable institutions in American history, most notably slavery and Jim Crow. Many think “federalism” is just a code word for letting racists be racist. Progressives also associate federalism—and its less prominent companion, localism, which simply means decentralization within a state—with parochialism and the suppression of dissent. They thus look to national power, particularly the First and Fourteenth Amendments, to protect racial minorities and dissenters from threats posed at the local level. But it is a mistake to equate federalism’s past with its future. State and local governments have become sites of empowerment for racial minorities and dissenters, the groups that progressives believe have the most to fear from decentralization. In fact, racial minorities and dissenters can wield more electoral power at the local level than they do at the national. And while minorities cannot dictate policy outcomes at the national level, they can rule at the state and local level. Racial minorities and dissenters are using that electoral muscle to protect themselves from marginalization and promote their own agendas. Progressives have long looked to the realm of rights to shield racial minorities and dissenters from unfriendly majorities. Iconic measures like the First and Fourteenth Amendments, the Civil Rights Act, and the Voting Rights Act all offer rights-based protections for minorities. But reliance on rights requires that racial minorities and dissenters look to the courts to shield them from the majority. If rights are the only protections afforded to racial minorities and dissenters, we risk treating both groups merely as what Stanford Law Professor Pam Karlan calls “objects of judicial solicitude rather than efficacious political actors in their own right.” Minority rule, by contrast, allows racial minorities and dissenters to act as efficacious political actors, just as members of the majority do. Think, for example, about where groups we would normally call a “minority” now actually constitute a majority: a mostly African-American city like Atlanta, a city such as San Francisco where the majority favors same-sex marriage, or a state like California or Texas where Latinos will soon be in the majority. In each of those cases, minority rule—where national minorities constitute local majorities—allows minorities to protect themselves rather than look to courts as their source of solace. It empowers racial minorities and dissenters not by shielding them from the majority, but by turning them into one. Why should we care? We should care because the success of our democracy depends on two projects. The first is integration—ensuring that our fractious polity remains a polity. The second is dialogue—ensuring a healthy amount of debate and disagreement within our democracy. We have made progress on both fronts, but there is a great deal more work to do. Our social, political, and economic life still reflects racial divides. Our political system is immobilized; the issues that matter to everyday citizens are stuck in the frozen political tundra we call Washington. We have long looked to deeply rooted rights as tools for promoting equality and protecting dissent. But everyday politics can be just as important for pursuing these goals. We should look to minority rule, not just minority rights, as we build a better democracy. An emphasis on minority rule isn’t intended to denigrate the importance of minority rights. It is simply to insist that while rights are a necessary condition for equality, they may not be a sufficient one. Too often we assume in the context of race that rights alone will suffice, as if the path to equality moves straight from civic inclusion to full integration. We miss the possibility that there is an intermediary stage: empowerment. Such a strategy would be impossible without the hard-won battles of the civil rights movement. But it’s possible to believe in, even revere, the work of that movement and still wonder whether rights, standing alone, will bring us to full equality. Civic inclusion was the hardest fight. But it turns out that discrimination is a protean monster and more resistant to change than one might think. We may require new, even unexpected tools to combat discrimination before we reach genuine integration. Similarly, while the First Amendment has long been thought of as part of the bedrock of our democracy, it does not represent the only tool for furthering dialogue and nurturing dissent. Decentralization gives political outliers one of the most important powers a dissenter can enjoy—the power to force the majority to engage. It thus helps generate the deliberative froth needed to prevent national politics from becoming ossified or frozen by political elites uninterested in debating the hard questions that matter most to everyday voters. Federalism and Race Advocates of racial justice have long been skeptical of federalism. It is not hard to figure out why. The most important guarantors of racial equality—the Fourteenth Amendment, the Civil Rights Act, the Voting Rights Act—were passed at the national level and resisted at the local level. And it’s not just history that blinds us to the possibilities associated with decentralization and minority rule; our very idea of equality inspires wariness. We have a firm sense of what “integration” or “diversity” looks like: a statistical mirror. “Diversity” is a much-revered term for the idea that institutions should look like the community from which they are drawn—that they should “look like America,” to use one of Bill Clinton’s favorite phrases

# Aff

## Federalism Bad

#### Federalism slows responses to disasters especially regarding climate change

Olson 2019

Samantha Olson, Duke University School of Law, J.D. expected 2020; University of Miami, B.A. 2016, "A military response to a warming world: Federalism, militias and catastrophpic disasters." Published by Duke Environmental Law & Policy Forum on April 23, 2019. pp. 301-303. Available here: (<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1363&context=delpf>) - AP

**Climate change is a threat to national security, a threat that the United States Department of Defense has explicitly recognized**. In addition to exacerbating conflicts overseas, **climate change threatens American lives through violent storms, wildfires, floods, droughts, and other natural disasters. The United States Armed Forces and the National Guard are called upon to both defend American interests abroad and to protect Americans from disaster at home**. Some states also call on their State Defense Forces—military forces controlled and funded by individual states—to respond to natural disasters. **While Federal and state military forces both play a significant role in disaster response, Federal military forces and federalized National Guard are prohibited from functioning as law enforcement in these scenarios** under the Posse Comitatus Act (PCA). State Defense Forces and statecontrolled National Guard are not subject to the PCA. **This restriction generally does not impede the function of these military forces in disaster response, and Presidential invocation of the Insurrection Act may even override this restriction** in extreme situations. **However, federalism concerns and questions regarding the appropriate use of the Insurrection Act likely slowed the federal military response to Hurricane Katrina**, adding further confusion to an already chaotic situation. **As a result of ongoing climate change and warming oceans, hurricanes are likely increasing in severity and threatening greater swaths of the coast**. These changes could potentially result in more catastrophic natural disasters similar to Hurricane Katrina. This note draws on earlier scholarship concerning the Insurrection Act and federalism in the wake of Hurricane Katrina and incorporates new information regarding the impacts of climate change on natural disasters in the United States. In light of intensifying hurricanes, flooding, and other extreme weather events, this note argues for clarifying when and how federal military forces and federalized National Guard may be used to respond to natural disasters. This note argues for an amended Insurrection Act that provides the President greater flexibility to respond quickly to catastrophic natural disasters and clarifies when it can be invoked. This note also argues for the expansion of state capabilities for disaster response through the use of State Defense Forces as a way for states to better prepare for increasingly severe weather events and avoid the need for Federal intervention through the Insurrection Act. Part I of this note will discuss the threat of climate change and the Department of Defense’s response. Parts II and III of this note will address the statutory background of disaster response and the use of the military domestically. Part IV will cover the relevant military forces responsible for disaster response. Part V will examine two hurricane scenarios and how they offer insight into effective preparedness and response to increasingly severe weather events. Finally, Part VI will offer potential statutory and policy changes to better address the growing threat of natural disasters. I. CLIMATE CHANGE AS A NATIONAL SECURITY THREAT **Climate change poses a significant threat to the United States by exacerbating the impact of extreme weather events**.2 **Because of these domestic impacts and climate change’s effects on stability across the globe, the United States Department of Defense has explicitly recognized it as a threat to national security since 2010**.3 The United Nations Intergovernmental Panel on Climate Change (IPCC) has stated that “[w]arming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. **The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen**.”4 The 2014 report also concluded with “very high confidence” that “[i]n urban areas, climate change is projected to increase risks . . . from heat stress, storms and extreme precipitation, inland and coastal flooding, landslides, air pollution, drought, water scarcity, sea level rise and storm surges.”5 **Although the IPCC report could not determine hurricane trends because of “observational limitations,” the IPCC concluded that “it is virtually certain that intense tropical cyclone activity has increased in the North Atlantic since 1970**.”6 Climate change worsens many weather events, but **hurricanes and their associated events, such as storm surges, pose particularly significant threats to the United States**.7 Hurricanes strike some of the most populous regions in the country and threaten critical infrastructure, such as power plants, ports, and military bases.8 **Unlike other extreme weather events, they also frequently require a significant military response to assist with disaster relief**.9 The following sections will review the impacts of climate change on security, both abroad and at home, focusing on the unique threat of natural disasters in the United States, followed by a discussion on the military’s affirmation of climate change and recognition of it as a threat to national security.

#### Federalism creates cross-state inequality and is more damaging than it is beneficial

Bruch, Meyers, and Gornick 2018

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**The decentralized structure of the safety net is one of most crucial yet least carefully studied structural design features of the US welfare state**, and it has dramatic consequences in terms of inequalities in social provision across the states. **Using state-level measures to examine geographic inequality in safety net programs, we shed new light on the potential consequences of the decentralized structure of assistance for working-age adults and families. The most striking finding of our analysis is the extent and persistence of geographic inequality**. **Scholars have long observed that inequality is an inevitable outcome of a federalist system, especially in the absence of fiscal redistribution**. But the extent of inequality in the US safety net has rarely been assessed across the weakly coordinated system of numerous separate programs that make up the American welfare state. When we undertake such an assessment using state-level measures of generosity and inclusion, we find that **the magnitude of cross-state inequality corresponds closely to the level of state discretion in financing, rule-making, and administration. The magnitude of inequality in provision, using measures that control for underlying need, suggests unequal treatment of individuals and households with similar needs who live in different jurisdictions**. **The highest levels of inequality are observed in those programs for which states have the highest level of financial responsibility and greater rule-making and administrative autonomy, especially in regard to the inclusiveness of program receipt**. The implication of these findings is that designing policies with state discretion in financing, rule-making, or administration is likely to lead to greater levels of cross-state inequality in provision than a design in which state discretion is limited. **Recent work examining state policy choices and social welfare spending also highlights potentially negative consequences of allowing state discretion.** For example, **recent work on state spending of the TANF block grant finds that 10 states spend less than 10 percent of their TANF block grant on basic assistance** (Schott et al. 2015), which likely substantially weakens TANF’s role in the safety net (Floyd, Pavetti, and Schott 2017). Building on a long line of scholarship, Soss and colleagues also demonstrate the significant role that race plays in state social welfare policy choices, with states with a greater representation of African Americans being more likely to adopt paternalistic policy designs that include more punitive sanctions and more restrictive and invasive conditions on the receipt of social welfare benefits (Soss et al. 2011). The consequences of devolution can also be seen over time. While we find several cases of changes in the extent of cross-state inequality, the vast majority of programs can be characterized as having relatively stable levels of cross-state inequality in provision. **This is likely a result of the substantial path dependence or feed-forward effects of the initial policy designs that established particular federal-state arrangements in terms of responsibility for financing, rule making, and administration**. However, the most notable findings regarding **change over time in cross-state inequality in provision is that the change in federal-state relations resulting from PRWORA increased** cross-state inequality in three of the programs funded in part by this block grant (cash assistance, targeted work assistance, and child care). This dynamic is underscored by a rare exception: in the one program, child support, in which the PRWORA imposed new and more stringent federal requirements, state outcomes converged. These findings of policy stability with select cases of convergence and divergence have several implications for the field of social policy and the well-being of families with children**. First, while these patterns of over-time, cross-state inequality are likely a result of a number of economic and political factors, we demonstrate that policy convergence and divergence are also related to how a policy structures the federal-state relationship**. In other words, **while political ideology or economic conditions may influence the policy diffusion and adoption process, attention must also be paid to how the policy itself is structured**. Second, given the magnitude and general stability of between-state inequalities in provision, any change in the policy environment that is intended to reduce such inequality would need to include changing the level of state responsibility for these programs. In fact, **even the most optimistic observers of post–civil rights era federalism concede that state discretion—in the absence of high federal standards and serious benchmarking of outcomes—is likely to do more damage than good** (Freeman and Rogers 2007). Indeed, even some champions of the 1996 reforms have beaten a retreat—expressing surprise or dismay at the ability and willingness of states (especially in the case of cash assistance) to eviscerate rather than innovate (Haskins 2016). Given the active role taken by many city and local governments to implement dramatically more progressive policies such as the $15 minimum wage, state actions ranging from preemption laws to drastic cuts in all state spending, and federal proposals to block grant Medicaid or other safety net programs, questions of state (and local) discretion and the relations between federal and state governments are centrally implicated in social welfare policy debates and should likewise be examined as centrally important aspects of social welfare policy research.

#### Federalism is used to deny immigrant families’ justice and further scrutinize them

McGee 2019

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I'm an immigration lawyer, Soli. I don't do family court. (117) "Of course it would be better if the mother stayed," the state lawyer said... "In an ideal world, Your Honor, the mother would stay, the child would stay, we'd have housing support for everyone. But we're not going to turn immigration policy on its head here, are we? This is a dependency court." (118) As Soli quickly learns when she asks her immigration lawyer in Lucky Boy how he can help her in her family court case, the law and its practitioners remain siloed. Family law's supposed inherent localism and immigration law's canonical federalism often mean that practitioners specialize in one or the other. (119) **Child welfare and immigration agencies rarely work together**. (120) **Family court judges do not compel ICE to cooperate with their orders and may use federalism as an excuse**. (121) **Yet immigration status plays a substantive role in terminating parental rights. Indirectly, it provides incentives for immigrant families to refuse essential medical and nutritional benefits, which exposes immigrant families to allegations of parental neglect**. Directly, family court judges and child welfare services often utilize immigration detention and deportation as grounds for terminating parental rights. **Punitive immigration policies also make it difficult for parents to fight family court battles**. Humanitarian parole granted to parents to stay in the U.S. to contest TPRs is contingent on judicial benevolence rather any claim to a right to custody and control over one's children. Indeed**, immigration law exceptionalism permits the immigrant family to be regulated by federal entities with little constitutional oversight. Immigrant family unity is denied with a swift deference to the political bodies that ignore the implications for family members' liberty interests**. These enmeshed systems thus combine to deprive immigrant families of any right to fight for their families in any meaningful way. This is how the State "steals children." (122) But on a theoretical level, **immigration and family law exceptionalism promote a strange confluence wherein pro-immigrant and pro-parental rights narratives are forced to rely on historical obfuscation**. In the current binary promoted by both canons, promoting parental rights or immigrant rights often inheres historical revisionism that ignores an ugly history of non-protection of poor families of color. But the immigrant family cannot rely on a test that demands adherence to the Nation's tradition and history. That basis never existed for the marginal family. **Federalism and constitutional exceptionalism thus provide expedient mechanisms to deny immigrant families the same rights to family unity as the canonical family**. However, Survived and Punished collapses this maneuvering. **It is the same state that denies immigrant parents meaningful opportunities to sustain their families and simultaneously, through the language of personal responsibility, destroys them for lack of adherence to an impossible standard**. Immigrant families are trying to survive. And for that, the neoliberal state will punish them. Survived and Punished provides a liberatory framework demanding justice for immigrant families facing family separation vis-a-vis deportation and child removals. If family and immigration law canons hold out family unity as a foremost goal, they cannot ignore the violence to families that the intersections of child welfare and immigration enforcement perpetuate. Further coordination between agencies, as suggested by the ABA model of reform, is insufficient. (123) Instead, the criminalization of poverty through the limitation of public benefits must cease. Immigrant parents can no longer face the loss of their children on the basis of status. Findings of abuse and neglect should no longer provide the basis for deportation. Until then, immigration and family law canon gesturing to the value of family unity will provide hollow comfort for immigrant families facing intervention by the State.

#### Federalism fails to determine democratic legitimacy and can even sustain autocratic regimes

Benz and Sonnicksen 15

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**Any attempt at decentralization of powers raises another issue, which is how responsibilities should be allocated to the different levels of a federal system**. The **normative economic theory of federalism provides a number of criteria to solve this problem. However, applying them in practice requires political decisions, which involve competing values** (Treisman, 2007). The principle of subsidiarity seems to provide a convincing and workable solution, prescribing the centralization of powers only to the extent that is necessary to address larger problems, or to provide public goods and services (Berman, 1994). However, **applying subsidiarity in practice proves to be far less clear cut.** There are good reasons to argue that, in principle, public services should be delivered as ‘close to the citizens’ as possible. However, **the allocation of powers always influences how tasks are fulfilled and what effects they have, which also means that, if particular competences are to be (re-)allocated, different justifications provided for centralization or for decentralization have to be balanced**. In short, a genuine political decision is therefore required, implying a challenge for democracy. As a constitutional rule, subsidiarity is part of the legal order but its application gives rise to political conflicts. **Even more problematic is the argument that federalism supports democracy by protecting the fundamental interests of minoriti**es. This reasoning does not refer to individuals but to groups defined by predetermined features. Certainly, in multilingual societies, federalism does grant various segments of society opportunities to maintain their cultural diversity, with all the costs and difficulties of political communication that come along with such arrangements (Linz, 1999; Gagnon and Tully, 2001; Kymlicka, 2005). **Federal structures** do, however, **clash with the principle of equality of citizens** (one man, one vote) **when minorities are to be protected by a separation of regional units and by granting special rights to preserve their identity**. Though they can be seen as necessary to guarantee equality of groups, such arrangements are not easy to square with basic liberal democratic rules, if collective concerns are regarded as culturally determined and individual rights to exercise cultural practices are confounded with democratic self-determination (Ferretti, 2009). As the case may be, **the notion of federalism securing minority protection surely becomes less tenable when societal minorities are not territorially concentrated, but are instead dispersed across subnational units. In such cases, federal elements such as a powerful second chamber representing states may do little, if anything toward guaranteeing rights and enfranchisement for such groups**, as poignantly illustrated by experience in the United States with the Civil Rights movement. **Research on comparative federalism reveals that federalism ‘matters’ for democracy, but this fails to translate into certainty as to ‘how’ this applies to various settings**, whether in the ‘conventional’ federal democracies of Europe and North America (see e.g. Burgess and Gagnon 2010) or in federations in other regions (for a comparative analysis in Latin American federations, see Gibson, 2004). **On the other hand, democracy and federalism can exist, and even function, without one another**. **The prevalence of unitary democratic systems easily refutes any notion of a dependence of democratic quality on federalism**, **while several cases of federations appear to demonstrate not only the ability to function without democracy, but even the emergence of ‘autocracy-sustaining’ effects of federalism** (Obydenkova and Swenden, 2013). This empirical evidence is in line with a contrasting theoretical reasoning. It states that federalism and democracy are in conflict or constitute incompatible structures. Montesquieu, who presented a federal order (république federative) as a defence association of smaller states, inspired the conceptual idea of federalism as a guarantor of liberty, which was further elaborated in the constitutional discourse of the United States (see e.g. Federalist Paper No. 9). As Montesquieu already realized, a federal order required the mutual dependence of governments at the different levels (Montesquieu, 1748/1989: 131–132**). A separation of powers alone cannot prevent the tyranny of a dictator or of majority rule. A moderate government can only evolve when institutions are interlocked in such a way that office holders check and balance each other**. Hence, in addition to horizontal federal elements such as comity, reciprocity, and mutual recognition, there must be vertical conditions met, which institutionalize relations between central or national and state governments. Member states must therefore be involved in legislation on the federal level, and the federal government must have the right to control and supervise the political activities of its member states.

#### Decentralization in environmental federalism creates a race-to-the-bottom which prioritizes short term financial goals of fossil fuels – China Proves

**Zhao and Percival 2017**

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**Much of the debate over the race-to-the-bottom theory and state decision-making dynamics has shifted since the turn of the 21st century, as scholars seek to explain new forms of government and constituent behaviour related to climate change**. In 2005, nine north-eastern states and two Canadian provinces banded together to form the Regional Greenhouse Gas Initiative (RGGI), a regional cap-and-trade programme limiting carbon emissions. **California has been a pioneer in promoting stricter regulation of GHG emissions on a statewide basis**, enacting the California Global Warming Solution Act72 in 2006. As amended in 2016, this legislation commits the state to reduce such emissions by 40% below 1990 levels by 2030. **At first blush, states voluntarily imposing regulatory costs on themselves, combined with knowledge that these actions will not result in capturing economic benefits within the region, appears to be strong evidence to refute a race to the bottom**. In articles published in 2005 and 2008, however, Engel explained that one of the reasons for states to cooperate was that they anticipate inevitable market changes, recognize the economic value of stimulating job growth in a young sector, and are attempting to ease the transition to potential future emissions credit markets.73 Similar explanations are offered for state renewable portfolio standards (RPSs), which are laws requiring retail electricity suppliers to include a minimum amount of electricity derived from renewable energy in the mix of electricity they sell. State RPSs exploded in popularity among states in the early 2000s: in the late 1990s only a couple of states had RPSs; by 2005, 25 states and the District of Columbia had enacted them.74 **Scholars have concluded that states are not racing to the top** by voluntarily passing RPSs**, but are instead attempting to cultivate the economic benefits of a new sector in anticipation of inevitable change**.75 **China has a substantial body of national environmental legislation, but its legal and administrative systems for protecting the environment are far more decentralized than those in the US**. China’s MEP plays a small, though growing, role in supervising enforcement of environmental standards; most significant enforcement decisions are made by local EPBs. China’s system of cadre oversight fosters competition between local governments. **Instead of leading to a race to the top, in practice this tends to result in lower levels of environmental protection.** The first important point is to understand the basic political framework between central and local governments. Zheng Yongnian maintains that the relationship between provincial and national governments in China reflects mutual conditionality, including top-down rules and bottom-up reactions. Although China’s reform has been market-oriented, until now it has not yet established complete private property rights, commercial law, or an independent judicial system – all of which are crucial factors in creating a market economy. **Some scholars attribute China’s high-speed development to ‘de facto federalism’, meaning that central government has delegated powers to local governments to stimulate the economy**.76 Commentators have observed that, as many political and economic powers have been delegated to local governments, the latter can countermand the policies of central government. However, the ruling party in China firmly controls the cadre personnel through appointment, assessment, transfer and decommissioning decisions made by the Party committee and its departments that are in charge of all cadres at higher levels. The cadre personnel are the central government’s ultimate trump card, and represent the most fundamental restriction on local officials. Some scholars even argue that local governments are reduced to the role of agents of central government and that, through the principle of ‘party managing cadres’, a new supervision mechanism has developed that is more effective than that of the planned economy era.77 Others believe that China’s central and local relationship can best be described as ‘regionally decentralized authoritarianism’ (RDA). Although central government has ultimate political control over local governments and their officials, it has decentralized executive and economic power in local governments. This combination is a unique feature of China’s environmental governance system. Arguably it plays a major role in determining China’s reform and development tracks, but it also creates some serious structural problems.78 Certainly **the ability of central government to evaluate the performance of local cadres remains an important source of power. In the current assessment and promotion system for officials, central government has set economic development as a ‘hard indicator’**, while social development is a less important ‘soft indicator’. It is also worth noting that the system of assessment of local officials creates a kind of competition for promotion based on economic growth, and has launched a special ‘political championship’ or ‘promotion tournament’ between local officials.79 Using economic growth as measured by growth in gross domestic product (GDP) has several advantages over other indices of governance. Firstly, officials at all levels of government need GDP growth to prove their trustworthy performance to the Communist Party and its government officials. Secondly, GDP growth increases local tax revenues, which generally reduces the financial burden on local governments, even if more tax is withheld by central government. Thirdly, GDP is easily measured, which facilitates comparisons among all official competitors.80 Another important aspect to understand is the relationship between GDP and environmental protection from the perspective of local governments. Because GDP growth is an important factor in cadre evaluation, local officials prefer to promote economic projects that generate immediate benefits during their tenure in office over environmental projects with longer-term effects.81 **Environmental protection efforts by local officials mostly produce benefits that are attributed to their successors as a result of their delayed effect**. In China the period for promotion is typically three to five years, and the period for achieving environmental protection or recovery is obviously much longer. **This makes the environment a lower priority for many officials. Also, in competing to raise GDP, officials are not satisfied with simply operating existing enterprises and projects**; they also must try to entice new projects to their areas, attracting foreign businesses and investment. Wang explains: As long as local versions of the central directive are in line with the most fundamental priority targets of the central government (maintaining economic growth), local governments can take advantage of considerable leeway (for instance, setting the specific GDP growth rate, and emphasizing investment growth and project funding instead of restructuring investment) and may diverge from the originally intended policy design.82 **During recent years, attracting foreign businesses and investment has become the top priority among local governments that seek to promote economic growth. There is evidence that this has indeed resulted in a race to the bottom, particularly through the relaxation of environmental regulations**. Other avenues include lowering the price of industrial land, relaxing labour protection, and reducing social security payments. Undeniably, the regional race-to-the-bottom development model of attracting industrial investment from 2002 to 2008 brought the Chinese economy ultra-highspeed growth of around 10% annually, and made China the global centre for low to middle-end manufacturing.83 As observed by the first author, **to discuss the race to the bottom in the Chinese context, in addition to the low cost of labour, local governments can attract global Foreign Direct Investment (FDI) to China by holding fire sales of their natural resources, with serious consequences for China’s environment**, market, and even government revenue. As China won the title of ‘world factory’, environmental destruction and energy consumption have reached intolerable levels.84 **Examples of the race to the bottom between local governments are not difficult to find in China. In the interests of attracting foreign businesses and investment, some EPBs have supported the location of polluting enterprises within their jurisdictions**. In 2005, the head of the local EPB in the Huangzhong county of China’s Qinghai Province welcomed a heavily polluting chromium salt factory that created severe environmental hazards.85 In Anhui Province, the local EPB approved the construction of a battery factory near a community of 3,000 residents. Not surprisingly, it was later discovered that more than 100 children in the vicinity of the plant had levels of lead in their blood that exceeded health standards. Many of them required hospital treatment.86 These developments are driven by a thirst for foreign investment. In recent years, many local governments have forced their executive departments, including the local environmental protection department, to participate directly in promoting investment. In order to achieve this objective some departments were forced to neglect their main duties. Officially, the local EPB should be responsible for environmental supervision, law enforcement inspection, and the examination and approval of environmental impact assessments (EIAs). Because of its involvement in efforts to attract foreign investment, however, it actually plays the role of referee as well as player. In the long run, this is bound to affect the ability of local EPBs to perform their normal responsibilities.87 **Many EPBs are praised by local governments for their ‘outstanding performance’ in attracting investment, which reveals that this troubling phenomenon persists**. Meanwhile, the few courageous EPB officials who insist that their primary function should remain environmental protection receive criticism from local leaders. For example, one local head of an EPB who suggested that a project should be relocated to another site was quickly transferred from his position.88 China’s present political system operates in a fluid fashion, with great local variation, considerable opportunity for local initiative, and tremendous pressure on local officials to give priority to rapid economic development. **As a consequence, local governments must find some methods to cope with inspection and examination from central government**. In China, sub-national officials may be forced to make trade-offs among multiple targets to balance their own political survival against the mandates of central government**. This appears to be the case particularly when limited resources and mutually incompatible goals connect with outcomes that are not entirely under their control**.**89 In addition, the alienation of grass-roots governments from the execution of environmental policy appears widespread**.90 It seems that, without the discipline of public pressure, just coping with upper levels of government on environmental issues can be difficult. Further support for this observation is provided by scholars from Tsinghua University and the National University of Singapore. **Their empirical results indicate that ‘spending on environmental amenities negatively affects city-level cadres’ odds of promotion. This is plausible because funds spent on the environment do not translate as surely into added local GDP growth’**. 91 This contrasts starkly with infrastructure investment in urban transportation, including roads and bridges, and public transportation. Transportation infrastructure as a share of total urban infrastructure investment rose from 60.2% in 2000 to 72.7% in 2010.92 Studies of the effectiveness of assessments of local officials based on achievement of China’s environmental targets offer yet another perspective. These studies focused on the implementation of China’s Five-Year Plan, and its targets for reduced emissions of pollutants. The best results were achieved in relation to reducing air pollutants, the most publicly visible among the pollutants targeted in the Plan. Water pollution, which is less visible but also a mandated target, was unaffected. Emissions of soot, an untargeted pollutant, also were unaffected. **The findings imply that a high-stakes reward for measured performance is not a universal guarantee of success. Another study shows that environmental targets do not always achieve their intended goals. Strategic and cyclical behaviour by local government officials in leadership positions often leads to short-term maximization of economic performance instead of long-term actions aimed at innovative environmental management**.93 In sum, a comparison of China and the US provides some support for the race-tothe-bottom hypothesis because local authorities in China often pursue lax enforcement policies in an effort to attract industry. Evidently, there are many other factors that contribute to explaining why the American, more federalized governance regime delivers more robust environmental protection, including a stronger tradition of respect for the rule of law and greater public involvement in the development and enforcement of environmental regulations. Nevertheless, the preliminary results are sufficiently compelling to invite further reflection on and further comparative study of the relation between decentralized governance and environmental ambition in China. 6. conclusion: **environmental federalism in an era of globalization In the US concerns over a race to the bottom have been raised as a justification for centralizing legal authority to protect the environment in the national government**. In contrast, **China has a far more decentralized legal system with greater responsibility for environmental protection given to local authorities. Local concerns over economic development and employment, as well as GDP assessment from upper leaders**, are strong motivations that may trump environmental protection, particularly when protecting the environment is perceived to interfere with local development.94 **Chinese local governments have stronger impulses to race to the bottom compared with the US. China’s persistent pollution problems**, and its highly decentralized system of environmental governance, provide significant evidence supporting the race-to-the-bottom hypothesis. Globalization has had a profound effect on the development of environmental law throughout the world. Even countries with pronounced differences in their legal and political systems borrow laws and regulatory innovations from one another to respond to environmental concerns.95 To combat the enormous environmental problems associated with its race to the bottom, China in recent years has been aggressive in borrowing regulatory innovations to strengthen its environmental laws and reform its system of environmental governance. These reforms include measures to provide emissions data to the public and to authorize public interest litigation, as well as initiatives to increase the influence of central government over local officials.