# Federalism Core — HSS 2017

### File Notes

“Federalism doesn’t have a political valence. These days it’s an extraordinarily powerful weapon in politics for the left and the right, and it doesn’t have to be your father’s (or grandfather’s) federalism.”

- Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School

# Negative

## 1NC

### 1NC — Federalism DA

#### Trump has revitalized federalism — state control of education policy is key.

Roberts 17 — Kevin D. Roberts, Ph.D., a longtime educator who is Executive Vice President of the Texas Public Policy Foundation in Austin, 2017 (“States, Not the Feds, Should Lead Education Reform,” *Real Clear Education*, February 7th, Available Online at [http://www.realcleareducation.com/articles/2017/02/07/states\_not\_the\_feds\_should\_lead\_ education\_reform\_\_110115.html](http://www.realcleareducation.com/articles/2017/02/07/states_not_the_feds_should_lead_%20education_reform__110115.html), Accessed 06-22-2017)

The era of Donald Trump offers conservative reformers opportunities they have not seen since the 1980s. The most significant are in education, where the federal government has aggrandized its power, rendering states impotent. This overreach comes at the expense of two things very dear to the nation—our schoolchildren and our understanding of shared power.

Though the Trump administration will no doubt address the former problem, its means of doing so may very well exacerbate the latter. Too often, well-intentioned, conservative executives end up using federal power to heal the wounds caused by the very same bludgeon—federal power.

If President Trump is correct in his inaugural exhortation that “now is the hour of action,” then states—not federal bureaucrats—need to lead the charge on education policy.

Among the many problems facing American education, the most significant may be our schools’ and colleges’ utter failure to teach civic education. Two generations of American students have been taught precious little about the American Founding or the Constitution, let alone the philosophical foundation of the American system of government—federalism. That notion of shared power between the federal government and states has, as a result, withered.

How fitting, then, that Texas—where the American spirit of independence, work ethic, freedom and a vibrant notion of state power is palpable—take the lead in renewing federalism. And how fitting that it do so in the policy area where revitalized state power is most needed: education.

During the otherwise-bleak years of the previous administration, the Lone Star State has shined as a beacon of liberty, deregulation and restrained government authority. Harkening to Justice Louis Brandeis's early-20th-century comment that “states are the laboratories of democracy,” Texas-based initiatives have sprouted across the nation. It's no Texan braggadocio to observe that nationwide, efforts in tort reform, deregulation, tax reduction and criminal justice reform originated in Texas. The resulting “Texas Model” has become the blueprint for leaders in dozens of states.

And that is precisely how our system should work. Though we are all familiar with the legitimate claims based on state sovereignty and the Tenth Amendment, our Founders viewed those as mere baseline expectations. In the realm of public policy, they saw the states as taking the initiative, being so bold and innovative that the federal government would have to serve as a check on them—not the other way around, as the case has been in recent years.

As the Obama administration would be the first to say, Texas has led those efforts to check federal power. That defensive posture was necessary—and, for the Republic, crucial. But now Texas and other states must seize the field of education policy, exercising their own power with bold policy initiatives.

The timing for Texas policymakers is perfect. The state's biennial legislative session has just begun, and the momentum for an education overhaul has never been stronger. At the National School Choice Week rally earlier this week, both Gov. Greg Abbott and Lt. Gov. Dan Patrick gave rousing, full-throated endorsements of school choice reforms.

There are obstacles, to be sure, but even the defenders of the status quo recognize that it's hard to defend the mediocrity of the status quo.

Among the many school choice vehicles, the most far-reaching—for Texas and the United States—is an Education Savings Account (ESA). Built on the successes of early choice vehicles such as tax-credit scholarships, ESAs offer wider and easier usage, removing the barriers to access that have been foisted on choice programs by opponents. Parents may use an ESA to pay for a host of education-related expenses, including private school tuition, tutoring, special needs programs and books.

In sum, an ESA gives parents an unprecedented means for customizing their child’s education—the exact opposite of the conveyor-belt, cookie-cutter approach that has become modern American education.

Though some reformers have advocated for federal ESAs, the inefficiency inherent in the large federal bureaucracy begs for states to take the lead. Texas, the most populous state with a bent toward conservative, free-market reforms, has a unique opportunity to show that states, as our Founders expected, can be at the forefront of policy innovation.

There could not be more at stake. Our children deserve an end to zip-code discrimination, which dramatically limits their access to decent educational options. Furthermore, the civic health of our American Republic—in particular, the long-standing view that states, not the feds, would lead—hangs in the balance.

#### Federal action on education upsets the overall balance of federalism.

Lawson 13 – Aaron Lawson, Associate at Edelson PC where his practice focuses on appeals and complex motion practice, J.D. from UMich, Educational Federalism: A New Case for Reduced Federal Involvement in K-12 Education, Brigham Young University Education and Law Journal, Article 5, Volume 2013, Issue 2, Published in the summer of 2013, http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1333&context=elj

Every state constitution, in contrast with the Federal Constitution, contains some guarantee of education.18 State courts split into two groups on how to give effect to these guarantees: (1) by evaluating education policy under Equal Protection by declaring education a fundamental right or by treating wealth as a suspect classification,19 or (2) by evaluating education policies under a framework of educational adequacy.20 In either case, these clauses establish substantive educational guarantees on the state level that do not exist at the federal level and provide the courts with a role in ensuring the fulfillment of these guarantees.21 These clauses also help to create a valuable political dynamic, which has inured to the benefit of children. As part of this political dynamic, courts define the contours of these affirmative guarantees, and the legislature fulfills its own constitutional duty by legislating between those boundaries.2

However, when the federal government legislates or regulates in a given field, it necessarily constrains the ability of states to legislate in that same field.23 In the field of education, the ability of courts to protect the rights of children is dependent on the ability of legislatures freely to react to courts. As such, anything that constrains state legislatures also constrains state courts and upsets this valuable political dynamic created by the interaction of state legislatures and state courts. An expansive federal role in educational policymaking is normatively undesirable when it threatens to interfere with this political dynamic. This dynamic receives scant attention in the literature described above. However, mindfulness of this dynamic is crucial to the proper placement of the educational policymaking and regulatory epicenter.

Constraints on state legislatures would not be as problematic if the federal government had proven itself adept at guaranteeing adequate educational opportunity for all students. However, RTTT and NCLB have, in some cases, proven remarkably unhelpful for poor and minority students.24 These negative outcomes, of course, are not guaranteed. However, the fact that federal involvement in education has produced undesirable outcomes for poor and minority students should cause policymakers to reexamine whether it is most desirable for the federal government to play such a significant role in education. This Comment argues that it is not.

#### Progressive federalism is the *basis* for resistance to Trump’s agenda.

Chemerinsky 17 — Erwin Chemerinsky, Founding Dean, Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law at the University of California-Irvine School of Law, Fellow of the American Academy of Arts and Sciences, former Alston & Bird Professor of Law and Political Science at Duke University, holds a J.D. from Harvard Law School, 2017 (“Embracing Federalism,” *Take Care*—a scholarly legal blog, March 16th, Available Online at <https://takecareblog.com/blog/embracing-federalism>, Accessed 06-14-2017)

It is time for progressives to embrace federalism and to use Supreme Court precedents protecting states’ rights to fight against Trump administration policies. Throughout American history, “states’ rights” have been used by conservatives to oppose progressive change. In the early 19th century, those opposing abolition of slavery did so in the name of states’ rights. In the late 19th and early 20th centuries, the Supreme Court struck down many progressive federal laws, including the first federal statute restricting the use of child labor, on federalism grounds. In the 1950s and 1960s, Southerners opposed desegregation by invoking states’ rights. In more recent decades, the Supreme Court, in a series of ideologically split 5-4 decisions, used federalism to strike down desirable federal laws, including provisions of the Violence Against Women Act, the Brady Handgun Control Act, and the Patient Protection and Affordable Care Act.

But now, with the Trump administration taking far right positions on almost every issue, state and local governments are a key hope. For example, President Donald Trump’s threat to withhold federal funds from “sanctuary cities” is coercion of local governments that violates principles of federalism long advocated by the conservative justices on the Supreme Court.

A great deal of confusion exists over what it means for a city to declare itself to be a “sanctuary.” It does not mean that a city will conceal or shelter undocumented immigrants from detection. Instead, when a city says that it is a “sanctuary,” it means that the city will not be an arm of federal immigration authorities. For example, a sanctuary city will not investigate, arrest, or detain individuals on the basis of immigration status. Rather, the city will provide services to all, regardless of immigration status, and generally will not turn over undocumented individuals to federal immigration authorities.

There are compelling reasons for cities to adopt such policies. Victims of crime and witnesses to crime will not come forward to the police if they fear deportation. Public health officials worry that sick people, including those with communicable diseases, will not go for treatment if they fear that it could lead to their deportation. Of course, their untreated communicable diseases can spread to all of us. Education officials worry that parents will not send their children to school if they think it might lead to deportation. Educating children, whether documented or undocumented, is a moral obligation and obviously essential for society.

Nonetheless, President Trump issued an executive order on January 25, 2017, which threatens sanctuary cities with loss of federal funds. But this violates the Tenth Amendment. The Supreme Court has held that it is unconstitutional for Congress to commandeer state and local governments and force them to administer federal mandates.

For example, in United States v. Printz, in 1997, the Supreme Court declared unconstitutional a provision of the federal Brady Handgun Control Act that required that state and local governments do background checks before issuing permits for firearms. The Court, in an opinion by Justice Scalia, said that such coercion violated principles of federalism and the Tenth Amendment.

Nor may Congress do this by putting strings on grants to state and local governments. The Supreme Court has said that such strings are constitutional only if the conditions are clearly stated, relate to the purpose of the program, and are not unduly coercive. None of these requirements are met by the Trump Executive Order. No federal statute conditions federal funds on cities denying themselves sanctuary status. And most federal grants to local governments have nothing to do with immigration.

But most of all, the Trump Executive Order is impermissibly coercive. In 2012, in National Federation of Independent Businesses v. Sebelius, the Supreme Court, 7-2, declared unconstitutional the Medicaid provisions of the Patient Protection and Affordable Care Act. These provided that if a state accepted federal Medicaid funds, it had to provide coverage for those within 133% of the federal poverty level. The federal government paid 100% of these costs until 2019 and 90% thereafter. The Court, in an opinion by Chief Justice Roberts, declared this unconstitutional as impermissibly coercing state governments in violation of the Tenth Amendment. The Court referred to this as like “a gun to the head” of the states and as “dragooning” them. The Trump Executive Order does exactly the same thing.

The federal government can use its agencies and agents to enforce federal immigration law however it chooses. But it cannot turn local governments into enforcement arms of the federal government. That is exactly what the Trump Executive Order does.

This is just one of many examples where principles of federalism must be used by progressives. In the area of environmental law, it will be crucial for state governments to adopt stricter pollution control laws in the face of the dismantling of federal environmental protections. Just last week, Scott Pruitt, the head of the Environmental Protection Agency, once more denied any link between greenhouse gas emissions and climate change. It is clear that he and the Trump administration will gut federal environmental regulations. But there long has been a principle that states can have stricter environmental laws, so long as Congress does not explicitly preempt this.

Another important area concerns decriminalization of marijuana. A number of states, including California, have repealed laws that make it a crime to possess small amounts of this drug. Attorney General Jeff Sessions has expressed opposition to these laws. But Congress cannot force state governments to enact or enforce laws. A state does not need to have any law prohibiting marijuana, or can have one with exceptions for possession for medical use or for small amounts. To be sure, the federal government can enforce its own drug laws however it wants, but it cannot compel state governments to do so.

States, of course, will vary enormously in their policies. But that, too, is what federalism and states’ rights are about. Progressives should not be hesitant to use conservative decisions to achieve desirable results. We will need all the tools we can find to fight over the next four years.

#### Resisting Trump’s agenda is essential to lower the risk of multiple existential threats.

Baum 16 — Seth Baum, Co-Founder and Executive Director of the Global Catastrophic Risk Institute, Affiliate Researcher at the Center for Research on Environmental Decisions at Columbia University, and Affiliate Scholar at the Institute for Ethics and Emerging Technologies, and a Research Scientist at Blue Marble Space Institute of Science, earned a Ph.D. in Geography from Pennsylvania State University, an M.S. in Electrical Engineering from Northeastern University, and a B.S. in Optics and a B.S. in Applied Mathematics from the University of Rochester, 2016 (“What Trump means for global catastrophic risk,” *Bulletin of Atomic Scientists*, December 9th, Available Online at <http://thebulletin.org/what-trump-means-global-catastrophic-risk10266>, Accessed 07-09-2017, Lil\_Arj)

In 1987, Donald Trump said he had an aggressive plan for the United States to partner with the Soviet Union on nuclear non-proliferation. He was motivated by, among other things, an encounter with Libyan dictator Muammar Qaddafi’s former pilot, who convinced him that at least some world leaders are too unstable to ever be trusted with nuclear weapons. Now, 30 years later, Trump—following a presidential campaign marked by impulsive, combative behavior—seems poised to become one of those unstable world leaders.

Global catastrophic risks are those that threaten the survival of human civilization. Of all the implications a Trump presidency has for global catastrophic risk—and there are many—the prospect of him ordering the launch of the massive US nuclear arsenal is by far the most worrisome. In the United States, the president has sole authority to launch atomic weapons. As Bruce Blair recently argued in Politico, Trump’s tendency toward erratic behavior, combined with a mix of difficult geopolitical challenges ahead, mean the probability of a nuclear launch order will be unusually high.

If Trump orders an unwarranted launch, then the only thing that could stop it would be disobedience by launch personnel—though even this might not suffice, since the president could simply replace them. Such disobedience has precedent, most notably in Vasili Arkhipov, the Soviet submarine officer who refused to authorize a nuclear launch during the Cuban Missile Crisis; Stanislav Petrov, the Soviet officer who refused to relay a warning (which turned out to be a false alarm) of incoming US missiles; and James Schlesinger, the US defense secretary under President Richard Nixon, who reportedly told Pentagon aides to check with him first if Nixon began talking about launching nuclear weapons. Both Arkhipov and Petrov are now celebrated as heroes for saving the world. Perhaps Schlesinger should be too, though his story has been questioned. US personnel involved in nuclear weapons operations should take note of these tales and reflect on how they might act in a nuclear crisis.

Risks and opportunities abroad. Aside from planning to either persuade or disobey the president, the only way to avoid nuclear war is to try to avoid the sorts of crises that can prompt nuclear launch. China and Russia, which both have large arsenals of long-range nuclear weapons and tense relationships with the United States, are the primary candidates for a nuclear conflagration with Washington. Already, Trump has increased tensions with China by taking a phone call from Taiwanese President Tsai Ing-wen. China-Taiwan relations are very fragile, and this sort of disruption could lead to a war that would drag in the United States.

Meanwhile, Trump’s presidency could create some interesting opportunities to improve US relations with Russia. The United States has long been too dismissive of Moscow’s very legitimate security concerns regarding NATO expansion, missile defense, and other encroachments. In stark defiance of US political convention, Trump speaks fondly of Russian President Vladimir Putin, an authoritarian leader, and expresses little interest in supporting NATO allies. The authoritarianism is a problem, but Trump’s unconventional friendliness nonetheless offers a valuable opportunity to rethink US-Russia relations for the better.

On the other hand, conciliatory overtures toward Russia could backfire. Without US pressure, Russia could become aggressive, perhaps invading the Baltic states. Russia might gamble that NATO wouldn’t fight back, but if it was wrong, such an invasion could lead to nuclear war. Additionally, Trump’s pro-Russia stance could mean that Putin would no longer be able to use anti-Americanism to shore up domestic support, which could lead to a dangerous political crisis. If Putin fears a loss of power, he could turn to more aggressive military action in hopes of bolstering his support. And if he were to lose power, particularly in a coup, there is no telling what would happen to one of the world’s two largest nuclear arsenals. The best approach for the United States is to rethink Russia-US relations while avoiding the sorts of military and political crises that could escalate to nuclear war.

The war at home. Trump has been accused many times of authoritarian tendencies, not least due to his praise for Putin. He also frequently defies democratic norms and institutions, for instance by encouraging violence against opposition protesters during his presidential campaign, and now via his business holdings, which create a real prospect he may violate the Constitution’s rule against accepting foreign bribes. Already, there are signs that Trump is profiting from his newfound political position, for example with an end to project delays on a Trump Tower in Buenos Aires. The US Constitution explicitly forbids the president from receiving foreign gifts, known as “emoluments.”

What if, under President Trump, the US government itself becomes authoritarian? Such an outcome might seem unfathomable, and to be sure, achieving authoritarian control would not be as easy for Trump as starting a nuclear war. It would require compliance from a much larger portion of government personnel and the public—compliance that cannot be taken for granted. Already, government officials are discussing how best to resist illegal and unethical moves from the inside, and citizens are circulating expert advice on how to thwart creeping authoritarianism.

But the president-elect will take office at a time in which support for democracy may be declining in the United States and other Western countries, as measured by survey data. And polling shows that his supporters were more likely to have authoritarian inclinations than supporters of other Republican or Democratic primary candidates. Moreover, his supporters cheered some of his clearly authoritarian suggestions, like creating a registry for Muslims and implying that through force of his own personality, he would achieve results where normal elected officials fail.

An authoritarian US government would be a devastating force. In theory, dictatorships can be benevolent, but throughout history, they have been responsible for some of the largest human tragedies, with tens of millions dying due to their own governments in the Stalinist Soviet Union, Nazi Germany, and Maoist China. Thanks to the miracles of modern technology, an authoritarian United States could wield overwhelming military and intelligence capabilities to even more disastrous effect.

Return to an old world order. Trump has suggested he might pull the United States back from the post-World War II international order it helped build and appears to favor a pre-World War II isolationist mercantilism that would have the United States look out for its unenlightened self-interest and nothing more. This would mean retreating from alliances and attempts to promote democracy abroad, and an embrace of economic protectionism at home.

Such a retreat from globalization would have important implications for catastrophic risk. The post-World War II international system has proved remarkably stable and peaceful. Returning to the pre-World War II system risks putting the world on course for another major war, this time with deadlier weapons. International cooperation is also essential for addressing global issues like climate change, infectious disease outbreaks, arms control, and the safe management of emerging technologies.

On the other hand, the globalized economy can be fragile. Shocks in one place can cascade around the world, and a bad enough shock could collapse the whole system, leaving behind few communities that are able to support themselves. Globalization can also bring dangerous concentrations of wealth and power. Nevertheless, complete rejection of globalization would be a dangerous mistake.

Playing with climate dangers. Climate change will not wipe out human populations as quickly as a nuclear bomb would, but it is wreaking slow-motion havoc that could ultimately be just as devastating. Trump has been all over the map on the subject, variously supporting action to reduce emissions and calling global warming a hoax. On December 5th he met with environmental activist and former vice president Al Gore, giving some cause for hope, but later the same week said he would appoint Oklahoma Attorney General Scott Pruitt, who denies the science of climate change, to lead the Environmental Protection Agency. Trump’s energy plan calls for energy independence with development of both fossil fuels and renewables, as well as less environmental regulation. If his energy policy puts more greenhouse gas into the atmosphere—as it may by increasing fossil fuel consumption—it will increase global catastrophic risk.

For all global catastrophic risks, it is important to remember that the US president is hardly the only important actor. Trump’s election shifts the landscape of risks and opportunities, but does not change the fact that each of us can help keep humanity safe. His election also offers an important reminder that outlier events sometimes happen. Just because election-winning politicians have been of a particular mold in the past, doesn’t mean the same kind of leaders will continue to win. Likewise, just because we have avoided global catastrophe so far doesn’t mean we will continue to do so.

## Uniqueness

### 2NC — Uniqueness

#### Trump has revitalized federalism by letting states take control of education policy. Momentum for the shift in balance of power is essential to cement the long-standing federalist principle — that’s Roberts.

#### Federalism is seen as in balance now---education reform remains largely under state control

Jacob 17 – Brian A. Jacob, Nonresident Senior Fellow - Economic Studies, Center on Children and Families, February 2, 2017, How the U.S. Department of Education can foster education reform in the era of Trump and ESSA, https://www.brookings.edu/research/how-the-u-s-department-of-education-can-foster-education-reform-in-the-era-of-trump-and-essa/

The current administration has vowed to leave education matters up to the states, continuing a movement started with the Every Student Succeeds Act (ESSA), which dramatically limited the federal government’s role in school accountability. While greater local control certainly has some benefits, it risks exacerbating the massive disparities in educational performance across states that already exists.

In 2015, there was almost a 30 percentile point difference in 4th grade math proficiency rates between the top and bottom states, only some of which can be explained by state-level social and economic factors. The massive disparity in progress is perhaps even more disturbing. Between 2003 and 2015, student proficiency rates grew by over 40 percent in some states, while remaining flat or even declining in other states.

The Department of Education (DoED) should take steps to highlight these disparities by identifying the lowest performing states and providing information on the status and progress of all states on a variety of educational metrics. The DoED might also provide modest funding and technical assistance to help demographically similar states work together to improve their public education systems.

On the campaign trail, President Trump often called for giving more discretion over education policy to states and localities, critiquing Common Core and what he viewed as other instances of federal overreach. In her recent confirmation hearing, President Trump’s nominee for Education Secretary—Betsy DeVos—repeatedly argued for leaving education matters up to the states.

And this desire for local control is not limited to the current administration. In 2015, Congress passed the Every Student Succeeds Act (ESSA) with strong bipartisan support. This legislation replaced the No Child Left Behind (NCLB) system of school accountability with a more narrowly tailored and flexible approach to school reform. Instead of requiring all schools to meet annual performance targets, ESSA requires states to focus on a small set of low-performing schools and gives them considerable latitude to design the interventions they deem appropriate.

In discussing ESSA, chair of the Senate Education Committee Lamar Alexander claimed, “The department was in effect acting as a national school board for the 42 states with waivers—100,000 schools. The states were doing fine until the federal government stuck its nose into it…So it was important to get the balls back in the hands of the people who really should have it.”

But the evidence suggests that not all states are doing fine. Indeed, there are massive disparities across states in terms of current student performance, and these differences are not merely a factor of the social and economic conditions in the state. All states have been actively engaged in efforts to turnaround failing schools, but the effectiveness of such efforts has varied dramatically across jurisdictions.

Public education will (and should) always be driven predominantly by local actors—teachers, administrators, school board members, and state legislators. Even under NCLB, states and districts had a mostly unfettered ability to run schools as they saw fit. But with autonomy comes the potential for greater disparity, as more capable, focused, and well-resourced states pull even further ahead of those with less capacity, fewer resources, and greater political dysfunction.

#### Trump is dismantling the federal role in education — DOE budget reductions and federal limits.

Wong 17 — Kenneth K. Wong, Walter and Leonore Annenberg Professor of Education Policy at Brown University, 2017 (“Redefining the federal role in public education: The 1st quarter of the Trump “insurgent” presidency,” *Brookings*, March 27th, Available Online at <https://www.brookings.edu/blog/brown-center-chalkboard/2017/03/27/redefining-the-federal-role-in-public-education-the-1st-quarter-of-the-trump-insurgent-presidency/>, Accessed 06-22-2017)

THE INSURGENT PRESIDENCY ATTEMPTS TO SCALE BACK THE FEDERAL ROLE

Trump’s White House aims to significantly repurpose the federal role in K-12 education. The administration has dismantled key initiatives that were associated with the Obama administration. At this point, Trump’s proposed initiatives constitute a critical reassessment, but do not yet amount to an all-out dismantling of the federal role in K-12 as embedded in the long-established “marble cake” federalism. In the FY18 budget proposal, for example, the Trump administration maintains federal funding for major categorical programs for high-needs students, such as Title I and the Individuals with Disabilities Education Act. The Every Student Succeeds Act (ESSA) reporting requirement on performance among student subgroups remains a central federal focus.

It is too early to tell whether the Trump administration plans to fundamentally reconstruct the terms of federal engagement in public education, which have been largely framed since the Great Society era of the Lyndon Johnson administration. But the administration could be headed in that direction, considering that the first quarter of the Trump presidency has included the following education policy initiatives:

Scaling back federal direction and shifting substantial decisionmaking to state and local government;

Proposing substantial budgetary reduction of the U.S. Department of Education, such as programs in college and career access, arts, health, after-school programs, teacher education, and technology;

Expanding federal support for a broad portfolio of school choice, including charter schools, vouchers for parents to enroll their children in public and private schools, federal tax credit scholarship program, and magnet programs;

Easing possible entry of for-profit providers in K-12 education;

Placing limits on federal capacity to promote equal education access, such as limiting the scope of Title IX enforcement; and

Reducing investment in data and research infrastructure.

#### Obama’s legacy leaves education authority to the states.

McGuinn 16 — Patrick McGuinn, Associate Professor of Political Science and Education at Drew Univesrity, earned his Ph.D. in Government (and an M.Ed. in Education Policy) at the University of Virginia, 2016 (“From No Child Left behind to the Every Student Succeeds Act: Federalism and the Education Legacy of the Obama Administration,” *Publius*—The Journal of Federalism, Volume 46, Issue 3, Summer, Available Online at <https://academic.oup.com/publius/article/46/3/392/1753622/From-No-Child-Left-behind-to-the-Every-Student>, Accessed 06-26-2017, Lil\_Arj)

Political scientists Paul Peterson, Kenneth Wong, and Barry Rabe (1986 ) observed thirty years ago that federal education policy tends to go through cycles of overreach and consolidation. The Obama Administration embraced an expansive view of the federal role in education and one which built on the test-based accountability framework put into place by NCLB, even as it sought to push in some new directions ( McDonnell 2010 ). Education reform is likely to be viewed, along with health care, as one of the most significant domestic policy legacies of the Obama Administration. While the Affordable Care Act was drafted by Congress and enacted through the “normal” legislative process, the Obama Administration opted to push its education agenda through unilateral executive branch action. The long-term impact of these actions on the separation of powers and federalism remains uncertain but may ultimately prove to be significant.

Through the use of competitive grant programs such as Race to the Top (RTTT), Investing in Innovation (I3), and School Improvement Grants (SIG), and the NCLB waiver process, the administration was able to change the national conversation around education, move the Democratic Party to embrace reform, and push states to enact important policy changes, particularly around charter schools, common core standards and assessments, teacher evaluation processes and school turnarounds. The administration’s aggressive push on school reform, however, eventually led to a political backlash against those same reforms and against federal involvement in education more generally, which resulted in an ESEA reauthorization (the ESSA) that rolls back the federal role in K-12 schooling in some important ways. There is, to be sure, some debate about the extent to which ESSA undoes important elements of the Obama education agenda or in fact codifies them into law ( Weiss 2015 ). Nevertheless, the legacy of the Obama Administration in education is bifurcated: on the one hand, federal activism effectively advanced the standards-based accountability movement in states, but it also mobilized opposition against “federal overreach” which helped to enact a law (ESSA) that will constrain the power of the national government in K-12 schooling in the future ( Ujifusa 2015 ).

However, ESSA for the most part is not likely to result in a return of education policymaking authority to the local level, but rather to the state level. A 2015 report from the Council of Chief State School Officers, for example, proclaimed that “Regardless of this uncertainty at the federal level, state education leaders remain firmly committed to state accountability systems that support educators, parents, and students by providing useful information that leads to improved outcomes for all students” (CCSSO 2015). While states have historically been relatively minor players in school reform, one of the enduring legacies of the Obama presidency may well be the invigoration and expansion of the state role in education ( Anagnostopolous 2013 ). Going forward states will now have considerably more latitude to determine their own education agendas, though also less political cover from federal mandates. What remains to be seen is if states have developed (or can develop) sufficient political will and administrative capacity to maintain the momentum that has built up behind education reform over the past two decades ( Camera 2015 ). Precisely how states will utilize this newfound authority is unknown, but one thing is certain: flexibility from federal mandates will result in widely divergent state levels of commitment to school reform, a wide range of policy approaches, and widely varying levels of effectiveness in improving school outcomes across the fifty states ( Weiss and McGuinn 2016 ). That is American federalism at work, for better or worse.

#### Trump guarantees state lead in status quo federalism balance---federal overreach decks effective policymaking

Burke 16 – Lindsey Burke, Director, Center for Education Policy and Will Skillman Fellow in Education, Reducing Federal Intervention in Education and Moving Toward Student-Centered Policies: 10 Steps for the Incoming Administration, Dec. 19th, 2016, http://www.heritage.org/education/report/reducing-federal-intervention-education-and-moving-toward-student-centered

The Trump Administration has the opportunity to advance education choice as appropriate, and to dramatically reduce the intervention of the federal Department of Education into local schools. The Department has been wholly ineffective at improving educational outcomes for students, loading states and local school leaders with a bureaucratic burden that saps time and financial resources and overseeing a subsidized student loan structure that has enabled colleges and universities to raise tuition at breathtaking rates and place taxpayers on the hook for loan defaults in the process.

Pursuing a package of reforms that begins the important work of making federal education funding limited, targeted, and, as appropriate, student-centered and portable holds the promise to restore state and local control of education and better serve students and taxpayers across the country.

#### Betsy DeVos has a history of supporting state control of education policy.

Boehm 17 — Eric Boehm, a reporter at Reason, 2017 (“Federalism in the Age of Trump,” *Reason*, January 19th, Available Online at <http://reason.com/archives/2017/01/19/federalism-in-the-age-of-trump-three-are>, Accessed 06-22-17)

Expanding Choice in Education

No Child Left Behind, the federal law that increased spending for schools in exchange for more testing to track student learning, turned 15 this month. It's old enough to be high school sophomore, but it's hasn't earned good grades.

By the end of the 2014 school year, 100 percent of all American students were supposed to meet the standards outlined by the Bush era law. Schools that failed to meet those goals were supposed to face consequences like restructuring.

Most of that hasn't happened. States lowered standards to make sure that more students could meet them and the Obama administration issued blanket waivers for the schools in states that adopted a new set of federal teaching guidelines called Common Core.

The problems with No Child Left Behind illustrate two of the biggest problems with the current status of public education. First, it was a one-size-fits-all solution that, second, funded education infrastructure—school buildings, administrators, and teachers—instead of funding students.

Yet the past decade-and-a-half has seen an upwelling of innovative education policy ideas from the state level, including expansions of charter schools, voucher programs, and education savings accounts. Many of those reforms have been focused on giving families a choice when it comes to public education, particularly for students trapped in failing schools for no reason other than their ZIP code.

DeVos, in her home state of Michigan, has a long history of fighting for those kinds of reforms. In 2000, she was heavily involved in an unsuccessful effort to remove the state constitution's ban on voucher programs via ballot initiative, and since then she has backed efforts to expand public charter schools there.

In her new federal post, she could help nudge states towards reform, says Ben DeGrow, director of education policy for the Michigan-based Mackinac Center.

That's where conservatives and libertarians find themselves walking a bit of a policy tightrope. Federal interventions, like No Child Left Behind, in state education policy has not worked, DeGrow says, but school choice activists should resist the urge to call for more federal action to implement policies they like.

At best, DeVos should work to peel back layers of federal regulation and encourage—not mandate—states to move in a direction that favors choice for parents and students. Of all the things on this list, this is the area where the greatest potential exists for the federal government to simply get out of the way and let the states experiment with new ideas.

### They Say: “State Influence Inevitable”

#### The federal government exerts an equal and opposite informal influence on the states.

Bulman-Pozen 15 — Jessica Bulman-Pozen, Associate Professor of Law at Columbia Law School, was a law clerk to Justice John Paul Stevens of the Supreme Court and Judge Merrick B. Garland of the U.S. Circuit Court of Appeals for the District of Columbia, received her J.D. from Yale Law School, where she served as editor-in-chief of the Yale Law Journal and was awarded the Israel H. Peres Prize by the faculty for the best student note in the Yale Law Journal. She also earned a M.Phil. from the University of Cambridge as a Gates Cambridge Scholar and a B.A. summa cum laude from Yale University, 2015 (“The Rite of Dissent: Notes on Nationalist Federalism: Responding to Heather K. Gerken's Childress Lecture, Federalism and Nationalism: Time for a Détente?,” *Saint Louis University Law Journal* (59 St. Louis U. L.J. 1133), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, Lil\_Arj)

The nationalist school of federalism has responded to federalist concerns about waning state power by describing how states continue to exercise [End Page 1144] meaningful authority without separate, sovereign spheres of action. A set of normative questions has, as Gerken argues, been met in part with empirical answers. 55 But understandings of nationalism do not emerge from this study unscathed. If state power today inheres in its integration with federal power, so too federal power today inheres in its integration with state power. State and federal actors alike use both state and federal governments to advance national agendas. They work together to articulate and further particular national interests, and, in so doing, oppose other combinations of state and federal actors who are championing distinct national interests. Nationalism is not something that exists apart from, let alone in distinction to, federalism. Instead, states play a constitutive role in our national rites of dissent.

## Link

### Link — Generic/Fed Requirements

#### Education policy is a matter of states’ rights---fed lead decks the balance of federalism

Lawson 13 – Aaron Lawson, Associate at Edelson PC where his practice focuses on appeals and complex motion practice, J.D. from UMich, Educational Federalism: A New Case for Reduced Federal Involvement in K-12 Education, Brigham Young University Education and Law Journal, Article 5, Volume 2013, Issue 2, Published in the summer of 2013, http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1333&context=elj

Courts are important players in education reform not by articulating the content of educational policy but by setting the rules governing how education reform can proceed. Educational reform involves an important give and take as interested parties advance their own solutions, but there are constitutional limits on this give and take that should be defined by state courts. The experience of educational adequacy lawsuits indicates that there is an important political dynamic at play here, which involves courts and ultimately inures to the benefit of students, as all education reform should.

To the extent that the federal government is involved, through programs like NCLB and RTTT, that involvement has the potential to diminish the effectiveness of state legislative response to state courts by binding the legislature to the requirements of federal funding programs. Thus, through NCLB and RTTT, the federal government threatens this valuable political dynamic in which courts play an important role in vindicating the substantive educational entitlements enjoyed by students. Although state legislatures may be able to respond to both the federal government and to state courts simultaneously, the very real possibility that state legislatures may, in some instances, be placed in an untenable position between federal requirements and state court dictates should counsel against extensive federal involvement in education.

An adequacy framework for educational policy requires more than that a state legislature commit to a certain level of education funding. It requires also that a legislature be sensitive to the ways in which educational policies, especially those that go beyond the funding context, affect student performance and achievement. NCLB and RTTT focus legislatures in ways that may not actually be helpful. These policies may have any number of constitutionally relevant consequences, particularly for poor and minority students.

There is a role for courts to play in educational policy, and that role is to make sure that legislatures remain sensitive to the ways educational policies affect students and especially that they remain sensitive to the unique challenges posed to racially and socioeconomically isolated students within our educational systems and society. State constitutional text demands that closing the achievement gap cannot merely be a legislative priority. State courts cannot effectively play that role in a system riddled with federal commands. There are reasons for federal involvement in local educational policy, but protection of student interests counsels in favor of more restrained involvement, rather than the ever-expanding role the federal government has given itself in the last decade.

#### Results in ineffective policymaking

Lawson 13 – Aaron Lawson, Associate at Edelson PC where his practice focuses on appeals and complex motion practice, J.D. from UMich, Educational Federalism: A New Case for Reduced Federal Involvement in K-12 Education, Brigham Young University Education and Law Journal, Article 5, Volume 2013, Issue 2, Published in the summer of 2013, http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1333&context=elj

III. THE PROBLEM WITH FEDERAL INVOLVEMENT

Restrictions on the ability of state legislatures and courts to remedy constitutionally deficient education systems are problematic, in large part because the federal government has proven inept at formulating education policy that is responsive to the needs of states. Nothing about the federal government suggests that it should be unskilled at formulating education policy. However, there are times in which federal education policy is ineffective. These instances should force us to ask whether and when it is normatively desirable for the federal government to be formulating educational policy, particularly when a substantive guarantee of some level of educational opportunity exists in the vast majority of states but not at the federal level. Accordingly, this Part describes instances in which federal involvement in education has proven to be less-than-successful.

#### It’s a massive violation of the 10th amendment

Hornbeck 17 – Dustin Hornbeck, Ph.D. Student in Educational Leadership and Policy, Miami University, Federal Role in Education Has a Long History, May 10th, 2017, https://www.higheredjobs.com/Articles/articleDisplay.cfm?ID=1285

President Donald Trump has directed the United States Department of Education to evaluate whether the federal government has "overstepped its legal authority" in the field of education. This is not a new issue in American politics.

Ever since the Department of Education became a Cabinet-level agency in 1979, opposition to federalized education has been a popular rallying cry among conservatives. Ronald Reagan advocated to dismantle the department while campaigning for his presidency, and many others since then have called for more power to be put back into the states' hands when it comes to educational policy. In February of this year, legislation was introduced to eliminate the Department of Education entirely.

So, what is the role of the state versus the federal government in the world of K-12 education?

As a researcher of education policy and politics, I have seen that people are divided on the role that the federal government should play in K-12 education -- a role that has changed over the course of history.

Growth of Public Education in States

The 10th Amendment to the United States Constitution states:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This leaves the power to create schools and a system for education in the hands of individual states, rather than the central national government. Today, all 50 states provide public schooling to their young people -- with 50 approaches to education within the borders of one nation.

Public schooling on a state level began in 1790, when Pennsylvania became the first state to require free education. This service was extended only to poor families, assuming that wealthy people could afford to pay for their own education. New York followed suit in 1805. In 1820, Massachusetts was the first state to have a tuition-free high school for all, and also the first to require compulsory education.

By the late 1800s, public education had spread to most states, in a movement often referred to as the common school movement. After World War I, urban populations swelled, and vocational education and secondary education became part of the American landscape. By 1930, every state had some sort of compulsory education law. This led to increased control of schools by cities and states.

**State led-policymaking is key to uphold the balance of federalism**

**Evers 14** –Williamson Evers (member of the Editorial Board of Education Next and a research fellow at Stanford University’s Hoover Institution. Evers was the U.S. Assistant Secretary of Education for policy, from 2007 to 2009). “How the Common Core Suppresses Competitive Federalism.” Education Next. September 8th, 2014. <http://educationnext.org/common-core-suppresses-competitive-federalism/>

We know that national standards are not needed for success in international comparisons. Back in the 1970s, the United States and Canada were both in the middling, mediocre ranks internationally. Both countries are rather similar in culture and level of commercial and industrial development. The United States has continued to wallow in mediocrity, **even as we centralize K-12 education.** Yet Canada (which has more competitive federalism in education than the United States and has no Ministry of Education in its central government) has climbed into the ranks of advanced nations in academic performance. Why is this important? Because one of the pillars of the case for national curriculum-content standards is that they are necessary for individuals to succeed in a global marketplace and that all top-performing countries have them. The case of Canada refutes that. Let’s turn to the background of the Common Core. Content standards, tests, and curriculum that had been provided by the states—thus far—will now because of Common Core be provided by federally-endorsed national curriculum-content standards, federally-funded tests, and curriculum (some of it federally funded) based on those tests and curriculum-content standards. The Common Core national standards had their origins in several Washington, D.C.-centric lobbying and policy-advocacy groups—namely, the National Governors Association (NGA), the Council of Chief State School Officers (CCSSO), and Achieve Inc. Shortly after the Obama administration came to power, it adopted and endorsed the national standards. It used competitive grants to coerce states into adopting Common Core. It paid for Common Core national tests and intervened in the test-creation process. It created a panel to oversee and monitor the national tests. It granted states waivers from the burdens of No Child Left Behind (NCLB)—conditional on continued adherence to Common Core or a federally-approved alternative. Central to the thinking (and rhetoric) of the advocates of Common Core on education reform was the idea that state performance standards were already on a downward slide and that, without nationalization, standards would inexorably continue on a “race to the bottom.” The name given to the Obama administration’s signature school reform effort, the Race to the Top program (RttT), reflects this belief. The idea is that to prevent states from following their supposed natural dynamic of a race to the bottom, the federal government needs to step in and lead a race to the top. I would disagree. While providers of public education certainly face the temptation to do what might look like taking the easy way out by letting academic standards slip, **there is also countervailing pressure in the direction of higher standards** (especially, as long as there are competing standards in other states). If policymakers and education officials let content standards slip, low standards will damage the state’s reputation for having a trained workforce. Such a drop in standards will even damage the policymakers’ own reputations. In 2007, the Thomas B. Fordham Institute **looked empirically** at state performance standards over time in a study called The Proficiency Illusion. The study showed that while states had a variety of performance standards (as would be expected in a federal system), **the supposed “race to the bottom” was not happening.** The proponents of the Common Core wrong in their claims that state performance standards were inevitably and everywhere on a downward slide. Why is this important? Because the other case for national curriculum-content standards is that without nationalization there will be a race to bottom and that only national standards can reverse a supposedly already-existing “race to the bottom.” But the facts refute this. This topples the other principal argument for national standards. To finance its Race to the Top program, the U.S. Department of Education took discretionary stimulus money that could be used as conditional grants, and then turned a portion of that money into a competitive grant program. It used the grants to encourage states to adopt the national standards. Policy analyst Michael Petrilli aptly called inducements to adopt the standards “the carrot that feels like a stick.” The department also paid for national consortia to develop national tests aligned with the national curriculum–content standards. The administration created another inducement in the form of No Child Left Behind waivers. In return for adopting the national standards or a federally approved alternative, states could escape NCLB sanctions for not making timely gains in student achievement. U.S. Education Secretary Arne Duncan went beyond what the law allows, by substituting the Obama administration’s favored education reforms (including national curriculum-content standards and tests) for NCLB’s accountability measures. I would add that the new accountability systems under the waivers can all too easily hide deficiencies in the performance of children in previously closely watched sub-groups and may weaken incentives to improve performance of those children. To some extent, federal officials have commandeered state curriculum-content standards and tests and substituted national standards and tests; to some extent, some state officials embraced the national standards-and-testing cartel as a relief from political pressure within their state and a relief from competitive pressure from other states. In any case, national standards and tests will change curriculum content, homogenize what is taught, and profoundly alter the structure of American K-12 public education. Nationalizing standards and tests would, according to this analysis, eliminate them as differentiated school-reform instruments that could be used by states in competition over educational attainment among the states. Sonny Perdue, governor of Georgia at the time Common Core was created, did not like it when the low-performing students of his state were compared with students in other states that had different standards from Georgia’s. He became the lead governor in bringing the NGA into the national standards effort. So, Yes, Common Core does undermine “competitive federalism.” Indeed, in part, it was designed to do so. Federalism is not only distinction from and rivalry between the federal government and the states; it is also rivalry among the states and among local governments within the states. As economist Richard McKenzie writes, the Founders sought to disperse power “among many different and competing governments—at the federal, state, and local levels.” The insight of competitive federalism is that fifty-one state school boards are better than a single federal Executive-branch office. Fifteen-thousand local school boards are better than either fifty-one state school boards or a single federal office. As political scientist Thomas Dye puts it, “intergovernmental competition” was seen by the Founders as an “auxiliary precaution” against the “monopoly abuse of power by a single centralized government.” Competitive federalism encourages innovation, allows movement between jurisdictions that enhances liberty, and permits a better match between policies and voter preferences. Common Core’s **national uniformity runs counter to competitive federalism**. Let’s turn to Alexis de Tocqueville, the most famous observer of American society in our history and see what he can tell us about national education standards. Tocqueville is famous for his portrait of nineteenth-century America and his philosophic insights on why the American society has flourished—and also where it might go wrong. It is worth reminding ourselves what some of Tocqueville’s insights were. Once we do, we can consider the current nationalization of K-12 public-school curriculum, with Tocqueville’s insights in mind. One of Tocqueville’s major insights was that Americans have benefited from popular participation in the large number of churches, charities, clubs, and voluntary associations in our country, as well as in state and local governments, which stand between the individual and the national government in Washington, D.C. In essence, Tocqueville believed that the civic health of America depended on popular participation in entities like associations to create and maintain religious, private, or charter schools, as well as in local authorities like school districts with fully-empowered schools boards. Such activity fosters civic virtue and “habits of the heart” and encourages everyday citizens to take on necessary social tasks that in pre-modern society lowly subjects were not allowed to undertake, but were instead the duty of the aristocracy. When Tocqueville described nineteenth-century American society he spoke, for example, of township school committees that were deeply rooted in their local communities. In those days, state control of local public education took the form of an annual report sent by the township committee to the state capital. There was no national control. Large sums (much of it taxed from laborers and farmers) were spent by these school committees, and their efforts reflected, Tocqueville thought, a widespread American desire to provide basic schooling as a route to opportunity and advancement. He admired the fact that in self-activating America, one might easily chance upon farmers, who had not waited for official permission from above, but were putting aside their plows “to deliberate upon the project of a public school.” At the same time, Tocqueville observed in European countries that activities like schooling that had formerly been part of the work of guilds, churches, municipalities, and the like were being taken over by the national government of those countries. Tocqueville feared that if either Americans neglected their participation in associations or local governments or Europeans lost their intermediate entities to the national governments, the tendency would be toward a loss of a liberty and a surrender to a soft despotism. In Democracy in America, Tocqueville described how in Europe “the prerogatives of the central power” were increasing every day and making the individual “weaker, more subordinate, and more precarious.”Once, he said, there had been “secondary powers” that represented local interests and administered local matters. Local judiciaries, local privileges, the freedoms of towns, provincial autonomy, local charities—all were gone or going. The national central government, he wrote, “no longer puts up with an intermediary between it and the citizens.” Tocqueville said that, in Europe, education, like charity, “has become a national affair.” The national government receives or even takes “the child from the arms of his mother” and turns the child over to “the agents” of the national government. In nineteenth-century Europe, the national governments already were infusing sentiments in the young and supplying their ideas. “Uniformity reigns” in education, Tocqueville said. Intellectual diversity was disappearing. He feared that both Europe and America were moving toward “centralization” and “despotism.” Tocqueville believed that in non-aristocratic societies (like America), there is strong potential for the national government to become immense and influential, standing above the citizens, not just as a mighty and coercive power, but also as a guardian and tutor. Tocqueville maintained that religion (as a moral anchor) as well as involvement in local government (such as school districts) and voluntary organizations could help America counter the tendency toward tyranny. Joseph Califano, President Jimmy Carter’s Health, Education and Welfare Secretary, articulated Tocqueville-style concerns about a centralization of schooling: “Any set of test questions that the federal government prescribed should surely be suspect as a first step toward a national curriculum. … [Carried to its full extent,] national control of curriculum is a form of national control of ideas.” Unless Common Core is stopped, its officials will dismantle what remains of state and local decision-making on classroom lessons and replace it with a new system of national tests and a national curriculum. This policy is Tocqueville’s nightmare: As in Europe, education “has become a national affair” and Common Core is the vehicle for imposing in America a one-size-fits-all centralization like that administered by the National Ministry of Education in France. Federalism, including horizontal inter-jurisdictional competition, allows policies better matched to needs and preferences of voters. It allows individuals and families to “vote with their feet”—to move to jurisdictions that they like, where the authorities don’t act counter to their liberties and preferences. Competitive federalism allows experimentation by alternative jurisdictions. One state can try one policy, while another state tries something else. This is why it is called the “laboratory of democracy.” This feature of federalism is what brought Massachusetts, Indiana, California and several other states to have the outstanding curriculum-content standards that they had before the Common Core. This is the feature of federalism that facilitates an exit strategy from Common Core: It allows states that are leaving Common Core to repeal and replace the national curriculum-content standards with outstanding pre-Common Core state standards. This can be done on an interim basis, while those states design their own replacement standards for the long run. Then the rivalry that takes place under competitive federalism will go back to work to the benefit of teachers, students, and **everyone who wants a well-educated citizenry**—and also everyone who wants to have the freedoms that are protected by the U.S. Constitution’s Madisonian system of federalism.

### Link — Trans bathrooms

#### Trans bathrooms is a matter of states’ rights---federal overreach decks federalism

Lowry 17 – Published by National Review Editors, Rich Lowry, Editor at the National Review, Returning Power to States and School Boards, Feb. 23rd, 2017, http://www.nationalreview.com/article/445181/trump-transgender-guidelines-win-federalism

Yesterday the Trump administration preserved federalism, respected the principle of local control over local schools, and corrected one of the Obama administration’s many lawless and radical executive actions. With a simple, two-page letter, the Departments of Education and Justice withdrew and rescinded two Obama-administration letters that purported to unilaterally redefine Title IX of the Education Amendments of 1972. The Obama administration had expanded Title IX’s explicit ban on sex discrimination in federally funded educational institutions to encompass “gender identity” discrimination and then imposed intrusive “guidance” on every federally funded school in the nation, on matters ranging from pronoun usage to eligibility for sports teams and access to showers, bathrooms, and sleeping quarters on overnight trips.

Put plainly, the Obama administration used a letter to rewrite a statute and then applied that letter to every public school in the United States, from kindergarten through college. This is not how one makes law in our constitutional republic. New laws require new statutes, and presidents do not have the power to rewrite old laws at will. At the very least, the Administrative Procedure Act requires that new and substantive agency rules go through a notice-and-comment procedure that gives the public a voice in the regulatory rulemaking process. The Obama administration skipped each of these steps.

Make no mistake, the actions of the Obama administration were both substantive and intrusive. While media often characterize the letter as merely providing “bathroom” guidance, it has affected broad areas of school life and conduct. In requiring schools to create a “supportive” environment for transgender students, it directed, for example, that girls could be forced to shower or change clothes next to anatomically intact males, sleep in the same room as males on overnight trips, and compete against males in sporting events.

There was no medical diagnosis or treatment requirement before schools were obligated to treat boys as girls or girls as boys. Instead, the legal requirements locked in the instant the student or the student’s parents notified the school that the student’s “gender identity” differed from his or her biological sex.

The implications for free speech and school curricula were profound, raising a host of questions. If a school tolerated other students “misgendering” a trans student through “improper” use of names or pronouns, was it creating a hostile learning environment? Would the school use the Obama administration’s guidance to attempt to override students’ free-speech rights to dissent from the decree? Did biology textbooks and other educational materials have to change to reflect the new definition of “gender” as an identity distinct from a person’s biological sex?

Critically, this federal guidance specifically instructed schools to ignore parental input or parental concerns if parents dissented from the new orthodoxy. The letter was clear: Schools were to provide transgender children “equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns.” This meant that parents who had legitimate concerns about safety, fairness, or even biological reality were left without a voice, even as the policy directly impacted their children’s educational experience.

Repealing the Obama administration’s letter leaves the difficult question of how to deal with gender-nonconforming students exactly where it belongs, with the states and local communities that traditionally control public education. Contrary to the claims of LGBT activists, preserving federalism does not leave transgender students to the mercy of bullies or bigots. As the Trump administration’s letter notes, “schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment.” Additionally, it reiterated its legal obligation to “hear all claims of discrimination.”

The Trump administration’s proper decision to rescind the Obama administration’s letter should send a clear signal to social-justice activists — what one president gives, the next president can take away. When it comes to serious matters like expanding federal nondiscrimination law, new laws should come only through constitutional process. If you want to change the law, persuade Congress to pass a statute. In our republic, letters are no substitute for lawmaking.

If states or local school boards want to recreate the Obama administration’s standards and apply them to their own schools, they are free to do so. If other states or school boards want to leave the difficult decisions to principals and teachers, who know the individuals and parents involved, they are free to do so as well. When it comes to the most delicate matters of student privacy and identity, one size most assuredly does not fit all.

\*\*Note – the next card is currently in the 1NC Shell for the Starter pack

#### A Supreme Court ruling for Grimm kills Federalism. Education is a key area – and the Aff hampers creative local solutions to a complex issue.

Dewart ‘16

Ms. Deborah J. Dewart is a lawyer specializing in Nonprofit Corporations, Estate Planning and Business Transactions cases. Amicus Brief - *GLOUCESTER COUNTY SCHOOL BOARD,* Petitioner, *v*. G. G., BY HIS NEXT FRIEND AND MOTHER, DEIRDRE *GRIMM,* Respondent BRIEF OF LIBERTY, LIFE, AND LAW FOUNDATION, WETHEPEOPLEINORDER.COM, AND THE NATIONAL LEGAL FOUNDATION AS AMICI CURIAE IN SUPPORT OF PETITIONER – September – Available at SCOUTS blog – along with all amicus briefs on this matter – modified to avoid potentially objectionable language - http://www.scotusblog.com/wp-content/uploads/2016/09/16-273-cert-amicus-LLL.pdf

The architects of the Constitution created a federal government "powerful enough to function effectively yet limited enough to preserve the hard-earned liberty fought for in the War of Independence." Shelby v. Holder, 679 F.3d 848, 853 (D.C. Cir. 2012). "[A] group of formerly independent states bound themselves together under one national government," delegating some of their powers—but not all—to the newly formed federal administration. Reynolds v. Sims, 377 U.S. 533, 574 (1964). Power is divided, not only horizontally among the three co-equal branches (Section I), but also vertically between federal and state governments. This Court has long recognized the critical need to preserve that structure. The Letters not only encroach on legislative and judicial territory, but also invade a matter of intense state and local concern that is not among the federal government's enumerated powers.

Education Is Primarily A State And Local Concern.

Education is among the many powers reserved to the states and the people. Apart from a constitutional restriction such as equal protection of the law:

[S]tate governments do not need constitutional authorization to act. The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution's text does not authorize any government to do so.

NFIB, 132 S. Ct. at 2578 (emphasis added). Judicial restraint should characterize any federal attempt to intervene in public education:

Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. ... By and large, public education in our Nation is committed to the control of state and local authorities.

Epperson v. Arkansas, 393 U.S. 97,104 (1968). "We see no reason to intrude on that historic control in this case." Bd. of Curators of University of Missouri v. Horowitz, 435 U.S. 78, 91 (1978) (citing Epperson and declining to formalize the academic dismissal process by requiring a hearing). The same is true here. There is no reason for the federal judiciary to interfere in the privacy policies of local schools and shut citizens out of the process.

The Fourth Circuit Decision Threatens Individual Liberty To Participate In The Political Process.

This case implicates the most sensitive privacy concerns of young school children. Accommodation of those concerns—both for transgender students and all others—requires compassion and skillful crafting of workable policies for each school district. It may also require construction or remodeling of facilities to implement accommodations. The federal government has attempted to dictate a one-size-fits-all "cookie cutter" solution for the entire nation. It is impossible, at the federal level, to consider the multitude of factors that may differ from one school district to another.

Federalism safeguards individual liberty, allowing states and local communities to "respond to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power." Bond v. United States, 564 U.S. 211, 221 (2011). Public school boards illustrate the outworking of this fundamental principle. Board members are typically selected, often by popular election, from among local citizens. Parents, teachers, and even students have the opportunity to participate in meetings and express their concerns. If the Fourth Circuit decision stands, these voices (perspectives) will be silenced (ignored) all across America.

This Court recently reinforced the importance of maintaining "the status of the States as independent sovereigns in our federal system . . . [o]therwise the two-government system established by the Framers would give way to a system that vests power in one central government, and individual liberty would suffer." NFIB, 132 S. Ct. at 2602. In short, "federalism protects the liberty of the individual from arbitrary power." Id. at 2578 (internal quotation marks and citation omitted). It is hard to imagine a more striking instance of arbitrary power than this case presents.

### Link — Incentives

#### Federal incentives constrain state policymaking and upsets the federalism balance

Lawson 13 – Aaron Lawson, Associate at Edelson PC where his practice focuses on appeals and complex motion practice, J.D. from UMich, Educational Federalism: A New Case for Reduced Federal Involvement in K-12 Education, Brigham Young University Education and Law Journal, Article 5, Volume 2013, Issue 2, Published in the summer of 2013, http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1333&context=elj

But there is another side to this coin, which is that “[a] state’s freedom from federal interference . . . is a freedom to make choices, not just a freedom to choose wisely.”114 As such, although “Congress may use its spending power to create incentives for states to act in accordance with federal policies[,] . . . when pressure turns into compulsion, the legislation runs contrary to our system of federalism.”115 This is particularly important in the context of education. Where conditions on federal money are too restrictive, they limit the array of choices available to state legislatures in any given area of policy. In the context of education, where a court will establish limits on the exercise of legislative discretion but call upon the legislature to formulate a remedy in the first instance, a state court’s action will be less effective since the legislature is already constrained by conditions attached to the receipt of federal funds. Indeed, where the effect of the federal policy is as harmful as some policies may be,116 the court’s ability to vindicate the rights of students might be entirely ineffective. This possibility becomes more plausible as federal intervention grows.

## Internal Link

### They Say: “Education Not Key To Overall Federalism”

#### Education is central — federal overreach threatens foundational federalist understanding of shared power — that’s Roberts.

#### Federal education policy destroys federalism in unrelated areas including environmental policy.

Kazman et al. 16 — Sam Kazman, the Competitive Enterprise Institute's general counsel, with Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute, editor-in-chief of the Cato Supreme Court Review, former special assistant/adviser to the Multi-National Force in Iraq on rule-of-law, and Joshua P. Thompson, a senior attorney at the Pacific Legal Foundation, 2016 (Amicus Brief of Pacific Legal Foundation, Competitive Enterprise Institute, and CATO Institute in support of the petitioner in the Supreme Court case *Christopher J. Christie, Governor of New Jersey, et al., v. National Collegiate Athletic Association, et al.*, November, Available Online at <https://object.cato.org/sites/cato.org/files/wp-content/uploads/christie_v_ncaa_cert-stage.pdf>, Accessed 06-30-2017)

For instance, the federal government could compel states to continue implementing education policies well after they have proven unpopular. Previously, the need to convince states to cooperate has given them significant leverage to influence federal policy. See Young, supra at 1074-75 (explaining that state resistence to federal education policy forced a federal agency to change its requirements). If, once adopted, the federal government could compel states to continue to implement particular policies, the political consequences could be far reaching. The federal government could dictate curricula or testing requirements in those states that previously embraced the federal policy. But see Milliken v. Bradley, 418 U.S. 717, 741-42 (1974) (recognizing education as an area of traditional state and local control). It could also require states to continue enforcing their current bathroom policies, whatever those may be. Cf. G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd., 822 F.3d 709 (4th Cir. 2016), cert. granted, No. 16-273 (Oct. 28, 2016). Limiting the anti-commandeering doctrine could also have severe repercussions in environmental policy. Federal-state cooperation on environmental regulation is particularly useful because states have greater local knowledge and more available enforcement officers. See Richard B. Stewart, Pyramids of Sacrifice? Problems of Federalism in Mandating State Implementation of National Environmental Policy, 86 Yale L.J. 1196, 1243-50 (1977). But if the federal government could indefinitely impose its will on states after they initially agree, that would threaten these cooperative federalism arrangements, with far reaching affects. Cf. Robert V. Percival, Environmental Federalism: Historical Roots and Contemporary Models, 54 Md. L. Rev. 1141, 1174 (1995).

#### Education is overwhelmingly a state’s right.

Prager 15 — Sarah Prager, Assistant Corporation Counsel at the New York City Law Department, was an Articles Editor of the 2013-2014 New York Law School Law Review, received her J.D. from New York Law School, 2015 (“An "IDEA" to Consider: Adopting a Uniform Test to Evaluate Compliance with the IDEA's Least Restrictive Environment Mandate,” New York Law School Law Review (59 N.Y.L. Sch. L. Rev. 653), Available Online to Subscribing Institutions via Lexis-Nexis, Accessed 07-01-2017, Lil\_Arj)

Education has always been an area of state regulation. And educational policy is one of the few spheres of authority that have been traditionally recognized as exclusively committed to the states. n209 In recent years, the federal government has employed its spending power to incentivize states to adopt or modify educational policy goals as applied to discrete segments of the student population. n210 However, even under conditional spending programs such as the IDEA, courts must remain careful not to impute to Congress an intent of upsetting the federalism status quo and, specifically, the states' traditional authority over their own educational policy. n211 While the Supreme Court has yet to address the IDEA's mainstreaming requirement, the Rowley Court did warn the lower courts not "to substitute their own notions of sound educational policy for those of the school authorities which they review." n212 Thus, while federal courts have a duty to ensure that recipient states comply with the IDEA's substantive standards, they may not "impose substantive standards of review which cannot be derived from the Act itself." n213

## Turns Case

### 2NC — Turns Segregation/Economic Inequality

#### Federalism reverses segregation and economic inequality — minority rule is *more important* than minority rights.

Gerken 12 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, 2012 (“A New Progressive Federalism,” *Democracy: A Journal of Ideas*, Number 24, Spring, Available Online at <http://democracyjournal.org/magazine/24/a-new-progressive-federalism/>, Accessed 06-14-2017)

Federalism and localism, in contrast, depend on—even glory in—the idea of minority rule. Neither theory requires you to like every policy passed at the local or state level any more than a nationalist has to agree with everything that Congress passes. But our current system rests on the assumption that decentralization can produce a healthier democracy in the long term. Ours is a world in which decision-making bodies of every sort (school committees, juries, city councils) are dominated by groups of every sort (Italians and Irish, Catholics and Jews, Greens and libertarians). We don’t worry about this representational kaleidoscope—let alone condemn it as “segregated”—merely because one group or another is taking its turn standing in for the whole. Perhaps we shouldn’t worry when it is a racial minority group in that position.

Minority rule can promote both the economic and political integration of racial minorities. We have long understood minority rights as furthering those goals, which is why we care so much about them. But minority rule can further these goals as well. Often when we talk about democratic equality, we focus on its symbolic benefits rather than its material ones. We talk about the dignity of political participation but wrinkle our noses at the idea of political patronage. But history suggests a more muscular account of what a democracy can do for minorities. Politics can play an important role in promoting economic integration, and economics can play an important role in promoting political integration.

Pam Karlan and New York University Law Professor Sam Issacharoff, for example, have argued that the economic progress of African Americans has turned not on the vindication of civil rights, but on business set-asides, affirmative action, and government employment. In their view, these programs came about precisely because blacks were able to elect their candidates of choice in majority-minority districts. “[T]he creation of a black middle class,” they write, “has depended on the vigilance of a black political class.” A group of economists at George Mason University found that black employment rates, for instance, rise during the tenure of black mayors, an effect that is particularly pronounced for municipal jobs. One might even argue that this was the story of integration for white ethnics, as Justice David Souter once argued. In Souter’s view, the Lithuanian and Polish wards of Chicago and the Irish and Italian political machines in Boston helped empower these groups. That power, in turn, “cooled” ethnicity’s “talismanic force.” In these examples, political power didn’t just facilitate economic integration. The economic advantages associated with political power exerted a gravitational pull on outsiders, bringing them into the system and giving them a stake in its success.

Admittedly, this argument involves a more rough-and-tumble account of democracy than we read in our civics textbooks. And it certainly offers a less pristine view of integration than the one we associate with the rights model. But while we have long recognized the dignity conferred by the rights afforded by the Fourteenth Amendment or civil-rights statutes, we should also acknowledge the dignity involved in groups’ protecting themselves rather than looking to the courts for help. Indeed, this notion resonates entirely with the lesson of the civil rights movement. Rights were not “conferred” upon African Americans. They fought for them, pushing reluctant national leaders to do the right thing.

Those who favor racial integration might also value minority rule for reasons that have nothing to do with its material benefits. We have long believed that political participation matters for equality. But we typically think of participation in highly idealistic and individualistic terms while ignoring crass concerns like who wins and who loses. Academics thus praise diverse democratic bodies because they involve the “politics of recognition”; they grant racial minorities the “dignity” of voice, ensuring that they play a role in any decision-making process.

However, when one turns to the question of winners and losers, the limits of the diversity paradigm are clear. While the diversity paradigm guarantees racial minorities a vote or voice on every decision-making body, it also ensures that they will be the political losers on any issue on which people divide along racial lines. Racial minorities are thus destined to be the junior partner or dissenting gadfly in the democratic process. So much for dignity.

Minority rule, in sharp contrast, turns the tables. It allows the usual winners to lose and the usual losers to win. It gives racial minorities the chance to shed the role of influencer or gadfly and stand in the shoes of the majority. Local institutions offer racial minorities the chance to enjoy the same sense of efficacy—and deal with the same types of problems—as the usual members of the majority. Minorities get a chance to forge consensus and to fend off dissenters. They get a chance to get something done and to experience the need for compromise, as dissenting from the margins normally comes with the luxury of ideological purity. And as with members of the majority, racial minorities don’t just have a chance to represent their own group—they have a chance to take their turn to stand in for the whole, which Princeton Professor George Kateb describes as a key feature of representative democracy.

If the “politics of recognition” theorists are correct that the diversity paradigm—granting racial minorities a voice on every decision-making body—represents an acknowledgment of equal status, then federalism and localism acknowledge the ability of racial minorities not just to participate, but to rule. In place of what some call the “politics of presence,” we have the politics of power. In place of the dignity of voice, we have the dignity of decisions.

The effects of turning the tables are not, of course, confined to racial minorities. It also deprives whites of the comfort and power associated with their majority status. The notion of turning the tables thus taps into a deeply intuitive idea of democratic fairness. Democracy works better when the usual losers sometimes win and the usual winners sometimes lose. Everyone ought to experience, in the words of President Bush, a good “thumpin’.”

### 2NC — State Education Policy Good

#### States improve education policy — laboratories of democracy.

Salisbury 3 — David F. Salisbury, Director of the Center for Educational Freedom at the Cato Institute, former Associate Professor in the Department of Educational Research at Florida State University, holds a Ph.D. in Instructional Technology from Brigham Young University, 2003 (“28. Department of Education,” *Cato Handbook For Congress: Policy Recommendations For The 108th Congress*, Available Online at <https://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policymakers/2003/9/hb108-28.pdf>, Accessed 06-11-2017, p. 295-296)

The way for Congress to improve American education is to step aside and let the states experiment with choice in a variety of ways. Some will expand charter schools or experiment with private management. Others will institute scholarship tax credits, parental tax credits, or vouchers either on a limited basis or open to all students. The most successful policies and programs will be emulated by other states. [end page 300]

[page 301 omitted — contains a table]

Since Congress has no authority under the Constitution to collect taxes for, fund, or regulate schools, it should not tax Americans to fund a huge federal education bureaucracy that exercises dictatorial control over curriculum, standards, and policy. The only actions that should be taken at the federal level are those that deregulate education. For example, Congress should repeal the many regulations and mandates governing special education and allow states to set up their own programs for educating special needs children. Instead of mandating tests or other accountability measures and subsidizing the public school monopoly, it should free states from their addiction to federal funds, eliminate the myriad unnecessary and unconstitutional federal programs, and allow the states to take the lead in reforming education.

Except in Washington, D.C., where Congress has constitutional authority over legislative matters, it should not set up demonstration projects or fund voucher programs. Federal tax credits for parents who use private schools may seem attractive, but, since Congress has no constitutional authority to collect taxes for education, it would be better to simply institute a tax cut for all Americans, eliminate the wasteful and meddlesome Department of Education, and allow individual Americans to decide how best to spend that money. We must remember that parents, not politicians, are in the best position to make decisions about the education of their children.

James Madison, who proclaimed that the powers of the federal government should be few and enumerated, would be shocked at what the president and Congress are doing today in relation to an aspect of family life that was never intended to come under the control of Congress, the White House, or any federal agency. Congress should take the enlightened view, consistent with that of the nation’s Founders, and draw a line in the sand that won’t be crossed. Education is a matter reserved to the states, period.

### They Say: “Race to the Bottom”

#### Federalism causes a race to the top — progressive states are statistically more prosperous.

Freeman and Rogers 7 — Richard B. Freeman, Herbert Ascherman Professor of Economics at Harvard University, Program Director for Labor Studies at the National Bureau of Economic Research, Fellow of the American Academy of Arts and Sciences, holds a Ph.D. in Economics from Harvard University, and Joel Rogers, Professor of Law, Political Science, and Sociology at the University of Wisconsin, holds a Ph.D. in Politics from Princeton University and a J.D. from Yale Law School, 2007 (“The Promise of Progressive Federalism,” *Remaking America: Democracy and Public Policy in an Age of Inequality*, Edited by Joe Soss, Jacob S. Hacker, and Suzanne Mettler, Published by the Russell Sage Foundation, ISBN 1610445104, p. 219)

The Race to the Bottom

A stronger argument from the left against federalism is that it opens the door to competition among states which will inevitably pressure states to reduce taxes, labor standards, and public goods in hopes of attracting business. Indeed, whenever states try to pass progressive legislation or tax the wealthy for public goods, some firms or wealthy persons inevitably threaten to move to areas with more favorable business or tax regulations. Business has always played states off against each other to block or roll back progressive legislation, at least until enough states pass their own but differing laws so that business ends up preferring nationalization to the multiplicity of laws (Robertson 1989; Robertson and Judd 1989; Gordon 1994; Hacker and Pierson 2002). States have sometimes been complicit in this game, exchanging autonomy and control of legislation for inequality-compounding weakness in its terms (Mettler 1998). Despite the fact that there is no systemic relation between state taxation and long-run trends in state growth, and little effect of differences in state taxation on corporate profitability, business concerns over taxes and regulation are almost always central to state political debate.22 As a political fact, state competition for capital is real.

Despite the political and rhetorical jostling, however, there is in fact little evidence that states are on a policy road to the bottom, with most states mimicking the practices of those least restrictive of business. If that were true, we’d expect substantial convergence of state regulatory legislation at the lowest possible level, but we have just seen that this is not the case. We’d also expect convergence in taxes and fees collected as a share of income, but instead we see an ongoing 50 percent difference in “tax” burden (state own source revenues as share of personal income) between low-taxing states such as New Hampshire and high-taxing ones such as New York.

Why is this? One reason for this is that states’ inherited differences in wealth, and the power of the private economy relative to government spending and effort, overwhelm any race-to-the-bottom effect in public policy that might exist. Another reason is that most states can afford taxes for public goods that are useful to business and wealth accumulation. A well-run public education and training system improves the skills of the bulk of the population, which helps business. A functioning transit infrastructure, which gets workers to work on time\* without their having to go mad in traffic helps business. An efficient local government and clear regulatory climate is more important to most businesses than small differences in standards imposed, or the costs of paying for that government efficiency. Most skilled workers and managers also want to live in a community where they can be free of pollution and crime, and have good schools, recreational opportunities, and cultural amenities available to them. Business, often more than individual citizens, knows that to attract high-quality labor they need to support livable communities. This is why states such as Minnesota and Connecticut continue to prosper despite greater worker protection, higher wages, and more taxes, and states such as South Dakota and Mississippi, lacking these types of laws, continue to be poor.

So the pressures through cross-state competition to pay attention to business concerns, while real, have not resulted in effective equalization of states’ regulation, taxation, and incomes. There is space for constructive policy intervention. The race-to-the-bottom is not the nine-hundred-pound gorilla that opponents of federalism fear it to be.

## Impact — Trump

### 1NC — Trump Module

#### Progressive federalism is the *basis* for resistance to Trump’s agenda.

Chemerinsky 17 — Erwin Chemerinsky, Founding Dean, Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law at the University of California-Irvine School of Law, Fellow of the American Academy of Arts and Sciences, former Alston & Bird Professor of Law and Political Science at Duke University, holds a J.D. from Harvard Law School, 2017 (“Embracing Federalism,” *Take Care*—a scholarly legal blog, March 16th, Available Online at <https://takecareblog.com/blog/embracing-federalism>, Accessed 06-14-2017)

It is time for progressives to embrace federalism and to use Supreme Court precedents protecting states’ rights to fight against Trump administration policies. Throughout American history, “states’ rights” have been used by conservatives to oppose progressive change. In the early 19th century, those opposing abolition of slavery did so in the name of states’ rights. In the late 19th and early 20th centuries, the Supreme Court struck down many progressive federal laws, including the first federal statute restricting the use of child labor, on federalism grounds. In the 1950s and 1960s, Southerners opposed desegregation by invoking states’ rights. In more recent decades, the Supreme Court, in a series of ideologically split 5-4 decisions, used federalism to strike down desirable federal laws, including provisions of the Violence Against Women Act, the Brady Handgun Control Act, and the Patient Protection and Affordable Care Act.

But now, with the Trump administration taking far right positions on almost every issue, state and local governments are a key hope. For example, President Donald Trump’s threat to withhold federal funds from “sanctuary cities” is coercion of local governments that violates principles of federalism long advocated by the conservative justices on the Supreme Court.

A great deal of confusion exists over what it means for a city to declare itself to be a “sanctuary.” It does not mean that a city will conceal or shelter undocumented immigrants from detection. Instead, when a city says that it is a “sanctuary,” it means that the city will not be an arm of federal immigration authorities. For example, a sanctuary city will not investigate, arrest, or detain individuals on the basis of immigration status. Rather, the city will provide services to all, regardless of immigration status, and generally will not turn over undocumented individuals to federal immigration authorities.

There are compelling reasons for cities to adopt such policies. Victims of crime and witnesses to crime will not come forward to the police if they fear deportation. Public health officials worry that sick people, including those with communicable diseases, will not go for treatment if they fear that it could lead to their deportation. Of course, their untreated communicable diseases can spread to all of us. Education officials worry that parents will not send their children to school if they think it might lead to deportation. Educating children, whether documented or undocumented, is a moral obligation and obviously essential for society.

Nonetheless, President Trump issued an executive order on January 25, 2017, which threatens sanctuary cities with loss of federal funds. But this violates the Tenth Amendment. The Supreme Court has held that it is unconstitutional for Congress to commandeer state and local governments and force them to administer federal mandates.

For example, in United States v. Printz, in 1997, the Supreme Court declared unconstitutional a provision of the federal Brady Handgun Control Act that required that state and local governments do background checks before issuing permits for firearms. The Court, in an opinion by Justice Scalia, said that such coercion violated principles of federalism and the Tenth Amendment.

Nor may Congress do this by putting strings on grants to state and local governments. The Supreme Court has said that such strings are constitutional only if the conditions are clearly stated, relate to the purpose of the program, and are not unduly coercive. None of these requirements are met by the Trump Executive Order. No federal statute conditions federal funds on cities denying themselves sanctuary status. And most federal grants to local governments have nothing to do with immigration.

But most of all, the Trump Executive Order is impermissibly coercive. In 2012, in National Federation of Independent Businesses v. Sebelius, the Supreme Court, 7-2, declared unconstitutional the Medicaid provisions of the Patient Protection and Affordable Care Act. These provided that if a state accepted federal Medicaid funds, it had to provide coverage for those within 133% of the federal poverty level. The federal government paid 100% of these costs until 2019 and 90% thereafter. The Court, in an opinion by Chief Justice Roberts, declared this unconstitutional as impermissibly coercing state governments in violation of the Tenth Amendment. The Court referred to this as like “a gun to the head” of the states and as “dragooning” them. The Trump Executive Order does exactly the same thing.

The federal government can use its agencies and agents to enforce federal immigration law however it chooses. But it cannot turn local governments into enforcement arms of the federal government. That is exactly what the Trump Executive Order does.

This is just one of many examples where principles of federalism must be used by progressives. In the area of environmental law, it will be crucial for state governments to adopt stricter pollution control laws in the face of the dismantling of federal environmental protections. Just last week, Scott Pruitt, the head of the Environmental Protection Agency, once more denied any link between greenhouse gas emissions and climate change. It is clear that he and the Trump administration will gut federal environmental regulations. But there long has been a principle that states can have stricter environmental laws, so long as Congress does not explicitly preempt this.

Another important area concerns decriminalization of marijuana. A number of states, including California, have repealed laws that make it a crime to possess small amounts of this drug. Attorney General Jeff Sessions has expressed opposition to these laws. But Congress cannot force state governments to enact or enforce laws. A state does not need to have any law prohibiting marijuana, or can have one with exceptions for possession for medical use or for small amounts. To be sure, the federal government can enforce its own drug laws however it wants, but it cannot compel state governments to do so.

States, of course, will vary enormously in their policies. But that, too, is what federalism and states’ rights are about. Progressives should not be hesitant to use conservative decisions to achieve desirable results. We will need all the tools we can find to fight over the next four years.

#### Resisting Trump’s agenda is essential to lower the risk of multiple existential threats.

Baum 16 — Seth Baum, Co-Founder and Executive Director of the Global Catastrophic Risk Institute, Affiliate Researcher at the Center for Research on Environmental Decisions at Columbia University, and Affiliate Scholar at the Institute for Ethics and Emerging Technologies, and a Research Scientist at Blue Marble Space Institute of Science, earned a Ph.D. in Geography from Pennsylvania State University, an M.S. in Electrical Engineering from Northeastern University, and a B.S. in Optics and a B.S. in Applied Mathematics from the University of Rochester, 2016 (“What Trump means for global catastrophic risk,” *Bulletin of Atomic Scientists*, December 9th, Available Online at <http://thebulletin.org/what-trump-means-global-catastrophic-risk10266>, Accessed 07-09-2017, Lil\_Arj)

In 1987, Donald Trump said he had an aggressive plan for the United States to partner with the Soviet Union on nuclear non-proliferation. He was motivated by, among other things, an encounter with Libyan dictator Muammar Qaddafi’s former pilot, who convinced him that at least some world leaders are too unstable to ever be trusted with nuclear weapons. Now, 30 years later, Trump—following a presidential campaign marked by impulsive, combative behavior—seems poised to become one of those unstable world leaders.

Global catastrophic risks are those that threaten the survival of human civilization. Of all the implications a Trump presidency has for global catastrophic risk—and there are many—the prospect of him ordering the launch of the massive US nuclear arsenal is by far the most worrisome. In the United States, the president has sole authority to launch atomic weapons. As Bruce Blair recently argued in Politico, Trump’s tendency toward erratic behavior, combined with a mix of difficult geopolitical challenges ahead, mean the probability of a nuclear launch order will be unusually high.

If Trump orders an unwarranted launch, then the only thing that could stop it would be disobedience by launch personnel—though even this might not suffice, since the president could simply replace them. Such disobedience has precedent, most notably in Vasili Arkhipov, the Soviet submarine officer who refused to authorize a nuclear launch during the Cuban Missile Crisis; Stanislav Petrov, the Soviet officer who refused to relay a warning (which turned out to be a false alarm) of incoming US missiles; and James Schlesinger, the US defense secretary under President Richard Nixon, who reportedly told Pentagon aides to check with him first if Nixon began talking about launching nuclear weapons. Both Arkhipov and Petrov are now celebrated as heroes for saving the world. Perhaps Schlesinger should be too, though his story has been questioned. US personnel involved in nuclear weapons operations should take note of these tales and reflect on how they might act in a nuclear crisis.

Risks and opportunities abroad. Aside from planning to either persuade or disobey the president, the only way to avoid nuclear war is to try to avoid the sorts of crises that can prompt nuclear launch. China and Russia, which both have large arsenals of long-range nuclear weapons and tense relationships with the United States, are the primary candidates for a nuclear conflagration with Washington. Already, Trump has increased tensions with China by taking a phone call from Taiwanese President Tsai Ing-wen. China-Taiwan relations are very fragile, and this sort of disruption could lead to a war that would drag in the United States.

Meanwhile, Trump’s presidency could create some interesting opportunities to improve US relations with Russia. The United States has long been too dismissive of Moscow’s very legitimate security concerns regarding NATO expansion, missile defense, and other encroachments. In stark defiance of US political convention, Trump speaks fondly of Russian President Vladimir Putin, an authoritarian leader, and expresses little interest in supporting NATO allies. The authoritarianism is a problem, but Trump’s unconventional friendliness nonetheless offers a valuable opportunity to rethink US-Russia relations for the better.

On the other hand, conciliatory overtures toward Russia could backfire. Without US pressure, Russia could become aggressive, perhaps invading the Baltic states. Russia might gamble that NATO wouldn’t fight back, but if it was wrong, such an invasion could lead to nuclear war. Additionally, Trump’s pro-Russia stance could mean that Putin would no longer be able to use anti-Americanism to shore up domestic support, which could lead to a dangerous political crisis. If Putin fears a loss of power, he could turn to more aggressive military action in hopes of bolstering his support. And if he were to lose power, particularly in a coup, there is no telling what would happen to one of the world’s two largest nuclear arsenals. The best approach for the United States is to rethink Russia-US relations while avoiding the sorts of military and political crises that could escalate to nuclear war.

The war at home. Trump has been accused many times of authoritarian tendencies, not least due to his praise for Putin. He also frequently defies democratic norms and institutions, for instance by encouraging violence against opposition protesters during his presidential campaign, and now via his business holdings, which create a real prospect he may violate the Constitution’s rule against accepting foreign bribes. Already, there are signs that Trump is profiting from his newfound political position, for example with an end to project delays on a Trump Tower in Buenos Aires. The US Constitution explicitly forbids the president from receiving foreign gifts, known as “emoluments.”

What if, under President Trump, the US government itself becomes authoritarian? Such an outcome might seem unfathomable, and to be sure, achieving authoritarian control would not be as easy for Trump as starting a nuclear war. It would require compliance from a much larger portion of government personnel and the public—compliance that cannot be taken for granted. Already, government officials are discussing how best to resist illegal and unethical moves from the inside, and citizens are circulating expert advice on how to thwart creeping authoritarianism.

But the president-elect will take office at a time in which support for democracy may be declining in the United States and other Western countries, as measured by survey data. And polling shows that his supporters were more likely to have authoritarian inclinations than supporters of other Republican or Democratic primary candidates. Moreover, his supporters cheered some of his clearly authoritarian suggestions, like creating a registry for Muslims and implying that through force of his own personality, he would achieve results where normal elected officials fail.

An authoritarian US government would be a devastating force. In theory, dictatorships can be benevolent, but throughout history, they have been responsible for some of the largest human tragedies, with tens of millions dying due to their own governments in the Stalinist Soviet Union, Nazi Germany, and Maoist China. Thanks to the miracles of modern technology, an authoritarian United States could wield overwhelming military and intelligence capabilities to even more disastrous effect.

Return to an old world order. Trump has suggested he might pull the United States back from the post-World War II international order it helped build and appears to favor a pre-World War II isolationist mercantilism that would have the United States look out for its unenlightened self-interest and nothing more. This would mean retreating from alliances and attempts to promote democracy abroad, and an embrace of economic protectionism at home.

Such a retreat from globalization would have important implications for catastrophic risk. The post-World War II international system has proved remarkably stable and peaceful. Returning to the pre-World War II system risks putting the world on course for another major war, this time with deadlier weapons. International cooperation is also essential for addressing global issues like climate change, infectious disease outbreaks, arms control, and the safe management of emerging technologies.

On the other hand, the globalized economy can be fragile. Shocks in one place can cascade around the world, and a bad enough shock could collapse the whole system, leaving behind few communities that are able to support themselves. Globalization can also bring dangerous concentrations of wealth and power. Nevertheless, complete rejection of globalization would be a dangerous mistake.

Playing with climate dangers. Climate change will not wipe out human populations as quickly as a nuclear bomb would, but it is wreaking slow-motion havoc that could ultimately be just as devastating. Trump has been all over the map on the subject, variously supporting action to reduce emissions and calling global warming a hoax. On December 5th he met with environmental activist and former vice president Al Gore, giving some cause for hope, but later the same week said he would appoint Oklahoma Attorney General Scott Pruitt, who denies the science of climate change, to lead the Environmental Protection Agency. Trump’s energy plan calls for energy independence with development of both fossil fuels and renewables, as well as less environmental regulation. If his energy policy puts more greenhouse gas into the atmosphere—as it may by increasing fossil fuel consumption—it will increase global catastrophic risk.

For all global catastrophic risks, it is important to remember that the US president is hardly the only important actor. Trump’s election shifts the landscape of risks and opportunities, but does not change the fact that each of us can help keep humanity safe. His election also offers an important reminder that outlier events sometimes happen. Just because election-winning politicians have been of a particular mold in the past, doesn’t mean the same kind of leaders will continue to win. Likewise, just because we have avoided global catastrophe so far doesn’t mean we will continue to do so.

### 2NC — Impact Explanation

#### Progressive federalism allows states to assert “states’ rights” in bucking Trump’s agenda on a broad range of issues including executive overreach, environmental policies, immigration and marijuana legalization — that’s Chemerinsky.

#### Trump’s agenda is an existential risk — policies that promote authoritarianism, protectionism, militarism, environmental destruction, or undermine disease response, arms control, and the safe management of emerging technologies all threaten the survival of human civilization — that’s Baum.

### 2NC — Federalism Checks Trump: General

#### Federalism prevents executive overreach while helping minorities get political power.

Somin 16 — Ilya Somin, Professor of Law at George Mason University, former John M. Olin Fellow in Law at Northwestern University Law School, holds a J.D. from Yale Law School and an M.A. in Political Science from Harvard University, 2016 (“Heather Gerken on Trump and progressive federalism,” *The Washington Post*, December 14th, Available Online at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/12/14/heather-gerken-on-trump-and-progressive-federalism/?utm\_term=.b6e833c4f04d&tid=a\_inl, Accessed 06-19-2017)

Yale Law School Professor Heather Gerken has long argued that liberals should take a more favorable view of federalism. In an important new article on Vox, she outlines a variety of ways in which they could potentially use state and local power to resist the Trump administration. There are a number of parallels between Gerken’s argument and my own analysis of the same subject. For example, we both outline similar strategies that sanctuary cities could use to resist Trump’s efforts to deport undocumented immigrants.

Perhaps the most notable difference between Gerken’s position and mine is that she puts little if any emphasis on judicially enforceable limits on federal power. This is part of a longstanding disagreement between Gerken and other modern progressive champions of federalism on the one hand, and conservative and libertarian federalists on the other. In my view, the new progressive federalism would be on a sounder footing if its advocates accept the need for strong, binding constitutional limits on federal power rather than resist it. In some of her recent writings, Gerken has shown greater openness to such limits on than in the past. But I think she and other liberals should move further in that direction.

Gerken’s Vox article actually underscores this point very well, even if perhaps unintentionally. Many of her suggested strategies for resisting Trump implicitly depend on constitutional limits on federal power for their effectiveness. For example, her (and my) recommendation that sanctuary cities should refuse to cooperate with federal deportation efforts relies on Supreme Court decisions forbidding federal “commandeering” of state and local governments. Otherwise, Trump and the GOP-controlled Congress could simply enact laws ordering the states to comply, and potentially imposing severe punishment on officials who refuse to do so.

Both the sanctuary city policy and some of Gerken’s other ideas might be undermined if the federal government could use conditional spending grants to pressure dissenting states into obedience. As Gerken briefly notes, such pressure tactics are rendered more difficult by Supreme Court decisions requiring that any such conditions be unambiguously clear, related to the purpose of the federal grant in question, and not so sweeping as to be “coercive.”

Tighter constraints on federal power could also curb other dangers posed by Trump to blue states, such as efforts to undermine state-level marijuana legalization. In addition, liberal efforts to use federalism to resist Trump are more likely to succeed in both courts of law and the court of public opinion if they attract at least some conservative and libertarian support. That support is more likely to be forthcoming if it is based on acceptance of generalized limits on federal power that can protect right and left alike, as opposed to ad hoc opposition to specific Trump policies.

Some liberals will likely continue to oppose nearly all hard-wired structural constraints on federal power for fear that they might be used to impede federal efforts to protect racial, ethnic, and other minorities. But as both Gerken and I have explained in the past, greater political decentralization can often benefit vulnerable minorities, particularly under modern conditions. Moreover, it is possible to impose tighter limits on federal power in many other areas, while still leaving the federal government broad power to combat invidious discrimination by state and local authorities.

Ultimately, the greatest threat to both unpopular minorities and many other groups is a largely unconstrained federal government dominated by their political enemies. In a diverse and increasingly polarized society with deep reservoirs of partisan hatred, both right and left have much to fear from such concentrated power. Recent political history shows that neither side can hope to stave off the threat by establishing a stranglehold over Washington that eliminates the possibility that the other will return to power. Rigorous enforcement of tight constitutional constraints on federal authority cannot completely eliminate the danger posed by the combination of polarization and the vast power of the modern state. But it can make it less menacing than it would be otherwise.

#### States can constrain Trump and create innovative policies — federalism is key.

Somin 17 — Ilya Somin, Professor of Law at George Mason University, former John M. Olin Fellow in Law at Northwestern University Law School, holds a J.D. from Yale Law School and an M.A. in Political Science from Harvard University, 2017 (“Why we need enforceable constitutional limits on federal power,” *The Washington Post*, January 3rd, Available Online at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/01/03/why-we-need-enforceable-constitutional-limits-on-federal-power/, Accessed 06-19-2017)

Yale Law School Professor Heather Gerken has a posted a thoughtful response to my commentary on her analysis of the ways in which liberals and others could use federalism to resist the upcoming Trump administration. We agree that federalism can play a valuable role in many ways. But Gerken argues that we don’t need judicially enforceable constitutional limits on federal power in order to do so.

Gerken argues that such limits are both infeasible and undesirable. I think she is mistaken on both counts. We need enforceable limits on federal power so that dissenting states and localities don’t get trumped by Trump – or any other federal enforcer.

In Gerken’s view, “judicial efforts to hold back the tide of federal power have been a failure.” They have indeed not gone as far as I and many others would like. But there has been important progress in recent years. That progress has gone far enough that many of the liberal proposals for resisting Trump actually rely on Supreme Court decisions limiting federal power. As I noted in my earlier post on Gerken’s work, this is true of her own and other liberals’ suggested strategies for protecting “sanctuary cities.”

Moreover, judicial enforcement of federalism could be much more effective if it enjoyed broader support, particularly from liberals. If Gerken and other leading liberal scholars and judges come around on the issue, the courts could do a lot more to restrict federal power than is currently the case. As with most forms of judicial review, judicial protection for federalism is likely to be stronger if it enjoys substantial bipartisan support. There is much that liberals could accomplish if they join with libertarians, conservatives, and others to help make federalism great again.

Gerken also wants the federal government to retain the power to “trump” state policies because she wants a form of federalism that enables states to help “forge national norms rather than allow us to shield ourselves from the federal policies with which we disagree.” As discussed in my earlier post and earlier critiques of Gerken’s work, I think the idea of a federal trump card is at odds with Gerken’s own emphasis on the value of federalism in protecting vulnerable dissenters and minorities. I cannot resist adding that the trump card looks even more dubious than usual in the soon-to-be era of Donald Trump. A trump card that regularly falls into the hands of Trump and his ilk is not one that liberals – or the rest of us – should support.

States that adopt innovative policies can indeed help create better norms that spread to other parts of the nation. But they don’t have to do that through federal coercion that compels the rest of the country to adopt them. In many cases, the better approach is a combination of competition and expanding opportunities for people to “vote with their feet” for better jurisdictions. Competition and foot voting put pressure on underperforming states and localities to improve their policies, while giving citizens greater freedom and more choice than is available with top-down federal norm-setting through trump cards (or even Trump cards).

Finally, Gerken reiterates her longstanding argument that states don’t need enforceable constitutional protections to resist the federal government, because they can often do so in other ways. She is surely right to argue that state resistance to federal dictates does not always depend on formal constitutional rules. But, in the absence of enforceable limits on federal power, such resistance will often be either ineffective, or unlikely to arise in the first place.

For example, state and local resistance to Trump’s potential attacks on sanctuary cities is not likely to succeed if the federal government could simply order local officials to do its bidding, on pain of severe penalties. State and local resistance to this and other federal policies can also be undermined (and often has been) by conditional federal grants, especially if there are no limits on the scope and extent of the conditions and associated penalties for violators.

It is true, as Gerken famously put it, that, absent enforceable constitutional limits on federal power, states and localities can still wield the “power of the servant.” But they can accomplish a lot more if they were also masters of their own domain. There is a reason why we normally assume that masters have greater autonomy than servants do. To adapt one of Gerken’s other famous phrases, those who value “dissenting by deciding” should help ensure that dissenting states actually have the final power of decision over some range of important issues. Otherwise, they might get trumped by Trump.

#### Only strong states’ rights can constrain Trump executive overreach.

Hamilton 17 — Marci A. Hamilton, a columnist for *News Week*, 2017 (“How to stop Trump? The founding fathers thought of that,” *Newsweek*, January 30th, Available Online at http://www.newsweek.com/how-stop-trump-founding-fathers-thought-550014, Accessed 06-22-2017)

For those panicking at President Donald Trump’s speedy signing of a pile of executive orders that reverse longtime policies during his first week, take a deep breath.

The Framers crafted a system to check men like Trump, and in fact they expected most everyone to hold power to abuse it.

The Framers of the Constitution, intellectually led by James Madison and James Wilson, were informed by an attitude toward human nature that is the key to the Constitution’s enduring success: Assume anyone who holds power will be tempted to abuse it, and then limit it.

It is related to Presbyterian-based Calvinism at the time, and the influence of now-Princeton University’s Reverend John Witherspoon, but they took that principle out of its theological underpinnings and crafted a Constitution for all Americans, whether Deists, Christians, Jews or other believers.

This core insight that humans can’t be trusted and need to be checked is the reason the United States will survive and even thrive during a Trump presidency.

For the Framers, the question to be addressed for every provision of the Constitution was this: If we give this amount of power to this individual/institution, how do we check it? The result in broad outline produced the following checking structures: separation of powers (between the three branches of government—legislative, executive and judicial); separation of power between the federal government and the states; and separation of power between church and state.

#### Strong federalism checks Trump executive overreach.

Loth 17 — Renée Loth, an editor at the *Boston Globe*, 2017 (“Liberals are reconsidering federalism in the wake of Trump,” *Boston Globe*, January 9th, Available Online at https://www.bostonglobe.com/opinion/2017/01/09/liberals-are-reconsidering-federalism-wake-trump/HgskudDGK4Claz7coGTa7M/story.html, Accessed 06-22-17)

With all of official Washington in the grip of Republicans, and an autocratic — not to say imperial — figure in the White House, many liberals are taking a second look at the 10th Amendment. That’s the one where all power not explicitly granted to the federal government by the US Constitution devolves to the states. “Progressive federalism,” a term that once might have been considered an oxymoron, is coming into vogue as worried Americans look to the states to protect their rights or to resist President-elect Donald Trump’s more despotic policy proposals.

Already, states are preparing rearguard actions against executive overreach. California has declared that it will remain committed to the Paris climate accords even if Trump, as threatened, pulls the United States out of the global agreement. Just last week the California state legislature hired former attorney general Eric Holder to help craft legal strategies to thwart the Trump agenda. A number of cities have pledged to continue protecting undocumented immigrants from deportation roundups despite Trump’s threats to cut off their federal funding. “The states are where it’s at,” says Carol Rose, director of the Massachusetts Civil Liberties Union. “We are the safe havens of democracy.”

It’s ironic that progressives find themselves looking for decentralized solutions to overweening power in Washington. Federalism, and its coarser cousin “states’ rights,” have long carried a noxious whiff of bigotry because of Southern-state resistance to civil rights and the abolition of slavery. And, since at least the 1960s and President Johnson’s Great Society, liberals have looked to Washington for broad safety-net protections, and to the Supreme Court to confer an ever-widening circle of liberties. Small-government federalists, by contrast, have often pushed local control as a cover for retrograde policies on civil rights and social welfare, including deep budget cuts masquerading as “block grants.”

#### Federalism checks trump — nullification and local resistance fail.

Messamore 17 — W.E. Messamore, has an entrepreneurship major and is a graduate of Belmont University, 2017 (“Democrats Use Federalism, “States’ Rights” in Fight Against Trump, Republicans,” *IVN*, March 2nd, Available Online at https://ivn.us/2017/03/02/democrats-use-federalism-states-rights-fight-trump-republicans/, Accessed 06-22-17)

With Republicans in control of the White House and both houses of Congress, Democrats may find refuge in the use of states’ rights and even local defiance of federal policy on the city level.

Heather Gerkin, the J. Skelly Wright Professor of Law at Yale Law School writes:

“Progressives have long been skeptical of federalism, with the role that “states’ rights” played in the resistance to the civil rights act and desegregation typically featuring prominently in their criticism…

That is a mistake. Federalism doesn’t have a political valence. These days it’s an extraordinarily powerful weapon in politics for the left and the right, and it doesn’t have to be your father’s (or grandfather’s) federalism.”

Relinquishing the tactics of nullification and local resistance to federal policies they disagree with is a mistake Democrats have vocally signaled that they are not going to make.

Major metropolitan governments are the only level of US government that Democrats control today with Democratic governors outnumbered by Republican governors 31 to 19, and after losing the White House and failing to secure either chamber of Congress.

Of America’s 20 biggest cities, however, all but three are locked up by Democratic mayors and closely aligned blue electorates comprising 32 million Americans. And they have vowed to actively defy Trump. Immigration is a major example:

“…in Los Angeles, where nearly half of the city’s residents are Latino, Mayor Eric Garcetti has vowed to do everything he can to fight widespread deportations of illegal immigrants.

In New York, with a large and diverse Latino population, Mayor Bill de Blasio has pledged not to cooperate with immigration agents. And Mayor Rahm Emanuel of Chicago has declared that it ‘will always be a sanctuary city.’

Across the nation, officials in sanctuary cities are gearing up to oppose President-elect Donald J. Trump if he follows through on a campaign promise to deport millions of illegal immigrants.”

And Democratic mayors in major US cities are promising to ignore federal policy and chart their own path on policing issues like drug prohibition enforcement, stop-and-frisk, and sentencing; climate change and renewable energy; healthcare and entitlement programs; and civil rights issues for LGBT.

### 2NC — Federalism Checks Trump: Agenda

#### Federalism is more effective at protecting minority rights and limiting Trump overreach on marijuana legalization and immigration.

Somin 16 — Ilya Somin, Professor of Law at George Mason University, former John M. Olin Fellow in Law at Northwestern University Law School, holds a J.D. from Yale Law School and an M.A. in Political Science from Harvard University, 2016 (“Trump, federal power, and the left – why liberals should help make federalism great again,” *The Washington Post*, December 5th, Available Online at <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/12/05/trump-federal-power-and-the-left-why-liberals-should-help-make-federalism-great-again/>, Accessed 06-19-2017)

One of the few beneficial effects of Donald Trump’s unexpected election victory has been a renewed interest in federalism among many on the left. In recent days, prominent liberal legal scholars Noah Feldman and Jeff Rosen, and political scientist Corey Brettschneider have all published notable articles on how state and local governments can use federalism to curb Trump and protect vulnerable minorities. All three argue that liberals should make use of constitutional constraints on federal power traditionally championed by conservatives and libertarians, including the conservative majority on the Supreme Court. Feldman’s article on how federalism can be used to protect sanctuary cities actually makes many of the same points as my own earlier piece on the same subject.

Some conservatives and libertarians will be tempted to dismiss the new liberal interest in federalism as unprincipled opportunism. Until recently, most liberals forcefully opposed the pro-federalism Supreme Court decisions many now seek to rely on to shield blue states against Trump. The next time there is a liberal Democrat in the White House, perhaps they will do so again.

“Fair weather federalism” is indeed a common phenomenon, on the right as well as the left. Both Democrats and Republicans tend to support expansive federal authority when their side is in power in Washington, and view it more skeptically when they are on the outs. It’s certainly possible that this will turn out to be just another iteration of the same old story.

But if we want to break this sad pattern, we should spend less time on recriminations over past inconsistencies and more looking for ways to build a durable cross-ideological coalition in favor of stronger enforcement of constitutional limits on federal power. In this context, it is important to recognize that newfound liberal interest in federalism is not solely a result of their fear of Trump. In recent years, some on the left have shown a greater openness to setting limits on federal power, and scholars such as Heather Gerken have pointed out that state and local governments now often protect vulnerable minorities better than Washington does.

Liberals could potentially build on these ideas to use federalism as a bulwark against Trumpian abuses. Their chances of succeeding in this endeavor, however, are likely to be greater if they can form a coalition with at least some like-minded conservatives and libertarians. A cross-ideological case for federalism is more likely to prevail in court challenges to Trump policies (which are likely to be heard a Supreme Court with a conservative majority), and more likely to succeed in the political arena as well.

If Trump attempts to implement the populist/nationalist agenda he campaigned on, there might be more opportunities for such alliances than in the past. In addition to drawing opposition on the left, the Trumpist agenda on constitutional and other issues also includes many elements inimical to libertarians and a good many constitutional conservatives – myself most definitely included. Many of us have been arguing for tighter enforcement of constitutional limits on federal power for many years, and would welcome greater cross-ideological cooperation on that front.

A good many liberals are understandably hesitant to commit to enforceable limits on the scope of federal power because of a fear that doing so might inhibit federal efforts to protect racial, ethnic, and other minorities against state and local oppression. But even very robust federal antidiscrimination efforts do not require virtually unlimited federal power to regulate anything that might have some effect on the economy, or nearly unconstrained federal authority to use conditional grants to pressure states and localities to do their bidding. Principled liberals can favor broad federal authority to protect minority groups under the Fourteenth Amendment, while simultaneously enforcing tighter limits on Washington’s power in other areas. We can make federalism a bulwark against national government oppression without returning to the bad old days when “states rights” was a shield for slavery and segregation.

As the Trump agenda suggests, federal power that has few or no constraints across the board can actually be a menace to minority groups. Other things equal, oppressive federal policies may actually be even more dangerous than comparable state and local ones. Federal policies affect more people, and are more difficult to escape by “voting with your feet” in favor of more tolerant jurisdictions.

It would be naive to expect left and right to reach a complete consensus on constitutional federalism anytime soon. There are still many obstacles to cross-ideological cooperation on these issues. Some liberals will continue to support nearly unconstrained federal power. All too many on the right will back Trump’s policies even when they go against their previous commitments on constitutional issues. And, obviously, there will be continued disagreements over interpretative methodology, such as the longstanding conflict between originalism and living constitutionalism (though the former has attracted some new left-wing support in recent years).

But, in the wake of Trump, perhaps there can at least be broader agreement that there should be serious, judicially enforceable limits on federal power to coerce state governments (whether directly or through conditional grants), and on federal authority to regulate private activities that are not closely connected to interstate commerce. These, after all, are exactly the tools that a Trump-led GOP could potentially use to break the resistance of dissenting state and local governments. They can also be used to harm immigrants and other minorities in a wide variety of ways, and to stifle liberal state policies, such as marijuana legalization.

More generally, recent political history has shown that neither Democrats nor Republicans can expect to achieve uncontested long-term control of the federal government anytime soon. Both sides have to reckon with the likelihood that the other will be in power a substantial proportion of the time. In an age of growing polarization and partisan hatred, both left and right have much to fear anytime Congress and the presidency falls under the control of the other – even if the president in question is not a dangerous demagogue like Trump.

Stronger enforcement of constitutional limits on federal authority cannot fully solve these problems. But by limiting the power available to the ruling party in Washington, it can curb some of the worst potential depredations of each party, and reduce the extent to which each must fear the other. That objective ought to be attractive to a wide range of people who may not otherwise agree on much else. Perhaps, together, we can help make American federalism great again.

#### Federalism enables the states to constrain conservative Trump policies.

Gerken and Revesz 17 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, and Joshua Revesz, Student at Yale Law School, 2017 (“Progressive Federalism: A User’s Guide,” *Democracy: A Journal of Ideas*, Number 44, Spring, Available Online at http://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/, Accessed 06-14-2017)

So, as a result of the federalism doctrine created by conservative justices, President Trump and the GOP-dominated Congress don’t have many sticks with which to bludgeon uncooperative states and cities. Their best bet for getting things done mostly involves carrots. This creates a heavy incentive for moderation and compromise. If Trump and his allies want to enact national policy, they must build a national consensus. At the very least, they will need to compromise enough to make their policies palatable to the other side. Just ask the Obama Administration, which had to grant red states waivers and other incentives to persuade them to expand health-care coverage.

To be sure, uncooperative federalism will not always result in a progressive victory. If President Trump spends enough political capital, he’ll surely win some of his battles against blue cities and states. But he cannot win the war. The federal government doesn’t have the resources to carry out all of the new Congress’s proposals. Spending time and money to crack down on marijuana, for example, takes resources away from fights over immigration or climate change.

The federal government cannot hire its own cops or teachers or put its own bureaucrats at every desk. Even if Trump doesn’t have to make nice with Democrats on the Hill, he’ll need the support of America’s progressive enclaves to actually get things done. A federal program that doesn’t affect California, New York, and Illinois—to say nothing of Houston, Atlanta, and Phoenix—won’t touch a huge portion of America. If progressive leaders hold their ground, they can shield their constituents from the policies they most oppose and maybe even force the new Administration to seek compromise.

### 2NC — Immigration (Moral Impact)

#### Trump’s immigration order is immoral — it threatens millions of children.

Cervantes and Walker 17 — Wendy Cervantes, Senior Policy Analyst at the Center for Law & Social Policy (CLASP), the Vice President of Immigration and Child Rights for First Focus and the Director of the Center for the Children of Immigrants, holds an M.A. in Latin American Studies and Political Science from the University of New Mexico and a B.A. in Communications from the University of Southern California, and Christina Walker, Policy Analyst, Child Care and Early Education at CLASP, 2017 (“Five Reasons Trump’s Immigration Orders Harm Children,” *Center For Law & Social Policy*, April, Available Online at <http://www.clasp.org/resources-and-publications/publication-1/Five-Reasons-Immigration-Enforcement-Orders-Harm-Children.pdf>, Accessed 07-06-2017, Lil\_Arj)

Research shows that harsh immigration enforcement policies have consistently undermined the health, economic security, and overall wellbeing of children in immigrant families.1

Earlier this year, the Trump Administration issued two executive orders that drastically expand the intensity and scope of federal immigration enforcement activities in the United States. These orders include policy changes that will have damaging consequences for children living in mixed-status immigrant families, the vast majority of whom are U.S. citizens, as well as unaccompanied children seeking protection here. 2

One order on immigration enforcement activities within the United States prioritizes more immigrants—including parents—for deportation, triples the number of immigration agents, and calls for increased collaboration between federal Immigration and Customs Enforcement (ICE) and local law enforcement agencies to detain undocumented immigrants. 3

Similarly, another order, which is focused on immigration enforcement along the U.S. southern border, calls for significant expansion of immigration detention capacity. It also makes policy changes that would return migrants—including women and children seeking asylum—back into harm’s way and strip children of critical protections.4 Ultimately, these costly and misguided policies pose a significant threat to millions of children whose wellbeing and long-term development is directly linked to the parent-child relationship, external stress factors, and family economic security.

Several provisions in these orders are likely to face legal challenges, while others would require additional funding to be fully implemented. Therefore, these policies should not be considered final or unalterable. However, it is clear that these orders—even those that have not been fully implemented—are already negatively affecting immigrant communities, creating a climate of fear, and endangering children’s safety and wellbeing. This fact sheet highlights key consequences for children and families.

Specifically, Trump’s immigration enforcement orders:

1. Tear families apart,

2. Harm children’s short- and long-term mental health,

3. Undermine children’s economic security,

4. Threaten children’s access to education and basic needs, and

5. Endanger the lives of asylum-seeking children and families.

### 2NC — Immigration (Economy Impact)

#### Trump’s future immigration policies are immoral and undermine economic growth.

Cervantes 17 — Wendy Cervantes, Senior Policy Analyst at the Center for Law & Social Policy (CLASP), the Vice President of Immigration and Child Rights for First Focus and the Director of the Center for the Children of Immigrants, holds an M.A. in Latin American Studies and Political Science from the University of New Mexico and a B.A. in Communications from the University of Southern California, 2017 (“Why President Trump’s Leaked Immigration Order Is a Threat to Us All,” *Washington Monthly*, March 8th, Available Online at <http://washingtonmonthly.com/2017/03/08/why-president-trumps-leaked-immigration-order-is-a-threat-to-us-all/>, Accessed 07-06-2017, Lil\_Arj)

In his first address to Congress, President Donald Trump boasted about his recent executive orders and promised to continue to push an immigration agenda that will prove deeply harmful and divisive.

So far, the president’s immigration orders have had or threatened to have dire consequences for citizens and non-citizens alike—from tearing families apart to creating a climate of fear within whole communities. A leaked executive order threatens to undercut basic lifelines for low-income immigrant families, and could have serious long-term implications for us all, regardless of immigration status. As proposed, the executive order would deny admission to anyone deemed likely to receive a wide range of income-based supports that low-wage workers and their families, native-born as well as foreign-born, rely on in tough times. This proposal is not only inhumane, it is grossly unfair to millions of taxpaying Lawful Permanent Residents who would be denied benefits.

For nearly a century, U.S immigration law has used the “public charge” test to ensure that newcomers do not end up relying on the government for their “subsistence” or basic survival, such as using public cash assistance—like the Temporary Assistance for Needy Families (TANF) program—as their primary source of support. But it has never been used to completely exclude people who will be working their way up from low-wage jobs. In fact, that is the traditional story of immigrants in America. Trump’s proposal, however, would drastically reverse longstanding guidelines for who would be excluded from the country.

The proposal, for example, could make someone inadmissible to the United States if the Department of Homeland Security determines that she may at some point in the future attempt to access public nutrition assistance or health care. It would also punish permanent residents with deportation if they use these same types of programs within the first five years of entering the United States, a severe consequence only currently used in extremely rare circumstances.

In another blow to immigrant families struggling to make ends meet, the draft order would expand the list of “federal means-tested benefits” that permanent residents are barred from using during their first five years in the country, potentially cutting them off from a much broader range of federal income-based programs regardless of the circumstances. Similarly, the order would prohibit taxpaying immigrant parents who lack a Social Security number from claiming the federal Child Tax Credit, a proven tool for combating child poverty that has long had bipartisan support.

The order’s objective to penalize immigrants with limited financial means—both those who aspire to enter the country and those who have recently arrived—threatens family unity in two ways. First, it would make it nearly impossible for low-income immigrants to reunite with loved ones through a family-based visa, a process that can already take several years and one that the president suggested should be replaced by a merit-based system. Second, it would put immigrant parents in the impossible position of allowing their children to go hungry or to risk deportation simply by applying for federal assistance.

It’s important to note that many of the draft order’s provisions would need to be ironed out in a regulatory process, and it remains unclear which means-tested programs would ultimately be included. In addition, some proposed provisions would require congressional approval. Without doubt, however, the issuance of the order would create immediate fear and confusion among immigrant families and the people and programs that serve them. Indeed, most concerning is the chilling effect this proposal would have, by deterring immigrants from seeking potentially lifesaving services for themselves or their children. Already state program administrators and health clinic workers are reporting that some parents are withdrawing their citizen children from critical programs simply because of the uncertainty created by this order and the fear of repercussions.

Lessons from the past serve as a caution against such overly restrictive proposals. After the passage of the 1996 immigration and welfare reform laws, which denied certain benefits to recently arrived Lawful Permanent Residents, research shows that participation of immigrants and their families in public benefit programs dropped sharply, compromising the health and well-being of low-income immigrants as well as their citizen children. And contrary to the president’s claim that immigrants strain public resources, a recent analysis shows that low-income immigrant households remain much less likely to participate in safety net programs like TANF or the Supplemental Nutrition Assistance Program (SNAP)—even though they are eligible—than households headed by people born in the United States.

In response to the extreme hardship caused by the 1996 restrictions, subsequent legislation restored eligibility for children and other vulnerable populations. For example, nutrition assistance under SNAP was later reinstated for qualified children (without a five-year bar), and states now have the option to provide federally funded health care to lawfully residing children and pregnant women regardless of how long they have been in the country—an option that more than half of the states have opted to include in their policies. These improvements reflect the common-sense principle that communities are better off when all babies and children have access to basic health care and nutrition.

Thus, the president’s proposed order represents a step backward, virtually pulling the entire safety net out from under taxpaying immigrant families. Ultimately millions of children, 88 percent of whom are U.S. born citizens, would suffer the most severe consequences. Access to preventative health care and nutrition helps improve childhood outcomes, which extends to better education and employment outcomes in adulthood. Similarly, the proposal’s restriction on access to the Child Tax Credit would directly harm 4.1 million U.S. citizen children living with at least one unauthorized parent, putting them at greater risk of falling into poverty.

Finally, it’s important to recognize that immigrants of all financial means significantly contribute to our nation’s economy, and they and their children are vital to our country’s future prosperity. In fact, children of immigrants represent one quarter of our increasingly diverse U.S. child population, and therefore will make up a critical segment of the future American workforce. Preventing these kids from having their most fundamental needs met and driving them further into poverty will only serve to undermine our economic prospects for generations to come.

#### Weak growth causes nuclear war---turns every impact

Kemp 10 – Geoffrey Kemp, Director of Regional Strategic Programs at The Nixon Center, served in the White House under Ronald Reagan, special assistant to the president for national security affairs and senior director for Near East and South Asian affairs on the National Security Council Staff, Former Director, Middle East Arms Control Project at the Carnegie Endowment for International Peace, 2010, The East Moves West: India, China, and Asia’s Growing Presence in the Middle East, p. 233-234

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest: and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

### 2NC — Marijuana (Racism Impact)

#### Marijuana laws are racist — uneven enforcement.

Levy-Pounds 13 — Nekima Levy-Pounds, Associate Professor of Law and Director of the Community Justice Project at the University of St. Thomas School of Law (Minneapolis), 2013 (“Going Up In Smoke: The Impacts Of The Drug War On Young Black Men,” Albany Government Law Review (6 Alb. Gov't L. Rev. 563), Available Online to Subscribing Institutions via Lexis-Nexis, Accessed 07-07-2017, Lil\_Arj)

[\*576] One of the most compelling arguments raised in support of legalizing marijuana has been advanced by various state chapters of the National Association for the Advancement of Colored People (NAACP). n58 Prior to the historic vote in Colorado, the president of the Colorado chapter of the NAACP, Alice Huffman, strongly supported the legalization of marijuana due to civil rights issues connected to enforcement laws. n59 Indeed, although African Americans comprise 4% of the population in Colorado, they represent 22% of those who are arrested for violating marijuana laws. n60

Sadly, this issue does not only affect African American men in Colorado. Uneven enforcement of marijuana laws is a problem across the nation. Recent studies indicate that African American men on a national level are routinely pulled over by law enforcement, harassed, arrested, and charged with low-level drug offenses, with marijuana being one of the primary factors. n61 [\*577] Concerns about the racially biased application n62 of marijuana enforcement laws against African Americans played a major role in NAACP chapters in other parts of the country making a decision to advocate for the legalization of marijuana. n63

#### Racism is a d-rule.

Memmi 99 — Albert Memmi, Professor Emeritus of Sociology at the University of Paris, 1999 (*Racism*, Published by the University of Minnesota Press, ISBN 0816631654, p. 163-165)

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved.

Yet, for this very reason, it is a struggle to be undertaken without surcease and without concessions. One cannot be indulgent toward racism; one must not even let the monster in the house, especially not in a mask. To give it merely a foothold means to augment the bestial part in us and in other people, which is to diminish what is human. To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence. It is to accept the persistence of the dark [end page 163] history in which we still largely live. It is to agree that the outsider will always be a possible victim (and which man is not himself an outsider relative to someone else?). Racism illustrates, in sum, the inevitable negativity of the condition of the dominated; that is, it illuminates in a certain sense the entire human condition. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animality to humanity. *In that sense,* we cannot fail to rise to the racist challenge.

However, it remains true that one's moral conduct only emerges from a choice; one has to want it. It is a choice among other choices, and always debatable in its foundations and its consequences. Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order, for which racism is the very negation. This is almost a redundancy. One cannot found a moral order, let alone a legislative order, on racism, because racism signifies the exclusion of the other, and his or her subjection to violence and domination. From an ethical point of view, if one can deploy a little religious language, racism is "the truly capital sin."22 It is not an accident that almost all of humanity's spiritual traditions counsel respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. All things considered, we have an interest in [end page 164] banishing injustice, because injustice engenders violence and death.

Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. But no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. All unjust society contains within itself the seeds of its own death. It is probably smarter to treat others with respect so that they treat you with respect. "Recall," says the Bible, "that you were once a stranger in Egypt," which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming one again someday. It is an ethical and a practical appeal--indeed, it is a contract, however implicit it might be. In short, the refusal of racism is the condition for all theoretical and practical morality. Because, in the end, the ethical choice commands the political choice, a just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace. True, it is a wager, but the stakes are irresistible.

### 2NC — Marijuana (Constitution Impact)

#### Laws prohibiting use of marijuana are unconstitutional.

Carcieri 11 — Martin D. Carcieri, Associate Professor of Political Science, San Francisco State University, earned a J.D. from the University of California, Hastings and a Ph.D. from the University of California, Santa Barbara, 2011 (“Obama, the Fourteenth Amendment, and the Drug War,” Akron Law Review (44 Akron L. Rev. 303), Available Online to Subscribing Institutions via Lexis-Nexis, Accessed 07-07-2017, Lil\_Arj)

I. INTRODUCTION

If Obama is reelected, however, the situation transforms. Since the Twenty-second Amendment bars him from a third term, n12 and his future would be quite secure, he would be free to speak the truth on this issue, which includes the following: beyond its economic n13 and social n14 costs, [\*306] marijuana prohibition burdens a range of constitutional interests, including those arising under the First, n15 Fourth, n16 Fifth, n17 Sixth, n18 [\*307] Eighth, n19 Tenth, n20 and Fifteenth n21 Amendments. n22 As a constitutional lawyer, further, the President knows that these problems may be but symptoms of an underlying constitutional infirmity, one rooted primarily in the Fourteenth Amendment. This article is written to help clarify the full range of understanding Obama would bring to a second term. Specifically, I defend two related, contested theses.

My core thesis, to which this article is primarily devoted, is a jurisprudential claim: contrary to state and lower federal court rulings, marijuana prohibition is subject to strict judicial scrutiny under leading [\*308] relevant U.S. Supreme Court jurisprudence. n23 I support this thesis primarily by showing that under the Fourteenth Amendment, bodily autonomy--i.e., the control over the borders and contents of one's body burdened by laws like marijuana prohibition--is a fundamental right, and that the Court has thus established a presumption in its favor, especially for adults in the home. I then reinforce this thesis with three further arguments: (1) marijuana prohibition violates "justice as regularity," n24 (2) marijuana prohibition satisfies the "suspect class" trigger of strict scrutiny, n25 and (3) bodily autonomy is closely analogous to the fundamental right of free speech. In sum, I argue that all roads of constitutional analysis lead to strict scrutiny of marijuana prohibition.

#### The Constitution is a moral decision rule. Ends-based disads can’t outweigh.

Bayer 11 — Peter Brandon Bayer, Lawyering Process Professor at the William S. Boyd School of Law at the University of Nevada-Las Vegas, former Assistant Professor and Director of the Legal Research, Analysis, and Writing Program at St. Thomas University School of Law, holds an LL.M. from Harvard Law School, a J.D. from New York University School of Law, and an M.A. in Sociology from New York University, 2011 (“Sacrifice and Sacred Honor: Why the Constitution is a ‘Suicide Pact’,” *William & Mary Bill of Rights Journal* (20 Wm. & Mary Bill of Rts. J. 287), December, Available Online to Subscribing Institutions via Lexis-Nexis)

Introduction

To be a true constitution, that which a society calls its constitution must enforce values so imperative, so fundamental, that the constitution comprises not only a way to live but more profoundly, a reason to die. Customarily through, for example, military service, individual citizens or groups of citizens may be required to risk their lives to preserve their constitution and the nation over which it presides. However, a true constitution rightfully demands that the entire constitutional order—the whole society regulated by that constitution—risk its own demise rather than betray the essential precepts that the constitution embodies. Only principles of such magnitude warrant inclusion in the supreme document of a particular people. n1 [\*290]

Simply believing that a particular constitution is worth dying for, however, is not enough. To be a legitimate constitution—to actually be worthy of such communal sacrifice—the given constitution must be moral; that is, both designed to enforce and actually capable of enforcing the abiding moral duties that demarcate legitimate from illegitimate governments.

Pursuant to the character of true and legitimate constitutions, the Constitution of the United States defines who we are, what we are and, most importantly, why we are. Our Constitution purports to set the governing minima without which no society may be legitimate. Accordingly, and quite deliberately, while a legal document, the Constitution is a profoundly moral thesis as well. It could not be otherwise because the Constitution's overarching endeavor is enforced morality, specifically "fundamental fairness" via due process of law n2 which, as Justice Felix Frankfurter aptly enthused, is "ultimate decency in a civilized society . . . ." n3 America's validation stems from the morality of the Constitution and how steadfastly we maintain it. n4

In contravention of our constitutional duty is the long-standing chestnut: the Constitution is not a suicide pact. n5 Of course, no one would argue that the Constitution is literally a "suicide pact," meaning the Constitution requires those governed thereunder to kill themselves. n6 Nor would reasonable theorists claim it to be a suicide pact [\*291] "in the sense that the Constitution was meant to fail." n7 Rather, commentators apply the not a suicide pact metaphor to support the Constitution of necessity, the premise that if circumstances raise significant jeopardy and lesser measures appear unavailing, government may do virtually anything—abridge or suspend any liberty—both to preserve the nation and to ensure the well-being of its institutions. n8

Several critics challenge that theory's empirical bases arguing, for example, that the definition of "necessity" is overinclusive. n9 Critics further argue that the Constitution of necessity betrays pivotal American principles of law, rights, dignity and separation of powers. n10 However, criticism usually stops well short of accepting the Constitution as a metaphorical "suicide pact," averring instead that necessity is the ultimate "compelling state interest," overpowering liberty if the exigency is dire enough. n11

I join the very few n12 who respond that, even if limited to situations of actual imminent danger to the very continuation of American society, necessity as the Constitution's "first principle" defies the Constitution's true moral nucleus that explains and justifies our nation: due process of law. While many articles challenge the Constitution of necessity as anathema to the inherent nature of American government, n13 such arguments alone cannot explain why, under sufficiently urgent circumstances, we ought not to abandon all constitutional liberty if that is what it takes, for however long it takes, with the earnest intent to restore liberty the very moment the danger has passed. n14 [\*292]

Accordingly, this Article proposes a deeper grounding to explain why the Constitution is a suicide pact. Specifically, morality, the very fabric of the Constitution, forbids us from abandoning our basic moral-societal precept of due process, even when faithful abidance is extraordinarily dangerous. We must understand that more than simple liberty is essential to our constitutional government. Rather, we must appreciate that government ensures liberty as integral to its unalterable duty to be moral. Liberty is not an end in itself, but a means; preserving morality is the end, the absolute goal of government. Thus, in a unique figurative sense, the Constitution must be a suicide pact, for as the prominent ethicist Immanuel Kant nobly appreciated regarding morality's overarching context, "Let justice be done even if the world should perish." n15

The proof takes several steps. Part I undertakes a thorough review of deontology, the philosophy arguing—correctly, I believe—that morality is transcendent, a set of a priori principles discernable through reason. Morality, then, does not care what the possible outcomes of a particular moral problem may be. n16 Pursuant to deontological philosophy, the "sacrifice," to which the title of this Article refers, is the duty to abide by morality no matter what the cost. n17

Thereafter, Part II argues that this Nation's originators were deontologists who declared in the Nation's founding document that government is legitimate only insofar as it safeguards morality derived from "the Laws of Nature and Nature's God," manifested as "unalienable Rights that among these are Life, Liberty and the pursuit of Happiness." n18 For the preservation of those moral principles, the Founders pledged their "Lives," "Fortunes," and "sacred Honor," n19 meaning that it is the duty of all Americans—their "sacred Honor"—to sacrifice, if necessary, their lives and property to defend legitimate government. We thus discover an interesting, informative and useful provenance linking the sacrifices attendant to deontological morality with the birth of the United States. n20

The Founders understood that their appreciation of, and dedication to, morality was incomplete—a confession analysts find apt as evinced by the presence of slavery, [\*293] along with several other strikingly unethical political and pragmatic arrangements surrounding both the Declaration and its later legal iteration, the Constitution. Indeed, the Founders expected future generations to enrich the moral bases of America, including repudiating ideas and practices that the Founders themselves accepted. n21 Part III asserts that the ethical theory of Immanuel Kant, as contemporarily understood, presents the improved moral philosophy hoped for by the Founders. Written shortly after the American Revolution, Kant's theory of dignity explains why obeying morality is more important than life itself; n22 a principle applicable not only to persons and groups, but also to nations and societies. Kantian ethics, therefore, explicate that the highest principle is not survival but, rather, moral rectitude.

Kant's ideas should control the understanding of the Constitution, most particularly the commands of due process of law, as Part IV explains. Although never explicitly cited as authority, Kant's dignity principle informs modern due process jurisprudence, which is sensible because the Constitution was drafted to enforce the moral quest commemorated in the Declaration. The comfortable application of Kantian ethics to constitutional due process demonstrates that, in the singular sense described above, the Constitution should be, must be and is a suicide pact.

### 2NC — Climate Impact

#### Trump’s climate agenda is an existential risk.

Podesta 17 — John Podesta, Founder and a Board Member of the Center for American Progress and most recently was the chairman of the 2016 Hillary Clinton presidential campaign, he previously served as chief of staff to President Bill Clinton and counselor to President Barack Obama, a visiting professor of law at the Georgetown University Law Center, 2017 (“Battling Climate Change in the Time of Trump,” *Center for American Progress,* March 21st, Available Online at <https://www.americanprogress.org/issues/green/reports/2017/03/21/428812/battling-climate-change-time-trump/>, Accessed 07-05-2017, Lil\_Arj)

Rampage against environmental laws

Make no mistake, though, the Trump administration presents an existential threat to the entire planet. Leadership on the state and local level may be able to bridge the gap at the federal level, but only for a period of time. The administration appears to be on a rampage against environmental laws that protect clean air, water, and our way of life. Since taking office, President Trump has signed more than seven executive orders, presidential memorandums, and bills prioritize giveaways to the fossil fuel industry. That number is expected to jump even higher in the coming days with an anticipated executive action aimed at undoing the Clean Power Plan, lifting a coal moratorium on public lands, throwing out consideration of climate change in federal decision-making, and making it easier to release the potent global warming pollutant, methane. The list of polluting actions, however, also includes eliminating a prohibition on bribery by oil companies, cutting limits on dumping of toxic mine waste in streams, and trying to make the United States more dependent on Canadian tar sands.

#### There’s an unquestionable scientific consensus about warming.

Nuccitelli 16 — Dana Nuccitelli, Climate Writer for the *Guardian*, Environmental Scientist at Tetra Tech—a private environmental consulting firm, holds an M.A. in Physics from the University of California-Davis and a B.A. in Astrophysics from the University of California-Berkeley, 2016 (“It’s settled: 90–100% of climate experts agree on human-caused global warming,” *Climate Consensus – The 97%*—a *Guardian* blog about climate change, April 13th, Available Online at <https://www.theguardian.com/environment/climate-consensus-97-per-cent/2016/apr/13/its-settled-90100-of-climate-experts-agree-on-human-caused-global-warming>, Accessed 07-15-2016)

There is an overwhelming expert scientific consensus on human-caused global warming.

Authors of seven previous climate consensus studies — including Naomi Oreskes, Peter Doran, William Anderegg, Bart Verheggen, Ed Maibach, J. Stuart Carlton, John Cook, myself, and six of our colleagues — have co-authored a new paper that should settle this question once and for all. The two key conclusions from the paper are:

1) Depending on exactly how you measure the expert consensus, it’s somewhere between 90% and 100% that agree humans are responsible for climate change, with most of our studies finding 97% consensus among publishing climate scientists.

2) The greater the climate expertise among those surveyed, the higher the consensus on human-caused global warming.

[Graphic Omitted]

Expert consensus is a powerful thing. People know we don’t have the time or capacity to learn about everything, and so we frequently defer to the conclusions of experts. It’s why we visit doctors when we’re ill. The same is true of climate change: most people defer to the expert consensus of climate scientists. Crucially, as we note in our paper:

Public perception of the scientific consensus has been found to be a gateway belief, affecting other climate beliefs and attitudes including policy support.

That’s why those who oppose taking action to curb climate change have engaged in a misinformation campaign to deny the existence of the expert consensus. They’ve been largely successful, as the public badly underestimate the expert consensus, in what we call the “consensus gap.” Only 12% of Americans realize that the consensus is above 90%.

[Video Omitted]

Consensus misrepresentations

Our latest paper was written in response to a critique published by Richard Tol in Environmental Research Letters, commenting on the 2013 paper published in the same journal by John Cook, myself, and colleagues finding a 97% consensus on human-caused global warming in the peer-reviewed literature.

Tol argues that when considering results from previous consensus studies, the Cook 97% figure is an outlier, which he claims is much higher than most other climate consensus estimates. He makes this argument by looking at sub-samples from previous surveys. For example, Doran’s 2009 study broke down the survey data by profession – the consensus was 47% among economic geologists, 64% among meteorologists, 82% among all Earth scientists, and 97% among publishing climate scientists. The lower the climate expertise in each group, the lower the consensus.

[Graph Omitted]

Like several of these consensus surveys, Doran cast a wide net and included responses from many non-experts, but among the experts, the consensus is consistently between 90% and 100%. However, by including the non-expert samples, it’s possible to find low “consensus” values.

The flaw in this approach is especially clear when we consider the most ridiculous sub-sample included in Tol’s critique: Verheggen’s 2015 study included a grouping of predominantly non-experts who were “unconvinced” by human-caused global warming, among whom the consensus was 7%. The only surprising thing about this number is that more than zero of those “unconvinced” by human-caused global warming agree that humans are the main cause of global warming. In his paper, Tol included this 7% “unconvinced,” non-expert sub-sample as a data point in his argument that the 97% consensus result is unusually high.

By breaking out all of these sub-samples of non-experts, the critique thus misrepresented a number of previous consensus studies in an effort to paint our 97% result as an outlier. The authors of those misrepresented studies were not impressed with this approach, denouncing the misrepresentations of their work in no uncertain terms.

We subsequently collaborated with those authors in this newly-published scholarly response, bringing together an all-star lineup of climate consensus experts. The following quote from the paper sums up our feelings about the critique’s treatment of our research:

Tol’s (2016) conflation of unrepresentative non-expert sub-samples and samples of climate experts is a misrepresentation of the results of previous studies, including those published by a number of coauthors of this paper.

Consensus on consensus

In our paper, we show that including non-experts is the only way to argue for a consensus below 90–100%. The greater the climate expertise among those included in the survey sample, the higher the consensus on human-caused global warming. Similarly, if you want to know if you need open heart surgery, you’ll get much more consistent answers (higher consensus) if you only ask cardiologists than if you also survey podiatrists, neurologists, and dentists.

That’s because, as we all know, expertise matters. It’s easy to manufacture a smaller non-expert “consensus” number and argue that it contradicts the 97% figure. As our new paper shows, when you ask the climate experts, the consensus on human-caused global warming is between 90% and 100%, with several studies finding 97% consensus among publishing climate scientists.

There’s some variation in the percentage, depending on exactly how the survey is done and how the question is worded, but ultimately it’s still true that there’s a 97% consensus in the peer-reviewed scientific literature on human-caused global warming. In fact, even Richard Tol has agreed:

The consensus is of course in the high nineties.

Is the consensus 97% or 99.9%?

In fact, some believe our 97% consensus estimate was too low. These claims are usually based on an analysis done by James Powell, and the difference simply boils down to how “consensus” is defined. Powell evaluated the percentage of papers that don’t explicitly reject human-caused global warming in their abstracts. That includes 99.83% of papers published between 1991 and 2012, and 99.96% of papers published in 2013.

In short, 97% of peer-reviewed climate research that states a position on human-caused warming endorses the consensus, and about 99.9% of the total climate research doesn’t explicitly reject human-caused global warming. Our two analyses simply answer different questions. The percentage of experts and their research that endorse the theory is a better description of “consensus.” However, Powell’s analysis is useful in showing how few peer-reviewed scientific papers explicitly reject human-caused global warming.

In any case, there’s really no question that humans are the driving force causing global warming. The experts are almost universally convinced because the scientific evidence is overwhelming. Denying the consensus by misrepresenting the research won’t change that reality.

With all of the consensus authors teaming up to show the 90–100% expert consensus on human-caused global warming, and most finding 97% consensus among publishing climate scientists, this paper should be the final word on the subject.

### 2NC — States Model Liberal Policy

#### Liberal states set a national agenda and level out inequity — spillover is real.

Gerken and Revesz 17 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, and Joshua Revesz, Student at Yale Law School, 2017 (“Progressive Federalism: A User’s Guide,” *Democracy: A Journal of Ideas*, Number 44, Spring, Available Online at http://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/, Accessed 06-14-2017)

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.

#### Federalism enables states to fuel national change from the bottom up.

Gerken and Revesz 17 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, and Joshua Revesz, Student at Yale Law School, 2017 (“Progressive Federalism: A User’s Guide,” *Democracy: A Journal of Ideas*, Number 44, Spring, Available Online at http://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/, Accessed 06-14-2017)

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.

If progressives want to take a lesson from the conservative handbook, they will have to consider which parts of the equality project—reforming immigration, policing, sentencing, to give just a few examples—they can directly advance. They should remember the crucial lessons of the same-sex marriage movement: In the United States, change generally comes from the bottom, not from the top. And they should remember that working through state and local institutions to enact progressive ideas is just as important as opposing whatever comes out of Washington. Social movements need pragmatic insiders, forging compromise from within, not just principled outsiders putting pressure from without.

Finally, states and cities should remember that they have the power to set the agenda. In the Obama years, red states took full advantage of their power to shape the national conversation. They enacted tough abortion limitations that forced that issue to the front of the political agenda. They sought to reframe the same-sex marriage debate into one about bakers and florists by enacting expansive religious freedom legislation. And they liberalized gun regulations at a time when the national consensus seemed poised to shift the other way.

These states understood that action can grab headlines and shape debate in a way that protest alone simply cannot. If blue states and cities wish to follow suit, they should take early lessons from Jerry Brown and Michael Bloomberg. The former made headlines in December by boldly claiming that California would launch its own satellites if the federal government abandoned its climate research. The latter drew attention to environmental issues by pledging that progressive cities would seek to join the Paris climate agreement if the Trump Administration withdraws. These sorts of bold pronouncements are not mere bluster. Rather, they’re essential for keeping important issues in the news and for denying President Trump sole control of the political agenda.

We don’t mean to suggest that federalism is a cure-all for either progressives or conservatives. During the next four years, many of the President’s actions will be hard to counter. Heavily indebted cities and states may find fighting the federal government is too expensive. And local politicians will always have to devote time and resources to addressing local concerns.

But progressives would be foolish to treat cities and states as nothing more than enclaves sheltered from national policies they don’t like. They can use all the tools we’ve suggested to encourage moderation and reshape the national conversation. Federalism is for everyone, and it’s time that liberals took notice.

### They Say: “Fair-weather Federalism Fails”

#### Coalitions with fair-weather federalists are key to incremental progress.

Somin 16 — Ilya Somin, Professor of Law at George Mason University, former John M. Olin Fellow in Law at Northwestern University Law School, holds a J.D. from Yale Law School and an M.A. in Political Science from Harvard University, 2016 ("Federalism as insurance," *The Washington Post*, December 20th, Available Online at https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/12/20/federalism-as-insurance/?utm\_term=.a43be5e90a65, Accessed 07-09-2017, Lil\_Arj)

Like Hills, I am also very critical of “fair weather federalists” who support constitutional limits on federal power only when it is politically convenient to do so. Sadly, as he notes, this kind of behavior is all too common on both left and right. I too wish that there were more consistent supporters of enforcing tight limits on federal power. In that happy scenario, we might all be better off than we are now, and it would be easier to resist overreach by Democrats and Republicans alike.

But fair weather federalists’ situational opposition to federal overreach has greater value than Hills suggests. Intellectually, the validity of an argument does not depend on the motives, sincerity, or consistency of those who advance it. In my view, many of the federalism objections to Trump’s likely policies are valid regardless of whether the people making these arguments are being consistent with their own previous views.

Fair weather friends of federalism can also often be valuable allies for more consistent ones. Efforts to enforce constitutional limits on government power almost always involve a coalition of principled advocates and people who only care about the issue when their own ox is the one being gored. For example, many of the most important Supreme Court decisions protecting freedom of speech involved the rights of communists, Nazis, and others whose own commitment to free speech was dubious at best.

As Lord Acton famously put it, “[a]t all times sincere friends of freedom have been rare, and its triumphs have been due to minorities, that have prevailed by associating themselves with auxiliaries whose objects often differed from their own.” The same is true of constitutional federalism. Where it prevails, it is usually by virtue of similar coalitions of convenience. In the same passage, Acton also warned that “this association [with situational allies], which is always dangerous, has sometimes been disastrous, by giving to opponents just grounds of opposition.” Fair enough. But, often, the risk is worth taking, especially when the alternative is near-certain defeat. By allying with fair weather federalists of the left in some cases and their right-wing counterparts in others, consistent federalists can gradually make important incremental progress.

Moreover, situational coalitions can sometimes lead to a more permanent consensus. So it proved over time on issues such as freedom of speech and religion, where groups that started out seeking to protect only their own rights gradually came to accept more general principle that government power in these areas should be strictly limited. In recent years, both liberals and conservatives have learned the painful lesson that they are unlikely to achieve secure, long-term dominance over the federal government anytime soon. Both should realize that they are likely to need a federalism insurance policy in the future. That might make some of them more willing to pay their dues than they were previously.

Be that as it may, sincere advocates of federalism, like Acton’s “sincere friends of liberty,” must be willing to make situational coalitions to further their goals. I argued for enforcing tight constitutional limits on federal power under both Bush and Obama. Today, I am doing it yet again in the face of Trump’s likely policies. And I’m happy to work with anyone who will join me in that cause, regardless of where they might have stood in the past.

#### Fair-weather federalism is inevitable due to political polarization — liberals should still embrace the tool.

Gerken 17 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, 2017 ("Balkinization: Federalism or Politics: A reponse to Rick Hills," *Balkinization*, January 2nd, Available Online at https://balkin.blogspot.com/2017/01/federalism-or-politics-reponse-to-rick.html, Accessed 07-09-2017, Lil\_Arj)

I’ve spent a long time arguing that federalism doesn’t have a political valence, so it’s been nice to see “progressive federalism” and the “nationalist school of federalism” getting some attention in the wake of the election. While I’m glad to be in conversation with a new group of academics, I’ve nonetheless found myself gravitating to the work of those with whom I’ve been debating these issues for a long time. Two of them have recently written quite thoughtful posts on this federalism revival – Rick Hills and Ilya Somin. I’ll respond to Rick today and Ilya tomorrow.

As Rick correctly notes, it’s a political ritual for those who lose the presidency to discover a love for federalism. Rick wonders, though, whether progressives have paid their “federalism insurance premium.” He compares federalism to “an insurance policy, protecting the risk averse against loss of national power” and insists that “the protection comes at a price: One must pay the ‘premium’ of protecting subnational power when one controls the national government, tolerating subnational experiments that one regards as more Frankenstein than Brandeis.”

I think Rick is both right and wrong. He’s surely right that those who control national power can be more or less tolerant of disagreement. I just don’t think this phenomenon has much to do with federalism. A handful of people – including Rick and myself – are committed to the notion that states and localities play a useful role in a well-functioning democracy (though I take a nationalist’s view as to what constitutes a well-functioning democracy). Rick and I also agree that federalism and localism allow for a distinctively American variant of a loyal opposition. But as Rick himself observes, most people – including most politicians – are fair-weather federalists. Issues, not institutional commitments, drive debates.

That’s why I don’t think it matters that much whether one side or the other has paid up its “federalism insurance premium.” Even if progressives learn to love federalism, I don’t think blue states will be more likely to win concessions from a conservative federal government. Nor do I think that conservatives – who have often allied themselves with federalism – will hesitate to impose national mandates where they can. This isn’t a knock on conservatives; progressives would behave in exactly the same fashion were the tables turned.

Rick’s core point, though, is right – we should worry about a give-and-take between liberals and conservatives. It’s just that the give-and-take has more to do with politics than institutions. Put differently, it’s not federalism that matters here, but pluralism. And a pluralist system only flourishes when both sides are willing to live and let live. Rick writes of the need to “tolerat[e] subnational experiments that one regards as more Frankenstein than Brandeis,” but the real problem is the underlying assumption that one’s opponent is closer to Frankenstein rather than to Brandeis. Maybe skepticism of one’s political foes depends on debates over decentralization, but I suspect it has a great deal more to do with the forces that political scientists have identified as the sources of polarization.

Federalism, after all, is just one of many institutional and legal strategies we use to instantiate pluralist politics. As Rick notes in the close of his post, “through the exercise of self-control across different political regimes, each Party can slowly confer on institutional arrangements a permanence (sentimentalists would even say "sanctity") that survives change of regimes, sending a signal to their opponents that their self-control will be reciprocated when the tables are turned.” That includes not just federalism and the filibuster (Rick’s example), but a range of institutional practices.

Unfortunately, we’re seeing lots of evidence these days that our “pluralism premiums” are not paid up; federalism is just part of that story. Progressives would point to the efforts of North Carolina’s GOP-controlled legislature to disempower their newly elected Democratic governor and the Senate’s refusal to grant Merrick Garland a hearing. Conservatives would point to the efforts of the Obama administration post-election efforts to protect his environmental policies from reversal or the blue states and cities promising to resist the new administration’s policies before Trump has even set foot in the White House. Perhaps the best proof of pluralism’s decline is the fact that I have to provide separate lists to make my case, precisely because conservatives and liberals agree on so little these days. We are all watching the same story unfold during Obama’s last days in office, but we have completely different views of whether Trump is violating “sacred” norms . . . or Obama is. Is Obama merely “cement[ing]his legacy” or “putting up policy roadblocks”?

In sum, federalism is like pretty much everything else in a well-functioning democracy; while it can help politics works, it also depends on politics to work. Needless to say, reciprocity and trust are hard to build but easy to dismantle in a system like our own. I take it that is Rick’s core concern, and on that point we agree entirely.

### They Say: “Rights Turn”

#### Federalism protects minority rights by harnessing local power.

Gerken 12 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, 2012 (“A New Progressive Federalism,” *Democracy: A Journal of Ideas*, Number 24, Spring, Available Online at <http://democracyjournal.org/magazine/24/a-new-progressive-federalism/>, Accessed 06-14-2017)

More importantly, what we have today is not your father’s federalism. The federalism that haunts our history looks quite different from the form of local power that prevails now. Federalism of old involved states’ rights, a trump card to protect instances of local oppression. Today’s federalism involves a muscular national government that makes policy in virtually every area that was once relegated to state and local governments. The states’ rights trump card has all but disappeared, which means that the national government can protect racial minorities and dissenters when it needs to while allowing local forms of power to flourish.

It would be foolish to insist that every state and local policy must be progressive for progressives to favor federalism. Decentralization will produce policies that progressives adore, and it will produce policies that they loathe. The same, of course, is true of a national system. Progressives have to make their case to the American people, just like everyone else. The point here is that progressives can fight for their causes in our current system, and they can win. Gone are the days of policy-making enclaves shielded from national power. If progressives are simply looking for guaranteed wins, it’s not decentralization that they should worry about—it’s democracy.

Moreover, progressives tend to overstate the problem of parochialism. When progressives talk about democracy, they celebrate the idiosyncratic dissenter, the nobility of resistance, the glory of getting things wrong, and the wild patchwork of views that make up the polity. When progressives turn to governance, however, they crave administrative efficiency, worry about local incompetence, and have a strong impulse to quash local rebellion. We join de Tocqueville in celebrating the eccentric charms of local democracy, but our tastes in bureaucracy run with Weber: impersonal, rationalized, and hierarchical. It should come as no surprise that de Tocqueville’s democracy fails to produce Weber’s bureaucracy. But rather than spending all of our time worrying about that failure, maybe we should acknowledge the fact that decentralization offers so many benefits that progressive nationalists can value.

Progressive nationalists have long worried that decentralized power needlessly fractures the national, exercising a centrifugal force on the polity. But ours is a system where local power can turn outsiders into insiders, integrating them into a political system and enabling them to protect themselves. It is one where the energy of outliers can serve as a catalyst for the center, allowing them to tee up issues for national debate. It is, in short, a form of federalism that progressive nationalists can celebrate.

Progressives were right to worry about federalism in the past. They are wrong to worry about it now. Minority rule and minority rights are tools for achieving the same ends. Both can help further equality and nurture dissent. Progressives have long endorsed the nationalist case for national power. Now is the time to acknowledge the nationalist case for local power.

#### Federalism is essential for minorities to fight discrimination by enabling minority rule. Rights are *not enough*.

Gerken 12 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, 2012 (“A New Progressive Federalism,” *Democracy: A Journal of Ideas*, Number 24, Spring, Available Online at <http://democracyjournal.org/magazine/24/a-new-progressive-federalism/>, Accessed 06-14-2017)

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.

#### Even if states are imperfect, governance at the local level empowers minorities.

Gerken 12 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, 2010(“Foreword: Federalism All the Way Down,” Yale Law School Legal Scholarship Repository, January 1st 2010, Available online at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4835&context=fss\_papers, Accessed 7-21-17)

Localism as a Double-Edged Sword. - Once we move federalism all the way down, it becomes clear that localism is a double-edged sword. The benefits of minority control can extend not just to Southern racists, but to blacks and Latinos. And yet we continue to look with suspicion upon institutions where racial minorities dominate. Federalism thinks about states as sites of political integration precisely because they allow national minorities to rule. So why don't we think of cities or juries or school committees as sites of racial integration precisely because they allow racial minorities to rule? Such an account requires us to move not just past sovereignty, but past history, rejecting the assumption that federalism's future can only reproduce its past. That move depends on two premises. First, while rights are a necessary condition for equality, they may not be a sufficient one. Too often we assume that rights alone will suffice, as if the path to equality moves straight from civic inclusion to full integration. We thus miss the possibility that there is an intermediary stage: empowerment. An empowerment strategy would be fruitless if times had not changed, of course, and civil rights enforcement played a crucial role in bringing about that change. The question, though, is where we go from here. It should be possible to believe in, even revere, the work of the civil rights movement and still wonder whether a rights strategy, standing alone, will bring us to full equality. Civic inclusion was the hardest fight. But it turns out 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. Second, this is not your father's federalism. To restate the obvious, my arguments are premised on the notion that it is perfectly acceptable for the national majority to play the Supremacy Clause card whenever it sees fit. While this is not a complete answer, for the reasons discussed below,185 at the very least the absence of sovereignty substantially mitigates the potential costs associated with local power.

#### Federalism empowers minorities at the local level to move towards material equality.

Gerken 12 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, 2010(“Foreword: Federalism All the Way Down,” Yale Law School Legal Scholarship Repository, January 1st 2010, Available online at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4835&context=fss\_papers, Accessed 7-21-17)

(a) The Hidden Costs of Diversity. - It's hard to miss the appeal of the diversity paradigm. It offers a deeply intuitive vision of fairness. We laud diversity on the ground that racial minorities offer a distinctive view or experience and thus ought to be included in democratic decisonmaking. Those who favor the "politics of recognition" thus wax eloquent on the dignity associated with voice and participation.18 6 Given its many virtues, you might wonder why anyone would quarrel with the notion that democratic bodies should "look like America." But the oddity of this theory for "empowering" racial minorities is that it relentlessly reproduces the same inequalities in governance that racial minorities experience elsewhere. You can see, then, the relevance of federalism, which depends on, even glories in, the notion that national minorities constitute local majorities. And while sovereignty has been invoked to defend Jim Crow, federalism itself has always been understood to be about minority rule, not homogenous enclaves.' 87 But, as I said, racial minorities are not the sort of minorities that typically rule at the state level. As a result, we lack a constitutional vocabulary for talking about the benefits associated with minority-dominated governance when racial minorities rule.

(b) Federalism-All-the-Way-Down and the Fourteenth Amendment. - If we can build a theory about minority-dominated governance at the state level, we can orient that theory around racial minorities' governing at the local level. Let me offer a partial sketch here to show how federalism-all-the-way-down might connect with sizeable chunks of the literature on racial empowerment, equality, and integration. Equality, of course, is a fiendishly complex and deeply contested idea. In legal circles, some endorse a colorblindness approach; others favor antisubordination. But the two camps routinely borrow from one another, and their adherents can be frustratingly vague about the relationship between means and ends.188 Rather than parse the debates on what, precisely, equality means, here I'll offer a rough-and ready working definition for these purposes. Most accounts of equality assume that racial minorities should be "integrated" into the nation's economic, political, and civic life, by which scholars mean that racial minorities should enjoy roughly the same material advantages as whites enjoy, be able to participate fully in governance without the handicap of racial stereotypes or discrimination, and feel as much a part of the polity as whites do. Just as many think that the Reconstruction Amendments further these long-term goals, so too we can imagine federalism-all-the-way-down promoting these ends.

### They Say: “Federalism is Conservative/Racist”

#### Federalism isn’t inherently conservative — minorities hold influence over state and local governments.

Gerken and Revesz 17 — Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, and Joshua Revesz, Student at Yale Law School, 2017 (“Progressive Federalism: A User’s Guide,” *Democracy: A Journal of Ideas*, Number 44, Spring, Available Online at http://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/, Accessed 06-14-2017)

Progressives have lost power in Washington. Every national institution now lies in the hands of the Republican Party. Given the slim chances of Democrats’ winning back Congress in 2018, many think that the best progressives can do is hunker down for the next four years, blocking legislation on the Hill and challenging it in court. It’s a depressing picture for those on the left. No one wants to be a member of a party whose “victories” are all in the kill, whose only role in national politics is that of the gadfly.

But if progressives can simply look outside the Beltway, they will find that they still have access to one of the most powerful weapons in politics: federalism. Using the power they wield in states and cities across the country, progressives can do a good deal more than mourn and obstruct. They can resist Washington overreach, shape national policies, and force the Republicans to compromise. Cities and states have long been at the center of the fight over national values. And it’s time progressives recognized that federalism isn’t just for conservatives.

Unfortunately, the moment one mentions federalism many progressives stop listening. The language of “states’ rights” has an ugly history, invoked to shield slavery and Jim Crow. Federalism’s checkered past led political scientist William H. Riker to remark in 1964 that “if one disapproves of racism, one should disapprove of federalism.” Even today, many progressives think of federalism as a parochial anachronism, better suited for stymieing change than for effecting it.

But they are making a mistake. This is not your father’s federalism. These days, state and local governments are often led by dissenters and racial minorities, the two groups progressives think have the most to fear from federalism. And this has allowed them to not only take advantage of the enormous power that federalism confers within their own cities and states, but to affect national debates, influence national policy, and force national actors to the bargaining table. Their success shows that federalism is a neutral and powerful tool for change, not an intrinsically conservative quirk of U.S. government.

#### Empirics are a bad model for federalism — state attitudes have changed.

Freeman and Rogers 7 — Richard B. Freeman, Herbert Ascherman Professor of Economics at Harvard University, Program Director for Labor Studies at the National Bureau of Economic Research, Fellow of the American Academy of Arts and Sciences, holds a Ph.D. in Economics from Harvard University, and Joel Rogers, Professor of Law, Political Science, and Sociology at the University of Wisconsin, holds a Ph.D. in Politics from Princeton University and a J.D. from Yale Law School, 2007 (“The Promise of Progressive Federalism,” *Remaking America: Democracy and Public Policy in an Age of Inequality*, Edited by Joe Soss, Jacob S. Hacker, and Suzanne Mettler, Published by the Russell Sage Foundation, ISBN 1610445104, p. 205)

American progressives are generally suspicious of federalism and the authority it gives state and local governments to make social and economic policy decisions. They would prefer the country run by a capable national government that supports their political goals. Progressives believe that only national power can lessen inequalities and fear that competition among states leads to reduced labor standards and social expenditures. They know that throughout United States history “states rights” has been associated with the suppression of African Americans in the South and that many of the achievements of twentieth-century American democracy—civil rights, the New Deal, and the extension of social benefits and protection to all Americans—required national action. Over the past few decades, as American national politics has withdrawn from many of the commitments of the New Deal, many progressives have decried the devolution of national responsibilities to states. They see the lessons of history on federalism as clear. More power to the states means more inequality, weaker civil rights, less popular organization, greater business influence on government decisions.

In this chapter we argue that the progressive disposition against federalism is outmoded. States are too important and enduring a part of the American national political system to be treated as some minor afterthought in policy debate. The current economy and attitudes on civil rights are different from those of the 1930s or 1960s. An exclusively national focus of policy initiatives also reflects an unreal vision of the nature of modern government and politics. The devolution of governmental authority to levels closer to the persons it affects is a worldwide phenomenon.1

States also have the power to enact policies that improve the lives of ordinary citizens. Responding to national political failure to deal with social and economic problems in the 1990s and 2000s, many states have adopted policies that advance individual freedom, protect public goods such as the environment, or strengthen local protection of the interests of workers and the poor. Although some states favor more conservative policies, enough have chosen progressive policies to belie any general race to the bottom in state policies. The wide variation in policies across states shows, moreover, the utility of one-size-fits-all politics. Regardless of their political coloration, the willingness of states to experiment with new approaches and serve as “laboratories of democracy” is welcome in a time of uncertainty about successor institutions to those of the New Deal and Great Society.2

#### Federalism won’t enable racism — no public support and 14th Amendment checks.

Freeman and Rogers 7 — Richard B. Freeman, Herbert Ascherman Professor of Economics at Harvard University, Program Director for Labor Studies at the National Bureau of Economic Research, Fellow of the American Academy of Arts and Sciences, holds a Ph.D. in Economics from Harvard University, and Joel Rogers, Professor of Law, Political Science, and Sociology at the University of Wisconsin, holds a Ph.D. in Politics from Princeton University and a J.D. from Yale Law School, 2007 (“The Promise of Progressive Federalism,” *Remaking America: Democracy and Public Policy in an Age of Inequality*, Edited by Joe Soss, Jacob S. Hacker, and Suzanne Mettler, Published by the Russell Sage Foundation, ISBN 1610445104, p. 218-219)

Social Exclusion and Local Domination

As noted in the introduction, one reason many progressives oppose increased federalism is because “states’ rights” has a long association with racism. We believe that the risk that allowing states a freer hand in government would lead to the old abuses is exceedingly small in today’s society. One reason is that exclusionist discriminatory practices of the type that have shamed the country in the past no longer enjoy much popular support. Without minimizing the problems created by individuals or firms discriminating against particular groups, we assert that the civil rights revolution effectively ended the notion that the government can engage in such practices. Americans disagree strongly about the nuances of gay marriage, immigrant rights, and unregulated abortion. They disagree about the best means of redressing past racial wrongs, or whether they have a responsibility to redress them at all. But analyses of social and political attitudes consistently show that Americans are qualitatively more tolerant toward diverse groups than they were a generation or two ago. In survey after survey, white attitudes toward blacks, men toward women, straights toward gays, and adherents of different religious faiths toward each other all show increased acceptance of diversity (among other surveys, see Page and Shapiro 1992; Mayer 1993; Fiorina 2005; McCarty, Poole, and Rosenthal 2006). For overwhelming majorities of the public, the notion that public power should be used to constrain opportunity on the basis of race or sex or sexual orientation is simply no longer accepted.

A second reason why allowing states a freer hand in government is unlikely to lead to the old abuses is that the geographic bases of domination are no longer secure. The idea of a culture war in America may be overdrawn and misleading, but the idea that the sides in that war match state boundaries is preposterous. Almost all communities in the United States are more diverse now than they were fifty years ago. Greater personal mobility, a more integrated national and increasingly international market, the greater role of multistate and multinational firms, national media, increased immigration, and the urbanization of American life have all helped produce this within-community diversity. And that means the likelihood of assembling stable oppressive voter majorities is much smaller than it once was. The same forces have also reduced the ability of any single uncontested employer or small group of employers to have a stranglehold on local political life. Americans have not enjoyed increases in real wages commensurate with the growth of productivity, but the reason for this is not that they are locked into company towns with little opportunity to switch employers. The backwaters of racist reaction, and company towns, are largely a thing of the past.

But assuming for the sake of argument that some state or group of employers in fact sought to suppress individual rights, our proposed progressive federalism would arrest any such effort. That is the point of having a floor of individual constitutional rights and other statutory minima. Under progressive federalism, if states conspicuously violate the [end page 218] Fourteenth Amendment or national civil rights law or other specified national rights, the national government would have the duty to protect those floors, using federal marshals if necessary, as in the past.

### They Say: “Too Much State Power”

#### Federalism allows local experimentation while maintaining some federal influence.

Freeman and Rogers 7 — Richard B. Freeman, Herbert Ascherman Professor of Economics at Harvard University, Program Director for Labor Studies at the National Bureau of Economic Research, Fellow of the American Academy of Arts and Sciences, holds a Ph.D. in Economics from Harvard University, and Joel Rogers, Professor of Law, Political Science, and Sociology at the University of Wisconsin, holds a Ph.D. in Politics from Princeton University and a J.D. from Yale Law School, 2007 (“The Promise of Progressive Federalism,” *Remaking America: Democracy and Public Policy in an Age of Inequality*, Edited by Joe Soss, Jacob S. Hacker, and Suzanne Mettler, Published by the Russell Sage Foundation, ISBN 1610445104, p. 224)

States have the power, and often the will, to meet the needs of citizens in progressive ways. They have shown that repeatedly in recent years. There is nothing intrinsic to federalism that justifies progressive opposition to giving states leeway to do more. There is much in federalism that should excite anyone seeking the variety, experimentation, and learning that states can bring to finding solutions to national problems. Progressive federalism seeks to harness this potential state contribution to our national democracy without retreating from civil rights and a national affirmative state. It seeks to reform current preemption doctrine to invite constructive experiment, to bring state government financing in line with other contemporary federalisms, and, by means of current technology and technique, to update and give content to the metaphor of states as “laboratories for democracy.” Progressive federalism does not propose handing all government over to states. It does propose making more policy in the state capitals we all memorized in grade school—Juneau and Pierre, Helena and Frankfort, Albany and Topeka, Lincoln and Lansing, Sacramento and Springfield—and less in the K Street suites of Jack Abramoff and his kind, or in secret Executive Office Building meetings with Big Oil, Big Pharma, and their ilk, which we have latterly come to know all too well.

Who can seriously object to that?

### They Cite: “Charles and Fuentes-Rohwert”

#### Their author concludes that the “federal” VRA was effective, progressive federalism.

Charles and Fuentes-Rohwert 15 — Guy-Uriel E. Charles, Charles S. Rhyne Professor of Law Senior Associate Dean for Faculty & Research at Duke Law School, the founding director of the Duke Law Center on Law, Race and Politics, previously was the Russell M. and Elizabeth M. Bennett Professor of Law at the University of Minnesota Law School, received his JD from the University of Michigan Law School and clerked for The Honorable Damon J. Keith of the United States Court of Appeals for the Sixth Circuit, and Luis Fuentes-Rohwert, Professor of Law and Harry T. Ice Faculty Fellow at Maurer School of Law at Indiana University, earned a LL.M. from Georgetown University School of Law, a Ph.D., J.D. and B.A. from the University of Michigan, 2015 (“Race, Federalism, and Voting Rights,” *The University of Chicago Legal Forum* (2015 U. Chi. Legal F. 113), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, p. 151, Lil\_Arj)

Relatedly, if federalism is thought to further decentralization-and decentralization is thought to enhance liberty and self-government-it is not clear why the VRA is not viewed as an ally of the federalism project. In the context of voting, the Voting Rights Act is the implementation of decentralization. Sections 2, 4, and 5 of the VRA compelled devolution of power, under the right circumstances, to local entities. The VRA created majority-minority districts, which assured that voters of color constituted a majority of voters in a least some electoral jurisdictions. The VRA operated at the county-level, the school board level, the commission level, and the city council level, inter alia. It forced political elites at the state level to consult with sub-state political elites. It empowered local minorities. Admittedly, the local minorities empowered by the VRA were racial minorities, but they were minorities nonetheless. It is hard to conceive of a structural scheme that empowered local minorities, in this case racial minorities, more than the VRA.

The puzzling question is, why is the VRA is not viewed as federalism-reinforcing? Why is it that when we think of states' rights, we do not think of the large majority of citizens of color within those states? Even more intriguingly, what will happen to states' rights when it unequivocally means minority empowerment? Our aim in this Part was to put those questions squarely on the table.

[Note to debaters: VRA — Voting Rights Act of 1965]

### They Say: “No Federal Marijuana Enforcement”

#### Trump will enforce federal marijuana laws — Sessions and Spicer.

Wilson 17 — Reid Wilson, accomplished journalist at *The Hill*, former chief political correspondent for The Morning Consult, George Washington University graduate, 2017 (“Confusion mounts over Trump administration’s stance on marijuana,” *The Hill*, February 28th, Available Online at <http://thehill.com/homenews/state-watch/321639-confusion-mounts-over-trump-administrations-stance-on-marijuana>, Accessed 07-05-2017)

The Trump administration is signaling a crackdown on federal drug laws, leaving apprehensive top officials in states that have legalized recreational marijuana searching for answers.

Senior Trump administration members have hinted in recent days that they plan to more strictly enforce drug laws, a reversal from the Obama administration, which largely tolerated legal marijuana industries in states where voters had given the go-ahead.

“I’m dubious about marijuana. I’m not sure we’re going to be a better, healthier nation if we have marijuana sold at every corner grocery store,” Attorney General Jeff Sessions told state attorneys general on Tuesday.

Sessions also urged local law enforcement officials to take a tougher stance against cartels importing drugs across the southern border.

White House press secretary Sean Spicer said last week he believed the administration would push “greater enforcement” of federal drug laws, under which marijuana is still a banned substance.

### They Say: “Good Moral Character Clauses”

#### Trump threatens to undermines the effectiveness of racial-justice based marijuana legalization — State resistance would solve.

Bender 17 — Steven W. Bender, Professor of Law and Associate Dean for Research and Faculty Development at the Seattle University School of Law, 2017 (“The Colors of Cannabis: Reflections on the Racial Justice Implications of California’s Proposition 64,” *UC Davis Law Review Online* (50 UC Davis L. Rev. Online 11), March 9th, Available Online at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2929749>, Accessed 07-07-2017, Lil\_Arj)

The other more ominous threat to minority entrepreneurship arrived in the same moment as the legalization of recreational marijuana in California — the election of Donald Trump. Currently operating under a truce of sorts with legalization states in the form of the so-called Cole memo,51 the federal government could return at any time to its prior approach in California and other states of raiding (medical) marijuana operations lawful under local law.52 My printed article addressed the reluctance of minorities, already subject to undue scrutiny by law enforcement officials, to enter a high-profile market that is not fully legal.53 With the election of an individual who made so many racially disparaging and polarizing remarks against Latinos and other minorities, and the specter of cabinet appointments such as proposed Attorney General Jeff Sessions, who staunchly opposes legal marijuana and would likely undo the hands-off policies of the Cole memo, racial minorities have much to fear. Would they voluntarily enter the newly minted legalized California market at the same moment that federal enforcement seems more likely than ever in the modern history of legalized recreational marijuana?

CONCLUSION

Advocates of racial justice need to buckle up for the coming years as federal enforcement looms over any advances that Proposition 64 delivered. Apart from this federal omnipresence, the California decriminalization experience suggests that racial justice does not always accompany a de-escalation of the drug war. Rather, racial justice must be a conscious influence in the design and ongoing implementation of drug reforms and, even then, advocates for racial justice cannot expect the system to reform completely, quickly, or even willingly. California will serve as the largest U.S. laboratory of [End Page 22] marijuana legalization for adults, and its racial justice effects bear watching in the years to come.

As I argued elsewhere,54 having been the first venue where derogatory racial stereotypes resonated and resulted in the criminality of marijuana use, states are best suited to undo the damage of that criminalization. As laboratories of social justice, the states in the coming presidential regime must take the lead in sensible drug policies that prioritize treatment and education over criminal sanctions. Although the trend toward legalization has flaws in fully confronting and redressing racial injustices in the War on Drugs, Proposition 64 is a hopeful sign that legalization measures are moving toward recognition of the racial implications of policies that have caused more societal harm in the last century than the drug itself.

## Impact — Warming

### 1NC — Warming Module

#### Federalism is key to solve climate change - utilities prove that federalism is necessary for flexible regulations

Boyd & Carlson 16 (William Boyd Is a Professor and John H. Schultz Energy Law Fellow at the University of Colorado Law School; Ann E. Carlson is a Professor of Environmental Law at UCLA and Faculty Co-Director, Emmett Institute on Climate Change and the Environment “Accidents of Federalism: Ratemaking and Policy Innovation in Public Utility Law,” UCLA Law Review, Vol. 63, <http://www.uclalawreview.org/wp-content/uploads/2016/05/Boyd-Carlson-63-4.pdf>)

Our attention to the innovation that is occurring and the interaction of state and federal policy aligns us with an emerging school of federalism theory that suggests that states can be deployed not just for local ends but also to promote national policies and values.348 The emergence and persistence of the three models of electricity regulation combined with federal subsidies and nudges are helping to promote low- and zero-carbon electricity at a time when the U.S. government is working to meet ambitious goals to cut carbon emissions. And they are producing innovation by taking advantage of precisely those traditional values federalism is meant to promote: diversity and experimentation. Yet they are doing so at least in part because the federal government has allowed the states to continue operating as important players in the national system of electricity regulation.349 Our description thus also provides another example of the dynamic interaction between and among levels of government, one that defies standard explanations of our federal system and that recognizes the important role the federal government often plays in creating and supporting policies that emerge from systems of federalism.350

CONCLUSION

When Congress passed Part II of the FPA in 1935, it sought to complement rather than replace existing state authority to regulate the electricity sector. In doing so, it recognized the value and importance of state policy experimentation and the traditional role of state PUCs in regulating electricity rates.

Today, despite significant change in the sector and in a moment of great technological and regulatory innovation, we are still working with the basic jurisdictional split established in 1935. Rather than modify this framework, and notwithstanding multiple opportunities to do so, Congress has left it largely intact, leaving states with the ability to choose whether and how to participate in electricity restructuring. The resulting system of regulation is messy and uneven, with three major models in operation across the country. But this three-model system, combined with specific federal policy nudges and subsidies that have worked to de-risk certain state experiments, is also facilitating innovation across many aspects of the electricity sector.

The standard, largely negative account of our current system of electricity regulation contends that we need a statutory overhaul to bring order and efficiency to our regulatory framework to better equip it to deal with new challenges. Perhaps. But what we have sacrificed in efficiency, we may have gained in experimentation. Although the counterfactual is impossible to assess with confidence, we have argued that the three-model system may be producing more (and underappreciated) policy innovation than would occur under a single, national approach. At a minimum, we argue, the diversity inherent in the three-model system has, when combined with directed federal policy nudges and subsidies, allowed for different experiments across different kinds of states and across different aspects of the machine than we would expect to see under a more uniform approach. In a very real way, then, the structure of federalism at the heart of the U.S. system of electricity regulation, and the diversity and experimentalism it has enabled, may be promoting rather than diminishing certain national policy goals—a recognition that animates much of the EPA’s Clean Power Plan with its embrace of state autonomy.

Basic principles of public utility law and, specifically, the practice of PUCs in designing and setting rates have been central to the innovations we describe. All of which suggests that we may finally be at a place where we are able to catch up with and realize the value of the experimentalist impulse that was at the heart of an earlier, more expansive concept of public utility but that has lain dormant for so long. We need this creative force now more than ever as we grapple with the need to transform the most complex machine ever built into something vastly cleaner, more distributed, and more interactive. Ratemaking, and the innovation it enables, must be front and center in that effort.

#### Climate change is a system disruptor and risk amplifier--only mitigation prevents biodiversity loss, ecosystem collapse, resource wars, and extreme weather events.

IPCC 15 (The Core Writing Team Synthesis Report IPCC “Climate Change 2014 Synthesis Report”, First published 2015, IPCC, 2014: Climate Change 2014: Synthesis Report.” Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change. IPCC, Geneva, Switzerland, 151, http://epic.awi.de/37530/1/IPCC\_AR5\_SYR\_Final.pdf)

SPM 2.3 Future risks and impacts caused by a changing climate

Climate change will amplify existing risks and create new risks for natural and human systems. Risks are unevenly distributed and are generally greater for disadvantaged people and communities in countries at all levels of development. {2.3}

Risk of climate-related impacts results from the interaction of climate-related hazards (including hazardous events and trends) with the vulnerability and exposure of human and natural systems, including their ability to adapt. Rising rates and magnitudes of warming and other changes in the climate system, accompanied by ocean acidification, increase the risk of severe, pervasive and in some cases irreversible detrimental impacts. Some risks are particularly relevant for individual regions (Figure SPM.8), while others are global. The overall risks of future climate change impacts can be reduced by limiting the rate and magnitude of climate change, including ocean acidification. The precise levels of climate change sufficient to trigger abrupt and irreversible change remain uncertain, but the risk associated with crossing such thresholds increases with rising temperature (medium confidence). For risk assessment, it is important to evaluate the widest possible range of impacts, including low-probability outcomes with large consequences. {1.5, 2.3, 2.4, 3.3, Box Introduction.1, Box 2.3, Box 2.4}

A large fraction of species faces increased extinction risk due to climate change during and beyond the 21st century, especially as climate change interacts with other stressors (high confidence). Most plant species cannot naturally shift their geographical ranges sufficiently fast to keep up with current and high projected rates of climate change in most landscapes; most small mammals and freshwater molluscs will not be able to keep up at the rates projected under RCP4.5 and above in flat landscapes in this century (high confidence). Future risk is indicated to be high by the observation that natural global climate change at rates lower than current anthropogenic climate change caused significant ecosystem shifts and species extinctions during the past millions of years. Marine organisms will face progressively lower oxygen levels and high rates and magnitudes of ocean acidification (high confidence), with associated risks exacerbated by rising ocean temperature extremes (medium confidence). Coral reefs and polar ecosystems are highly vulnerable. Coastal systems and low-lying areas are at risk from sea level rise, which will continue for centuries even if the global mean temperature is stabilized (high confidence). {2.3, 2.4, Figure 2.5}

Climate change is projected to undermine food security (Figure SPM.9). Due to projected climate change by the mid-21st century and beyond, global marine species redistribution and marine biodiversity reduction in sensitive regions will challenge the sustained provision of fisheries productivity and other ecosystem services (high confidence). For wheat, rice and maize in tropical and temperate regions, climate change without adaptation is projected to negatively impact production for local temperature increases of 2°C or more above late 20th century levels, although individual locations may benefit (medium confidence). Global temperature increases of ~4°C or more 13 above late 20th century levels, combined with increasing food demand, would pose large risks to food security globally (high confidence). Climate change is projected to reduce renewable surface water and groundwater resources in most dry subtropical regions (robust evidence, high agreement), intensifying competition for water among sectors (limited evidence, medium agreement). {2.3.1, 2.3.2}

Until mid-century, projected climate change will impact human health mainly by exacerbating health problems that already exist (very high confidence). Throughout the 21st century, climate change is expected to lead to increases in ill-health in many regions and especially in developing countries with low income, as compared to a baseline without climate change (high confidence). By 2100 for RCP8.5, the combination of high temperature and humidity in some areas for parts of the year is expected to compromise common human activities, including growing food and working outdoors (high confidence). {2.3.2}

In urban areas climate change is projected to increase risks for people, assets, economies and ecosystems, including risks from heat stress, storms and extreme precipitation, inland and coastal flooding, landslides, air pollution, drought, water scarcity, sea level rise and storm surges (very high confidence). These risks are amplified for those lacking essential infrastructure and services or living in exposed areas. {2.3.2}

Rural areas are expected to experience major impacts on water availability and supply, food security, infrastructure and agricultural incomes, including shifts in the production areas of food and non-food crops around the world (high confidence). {2.3.2}

Aggregate economic losses accelerate with increasing temperature (limited evidence, high agreement), but global economic impacts from climate change are currently difficult to estimate. From a poverty perspective, climate change impacts are projected to slow down economic growth, make poverty reduction more difficult, further erode food security and prolong existing and create new poverty traps, the latter particularly in urban areas and emerging hotspots of hunger (medium confidence). International dimensions such as trade and relations among states are also important for understanding the risks of climate change at regional scales. {2.3.2}

Climate change is projected to increase displacement of people (medium evidence, high agreement). Populations that lack the resources for planned migration experience higher exposure to extreme weather events, particularly in developing countries with low income. Climate change can indirectly increase risks of violent conflicts by amplifying well-documented drivers of these conflicts such as poverty and economic shocks (medium confidence). {2.3.2}

### 2NC — Federalism Solves Warming

#### Federalism is necessary to solve warming - absent federalism lack of emissions restrictions will make unmitigated warming inevitable

Ibbitson 6/2/17 (John, Globe & Mail Reporter, “Federalism might be our best hope in fighting climate change” https://www.theglobeandmail.com/news/politics/federalism-might-be-our-best-hope-in-fighting-climate-change/article35197342/)

Federal systems of government are splendid things: robust, flexible, able to accommodate conflicting local values. When it comes to the fight against global warming, federalism is the ace up Canada’s sleeve, while south of the border it’s America’s last, best hope.

Conservative prime minister Stephen Harper was right to withdraw Canada from the Kyoto Protocol on climate change in 2011. The Chrétien government had made promises at Kyoto that no Canadian government could keep without wrecking the economy. The expanding oil sands in Alberta had become a major driver of growth. The U.S. Congress was blocking president Barack Obama’s efforts to fight global warming.

Any Canadian tax on carbon without an equivalent American action would simply kill Canadian jobs, without lowering the planet’s temperature even a smidgeon, Mr. Harper argued, and that argument made sense.

But, although Ottawa wasn’t ready to fight climate change, some provincial governments thought differently. Quebec had a natural advantage, because most of its electricity is generated by hydro. The Liberal government in Ontario wanted to replace lost manufacturing jobs in traditional industries by developing green-energy technology. British Columbia premier Gordon Campbell believed that a carbon tax was the most business-friendly way to lower emissions.

When Rachel Notley’s NDP came to power in Alberta, committed to bringing that province in line with others in the fight against climate change, Mr. Harper shrugged. Ottawa’s job, he believed, was to get a pipeline to tidewater somehow, somewhere. If the provinces wanted to go all green, they were welcome to knock themselves out.

But then Mr. Harper was replaced by Justin Trudeau, and Mr. Obama by Donald Trump. The White House is now even more of a climate-change-denier than the House of Representatives or Senate, while the Liberal government is as enthusiastic about fighting climate change as any province.

In Canada’s case, federalism worked to provide in advance what Ottawa now seeks: a national (if piecemeal) strategy to reduce carbon emissions through provincial cap-and-trade or carbon tax schemes, with only Saskatchewan’s Brad Wall seriously offside.

In America’s case, federalism and the entrepreneurial energy of the private sector have combined to limit the damage inflicted by Washington. About 30 states have green-energy strategies in place. Elon Musk resigned Thursday from two of Mr. Trump’s advisory councils in protest over the President’s decision to withdraw the United States from the Paris accord on climate change. Of course he resigned: His Tesla Model 3 electric car will soon hit the streets in an increasingly competitive electric vehicle market, going head-to-head with, among other competitors, the Chevy Bolt and the Volkswagen eGolf.

The battle in North America against global warming will be most successfully fought in dealer show rooms. Mr. Trump, with his Luddite refusal to recognize the transformation under way in his own country’s economy, is making that battle harder to win, which is why dozens of mayors and CEOs vowed to continue efforts to reduce carbon dioxide emissions in the wake of the President’s announcement.

#### Undermining cooperative federalism makes climate mitigation impossible --- that turns the aff.

Andreen et al. 08 (William Andreen a professor of Law at the University of Alabama // Robert Glicksman the Chair of the University of Kansas Law School and Director of the CPR // Nina Mendelson a Professor of Law at the University of Michigan and a Resident Scholar at the CPR // Rena Steinzor a Research Professor of Law at the University of Maryland and Director of CPR // Shana Jones a Policy Analyst at the CPR “Cooperative Federalism and Climate Change: Why Federal, State, and Local Governments Must Continue to Partner,” The Center for Progressive Reform, 29 May 2008, p. 10-12, <http://www.progressivereform.org/articles/cooperative_federalism_and_climate_change.pdf>)

Complete preemption of state and local authority to address climate change would not only be inconsistent with federalism values and with nearly forty years of federal environmental regulation, it also would prevent the United States from taking the steps needed to avoid the potentially devastating effects of climate change. In particular, prohibiting state and local governments from acting in areas that have always been within their exclusive jurisdiction – including the regulation of electric utilities, land use control, agriculture, landfills, and building codes – would make it impossible for the United States to achieve the carbon reductions needed to avoid catastrophic climate change. States are now targeting these sources in creative and innovative ways, including renewable portfolio standards, emissions trading programs, and policies relating to residential energy usage, transportation planning, taxation, and waste reduction. Preempting these efforts will be detrimental to reducing carbon emissions for the following reasons:

A “top-down” approach characterized by complete preemption of state and local climate change programs ignores the reality of climate change, namely that it is a problem caused by disparate and diverse sources and that all of these sources must reduce their carbon emissions if we want to address the problem effectively. As many states have already shown, a rational and effective climate change policy requires the use of many different tools. Such a “portfolio” approach affords state and local governments the flexibility they need to implement the policies and programs that serve their unique constituencies best. In addition, “[d]iversification enhances a state’s resilience to external energy challenges,” allowing states to be better prepared when prices spike. 66 Complete preemption would both preclude flexibility and impair effectiveness in the nation’s quest to minimize the adverse effects of climate change.

Not only are state and local governments able to use legal tools that are not available to the national government, they are far better suited to motivate the lifestyle changes among their citizens that will prove essential to an effective climate change policy over the long run. Unless individuals bear some of the burden of combating climate change, the entire task will be thrust upon the industries responsible for generating most of the nation’s GHGs (although compliance with climate change requirements by industries such as electric utilities obviously will affect individual citizens indirectly). Lifestyle changes will require “local commitment, down to individuals, to accomplish the type of economic and societal transformations that will be necessary to achieve very large reductions in carbon.”67

The kinds of emissions trading regimes envisioned under most pending federal climate change bills will not be enough to combat climate change. Development and transportation decisions made by local governments will be key to reducing carbon emissions. One estimate finds that “if 60 percent of new growth” consists of “compact” or “high-density” development,”68 up to 85 million metric tons of carbon gas emissions could be prevented from reaching the atmosphere each year by 2030,” the equivalent of a 28 percent increase in federal vehicle efficiency standards.69 This is five percent greater than the levels of emissions reductions predicted to be generated by the increased vehicle efficiency standards mandated by the 2007 Energy Independence Security Act – reduction predictions that notably do not take into account the likelihood that driving will continue to increase. 70 State and local governments recognize that they must promote less driving, not more, if carbon emissions are to be reduced significantly.

Another reason to preserve state and local authority to address climate change, notwithstanding the establishment of federal programs, is to preserve state and local authority to deal with the divergent impacts that climate change is likely to have in different parts of the country. Regional variation in the impacts of climate change is likely to be significant.71 Some regions will experience severe droughts. Others will lose coastlines. Still others will suffer from flooding caused by severe weather events. States will need the authority to enact more stringent programs or supplemental programs tailored to address the unique impacts that climate change will have on their populations and natural resources. States will also play crucial roles in adaptation planning. Although we know that the impacts of climate change will differ by region, we cannot predict with certainty what these differences will be. In the face of such uncertainty, straitjacketing states by forcing them to conform to a single, minimally protective federal regime would be both unnecessarily limiting and unwise.

States and localities often serve as the federal government’s agent or partner in the implementation of federal environmental legislation, and the freedom to apply the experience and expertise they have developed over the past four decades by creating programs that supplement federal climate change efforts will be invaluable and necessary if federal climate change programs are to succeed. A cooperative approach that retains state and local authority better utilizes state and local resources than an approach that vests the exclusive power to deal with climate change in the federal government.

#### It’s necessary - status quo forced choice between centralized and decentralized climate policy collapses effective policy - federalism is key

Sovacool 08 (Sovacool, Research Fellow in the Energy Governance Program at the Centre on Asia and Globalization Benjamin K. "The best of both worlds: Environmental federalism and the need for federal action on renewable energy and climate change." Stan. Envtl. LJ 27 (2008): 397)

But when environmental problems are national or international in scope, only interactive federalism captures all of these benefits while minimizing the deficiencies that accompany a decentralized, centralized, or dual federalist approach. Interactive federalism creates plurality and dialogue to enhance the innovative and competitive aspects of decentralization while maintaining distributive equity and accountability. In the case of state-based RPSs and greenhouse gas quotas, federal interaction is urgently needed to create a fair, consistent, and constitutional approach to promoting renewable energy and fighting climate change. If designed to include a credit trading scheme, federal intervention would permit considerable differentiation and flexibility among locales and individual generators or emitters with different preferences at the local level while maintaining a level of consistency for investors at the national level. Ultimately, the arguments in favor of decentralization or centralization are not really for unilateral state or federal action but simply for flexible and efficiency-minded regulatory tools and strategies. Interactive federalism on state RPS mandates and greenhouse gas quotas would attain economies of scale in research and development, enforcement, and compliance while avoiding many of the other pitfalls of centralized action. Moreover, both the RPS and greenhouse gas problems are well suited to federal floors since they would provide a minimum level of protection for society but would also retain broad latitude for further action at multiple local and regional scales.

The significant benefits that would accrue from the application of interactive federalism to these two issues point to important lessons for environmental policymaking as a whole. The experience with state-based renewable energy and climate change policy suggests that federal interaction is essential when (i) existing state actions are insufficient to promote environmental policy goals; (ii) the states face constitutional challenges to addressing an environmental problem individually; (iii) the state regulatory environment imposes additional costs on businesses and consumers; and (iv) the presence of interstate spillovers and externalities suggests the need for national action. It is then that the call for interactive environmental federalism, providing distributive justice and uniformity along with experimentation and innovation, should ring the loudest.

### 2NC — Subnational Action Key

#### Subnational action is key - leads the way for large scale action that outweighs the effect of Paris

Bloomberg 11/22/16(Michael R. Bloomberg, MBA @ Harvard Business School, BS in Electrical Engineering @ Johns Hopkins, "Washington Won't Have Last Word on Climate Change," Bloomberg View, https://www.bloomberg.com/view/articles/2016-11-22/washington-won-t-have-last-word-on-climate-change)

I can’t tell you what Donald Trump's administration will do -- and in all fairness, they will need time to figure it out themselves. What’s said on the campaign trail is one thing; actually carrying out a specific policy is another. I hope they’ll recognize the importance of the issue. But I am confident that no matter what happens in Washington, no matter what regulations the next administration adopts or rescinds, no matter what laws the next Congress may pass, we will meet the pledges that the U.S. made in Paris. The reason is simple: Cities, businesses and citizens will continue reducing emissions, because they have concluded -- just as China has -- that doing so is in their own self-interest. The U.S.’s success in fighting climate change has never been primarily dependent on Washington. Bear in mind: Over the past decade, Congress has not passed a single bill that takes direct aim at climate change. Yet at the same time, the U.S. has led the world in reducing emissions. That progress has been driven by cities, businesses and citizens -- and none of them are letting up now. Just the opposite: All are looking for ways to expand their efforts. Mayors and local leaders around the country are determined to keep pushing ahead on climate change -- because it is in their interest to do so. Over time, as more and more Americans come to recognize what climate change means to their families and their futures -- by seeing the increasingly severe impact of storms, droughts and other weather events -- they will demand action from the federal government, too. But in the meantime, mayors and other local officials will lead the way.

### They Say: “No Internal Link”

#### Federal education policy destroys federalism in unrelated areas including environmental policy.

Kazman et al. 16 — Sam Kazman, the Competitive Enterprise Institute's general counsel, with Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute, editor-in-chief of the Cato Supreme Court Review, former special assistant/adviser to the Multi-National Force in Iraq on rule-of-law, and Joshua P. Thompson, a senior attorney at the Pacific Legal Foundation, 2016 (Amicus Brief of Pacific Legal Foundation, Competitive Enterprise Institute, and CATO Institute in support of the petitioner in the Supreme Court case *Christopher J. Christie, Governor of New Jersey, et al., v. National Collegiate Athletic Association, et al.*, November, Available Online at <https://object.cato.org/sites/cato.org/files/wp-content/uploads/christie_v_ncaa_cert-stage.pdf>, Accessed 06-30-2017)

For instance, the federal government could compel states to continue implementing education policies well after they have proven unpopular. Previously, the need to convince states to cooperate has given them significant leverage to influence federal policy. See Young, supra at 1074-75 (explaining that state resistence to federal education policy forced a federal agency to change its requirements). If, once adopted, the federal government could compel states to continue to implement particular policies, the political consequences could be far reaching. The federal government could dictate curricula or testing requirements in those states that previously embraced the federal policy. But see Milliken v. Bradley, 418 U.S. 717, 741-42 (1974) (recognizing education as an area of traditional state and local control). It could also require states to continue enforcing their current bathroom policies, whatever those may be. Cf. G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd., 822 F.3d 709 (4th Cir. 2016), cert. granted, No. 16-273 (Oct. 28, 2016). Limiting the anti-commandeering doctrine could also have severe repercussions in environmental policy. Federal-state cooperation on environmental regulation is particularly useful because states have greater local knowledge and more available enforcement officers. See Richard B. Stewart, Pyramids of Sacrifice? Problems of Federalism in Mandating State Implementation of National Environmental Policy, 86 Yale L.J. 1196, 1243-50 (1977). But if the federal government could indefinitely impose its will on states after they initially agree, that would threaten these cooperative federalism arrangements, with far reaching affects. Cf. Robert V. Percival, Environmental Federalism: Historical Roots and Contemporary Models, 54 Md. L. Rev. 1141, 1174 (1995).

### They Say: “Race to the Bottom”

#### No race to the bottom — state market incentives encourage pursuit of renewables.

Burtraw 17 — Dallas Burtraw, Darius Gaskins Senior Fellow with the nonpartisan think tank Resources for the Future, served on the National Academy of Sciences Board on Environmental Studies and Toxicology and on the U.S. Environmental Protection Agency’s Advisory Council on Clean Air Compliance Analysis, served on California’s Economic and Allocation Advisory Committee advising the governor’s office and the Air Resources Board on implementation of the state’s climate law, earned a PhD in economics from the University of Michigan, an MPP in public policy from the University of Michigan, and a BS in community economic development from University of California at Davis, 2017 (“States Could Take Lead On Environmental Regulation Under Trump,” *NPR*, January 18th, Available Online at <http://www.npr.org/2017/01/18/510472419/states-could-take-lead-on-environmental-regulation-under-trump>, Accessed 07-10-2017)

ROBERT SIEGEL, HOST: More now on federalism and the environment. States and cities have long taken the lead in pushing for clean energy and climate initiatives, and for a sense of what we might see from the states during a Trump administration, we're joined now by Dallas Burtraw. He's a senior fellow with the nonpartisan think tank Resources for the Future. Welcome to the program.

DALLAS BURTRAW: Thank you, Robert.

SIEGEL: And perhaps you can help us understand the landscape of state regulations and policies, where they're strongest and where they're weakest.

BURTRAW: There are state policies that are strong throughout the nation, but especially in the northeast states, in California and a number of other states, we see leadership on climate and energy policies. There's 10 states nationally that have cap and trade programs in place.

A number of other states have climate policy goals already articulated. And they take the shape mostly in the form of clean energy policies with over half the states in the country having funded energy efficiency standards.

SIEGEL: But if the federal government were not to have an activist EPA, would you expect the states to continue behaving as they've been behaving?

BURTRAW: I would expect to see these states really double down on their commitment to climate and energy policies partly because it's been so important for their economic development and job creation in those states. And even in the states that don't have in place these climate and energy policies that we refer to, we're seeing the breakout of market forces that are leading to the development of clean energy and industry that is very prominent even in so-called red states.

SIEGEL: You're saying in many states, there is strong an economic interest in sustainable energy development as in traditional fossil fuels.

BURTRAW: Well, that's right. We're seeing that across the solar and renewable industry, for example, there are more than twice as many jobs as there is in the coal electricity generation pathway.

SIEGEL: And is it fair to say that those jobs would exist even if the federal government were not subsidizing them in any way?

BURTRAW: Well, the federal subsidies have enabled those industries to develop and emerge now, but it's now the case that their costs have fallen that they're really competitive with coal and even natural gas.

SIEGEL: Now, California has its own auto emissions standards that are more rigorous than federal standards. Could the federal government say to California, you longer have the authority to do that?

BURTRAW: Well, the way it works is California has a unique situation in that it can develop auto standards that exceed the federal standards. And then other states are given a choice about whether to jump onboard with California or to adhere to the federal standards.

And time after time over the last four decades, California has taken the lead and sought a waiver to enact its standards, and the federal standards are then ultimately caught up with California. And that's where we are just now with standards going through 2025.

SIEGEL: But what about California's waiver? Is that secure until 2025?

BURTRAW: Well, that's an uncertain question - whether Pruitt would go after to try to revoke the waiver for California. But every waiver request previously has always been accepted, and for him to go in and try to revoke a waiver that's already been granted - a lot of chicken feathers would hit the fan if that were to happen.

SIEGEL: From the sound of it, from the way you see it, it sounds like no matter what federal policy is at EPA, it's unlikely to have much effect on the environment. Is that being too rosy?

BURTRAW: That is being a little bit too rosy. What I would say - it's as though the federal government is taking its foot off the accelerator, and now we're going to be coasting. Many of the states that are providing leadership and developing policies will continue to do their part of the work, and I think the state-level policies will propagate to other states.

But the problems cannot ultimately be solved without some sort of federal involvement. The states can go so far, but they cannot really leverage the kind of actions that's necessary, especially on climate, at the international level. That requires a role for the federal government to coordinate and compel international partners to do their part.

### They Say: “No Warming Impact”

#### There’s an unquestionable scientific consensus about warming.

Nuccitelli 16 — Dana Nuccitelli, Climate Writer for the *Guardian*, Environmental Scientist at Tetra Tech—a private environmental consulting firm, holds an M.A. in Physics from the University of California-Davis and a B.A. in Astrophysics from the University of California-Berkeley, 2016 (“It’s settled: 90–100% of climate experts agree on human-caused global warming,” *Climate Consensus – The 97%*—a *Guardian* blog about climate change, April 13th, Available Online at <https://www.theguardian.com/environment/climate-consensus-97-per-cent/2016/apr/13/its-settled-90100-of-climate-experts-agree-on-human-caused-global-warming>, Accessed 07-15-2016)

There is an overwhelming expert scientific consensus on human-caused global warming.

Authors of seven previous climate consensus studies — including Naomi Oreskes, Peter Doran, William Anderegg, Bart Verheggen, Ed Maibach, J. Stuart Carlton, John Cook, myself, and six of our colleagues — have co-authored a new paper that should settle this question once and for all. The two key conclusions from the paper are:

1) Depending on exactly how you measure the expert consensus, it’s somewhere between 90% and 100% that agree humans are responsible for climate change, with most of our studies finding 97% consensus among publishing climate scientists.

2) The greater the climate expertise among those surveyed, the higher the consensus on human-caused global warming.

[Graphic Omitted]

Expert consensus is a powerful thing. People know we don’t have the time or capacity to learn about everything, and so we frequently defer to the conclusions of experts. It’s why we visit doctors when we’re ill. The same is true of climate change: most people defer to the expert consensus of climate scientists. Crucially, as we note in our paper:

Public perception of the scientific consensus has been found to be a gateway belief, affecting other climate beliefs and attitudes including policy support.

That’s why those who oppose taking action to curb climate change have engaged in a misinformation campaign to deny the existence of the expert consensus. They’ve been largely successful, as the public badly underestimate the expert consensus, in what we call the “consensus gap.” Only 12% of Americans realize that the consensus is above 90%.

[Video Omitted]

Consensus misrepresentations

Our latest paper was written in response to a critique published by Richard Tol in Environmental Research Letters, commenting on the 2013 paper published in the same journal by John Cook, myself, and colleagues finding a 97% consensus on human-caused global warming in the peer-reviewed literature.

Tol argues that when considering results from previous consensus studies, the Cook 97% figure is an outlier, which he claims is much higher than most other climate consensus estimates. He makes this argument by looking at sub-samples from previous surveys. For example, Doran’s 2009 study broke down the survey data by profession – the consensus was 47% among economic geologists, 64% among meteorologists, 82% among all Earth scientists, and 97% among publishing climate scientists. The lower the climate expertise in each group, the lower the consensus.

[Graph Omitted]

Like several of these consensus surveys, Doran cast a wide net and included responses from many non-experts, but among the experts, the consensus is consistently between 90% and 100%. However, by including the non-expert samples, it’s possible to find low “consensus” values.

The flaw in this approach is especially clear when we consider the most ridiculous sub-sample included in Tol’s critique: Verheggen’s 2015 study included a grouping of predominantly non-experts who were “unconvinced” by human-caused global warming, among whom the consensus was 7%. The only surprising thing about this number is that more than zero of those “unconvinced” by human-caused global warming agree that humans are the main cause of global warming. In his paper, Tol included this 7% “unconvinced,” non-expert sub-sample as a data point in his argument that the 97% consensus result is unusually high.

By breaking out all of these sub-samples of non-experts, the critique thus misrepresented a number of previous consensus studies in an effort to paint our 97% result as an outlier. The authors of those misrepresented studies were not impressed with this approach, denouncing the misrepresentations of their work in no uncertain terms.

We subsequently collaborated with those authors in this newly-published scholarly response, bringing together an all-star lineup of climate consensus experts. The following quote from the paper sums up our feelings about the critique’s treatment of our research:

Tol’s (2016) conflation of unrepresentative non-expert sub-samples and samples of climate experts is a misrepresentation of the results of previous studies, including those published by a number of coauthors of this paper.

Consensus on consensus

In our paper, we show that including non-experts is the only way to argue for a consensus below 90–100%. The greater the climate expertise among those included in the survey sample, the higher the consensus on human-caused global warming. Similarly, if you want to know if you need open heart surgery, you’ll get much more consistent answers (higher consensus) if you only ask cardiologists than if you also survey podiatrists, neurologists, and dentists.

That’s because, as we all know, expertise matters. It’s easy to manufacture a smaller non-expert “consensus” number and argue that it contradicts the 97% figure. As our new paper shows, when you ask the climate experts, the consensus on human-caused global warming is between 90% and 100%, with several studies finding 97% consensus among publishing climate scientists.

There’s some variation in the percentage, depending on exactly how the survey is done and how the question is worded, but ultimately it’s still true that there’s a 97% consensus in the peer-reviewed scientific literature on human-caused global warming. In fact, even Richard Tol has agreed:

The consensus is of course in the high nineties.

Is the consensus 97% or 99.9%?

In fact, some believe our 97% consensus estimate was too low. These claims are usually based on an analysis done by James Powell, and the difference simply boils down to how “consensus” is defined. Powell evaluated the percentage of papers that don’t explicitly reject human-caused global warming in their abstracts. That includes 99.83% of papers published between 1991 and 2012, and 99.96% of papers published in 2013.

In short, 97% of peer-reviewed climate research that states a position on human-caused warming endorses the consensus, and about 99.9% of the total climate research doesn’t explicitly reject human-caused global warming. Our two analyses simply answer different questions. The percentage of experts and their research that endorse the theory is a better description of “consensus.” However, Powell’s analysis is useful in showing how few peer-reviewed scientific papers explicitly reject human-caused global warming.

In any case, there’s really no question that humans are the driving force causing global warming. The experts are almost universally convinced because the scientific evidence is overwhelming. Denying the consensus by misrepresenting the research won’t change that reality.

With all of the consensus authors teaming up to show the 90–100% expert consensus on human-caused global warming, and most finding 97% consensus among publishing climate scientists, this paper should be the final word on the subject.

#### Prefer our evidence — it’s a meta-study of meta-studies.

MTU 16 — Michigan Technological University, 2016 (“Consensus on consensus: Expertise matters in agreement over human-caused climate change,” *Science Daily*, April 12th, Available Online at <https://www.sciencedaily.com/releases/2016/04/160412211610.htm>, Accessed 07-15-2016)

A research team confirms that 97 percent of climate scientists agree that climate change is caused by humans. The group includes Sarah Green, a chemistry professor at Michigan Technological University.

"What's important is that this is not just one study -- it's the consensus of multiple studies," Green says. This consistency across studies contrasts with the language used by climate change doubters. This perspective stems from, as the authors write, "conflating the opinions of non-experts with experts and assuming that lack of affirmation equals dissent."

Environmental Research Letters published the paper this week. In it, the team lays out what they call "consensus on consensus" and draws from seven independent consensus studies by the co-authors. This includes a study from 2013, in which the researchers surveyed more than 11,000 abstracts and found most scientists agree that humans are causing climate change. Through this new collaboration, multiple consensus researchers – and their data gathered from different approaches – lead to essentially the same conclusion.

The key factor comes down to expertise: The more expertise in climate science the scientists have, the more they agree on human-caused climate change.

Skeptic vs. Doubter

There are many surveys about climate change consensus. The problem with some surveys, Green points out, is that they are biased towards populations with predetermined points of view. Additionally, respondents to some surveys lack scientific expertise in climate science.

"The public has a very skewed view of how much disagreement there is in the scientific community," she says. Only 12 percent of the US public are aware there is such strong scientific agreement in this area, and those who reject mainstream climate science continue to claim that there is a lack of scientific consensus. People who think scientists are still debating climate change do not see the problem as urgent and are unlikely to support solutions.

This new paper is a rebuttal to a comment criticizing the 2013 paper. Green is quick to point out that skepticism, a drive to dig deeper and seeking to better validate data, is a crucial part of the scientific process.

"But climate change denial is not about scientific skepticism," she says.

Broader Impacts

Refuting climate change doubters is the main purpose of a website Green contributes to called skepticalscience.com. The website is run by the new study's lead author, John Cook from the University of Queensland in Australia. He says consensus studies have helped change political dialogue around climate change.

"The progress made at the United Nations Climate Change Conference (COP21) in Paris late last year indicates that countries are now well and truly behind the scientific consensus, too," Cook says.

Co-author Naomi Oreskes from Harvard University originally pursued consensus data about climate change in 2004 and co-wrote Merchants of Doubt, which was turned into a documentary in 2014. She says that this latest work places the findings in the broader context of other research.

"By compiling and analyzing all of this research – essentially a meta-study of meta-studies – we've established a consistent picture with high levels of scientific agreement among climate experts," she says.

And among climate scientists, there's little doubt. There is consensus on consensus.

#### Dismiss evidence from skeptics — it’s single-study syndrome.

Nuccitelli 14 — Dana Nuccitelli, Climate Writer for the *Guardian*, Environmental Scientist at Tetra Tech—a private environmental consulting firm, holds an M.A. in Physics from the University of California-Davis and a B.A. in Astrophysics from the University of California-Berkeley, 2014 (“The 97% v the 3% – just how much global warming are humans causing?,” *Climate Consensus – The 97%*—a *Guardian* blog about climate change, September 15th, Available Online at http://www.theguardian.com/environment/climate-consensus-97-per-cent/2014/sep/15/97-vs-3-how-much-global-warming-are-humans-causing, Accessed 09-26-2014)

A pair of climate scientists recently had a dispute regarding how much global warming humans are responsible for. Gavin Schmidt from NASA represented the consensus of 96–97% of climate experts in arguing that humans have been the dominant cause of global warming since 1950, while Judith Curry from Georgia Tech represented the opinions of 2–4% of climate experts that we could be responsible for less than half of that warming.

Curry is to be the featured speaker on this subject at a National Press Club event tomorrow hosted by the Marshall Institute; a right-wing thinktank that has spread misinformation about the dangers of smoking, ozone depletion, acid rain, DDT, and now climate change. She may also discuss the subject at an event next week hosted by the fossil fuel-funded right-wing think tank Texas Public Policy Foundation (TPPF).

The exchange between Schmidt and Curry can be read on RealClimate – a blog run by climate scientists. The discrepancy in both the quantity and quality of the supporting evidence used by each scientist was one of the most telling aspects of their debate.

For his part, Schmidt referenced the most recent IPCC report. The IPCC summarises the latest and greatest climate science research, so there is no better single source. The figure below from the IPCC report illustrates why 96–97% of climate science experts and peer-reviewed research agree that humans are the main cause of global warming.

[graphic omitted]

The black bar indicates the amount of global surface warming observed from 1951 to 2010. The green bar shows the amount of warming caused by human greenhouse gas emissions during that time. The yellow is the influence from other human effects (mainly cooling from human sulfate aerosol emissions, which scatter sunlight), and the orange is the combined human effect. Below those are the contributions from external natural factors (mainly the sun and volcanoes) and from natural internal variability (mainly ocean cycles), while the whiskers show the uncertainty range for each.

[graphic omitted — IPCC AR5 Figure 10.5: Assessed likely ranges (whiskers) and their mid-points (bars) for attributable warming trends over the 1951–2010 period due to well-mixed greenhouse gases, other anthropogenic forcings (OA), natural forcings (NAT), combined anthropogenic forcings (ANT) and internal variability. The HadCRUT4 observations are shown in black with the 5 to 95% uncertainty range due to observational uncertainty in this record.

IPCC AR5 figure 10.5: Likely ranges (whiskers) and their mid-points (bars) for attributable warming trends over the 1951–2010 period due to greenhouse gases, other anthropogenic forcings (OA), natural forcings (NAT), combined anthropogenic forcings (ANT) and internal variability. The HadCRUT4 observations are shown in black.]

Notice that the green and orange bars are both bigger than the black bar. This shows that greenhouse gases have caused more warming than has been observed over the past six decades, but some of that was offset by cooling from human aerosol pollution. And the best estimate from the body of peer-reviewed climate science research is that humans are responsible for more than 100% of the global surface warming since 1950, with natural factors probably offsetting a little bit of that with a slight cooling influence.

Schmidt illustrated this key point in the figure below, which is called a probability distribution of the warming caused by humans since 1950. The curve is centered at about 110% – the most likely value for the human contribution to global warming, while the probability of the human contribution being less than 50% is almost nil.

[graphic omitted — The probability density function for the fraction of warming attributable to human activity (derived from Fig. 10.5 in IPCC AR5). The bulk of the probability is far to the right of the “50%” line, and the peak is around 110%.

The probability density function for the fraction of warming attributable to human activity (derived from figure 10.5 in IPCC AR5). The bulk of the probability is far to the right of the ‘50%’ line, and the peak is around 110%. Source: RealClimate]

Again it’s important to remember that the IPCC report is just a summary of the latest and greatest climate science research. The figures above are supported by the papers that have specifically investigated the attribution of recent global warming. This isn’t just one study; it’s based on many studies that are all in strong agreement. As the IPCC report concluded,

It is extremely likely that human activities caused more than half of the observed increase in GMST [global mean surface temperature] from 1951 to 2010.This assessment is supported by robust evidence from multiple studies using different methods.

It’s not just “more than half,” it’s also most likely close to 100%. In fact it’s just as likely that humans are responsible for about 160% of the global surface warming since 1950 as it is that we’re only responsible for 50%.

Curry disagrees with the expert consensus on this issue, but her arguments are rather muddled and “confused,” as Schmidt puts it. Her main argument is that there is uncertainty regarding the contribution of internal variability. The problem with that argument is that over long periods of time (like the six decades since 1950), positive and negative phases of ocean cycles tend to cancel each other out, and thus internal variability doesn’t have a large influence on long-term temperatures. As the first figure above shows, the IPCC estimates the temperature influence of internal variability since 1950 at ±0.1°C, during which time we’ve seen about 0.65°C global surface warming.

Curry also references a report written by Nic Lewis for the anti-climate policy think tank Global Warming Policy Foundation (GWPF), which I wrote about here. The GWPF report argues that the climate sensitivity is toward the lower end of the IPCC estimated range. However, the report is biased towards Lewis’ preferred approach, finding poor excuses to reject the many other methods that arrive at higher climate sensitivity estimates. Moreover, recent research has identified flaws in Lewis’ approach that explain why it incorrectly yields the lowest climate sensitivity estimates. In any case, even if the GWPF were correct, it wouldn’t disprove that most of the warming since 1950 is human-caused.

Curry’s other reference is to a single paper written by Zhou & Tung at the University of Washington in 2013, which concluded that roughly half of the global surface warming over the past 32 or 50 years could be explained by ocean cycles (specifically, the Atlantic Multi-decadal Oscillation). Matt Ridley also recently referenced this paper in an error-riddled Wall Street Journal editorial (debunked here and here and here and here). However, as Schmidt points out,

Tung and Zhou assumed that all multi-decadal variability was associated with the Atlantic Multi-decadal Oscillation (AMO) and did not assess whether anthropogenic forcings could project onto this variability. It is circular reasoning to then use this paper to conclude that all multi-decadal variability is associated with the AMO.

Recent research led by Michael Mann has confirmed that the approach used by Tung and Zhou misidentifies external influences on the AMO as being part of its internal variability.

The problem with relying on a single paper (aka “single study syndrome”) is that flawed studies sometimes get published. On the other hand, when many studies using multiple independent approaches arrive at similar results, they’re probably right. Schmidt’s supporting evidence is far stronger than Curry’s.

Thus although Curry doesn’t understand why so few experts agree with her, it’s easy to see why 96–97% of climate scientists and their peer-reviewed research agree that humans are the main cause of global warming. That’s what the scientific evidence overwhelmingly shows. While it’s possible to find one or two flawed papers arguing to the contrary, the balance of evidence is tilted heavily to the side of human-caused global warming.

It’s about as settled as science gets. In fact, it’s about as settled as the fact that smoking causes cancer, chlorofluorocarbons cause ozone depletion, sulfur dioxide causes acid rain, and DDT is toxic. Although the science is inconvenient for certain industries and the political think tanks they fund (like the Marshall Institute and TPPF), these effects all pose dangers to public health. Climate change perhaps most of all.

### They Say: “1NC Ev only about electricity”

#### Electricity sector reductions are uniquely key to prevent warming

Kaufman et al. 16 (Noah Kaufman, economist for the US Climate Initiative in the Global Climate Program, Michael Obeiter, Senior Associate in World Research Institute’s Global Climate Initiative, Eleanor Krause, Researcher and Analyst for World Research Institute’s Carbon Pricing program, “Putting a Price on Carbon: Reducing Emissions” January 2016, https://www.wri.org/sites/default/files/Putting\_a\_Price\_on\_Carbon\_Emissions.pdf)

Electricity Sector

The electricity sector produces more greenhouse gas emissions than any other sector in the United States. Over four billion megawatt hours of electricity are produced each year, approximately two thirds of which are produced using fossil fuels (U.S. EIA 2015a). The result is over 2 billion metric tons of annual CO2 -equivalent emissions, which comprise roughly one third of total U.S. greenhouse gas emissions (U.S. EPA 2013a).

For the United States to meet its emissions reduction targets, fossil fuel usage in the electricity sector must be significantly curtailed. Fortunately, there are viable alternatives. Nuclear energy provides nearly 20 percent of total electricity generation, and renewables provide another 13 percent (U.S. EIA 2015b). The amount of electricity produced by solar and wind energy in particular has increased dramatically in the past decade as the costs of these technologies have plummeted (Feldman et al. 2012), making them a more viable alternative to fossil-fuel generation each year.

Still, absent strong climate change policies, the transition away from fossil fuels is unlikely to occur quickly enough to enable the United States to achieve its emissions targets. Accounting for the effects of the Clean Power Plan (the regulation of greenhouse gas emissions from existing power plants), the U.S. Environmental Protection Agency (EPA) forecasts that fossil fuels will still comprise about 60 percent of U.S. electricity generation in 2030. As explained below, carbon pricing can have dramatic effects on emissions in the electricity sector. As soon as the policy is implemented, high carbon generating units will operate less often because of higher operating costs. The carbon price will also change decisions about how much electricity to consume, which plants to build, and what efficiency measures to implement. Simultaneously, pricing carbon will induce investments in low-carbon technologies, the development of which will be crucial if the United States is to meet its long-term emissions targets.

## Impact — Leadership

### 1NC — Leadership Module

#### Federal overreach on domestic affairs undermines U.S. global leadership.

Rivlin 92 — Alice M. Rivlin, Senior Fellow and Former Director of Economic Studies at the Brookings Institution, former Hirst Professor of Public Policy at George Mason University, former Founding Director at the Congressional Budget Office, holds a Ph.D. in Economics from Radcliffe College (Harvard University), 1992 (“Federal Policy Goes Global,” *Reviving the American Dream: The Economy, the States & the Federal Government*, Published by the Brookings Institution, ISBN 0815774761, p. 30-31)

The inexorably rising frequency and complexity of U.S. interaction with the rest of the world add to the stress on federal decisionmaking processes and underline the need for making those processes simpler and more effective. If the United States is to be an effective world leader, it cannot afford a cumbersome national government, overlapping responsibilities between the federal government and the states, and confusion over which level is in charge of specific domestic government functions.

As the world shrinks, international concerns will continue threatening to crowd out domestic policy on the federal agenda. Paradoxically, however, effective domestic policy is now more crucial than ever, precisely because it is essential to U.S. leadership in world affairs. Unless we have a strong productive economy, a healthy, well-educated population, and a responsive democratic government, we will not be among the major shapers of the future of this interdependent world. If the American standard of living is falling behind that of other countries and its governmental [end page 30] structure is paralyzed, the United States will find its credibility in world councils eroding. International considerations provide additional rationale, if more were needed, for the United States to have a strong effective domestic policy.

One answer to this paradox is to rediscover the strengths of our federal system, the division of labor between the states and the national government. Washington not only has too much to do, it has taken on domestic responsibilities that would be handled better by the states. Revitalizing the economy may depend on restoring a cleaner division of responsibility between the states and the national government.

#### U.S. leadership is vital to global stability. Relative decline opens a power vacuum that spurs conflict.

Goure 13 — Daniel Goure, President of The Lexington Institute—a nonprofit public-policy research organization, Adjunct Professor in Graduate Programs at the Center for Peace and Security Studies at Georgetown University, Adjunct Professor at the National Defense University, former Deputy Director of the International Security Program at the Center for Strategic and International Studies, has consulted for the Departments of State, Defense and Energy, has taught or lectured at the Johns Hopkins University, the Foreign Service Institute, the National War College, the Naval War College, the Air War College, and the Inter-American Defense College, holds Masters and Ph.D. degrees in International Relations and Russian Studies from Johns Hopkins University, 2013 (“How U.S. Military Power Holds the World Together,” *inFocus Quarterly*—the Jewish Policy Center's journal, Volume VII, Number 2, Summer, Available Online at http://www.jewishpolicycenter.org/4397/us-military-power, Accessed 08-17-2013)

The Centrality of U.S. Power

There are three fundamental problems with the argument in favor of abandoning America's security role in the world. The first problem is that the United States cannot withdraw without sucking the air out of the system. U.S. power and presence have been the central structural feature that holds the present international order together. It flavors the very air that fills the sphere that is the international system. Whether it is the size of the U.S. economy, its capacity for innovation, the role of the dollar as the world's reserve currency or the contribution of U.S. military power to the stability and peace of the global commons, the present world order has "Made in the USA" written all over it.

The international system is not a game of Jenga where the worst thing that can happen is that one's tower collapses. Start taking away the fundamental building blocks of the international order, particularly American military power, and the results are all but certain to be major instability, increased conflict rates, rapid proliferation of nuclear weapons, economic dislocation and, ultimately, serious and growing threats to security at home.

### 2NC — Federalism Key To U.S. Leadership

#### Federal overreach on domestic affairs undermines U.S. leadership.

Nivola 7 — Pietro S. Nivola, Vice President and Director of Governance Studies at The Brookings Institution, former Associate Professor of Political Science at the University of Vermont, former Lecturer in the Department of Government at Harvard University, holds a Ph.D. from Harvard University, 2007 (“Rediscovering Federalism,” *Issues in Governance Studies*—a publication of the Brookings Institution, Number 8, July, Available Online at https://www.brookings.edu/wp-content/uploads/2016/06/07governance\_nivola.pdf, Accessed 06-19-2017, p. 1-2)

This paper stipulates that federalism can offer government a helpful division of labor. The essay argues that the central government in the United States has grown inordinately preoccupied with concerns better left to local authorities. The result is an overextended government, too often distracted from higher priorities. To restore some semblance of so-called “subsidiarity”—that is, a more suitable delineation of competences among levels of government—the essay takes up basic principles that ought to guide that quest. Finally, the paper advances several suggestions for how particular policy pursuits might be devolved.

Whatever else it is supposed to do, a federal system of government should offer policy-makers a division of labor.1 Perhaps the first to fully appreciate that benefit was Alexis de Tocqueville. He admired the federated regime of the United States because, among other virtues, it enabled its central government to focus on primary public obligations (“a small number of objects,” he stressed, “sufficiently prominent to attract its attention”), leaving what he called society’s countless [end page 1] “secondary affairs” to lower levels of administration.2 Such a system, in other words, could help officials in Washington keep their priorities straight.

It is this potential advantage, above all others, that warrants renewed emphasis today. America’s national government has its hands full coping with its continental, indeed global, security responsibilities, and cannot keep expanding a domestic policy agenda that injudiciously dabbles in too many duties best consigned to local authorities. Indeed, in the habit of attempting to do a little of everything, rather than a few important things well, our overstretched government suffers a kind of attention deficit disorder. Although this state of overload and distraction obviously is not a cause of catastrophes such as the successful surprise attacks of September 11, 2001, the ferocity of the insurgency in Iraq, or the submersion of a historic American city inundated by a hurricane in 2005, it may render such tragedies harder to prevent or mitigate.

#### State power over domestic issues is key to U.S. leadership — resource constraints.

Rivlin 92 — Alice M. Rivlin, Senior Fellow and Former Director of Economic Studies at the Brookings Institution, former Hirst Professor of Public Policy at George Mason University, former Founding Director at the Congressional Budget Office, holds a Ph.D. in Economics from Radcliffe College (Harvard University), 1992 (“The Dream, The Reality, and Some Solutions,” *Reviving the American Dream: The Economy, the States & the Federal Government*, Published by the Brookings Institution, ISBN 0815774761, p. 10-11)

The Impact of Global Interdependence

The first reason is that dramatic changes in the world are radically altering the tasks facing national governments. Rapid advances in the technology of transportation, communications, and weaponry have shrunk distances and intertwined the United States with the rest of the world, intimately and irreversibly. Goods, services, money, and people are flowing easily across oceans and borders. So are economic, political, and environmental problems.

Global interdependence requires international cooperation to solve common problems and some delegation of sovereignty to supranational authorities. The Gulf war and growing nuclear capacity in developing nations leave no doubt that stronger international controls are needed on sophisticated weapons. The rapidly thinning ozone layer dramatizes the stake that all nations have in controlling harmful atmospheric emissions.

Despite its political appeal, isolationism is no longer a viable option. If the United States is to protect its own citizens and help shape a more habitable world, it must take an active part in international partnerships focused on everything from chemical weapons to acid rain to narcotics traffic. These partnerships are already demanding increasing attention from both the executive and legislative branches of the federal government.

Global interdependence creates a paradox for the U.S. government. On the one hand, since both the president and Congress [end page 10] will be spending greater time and energy on international affairs, domestic policy will get less attention in Washington. At the same time, global interdependence makes domestic policy more important than ever. The United States needs rising productivity, a skilled labor force, and modern physical capital, both public and private, if it is to generate the improved standard of living necessary not only to foster domestic well-being, but also to play an effective role in international partnerships. The added complexity of Washington's international role strengthens the case for sorting out domestic responsibilities more clearly. Washington cannot do everything and should not try. The states should take responsibility for a larger and more clearly defined segment of the domestic agenda.

#### Federalism is key to effective responses to security threats — 9/11 proves.

Nivola 5 — Pietro S. Nivola, Vice President and Director of Governance Studies at The Brookings Institution, former Associate Professor of Political Science at the University of Vermont, former Lecturer in the Department of Government at Harvard University, holds a Ph.D. from Harvard University, 2005 (“Why Federalism Matters,” Brookings Institution Report, October 1st, Available Online at https://www.brookings.edu/research/why-federalism-matters/, Accessed 06-19-2017)

Apart from creating confusion and complacency in local communities, a second sort of disorder begot by a national government too immersed in their day-to-day minutia is that it may become less mindful of its own paramount priorities.

Consider an obvious one: the security threat presented by Islamic extremism. This should have been the U.S. government’s first concern, starting from at least the early 1990s. The prelude to September 11, 2001 was eventful and ominous. Fanatics with ties to Osama bin Laden had bombed the World Trade Center in 1993. Muslim militants had tried to hijack an airliner and crash it into the Eiffel Tower in 1994. U.S. military barracks in Dhahran, Saudi Arabia, were blown up, killing nearly a score of American servicemen in 1996. Courtesy of Al Qaeda, truck bombings at the American embassies in Tanzania and Kenya in 1998 caused thousands of casualties. Al Qaeda operatives attacked the USS Cole in 2000.

And so it went, year after year. What is remarkable was not that the jihadists successfully struck the Twin Towers again in the fall of 2001 but that the United States and its allies threw no forceful counterpunches during the preceding decade, and that practically nothing was done to prepare the American people for the epic struggle they would have to wage. Instead, the Clinton administration and both parties in Congress mostly remained engrossed in domestic issues, no matter how picayune or petty. Neither of the presidential candidates in the 2000 election seemed attentive to the fact that the country and the world were menaced by terrorism. On the day of reckoning, when word reached President George W. Bush that United Airlines flight 175 had slammed into a New York skyscraper, he was busy visiting a second-grade classroom at an elementary school in Sarasota, Florida.

The government’s missteps leading up to September 11th, in short, had to do with more than bureaucratic lapses of the kind identified in the 9/11 Commission’s detailed litany. The failure was also rooted in a kind of systemic attention deficit disorder. Diverting too much time and energy to what de Tocqueville had termed “secondary affairs,” the nation’s public servants from top to bottom grew distracted and overextended.

To be sure, the past four years have brought some notable changes. Fortifying the nation’s security and foreign policy, for instance, remains a problematic work in progress, but is at least no longer an item relegated to the hind sections of newspapers and presidential speeches. Nonetheless, distraction and overextension are old habits that the government in Washington hasn’t kicked. Controversies of the most local, indeed sub-local, sort—like the case of Terri Schiavo—still make their way to the top, transfixing Congress and even the White House.

The sensible way to disencumber the federal government and sharpen its focus is to take federalism seriously—which is to say, desist from fussing with the management of local public schools, municipal staffing practices, sanitation standards, routine criminal justice, family end-of-life disputes, and countless other chores customarily in the ambit of state and local governance. Engineering such a disengagement on a full scale, however, implies reopening a large and unsettled debate: What are the proper spheres of national and local authority?

#### Federal involvement in domestic issues creates overlapping responsibilities and ineffective federal action — Katrina proves.

Nivola 7 — Pietro S. Nivola, Vice President and Director of Governance Studies at The Brookings Institution, former Associate Professor of Political Science at the University of Vermont, former Lecturer in the Department of Government at Harvard University, holds a Ph.D. from Harvard University, 2007 (“Rediscovering Federalism,” *Issues in Governance Studies*—a publication of the Brookings Institution, Number 8, July, Available Online at https://www.brookings.edu/wp-content/uploads/2016/06/07governance\_nivola.pdf, Accessed 06-19-2017, p. 18)

Conclusion

Diverting too much of its limited attention to what de Tocqueville had termed “secondary affairs,” the U.S. government overextends itself. This proclivity courts inefficacy up and down the line.

When the federal government is expected to “do it all,” state and local officials fall short of fulfilling their basic obligations. That, in part, is what happened in the Hurricane Katrina debacle. The city of New Orleans and the state of Louisiana proved woefully ill-prepared for the storm, even though everyone knew one like it would eventually strike. Whatever the multiple explanations for their fatal error, part of the story almost certainly was excessive dependence on direction and deliverance by Uncle Sam. Meanwhile, relentlessly pressured to spread their resources, and unable to plan centrally for every possible disaster that might occur somewhere in this huge country, agencies at the national level faltered just as badly every step of the way in the flood prevention, the response, and the recovery.

Federalism, at least in its authentic form, is less a source of such disarray than a possible solution. A wider and less ambiguous scope of self-rule for the states would signal that, for most of what governance entails, the buck stops with them, and that Washington’s omnivorous policy process should quit biting off more than it can chew.

### 2NC — U.S. Leadership Good

#### Declining U.S. leadership would create a power vacuum that risks war.

Friedberg and Schoenfeld 8 — Aaron Friedberg, Professor of Politics and International Relations at the Woodrow Wilson School at Princeton University, and Gabriel Schoenfeld, Senior Editor of Commentary and Visiting Scholar at the Witherspoon Institute—an independent research center in Princeton, NJ, 2008 (“The Dangers of a Diminished America,” *Wall Street Journal*, October 21st, Available Online at http://online.wsj.com/article/SB122455074012352571.html, Accessed 11-11-2008)

If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk.

In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability.

The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity.

None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.

As for our democratic friends, the present crisis comes when many European nations are struggling to deal with decades of anemic growth, sclerotic governance and an impending demographic crisis. Despite its past dynamism, Japan faces similar challenges. India is still in the early stages of its emergence as a world economic and geopolitical power.

What does this all mean? There is no substitute for America on the world stage. The choice we have before us is between the potentially disastrous effects of disengagement and the stiff price tag of continued American leadership.

#### U.S. leadership creates a political framework for global cooperation — addresses multiple transnational threats.

BIW 13 — Stephen G. Brooks, Associate Professor in the Department of Government at Dartmouth College, former Fellow in the Belfer Center for Science and International Affairs at Harvard University, holds a Ph.D. in Political Science from Yale University, G. John Ikenberry, Albert G. Milbank Professor of Politics and International Affairs in the Department of Politics and the Woodrow Wilson School of Public and International Affairs and Co-Director of the Center for International Security Studies at Princeton University, Global Eminence Scholar at Kyung Hee University (South Korea), former Senior Associate at the Carnegie Endowment for International Peace, former Fellow at the Woodrow Wilson International Center for Scholars, former Senior Fellow at the Brookings Institution, holds a Ph.D. in Political Science from the University of Chicago, and William C. Wohlforth, Daniel Webster Professor in the Department of Government at Dartmouth College, holds a Ph.D. in Political Science from Yale University, 2013 (“Lean Forward: In Defense of American Engagement,” *Foreign Affairs*, Volume 92, Issue 1, January/February, Available Online to Subscribing Institutions via Academic Search Elite)

Creating Cooperation

What goes for the global economy goes for other forms of international cooperation. Here, too, American leadership benefits many countries but disproportionately helps the United States. In order to counter transnational threats, such as terrorism, piracy, organized crime, climate change, and pandemics, states have to work together and take collective action. But cooperation does not come about effortlessly, especially when national interests diverge. The United States' military efforts to promote stability and its broader leadership make it easier for Washington to launch joint initiatives and shape them in ways that reflect U.S. interests. After all, cooperation is hard to come by in regions where chaos reigns, and it flourishes where leaders can anticipate lasting stability.

U.S. alliances are about security first, but they also provide the political framework and channels of communication for cooperation on nonmilitary issues. NATO, for example, has spawned new institutions, such as the Atlantic Council, a think tank, that make it easier for Americans and Europeans to talk to one another and do business. Likewise, consultations with allies in East Asia spill over into other policy issues; for example, when American diplomats travel to Seoul to manage the military alliance, they also end up discussing the Trans-Pacific Partnership. Thanks to conduits such as this, the United States can use bargaining chips in one issue area to make progress in others.

The benefits of these communication channels are especially pronounced when it comes to fighting the kinds of threats that require new forms of cooperation, such as terrorism and pandemics. With its alliance system in place, the United States is in a stronger position than it would otherwise be to advance cooperation and share burdens. For example, the intelligence-sharing network within NATO, which was originally designed to gather information on the Soviet Union, has been adapted to deal with terrorism. Similarly, after a tsunami in the Indian Ocean devastated surrounding countries in 2004, Washington had a much easier time orchestrating a fast humanitarian response with Australia, India, and Japan, since their militaries were already comfortable working with one another. The operation did wonders for the United States' image in the region.

The United States' global role also has the more direct effect of facilitating the bargains among governments that get cooperation going in the first place. As the scholar Joseph Nye has written, "The American military role in deterring threats to allies, or of assuring access to a crucial resource such as oil in the Persian Gulf, means that the provision of protective force can be used in bargaining situations. Sometimes the linkage may be direct; more often it is a factor not mentioned openly but present in the back of statesmen's minds."

### They Say: “Trump’s Dysfunction Hurts U.S. Leadership”

#### Trump’s foreign policy is revitalizing U.S. leadership — critics are wrong.

Kroenig 17 — Matthew Kroenig, Associate Professor of Government and Foreign Service at Georgetown University, Senior Fellow at the Brent Scowcroft Center on International Security at the Atlantic Council, holds a Ph.D. in Political Science from the University of California-Berkeley, 2017 (“The Case for Trump's Foreign Policy: The Right People, the Right Positions,” *Foreign Affairs*, May/June, Available Online to Subscribing Institutions via Hein Online, p. 30)

Media coverage of U.S. President Donald Trump's foreign policy has been overwhelmingly negative. Analysts have seized on early policy missteps, a supposed slowness in staffing the national security bureaucracy, and controversial statements and actions as evidence that Trump's foreign policy is already failing.

But the critics have gotten a lot wrong and failed to give credit where credit is due. The Trump administration has left behind the rhetoric of the campaign trail and has begun to adopt foreign policies that are, for the most part, well suited to the challenges ahead. Trump inherited a crumbling international order from President Barack Obama, but he has assembled a highly capable national security team to help him update and revitalize it. Many of the controversial foreign policy statements that Trump has made as president have, in fact, been consistent with established U.S. policy. Where he has broken with tradition, it has often been to embrace much-needed change.

It is too early to pass definitive judgment on the Trump administration. But its rapid improvement, combined with Trump's own willingness to take bold action, suggests that former Secretary of State Henry Kissinger may have been right when he told CBS News last December that Trump's presidency could present "an extraordinary opportunity" for U.S. foreign policy.

### They Say: “Natural Disasters Turn”

#### Natural disasters reduce the risk of conflict — community harmony.

Xu et al. 16 — Jiuping Xu, Professor at Business School of Sichuan University, earned a doctoral degree of Applied Mathematics of Tsinghua University, doctoral degree of Physics and Chemistry of Sichuan University, and Ziqi Wang, works at Institute of Emergency Management and Reconstruction in Post-disaster, Sichuan University, and Feng Shen, works at the School of Finance, Southwestern University of Finance and Economics, and Chi Ouyang, works at Institute of Emergency Management and Reconstruction in Post-disaster, Sichuan University, and Yan Tu, works at School of Management, Wuhan University of Technology, 2016 (“Natural disasters and social conflict: A systematic literature review,” International Journal of Disaster Risk Reduction, Volume 17, August, Available Online to Subscribing Institutions via Science Direct, Accessed 06-27-2017, Lil\_Arj)

While natural disasters and the related conflicts were found to have obvious adverse effects on societies, some positive impacts or by-products were identified, particularly at the national level. The common positive tendencies were found to be:

1. Small-scale natural disasters were found to often create opportunities to enhance government response capacities to deal with large-scale natural disasters and reduce contradictions at the local level, thereby increasing community trust [88,11].

2. Large destructive natural disasters sometimes provided opportunities to reduce existing and potential conflicts and to establish a temporary peace, particularly in extremely tense regions [7]. However, these dramatic opportunities were not strong enough to overcome deep social contradictions, and the peace was not often long-lasting [28].

3. In some special instances, the impact of natural disaster caused social conflicts was found to reduce the risk of social crisis, mainly because the event promoted interpersonal harmony and kept people together [43].

#### Natural disasters have mixed economic consequences — no consensus measurement.

Noy and DuPont 16 — Ilan Noy, Chair in the Economics of Disasters. &. Professor of Economics, Victoria University of Wellington, New Zealand, and, William duPont IV, Assistant Professor at the College of Saint Benedict and Saint John’s University College of Saint Benedict and Saint John’s University, University of Hawaii at Manoa, earned a PhD in economics from the University of Hawaii, 2016 (“The long-term consequences of natural disasters — A summary of the literature,” Abstract of a Working Paper for Te Kura Ohaoha Pūtea, from the School of Economics and Finance at the Victoria University of Wellington, Available Online at <http://researcharchive.vuw.ac.nz/handle/10063/4981>, Accessed 06-27-2017, Lil\_Arj)

The long-term economic impact of natural disasters is a subject that is highly debated among scholars. Several factors should be taken into consideration: These include the type and severity of natural disaster, the underlying wealth of the economy, and the total area of country impacted. Additionally, the way that researchers choose to define long-term impact, look at direct and indirect damage, and the availability of data also matters. Regardless of the method used there is still not a clear consensus concerning the long-term economic consequences of disasters. To discuss the long-term economic impact of natural disasters, one must first define impact. A common way to determine this impact is to compare the economy post disaster to the level it was at prior to the disaster. Some researchers argue that an economy has recovered when it returns to pre-disaster levels. This approach can be useful when comparing the impact in the short-term; however when analyzing the long-term impact it becomes problematic. Economies are constantly changing, and over long periods of time these changes will accumulate. Therefore one of the biggest challenges for researchers is to estimate what the level the economy would be at had the natural disaster not occurred. The way in which researchers go about doing this, can have a large impact on the results they find. Researchers have not reached consensus concerning the long-term consequences to natural disasters. Several authors have found very little to no impact, of natural disasters in the long-term, especially when using country level data. There have been some notable exceptions. Poor countries as well as small island nations have been found to be less resilient in the long-term. Studies using data collected at regional and local, have found a much more nuanced set of results regardless of wealth, income, or size.

#### Natural disasters have no significant effect on economic growth — most qualified evidence.

Cavallo et al. 10 — Eduardo Cavallo, a Lead Economist at the Research Department of the Inter-American Development Bank (IDB), and Sebastian Galiani, a Professor of Economics at University of Maryland and Visiting Professor at Universidad de San Andres, Argentina, and, Ilan Noy, Chair in the Economics of Disasters & Professor of Economics, Victoria University of Wellington, New Zealand, and Juan Pantano, Senior Research Associate Associate Director for Research at the Center for the Economics of Human Development, 2010 (“Catastrophic Natural Disasters and Economic Growth,” Working Paper at the University of Hawaii, April 28th, Available Online at <http://www.economics.hawaii.edu/research/workingpapers/WP_10-6.pdf>, Accessed 06-27-2017, Lil\_Arj)

5 Conclusions

We examined the impact of natural disasters on GDP per capita by combining information from comparative case studies obtained with a synthetic control methodology recently expounded in Abadie et al. (2010). The procedure involves identifying the causal effects by comparing the actual evolution of post-disaster per capita incomes with a counter-factual series constructed by using synthetic controls.

Our estimates provide new evidence on the short- and long-run per capita income effects of large natural disasters. Contrary to previous work, we find that natural disasters, even when we focus only on the effects of the largest natural disasters, do not have any significant effect on subsequent economic growth. Indeed, the only two cases where we found that truly large natural disasters were followed by an important decline in GDP per capita were cases where the natural disaster was followed, though in one case not immediately, by radical political revolution, which severely affected the institutional organization of society. Thus, we conclude that unless a natural disaster triggers a radical political revolution; it is unlikely to affect economic growth. Of course, this conclusion does not neglect the direct cost of natural disasters such as the lives lost and the costs of reconstruction that often are quite large.

Finally, our results are informative about the average long-term costs of natural disasters; and can also be useful to other literatures such as those attempting to quantify the likely costs of any future climate change and evaluating various climate-change mitigation policies.

#### No impact to economic decline

Drezner ‘14

Daniel W. Drezner, IR Professor at Tufts University, “The System Worked: Global Economic Governance during the Great Recession,” World Politics, Volume 66. Number 1, January 2014, pp. 123-164

The final significant outcome addresses a dog that hasn't barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.42 They voiced genuine concern that the global economic downturn would lead to an increase in conflict—whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fueled impressions of a surge in global public disorder. **The aggregate data suggest otherwise**, however. The Institute for Economics and Peace has concluded that "the average level of peacefulness in 2012 is approximately the same as it was in 2007."43 **Interstate violence** in particular has **declined** since the start of the financial crisis, as have military expenditures in most sampled countries. Other **studies confirm** that **the** Great **Recession has not triggered** any increase in **violent conflict**, as Lotta Themner and Peter Wallensteen conclude: "[T]he pattern is one of relative stability when we consider the trend for the past five years."44 The secular decline in violence that started with the end of the Cold War has not been reversed. Rogers Brubaker observes that "the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected."43

## Impact — Iraq

### 1NC — Iraq Module

**U.S. Federalism is modelled globally**

Rahdert 7 – Mark C., A.B. 1974, Harvard College; J.D. 1978, Yale Law School. Professor of Law, Temple University Beasley School of Law, “ARTICLE: COMPARATIVE CONSTITUTIONAL ADVOCACY”, 56 Am. U.L. Rev. 553, February 2007

A. External Factors Perhaps the main reason that this debate has surfaced at this particular juncture is that foreign sources on constitutional questions are available to a degree and in a quality never previously experienced. There are four principal causes. First, until recently, there was relatively little comparative constitutional material worthy of serious consideration by U.S. courts. Now there is, forcing U.S. judges for the first time to decide what to do about it. Second, the decisions of foreign constitutional courts increasingly grapple with the same (or very similar) constitutional issues as their U.S. counterparts. This is particularly true in human rights, where there has been an international convergence of constitutional human rights norms, making discussion of these issues in foreign courts more potentially relevant to U.S. jurisprudence. Third, many foreign [\*562] constitutional courts possess sufficient expertise, professionalism, judicial independence, transparency of process, and caliber of reasoning to make their views worthy of mature consideration. Finally, while there is still a long way to go, improvements in information technology and availability make the decisions of foreign courts more accessible than they have ever been in the past. 1. Growth of foreign constitutional precedent Most comparative constitutional material is of recent origin. The bulk has developed since World War II. n37 Prior to the War, liberal democracies outside the United States were rare, n38 and those with systems for authoritative legal interpretation and application of constitutional norms were even rarer. n39 English-speaking systems (most accessible because of a common tongue and common legal roots) were still part of the British common law system, which operated without a formal written constitution and without American-style judicial review. n40 Other major non-English legal systems were either relatively short-lived constitutional democracies (such as the German pre-war Weimar republic), n41 functioned under civil law traditions that vested constitutional authority outside the courts (as was the case in pre-war France), n42 or simply lacked the indicia of true democratic governance (as was true in most of Asia, [\*563] Central America, and most jurisdictions south of the Equator). n43 Consequently, there was practically no worthwhile constitutional precedent anywhere else in the world. English law played a significant though occasional role in American constitutional thinking, n44 but the constitutional law of other nations had virtually no role at all. The past fifty years have changed all of that in remarkable ways, most notably through the enactment of new constitutions and the development of tribunals for authoritative constitutional interpretation and application in democratic systems around the world. n45 With direct U.S. encouragement, elements of American-style constitutionalism were transplanted into the new post-war constitutional structures adopted in Japan and West Germany. n46 Some leading Western European nations contemporaneously adopted new constitutional systems complete with formal constitutional courts. n47 English-speaking constitutional legal systems with judicial review powers emerged in several British [\*564] Commonwealth nations including Canada, Australia, and New Zealand. n48 New supranational constitutional systems with authoritative judicial structures, most notably the European Court of Human Rights and the courts of the European Union, developed. n49 Constitutions and constitutional courts were installed in some of the nations that emerged from crumbling colonial empires in Africa, the Middle East, the Indian subcontinent, Southeast Asia, and the Pacific. n50 More recently, systems of constitutional law and adjudication in constitutional courts were adopted in several Eastern European republics that were organized (sometimes with U.S. technical assistance) after the disintegration of the Communist bloc and the Soviet Union. n51 Indeed, if one were to create a list of the fifteen or twenty leading world constitutional systems today, the overwhelming majority either did not exist or were in their infancy fifty years ago. 2. Similarity of issues Many of the world's leading constitutional systems have been in business long enough to develop significant and relatively mature law on constitutional questions that resonate with issues in the United States. There is, for example, a robust transnational jurisprudence on such issues as reproductive freedom, n52 freedom of speech, n53 [\*565] freedom of religion, n54 racial and ethnic equality, n55 language rights of minorities, n56 gender equality, n57 sexual orientation equality, n58 privacy, n59 constitutional limits on punishment, n60 the right to counsel for the indigent, n61 and the rights of the accused. n62 An international jurisprudence is also developing on such structural issues as **separation of powers** and the **rulemaking authority of government agencies**, n63 war and emergency executive powers, n64 and even (to a limited degree) **federalism**. n65 [\*566] Exploring the jurisprudence of other nations on these and other similar constitutional questions, one is struck by the **similarity to U.S. constitutional law**. This similarity has at least two sources: a commitment to common constitutional norms, and the need to apply them to comparable cultural, social, political, and economic developments. n66 While the various world constitutional systems reflect important differences in language, structure, and history, they are often committed to the same basic principles as the U.S. Constitution. This is especially true in the field of human rights n67 because the U.S. Constitution has served as a model for human rights guarantees around the world. n68 While more modern constitutions elsewhere have often expanded beyond the U.S. Constitution, including explicit guarantees that the U.S. Constitution lacks, n69 many have looked (often **explicitly**) to the U.S. Constitution for guidance when crafting their own Constitutions. n70 Because their constitutional [\*567] law embraces comparable basic human rights, it encounters similar constitutional questions. While reliance on the U.S. model for structural issues has been less direct, other democracies also share some common structural ground, particularly in the delineation of separate spheres for legislative, executive/administrative, and judicial functions. n71 Like the U.S. Constitution, many foreign constitutions delineate legislative and executive powers and functions, and their legal systems face instances of potential horizontal and vertical conflict among internal governmental structures. n72 Not only do other systems share a commitment to similar constitutional norms, they also experience similar challenges in applying these principles to the realities of contemporary culture. n73 [\*568] In the twenty-first century, economic and technological developments, demographic changes, political, social, cultural, or religious issues, and world events often cross national boundaries, creating the same sorts of constitutional friction in more than one constitutional system. Thus, for example, nations committed to principles of equality have addressed the rights of various subgroups, including ethnic and linguistic minorities, women, indigenous groups, and non-citizens. n74 Nations committed to free expression have grappled with the effects of mass media, the Internet, distribution of sexually explicit materials, disclosure of government secrets, press invasions of privacy, hate speech, and saturated media coverage of high-profile criminal trials. n75 And nations committed to constitutional reproductive and medical privacy have defined the scope of those rights in the context of rapid advances in reproductive and medical technology. n76 3. Analytic methods Constitutional decision makers often employ similar analytic processes. For example, concepts such as separation of powers, standards of review, means-ends analysis, balancing of interests, and proportionality n77 familiar to American constitutional law have counterparts in other constitutional systems. The principles do not have identical meanings or applications in different systems, and there are other analytic structures that lack direct U.S. cognates. n78 [\*569] Nevertheless, there is a definite analytic common ground across constitutional systems. Additionally, many foreign constitutional tribunals exhibit high levels of professionalism, use transparent and fair processes, maintain the impartiality and political independence of judges, engage in thorough legal reasoning, and display a strong commitment to the rule of law. All of this supports the potential utility of foreign courts' judgments on common questions of law. n79 One particularly notable feature of comparative constitutional adjudication is the frequency and analytic clarity of international courts' reference to and discussion of U.S. precedent on constitutional questions. In Canada, n80 Australia, n81 Germany, n82 the European Court of Human Rights, n83 Israel, n84 India, n85 South Africa, n86 Japan, n87 and elsewhere, judges [\*570] frequently refer to and discuss U.S. constitutional law and precedent. Indeed, the depth of foreign courts' knowledge and discussion of U.S. constitutional precedent contrasts with the dearth of knowledge and discussion of comparative sources in most U.S. constitutional law. When skilled and thoughtful judges elsewhere deem U.S. constitutional law relevant to constitutional issues in their legal system, it supports the reciprocal inference that their decisions might be relevant to questions of U.S. constitutional law. 4. Availability The final external factor favoring greater use of comparative constitutional precedent is its increasing availability. n88 Most foreign constitutional tribunals maintain detailed and accurate records of their proceedings, publish them in accessible formats, and sometimes even translate them into English. n89 These materials are internationally available and in many instances electronically accessible. n90 While some lag time still exists between decision and publication, it is growing progressively shorter, so that it is often possible to acquire detailed knowledge of foreign decisions shortly after they are rendered. These developments combine to create the distinct impression that foreign constitutional courts might well have significant potential utility as a source for analysis of current U.S. constitutional questions. [\*571] They set the foundation for internal U.S. debate over the legitimacy of comparative constitutional analysis.

#### US specifically influences Iraqi federalism – which is key to counter civil war and ISIS. Absent federalism, escalation would spill-over to the region

Pollack ‘14

(Kenneth, Senior Fellow, Foreign Policy, Center for Middle East Policy, Brookings Institute, “Options for U.S. Policy Toward Iraq,” July 24, http://www.brookings.edu/research/testimony/2014/07/24-options-us-policy-toward-iraq-pollack)

Second, it is equally critical that we accept the reality that Iraq has fallen once more into civil war. It is not “on the brink of civil war.” It is not “sliding into civil war.” It is not “at risk of a new civil war.” **It is in a civil war**. This is what civil war looks like. And civil wars have certain dynamics that need to be understood if they are to be ended, or even merely survived. Iraq’s current situation is the recurrence of the civil war of 2006-2008. In 2007-2008, the United States committed tremendous military and economic resources to pull Iraq out of that first instance of civil war. This time around, Washington has made clear that it will not devote anything like the same resources and there is no other country that can. This second point is important because intercommunal civil wars like Iraq’s are difficult for external powers to end without either a significant commitment of resources or a terrible slaughter by one or more of the combatants. Given the American public’s understandable unwillingness to re-commit the kind of resources we did in 2007-2008, we are unlikely to bring the Iraqi civil war to a speedy end with minimal bloodshed and still safeguard the range of American interests engaged there. For those reasons, the hard truth we face is that, in the circumstances we currently find ourselves in, our options range from bad to awful. Nevertheless, doing nothing because all of the options are unpalatable would be the worst choice of all. Civil wars do not just go away if they are ignored. They burn on and on. They also have a **bad habit of infecting neighboring** states—just as the Syrian civil war has helped re-ignite the Iraqi civil war. If we try to turn our back on Iraq once again, it **will affect its neighbors**. It could **easily affect the international oil market** (and through it, the U.S. **economy**, which remains heavily dependent on the price of oil no matter how much we may frack). It will also **generate terrorists** who will seek to kill Americans. So our option may be awful, but we have no choice but to try to make them work. Plan A: Rebuilding a (Somewhat) Unified Iraq Although I believe that the Obama Administration’s Iraq policy has been disastrous, and a critical factor in the rekindling of Iraq’s civil war,[1] I find myself largely in agreement with the approach they have adopted to deal with the revived civil war. Our first priority should be to try to engineer a new Iraqi government that Kurds, Shi’a and moderate Sunnis can all (endorse) embrace, so that they can then wage a unified military campaign (with American support) against ISIS and the other Sunni militant groups.[2] That needs to remain Washington’s priority until it fails because it is the best outcome for all concerned, including the United States. Doing so would be the most likely way to dampen or eliminate the current conflict, and create the fewest causes for future violence. **It could also succeed relatively quickly**—in a matter of months rather than years like all of the other options. However, it will be extremely difficult to pull off. The keys to this strategy will be to convince the Kurds not to break from Iraq and convince moderate Sunnis to remain part of the Iraqi political process—and **to turn on ISIS** and the other Sunni militant groups. As I and other experts on Iraq have written, this will require both a new political leadership and a drastic overhaul of Iraq’s political system. With regard to the former condition, at this point, it seems highly unlikely that Nuri al-Maliki can remain prime minister and retain either the Kurds or meaningful Sunni representation in his government. However, even if he were removed and new, more acceptable leaders chosen, there would still be a long way to go.[3] Even moderate Sunni leaders are not going to go back to the status quo ante. They now **insist on decentralizing** power from the center to the periphery, a redistribution of power within the federal government, and a thorough depoliticization of the Iraqi security services so that they cannot be used as a source of repression by what will inevitably be a Shi’a-dominated central government. They are likely to **demand to be allowed to form a federal region** like the Kurdistan Regional Government, complete with a separate budget and their own military forces akin to the Kurdish Peshmerga. For their part, the Kurds will want even more than that. At this point, given the extensive autonomy that the KRG already enjoys, coupled with the territorial and administrative gains it has won in the wake of the ISIS offensive, greater federalism probably won’t be an adequate alternative to independence for the Kurds. If the Kurds can be prevented from seceding, it will probably require Baghdad to accept a confederal arrangement with Erbil. The difference here is that in a typical federal system, resources and authorities are generated from the center and delegated to the periphery for all but a limited number of constrained functions. However, keeping the Kurds on board will likely necessitate a shift to one in which resources and authority begin in the periphery and then are shared with the center for specific purposes and under specific constraints. The Kurds are likely to insist that the KRG maintain the current lines of control in disputed territories unchanged until a referendum can be conducted in accordance with article 140 of the Iraqi constitution. Baghdad will have to recognize Erbil’s right to develop and market the oil it produces as the new status quo. As for oil revenues, Erbil will demand that it be allowed to keep the Kirkuk oil fields it has now secured, and agree that Baghdad and Erbil each be allowed to pump as much oil as they like and pay all of their own expenses from those revenues. Assuming that moderate Sunnis, Kurds and moderate Shi’a can all agree on these various changes, we **could see the resurrection of a unified Iraqi polity**. It is reasonable to assume that in those happy circumstances, many Sunni tribes will be ready to fight ISIS and the other Sunni militant groups—and to accept assistance from the United States to do so. (Although they have made clear that they will not accept assistance from the Iraqi security forces until they have been thoroughly depoliticized.) Moreover, these are really the only circumstances in which the United States should be willing to provide large-scale military assistance to the Iraqi government to fight ISIS and the other militant groups. Only in those circumstances will such assistance be seen as non-partisan, meant to help all Iraqis and not just the Shi’a (and their Iranian allies).

**Middle East war goes nuclear**

**Primakov 9** (Yevgeny, President of the Chamber of Commerce and Industry of the Russian Federation; Member of the Russian Academy of Sciences; member of the Editorial Board of Russia in Global Affairs. This article is based on the scientific report for which the author was awarded the Lomonosov Gold Medal of the Russian Academy of Sciences in 2008, “The Middle East Problem in the Context of International Relations”, 9/08)

The Middle East conflict is unparalleled in terms of its potential for spreading globally. During the Cold War, amid which the Arab-Israeli conflict evolved, the two opposing superpowers directly supported the conflicting parties: the Soviet Union supported Arab countries, while the United States supported Israel. On the one hand, the bipolar world order which existed at that time objectively played in favor of the escalation of the Middle East conflict into a global confrontation. On the other hand, the Soviet Union and the United States were not interested in such developments and they managed to keep the situation under control. The behavior of both superpowers in the course of all the wars in the Middle East proves that. In 1956, during the Anglo-French-Israeli military invasion of Egypt (which followed Cairo’s decision to nationalize the Suez Canal Company) the United States – contrary to the widespread belief in various countries, including Russia – not only refrained from supporting its allies but insistently pressed – along with the Soviet Union – for the cessation of the armed action. Washington feared that the tripartite aggression would undermine the positions of the West in the Arab world and would result in a direct clash with the Soviet Union. Fears that hostilities in the Middle East might acquire a global dimension could materialize also during the Six-Day War of 1967. On its eve, Moscow and Washington urged each other to cool down their “clients.” When the war began, both superpowers assured each other that they did not intend to get involved in the crisis militarily and that that they would make efforts at the United Nations to negotiate terms for a ceasefire. On July 5, the Chairman of the Soviet Government, Alexei Kosygin, who was authorized by the Politburo to conduct negotiations on behalf of the Soviet leadership, for the first time ever used a hot line for this purpose. After the USS Liberty was attacked by Israeli forces, which later claimed the attack was a case of mistaken identity, U.S. President Lyndon Johnson immediately notified Kosygin that the movement of the U.S. Navy in the Mediterranean Sea was only intended to help the crew of the attacked ship and to investigate the incident. The situation repeated itself during the hostilities of October 1973. Russian publications of those years argued that it was the Soviet Union that prevented U.S. military involvement in those events. In contrast, many U.S. authors claimed that a U.S. reaction thwarted Soviet plans to send troops to the Middle East. Neither statement is true. The atmosphere was really quite tense. Sentiments both in Washington and Moscow were in favor of interference, yet both capitals were far from taking real action. When U.S. troops were put on high alert, Henry Kissinger assured Soviet Ambassador Anatoly Dobrynin that this was done largely for domestic considerations and should not be seen by Moscow as a hostile act. In a private conversation with Dobrynin, President Richard Nixon said the same, adding that he might have overre-acted but that this had been done amidst a hostile campaign against him over Watergate. Meanwhile, Kosygin and Foreign Minister Andrei Gromyko at a Politburo meeting in Moscow strongly rejected a proposal by Defense Minister Marshal Andrei Grechko to “demonstrate” Soviet military presence in Egypt in response to Israel’s refusal to comply with a UN Security Council resolution. Soviet leader Leonid Brezhnev took the side of Kosygin and Gromyko, saying that he was against any Soviet involvement in the conflict. The above suggests an unequivocal conclusion that control by the superpowers in the bipolar world did not allow the Middle East conflict to escalate into a global confrontation. After the end of the Cold War, some scholars and political observers concluded that a real threat of the Arab-Israeli conflict going beyond regional frameworks ceased to exist. However, in the 21st century this conclusion no longer conforms to the reality. The U.S. military operation in Iraq has changed the balance of forces in the Middle East. The disappearance of the Iraqi counterbalance has brought Iran to the fore as a regional power claiming a direct role in various Middle East processes. I do not belong to those who believe that the Iranian leadership has already made a political decision to create nuclear weapons of its own. Yet Tehran seems to have set itself the goal of achieving a technological level that would let it make such a decision (the “Japanese model”) under unfavorable circumstances. Israel already possesses nuclear weapons and delivery vehicles. In such circumstances, the absence of a Middle East settlement opens a dangerous prospect of a nuclear collision in the region, which would have **catastrophic consequences for the whole world**. The transition to a multipolar world has objectively strengthened the role of states and organizations that are directly involved in regional conflicts, which increases the latter’s danger and reduces the possibility of controlling them. This refers, above all, to the Middle East conflict. The coming of Barack Obama to the presidency has allayed fears that the United States could deliver a preventive strike against Iran (under George W. Bush, it was one of the most discussed topics in the United States). However, fears have increased that such a strike can be launched by Israel, which would have unpredictable consequences for the region and beyond. It seems that President Obama’s position does not completely rule out such a possibility.

### 2NC — Credibility Impact

**Iraq failure damages US credibility – triggers global conflicts**

**Gardner 7** (Hall, Professor and Chair of the International Affairs Department – American University of Paris, Averting Global War, p. 210-217)

Or, by contrast, should the United States withdraw its forces too precipitously from Iraq without a firm negotiated settlement, differing states and partisan groups could seek to **take advantage of new "power vacuums**" caused by a significant withdrawal and **perceived U.S. weakness** by engaging in "**preemptive" military actions in the region** and throughout the world (ironically following U.S. footsteps in Iraq in 2003)-in taking the risk that the United States or EU would not be willing to re-engage military forces or impose strong sanctions. At the same time, however, perceptions that Washington is permanently bogged down in Iraq could also lead states outside the region to take risks involving military action in the belief that the United States will not act elsewhere, even if the U.S. military presence in the Persian Gulf region does, at least for the present, appear to deter states such as Iran but not groups such as al-Qaida. While it is dubious Turkey would intervene as long the United States maintains a strong presence inside Iraq and in Kurdistan in particular, this could change should the U.S. withdraw from Iraq altogether.l A precipitous withdrawal of U.S. forces from Iraq could lead to direct Turkish intervention in northern Iraq against the PKK in an effort to secure oil pipelines, for example, which in turn could **draw Iran into the country in confrontation** (or tacit cooperation) with Turkey, depending on Ankara's goals and upon how long Turkey stays. In effect, Turkey and Iran could forge a condominium over the Kurdish and Shi’a regions, thereby isolating regions controlled by Sunni factions. In addition to Turkey and Iran, other states could likewise engage in preemptive actions: With Lebanon in the midst of a civil war and Syria threatening intervention, **Israel could strike the major Iranian nuclear enrichment facilities** much as it stuck the Iraqi Osirak plant in 1981 (if the United States itself does not act); Iran might then try to counter-strike U.S. military bases in the Gulf if it cannot reach Israel or other states. China could wait for such a moment of perceived U.S. weakness to **seize Taiwan**. Concurrently, al-Qaida (or other partisan movements) would be better positioned to infiltrate poor states such as Egypt, Jordan, Morocco, Bangladesh, Iraq, and Palestine, plus **nuclear-capable Pakistan**, or could attack oil rich Persian Gulf allies of the United States. In addition to plotting (or really propagandizing in support of) attacks by alienated groups (including non-Muslims) in the United Kingdom and the United States, the major focus of al-Qaida would be Saudi Arabia, once Saudi fighters currently in Iraq sneak home. An insurrection there would involve the infiltration by al-Qaida into the police, security services, and the Saudi National Guard.2 One scenario envisions a sophisticated attack (perhaps by commercial jets) on the Saudi oil complex that could take up to 50 percent of Saudi oil production off the market for at least six months, because over half of Saudi Arabia's oil reserves are contained in just eight fields. As only Saudi Arabia presently possesses sufficient reserves to make up for short falls in the global oil market, this act of **catastrophic terrorism** would likewise drain most of the world's spare capacity, sending world oil prices skyrocketing.3 Here, the United States would prepare to seize the oil fields, but to what avail? There is moreover a real danger that differing states and antistate partisan movements (generally with extreme nationalist or religious ideologies) will continue their struggle against U.S. predominance-whether Washington remains bogged down in Iraqi quicksand and engaging in skirmishes with Iran (thus exhibiting impotence) or whether it withdraws too precipitously from Iraq (thus ostensibly exhibiting cowardliness). Without a firmly negotiated political settlement involving conflicting Iraqi factions and their neighbors, the struggle against U.S. predominance would additionally occur even after a partial or phased withdrawal of U.S. forces from Iraq--and even if Washington claims that it will focus more intently on al-Qaida and remain engaged in the defense of the Persian Gulf region and elsewhere. Such a no-win situation could eventually provoke Washington to re-intervene in a Bonapartist or eagle-like patriotic-nationalist backlash. The more U.S. forces find themselves over-committed and sinking deeper into quicksand in Afghanistan and Iraq, the more the option of global strike planning "without resort to large numbers of general purpose forces" may be considered by the Pentagon-in accord with the Stratcom contingency plan (CONPLAN 8022-02) for dealing with "imminent" threats from countries such as North Korea or Iran.4 If events consequently spin out of U.S. control, third parties could become directly or indirectly involved. Iran's threat to develop nuclear and ballistic missiles has already begun to fuel a mushrooming "insecurity-security dialectic" between the United States and Russia, involving a renewed arms rivalry with ballistic missiles and ballistic missile defense (BMD). Likewise, a somewhat similar spiraling "insecurity-security dialectic" is also fueling a ballistic missile and BMD rivalry among the United States, South Korea, China, and Japan over the North Korean threat to develop ballistic missiles and nuclear weaponry, combined with Chinese irredentist claims to Taiwan. The potential deployment of BMD systems by the United States in eastern Europe and Asia might furthermore lead Russia and China to engage in even closer defense collaboration-in the effort to develop new technologies so as to circumvent advanced BMD technology. On the one hand, China appears to be focusing on the United States as its primary threat (with less mention of Russia) and has been developing a strategy of "active defense," which could possibly envision the preemptive use of nuclear weaponry.5 On the other hand, the Bush administration's Nuclear Posture Review of December 2001 envisioned possible **use of nuclear weapons** in conflicts with Iran, Syria, North Korea, Russia, and China (particularly over Taiwan). The 2001 Nuclear Posture Review also envisioned the use of nuclear weaponry in case of **use of chemical or biological weaponry** against U.S. interests; or else in case of "surprising developments," which include "sudden regime change by which an existing nuclear arsenal comes into the hands of a new, hostile leadership group, or an opponent's surprise unveiling of WMD capabilities."6 This could refer to Pakistan or Saudi Arabia, among other countries. Major and regional power conflict could also be sparked by disputes over energy pipelines in the Caucasus and Black Sea regions to Europe or over Sea Lines of Communication (SLOCs) involving ₪ stopped here at 08:09 ₪ trade and energy transport from the Persian Gulf and Indian Ocean to the South China Sea-not to overlook forceful efforts to secure access to oil-rich islets, such as the Tunb isles in the Persian Gulf (claimed by the United Arab Emirates but held by Iran), the Spratly Islands in the South China sea, or the Daioyo/Senkaku and the Dokdol Takeshima islands in the Pacific, among other possibilities, including Russian, Danish, Canadian, and U.S. claims to vast Arctic resources. As was the case in the battle over the Falklands/Malvinas Islands between Argentina and Britain in 1982, other island disputes and efforts to block major choke points and sea lines of communication could spark significant conflicts, particularly as the development of "swarming" techniques using rapid speed boats permits lesser states and antistate actors to attack large naval vessels.

**They Say: “No Modelling”**

**Iraq models US federalism – decentralization key to stability**

**Washington Post 7**(Leslie Gelb, president emeritus of the Council on Foreign Relations, Joseph R. Biden Jr. (D-Del.) is chairman of the Senate Foreign Relations Committee, “Federalism, Not Partition,” October 3, http://www.washingtonpost.com/wp-dyn/content/article/2007/10/02/AR2007100201824.html)

The Bush administration and Iraqi Prime Minister Nouri al-Maliki greeted last week's Senate vote on Iraq policy -- based on a plan we proposed in 2006 -- with misrepresentations and untruths. Seventy-five senators, including 26 Republicans, voted to promote a political settlement based on decentralized power-sharing. It was a life raft for an Iraq policy that is adrift. Instead, Maliki and the administration -- through our embassy in Baghdad -- distorted the Biden-Brownback amendment beyond recognition, charging that we seek to "partition or divide Iraq by intimidation, force or other means." We want to set the record straight. **If the United States can't put this federalism idea on track**, we will have no chance for a political settlement in Iraq and, without that, no chance for leaving Iraq without leaving chaos behind. First, our plan is not partition, though even some supporters and the media mistakenly call it that. It would hold Iraq together by bringing to life the federal system enshrined in its constitution. A federal Iraq is a united Iraq but one in which power devolves to regional governments, with a limited central government responsible for common concerns such as protecting borders and distributing oil revenue. Iraqis have no familiarity with federalism, which, absent an occupier or a dictator, has historically been the only path to keeping disunited countries whole. We can point to our federal system and how it began with most power in the hands of the states. We can point to similar solutions in the United Arab Emirates, Spain and Bosnia. Most Iraqis want to keep their country whole. But if Iraqi leaders keep **hearing from U.S. leaders** that federalism amounts to or will lead to partition, that's what they will believe. The Bush administration's quixotic alternative has been to promote a strong central government in Baghdad. That central government doesn't function; it is corrupt and widely regarded as irrelevant. It has not produced political reconciliation -- and there is no evidence it will. Second, we are not trying to impose our plan. If the Iraqis don't want it, they won't and shouldn't take it, as the Senate amendment makes clear. But Iraqis and the White House might consider the facts. Iraq's constitution already provides for a federal system. As for the regions forming along sectarian lines, the constitution leaves the choice to the people of its 18 provinces. The White House can hardly complain that we would force unwanted solutions on Iraqis. President Bush did not hesitate to push Prime Minister Ibrahim al-Jafari out of office to make way for Maliki, and he may yet do the same to Maliki. The United States has responsibilities in Iraq that we cannot run away from. **The Iraqis will need our help** in explaining and lining up support for a federal solution. With 160,000 Americans at risk in Iraq, with hundreds of billions of dollars spent, and with more than 3,800 dead and nearly 28,000 wounded, we also have a right to be heard. Third, our plan would not produce "suffering and bloodshed," as a U.S. Embassy statement irresponsibly suggested. And it is hard to imagine more suffering and bloodshed than we've already seen from government-tolerated militias, jihadists, Baathists and administration ineptitude. More than 4 million Iraqis have fled their homes, most for fear of sectarian violence. The Bush administration should be helping Iraqis make federalism work -- through an agreement over the fair distribution of oil revenue; the safe return of refugees; integrating militia members into local security forces; leveraging the shared interest of other countries in a stable Iraq; and refocusing capacity-building and aid on the provinces and regions -- not scaring them off by equating federalism to partition, sectarianism and foreign bullying. To confuse matters more, the administration has conjured a "bottom-up" strategy that looks like federalism and smells like federalism -- but is, in reality, a recipe for chaos. "Bottom-up" seems to mean that the United States will support any group, anywhere, that will fight al-Qaeda or Shiite extremists. Now, it always made sense to seek allies among tribal chiefs to fight common terrorist enemies. But to simply back these groups as they appear, without any overall political context or purpose, is to invite anarchy. Nothing will fragment Iraq more than a bottom-up approach that pits one group against another and fails to knit these parts into governable wholes. Federalism is the one formula that fits the seemingly contradictory desires of most Iraqis to remain whole and of various groups to govern themselves for the time being. It also recognizes the reality of the choice we face in Iraq: a managed transition to **federalism or actual partition through civil war**.

**US is the best model for Iraq decentralization – key to stop inevitable collapse**

**Mihalakas ’12** [Nasos Mihalakas, LLM from University College London and a JD from the University of Pittsburgh, “Time for Iraq to Activate its Federation Council!”, April 30, https://mihalakas.wordpress.com/2012/04/30/time-for-iraq-to-activate-its-federation-council/]

The political power struggle in Baghdad has significantly escalated since the last U.S. troops withdrew in December 2011, with Prime Minister Nouri al-Maliki slowly abandoning the principle of a unity government that gives all stakeholders a share of power and instead trying to consolidate power in his own hands. The situation has deteriorated so much that in a recent interview with the Associated Press the president of Iraq’s self-rule Kurdish region (Massoud Barzani) demanded that Shiite leaders “agree on sharing power with their political opponents by September or else the Kurds could consider breaking away from Baghdad.” Tony Karon reports, that even the radical Shiite cleric Moqtada al-Sadr, whose support was critical to getting Maliki reelected, has taken to referring to the Prime Minister as “the dictator.” The most egregious case of power-grab by Maliki, was the ‘politically motivated’ prosecution of Iraqi Sunni leader and Vice-President of the government Tarek al-Hashemi, who was forced to flee Baghdad to escape criminal charges his supporters see as designed to hobble the Sunni political leadership. According to Mr. Karon, Hashemi fled first to Erbil, capital of Iraq’s Kurdistan Regional Government (KRG), whose terrain the Iraqi security forces are not authorized to enter, and is now in Turkey. Barzani’s ‘declaration of defiance’ against Maliki, is very much the result of Kurdistan’s long-held desire for independence as well as a consequence of Maliki’s recent attempt to consolidate power. Although unilateral secession by the Kurds (or the Sunnis) is somewhat unlikely, the escalation of political tensions by Maliki could lead to the eventual break-up of Iraq. Furthermore, according to the AP, Barzani also said he “wholeheartedly” supports Sunni desires to create their own self-rule regions in Iraq. Sunni lawmakers, whose Iraqiya political coalition won the most seats in 2010 parliamentary elections but were outmaneuvered by Maliki for the right to form the government, bitterly complain they have no say in Iraq’s power structure. Unless something is done to alleviate the concerns of Kurds and Sunnis about their place in the national government, Iraq might inevitable collapse. Salvation however might still lie within, courtesy of the federal elements of the Iraqi constitution. Iraq’s Ethnic Federalism Under Iraq’s current ‘ethnic/religious federalism’, major political powers are divided among people representing the three main religious/ethnic division: the Kurds who make up 20% of the population, and between the two Muslim faiths (65% Shia and 30% Sunni). Therefore, the convention that has emerged since 2005 (when the current constitution came to force) has been to elect a President of Kurdish background, while the Prime Minister has to come from the Shia community, and the Speaker of the Council of Representatives (parliament) from the Sunni community. In Iraq’s federal structure there are four different levels of government: the central government in Baghdad, the regions (currently only one – Iraqi Kurdistan), the provinces (eighteen) and the local administrations. The Iraqi constitution is very much typical federal constitution, in the way it distributes powers vertically. The federal/national government in Baghdad has limited enumerated powers, and the provinces are endowed with their own distinct political/legislative/judicial authorities. Therefore, the constitution provides that the regions enjoy a great amount of power under this structure, often at the expense of the central government in Baghdad. The constitutions federalism even grants provinces the power to join together and form ‘regions’ which will be semi-autonomous. Although Iraqi Kurdistan is the only legally defined region within Iraq, with its own government and quasi-official militia, other provinces can do the same through a referendum (See: Art. 115 of the Iraqi Constitution). Therefore, Article 115 applies to provinces joining together and forming a region. In fact, instead of blocking the creation of large and powerful administrative regions in the country that could confront central government or even each other, the constitution actually encourages it. This is particularly worrying considering that separatism is already a very powerful trend in Iraq. In Iraq, it was very much expected that the governorates will begin the process of grouping together immediately after the parliamentary elections of 2005. Political tensions between the three communities, could lead to further ethnic/religious divisions and the eventual ‘partition’ of Iraq. According to Zaid Al-Ali, “the result will most likely be that Iraq will eventually come to resemble Belgium, whose federal structure of government contains three states: Flanders (Flemish-speaking), Wallonia (French-speaking), and Brussels itself.” Similarly, Iraq is likely to be divided in three parts, with a Kurdish region in the north, a Shia-dominated south and a Sunni region in the center. Horizontal Federalism – the Iraqi Federation Council The only way to prevent this from happening is by strengthening ‘horizontal federalism’ within the Iraqi federal government. Under the Iraqi Constitution, there are to be two legislative houses, the Council of Representatives and the Federation Council. The Council of Representatives is directly elected by the people, “at a ratio of one representative per 100,000 Iraqi persons representing the entire Iraqi people.” The Council of Representatives has the power to enact all federal laws, including the approval and adjustment of the federal budget, conduct foreign policy and defense, and consent to a declaration of war or state of emergency. On the other hand, the Federation Council does not exist yet. The Federation Council is to be composed of representatives of regions and all governorates that have not joined a region. The Constitution does not enumerate the formation or functions of the Federation Council, but leaves those particulars to the Council of Representatives. (See: Article 62 of the Iraqi Constitution) There are plenty of available models for a second legislative chamber representing sub-national entities (like the German Bundesrat, or the South African National Council of Provinces), but of course the U.S. Senate could be the **best model to protect the provinces** and **curb the federal government’s powers**. A second legislative body, which represents all provinces equally, with a primary function of safeguarding the rights and privileges of the regions and provinces from excessive overreach by the federal government will go a long way in alleviating fears and concerns by the ethnic/religious minorities of Iraq – as well as strengthen federalism and prevent any further talk of secession of break-up.

**Iraq will model US federalism.**

**Biden, 7** [Vice President, U.S. Senator, and Gelb, President Emeritus of the Council on Foreign Relations 2007(Joseph and Leslie H., October 3, P. A23, “Federalism, Not Partition”, Washington Post)

We want to set the record straight. If the United States can't put this federalism idea on track, we will have no chance for a political settlement in Iraq and, without that, no chance for leaving Iraq without leaving chaos behind. First, our plan is not partition, though even some supporters and the media mistakenly call it that. It would hold Iraq together by bringing to life the federal system enshrined in its constitution. A federal Iraq is a united Iraq but one in which power devolves to regional governments, with a limited central government responsible for common concerns such as protecting borders and distributing oil revenue. Iraqis have no familiarity with federalism, which, absent an occupier or a dictator, has historically been the only path to keeping disunited countries whole. We can point to **our federal system** and how it began with most **power in the hands of the states**. We can point to similar solutions in the United Arab Emirates, Spain and Bosnia. Most Iraqis want to keep their country whole. But if Iraqi leaders keep hearing from U.S. leaders that federalism amounts to or will lead to partition, that’s what they will believe

**They Say: “Federalism Not Key”**

**Iraqi Federalism is the only way to stabilize civil war**

**Khalilzad and Pollack 14** (Zalmay, Counselor at CSIS and has served as U.S. Ambassador to Iraq, Afghanistan, and the U.N. – Kenneth, senior fellow at the Brookings Institution and has served as a Persian Gulf Military analyst at the CIA and Director for Persian Gulf Affairs at the National Security Council, “How to Save Iraq”, <http://www.newrepublic.com/article/118794/federalism-could-save-iraq-falling-apart-due-civil-war>, 7/22/14)

The most important thing to understand about Iraq today is also the hardest. The country has fallen once more into civil war, a recurrence of the civil war of 2006-2008. In 2007-2008, the United States committed tremendous military and economic resources to pull Iraq out of that first instance of civil war. This time around, Washington has made clear that it will not devote anything like the same resources and there is no other country that can. All other things being equal, therefore, the most likely future Iraqis face is a new civil war fought largely along the internal ethno-sectarian divisions of the country. Towns and cities may change hands, but the broad frontlines could remain largely unchanged for years. Meanwhile, tens or hundreds of thousands will die in fruitless conflict. The history of such civil wars demonstrates that there are really only three ways that they end. The first is that one group wins. In the case of Iraq, the Shi’a will have the best chance because of their demographic weight, but history has seen many civil wars in which numbers alone have proven inadequate to produce either a swift or even an eventual victory. However, when one identity group does prevail, it typically does so in a brutal and bloody fashion. Therefore, such an outcome should not be the goal of American policy. A second possibility is partition. Neither the Sunni Arabs nor the Shi’a Arabs of Iraq seem willing to share power in Iraq. Both might be willing to allow the Kurds to go their own way (although Kirkuk could remain a stumbling block), but they seem equally determined to dominate the Arab lands of Iraq. That suggests a long and costly civil war. Over time, both might come to realize that neither can conquer the other outright, especially if both are receiving considerable outside assistance from neighboring states. In those circumstances, it might become possible to convince them to divorce from each other, separating into two different states as in Sudan and Yugoslavia. Nevertheless, as those two examples suggest, partition is still likely to be difficult, bloody and a long time in coming. There is a dangerous mythology taking hold in Washington that partition might be easy because Iraq has since been sorted out into neat, easily divided cantonments. That is false. While there are far fewer mixed towns and neighborhoods, they still exist, and even the homogeneous towns and neighborhoods remain heavily intermingled across central Iraq, including in Baghdad. Moreover, both the Sunni and the Shi’a militias are claiming territory largely inhabited by the sects of the other. All of that indicates that it would probably take years of fruitless bloodshed to convince both the Sunni and Shi’a leaderships to agree to partition, let alone on where to divide the country. The final possibility is the best—or perhaps just the least bad—is what the Obama administration is trying now: Engineering a new Iraqi government that Kurds, Shi’a and moderate Sunnis can all embrace, so that they can then wage a unified military campaign (with American support) against ISIS and the other Sunni militant groups. That needs to remain Washington’s priority until it fails because it is the best outcome for all concerned, including the United States. Of course, this is also a long shot. It will not be enough just to depose Iraqi Prime Minister Nouri al-Maliki, anoint new leaders, and declare a national unity government. What brought Iraq to this impasse is the fear in Iraq’s periphery—the Sunnis, Kurds, and the Shi’a of the deep south—of the efforts by its center, literal and figurative, to oppress them. The leaders of these communities might agree to join a new government, but they are only going to be willing to make it work if there are far-reaching, structural changes in Iraq’s political, military and economic systems to decentralize power, security and wealth from the center to the periphery. In other words, they are only going to be willing to participate in a new Iraqi political process if there is **real federalism**. A federal solution would preserve the nominal unity of Iraq and some key functions of the central government, but would decentralize the vast majority of powers and responsibilities from Baghdad to the provinces and regions. For the moment, let’s set aside the Kurds. First, it is worth sketching out what federalism might mean for Arab Iraq. The keys would be both redistributing power from the central government to the provinces and regions, and redistributing power within the central government to prevent the re-emergence of another overly powerful Prime Minister like Maliki. Shifting power from the center to the periphery needs to start with money. The central government would retain the function of redistributing oil wealth according to a new oil revenue sharing law. Such a law would also apportion a certain percent of the funds to the federal government to perform its (limited) functions, or might simply set parameters that would limit the extent to which the federal parliament could tap Iraq’s oil revenues to pay for the activities of the federal government. However, the exploration, production, and even export of hydrocarbons would belong to the provinces and regions. A variety of other functions would also need to be divided up, with some migrating to the provinces and regions and others remaining with Baghdad. For instance, the management of Iraq’s power grid, its water resources (and therefore its agricultural policy), and its transportation network would likely remain with the federal government. On the other hand, education policy, housing, labor policy, and other similar functions would probably become the purview of the provinces and regions, and paid for by their own individual funds. Security would be particularly tricky. Baghdad would have to cede the maintenance of internal law and order to the provinces and regions, which would be allowed to raise local forces to do so. They would also have to receive a share of the federal budget—proportionate to demographics, but wholly under the control of the provinces and regions—to fund their internal security units. However, one solution for external defense would be to assign this responsibility to the central government. In this case, because the Iraqi Army will always retain the latent capacity to subjugate any or all of the provinces, there will have to be a redistribution of power within Baghdad to make it difficult, if not impossible, for an Iraqi Prime Minister to do so. Alternatively, some Iraqis argue that each federal region should maintain its own forces, like the Peshmerga, and that the regions should then coordinate their security forces and activities to ensure external security. Whichever path was followed, it would be critical to create checks and balances that would constrain the government’s ability to employ Iraq’s security forces to repress any of Iraq’s communities. The most useful but also the most ambitious step would be a constitutional amendment to shift the conduct of foreign affairs and national security (including command of the Iraqi armed forces) from the prime minister to the president. The prime minister would retain control over domestic politics and economic policies, and both would be subject to a limit of two terms in office. Iraqi leaders also need to agree to implement constitutional provisions (and enact reforms when necessary) to depoliticize the security services and enhance parliamentary oversight. The constitution already includes significant checks and balances that have been circumvented. It requires parliamentary approval of senior appointments, namely the Army chief of staff, his assistants, division commanders and above, and the director of the intelligence service. Laws are still needed to define the powers of the minister of defense (appointed by the president) and minister of interior (appointed by the prime minister), resubordinate Iraq’s various military operations centers under the ministry of defense chain of command (they currently report directly to the prime minister), and specify the treatment of Iraq’s hydrocarbon wealth in the non-Kurdish lands. Other constitutional amendments should redefine the appointment of Iraqi judiciary and election officials and should delegate control of local security forces and appointment of all provincial officials to the provincial and regional governments. The new government should also reestablish constitutional checks and balances on the premiership by enhancing the legislative powers of the parliament (repealing the court ruling that restricts the power to present bills to the Cabinet and president), restoring the independence of key institutions such as the central bank, election committee, media committee, and establishing the Supreme Federal Court. The future Cabinet should also have clear bylaws to regulate its work and the authorities of ministers. Even such a heavily revised Iraqi political structure is not going to be good enough for the Kurds. Sunni and Shi’a Arabs disaffected with Maliki’s premiership might see them as a reasonable alternative to protracted civil war, but the Kurds will not see them as a reasonable alternative to what they consider a historic opportunity to achieve independence. The Kurds already have an independent nation in virtually every way, at least every way noticeable to the average Kurd or Iraqi. They have their own schools and power, their own foreign policy and security services, their own language and culture, their own oil export channels and airports. And the list can go on. Not surprisingly, President Masoud Barzani has announced that the Kurdish Parliament will be asked to establish a Kurdish independent election commission. This commission is expected to organize a referendum asking the residents of the region to decide on sovereignty and independence. Given the Kurdish leadership’s decision on a referendum, federalism may be an answer for Arab Iraq, but to keep Kurdistan even a nominal part of Iraq will require something more. It will require something closer to confederation. The difference here is that in a typical federal system, resources and authorities are generated from the center and delegated to the periphery for all but a limited number of constrained functions. However, keeping the Kurds on board will likely require a shift to one in which resources and authority begin in the periphery and then are shared with the center for specific purposes and under specific constraints. Certainly, on one of the most important aspects of statehood, security, the Kurds already provide for themselves and will not agree to subordinate the Peshmerga (or their intelligence services, the Asayish) to Baghdad’s control. At most, they might allow some Iraqi army units to reinforce the Peshmerga if they were hard-pressed by a foreign invasion. Thus, the security structure in Iraq’s constitution which in theory gives Baghdad’s army the right to go into Kurdish territory is not suitable anymore. The Kurds will most certainly insist on retaining independent control of the Peshmerga, perhaps with an agreement that would specify under what circumstances Baghdad might call on Kurdish military assistance, and when the Kurds might ask for military help from Baghdad. The Kurds will also insist that the KRG maintain the current lines of control in disputed territories unchanged until a referendum can be conducted in accordance with article 140 of the Iraqi constitution. The two sides would need to hammer out an agreement that would include a fixed timeline for the process—perhaps within 4-6 months of the formation of a new federal government—and ensuring them the right to hold the referendum even if Baghdad fails to meet the deadline. The Kurds may also seek to exercise control over their own airspace to protect against unilateral actions by Baghdad—such as the recent decision to close Kurdistan’s airspace to cargo flights—that can cause significant damage to their economy. Oil revenues pose a similar challenge. Earlier this year, the Kurds began exporting oil directly to the Turkish port of Ceyhan, bypassing Iraqi federal control. Then, just before the ISIS offensive in early June, the Kurds began marketing that oil on their own, again bypassing Baghdad’s state oil marketing organization. The Kurds are reluctant to give up what they see as an insurance policy that they can always sell oil themselves and not have to rely on disbursements from Baghdad. Thus, to keep the Kurds in Iraq, Baghdad is likely to have to recognize Erbil’s right to develop and market the oil it produces as the new status quo. Another difficulty lies in determining how Iraqi oil revenues should be shared. There are many ways to skin this cat. One way would be for the Kurds to simply pump as much oil as they like and pay all of their expenses—including those of the international oil companies producing the oil—on their own from those revenues. Under this scenario, Baghdad would do the same with the oil exports under its control. An alternative approach would be for Baghdad and Erbil to determine an agreeable formula for splitting these revenues. (It is currently set at 17 percent for the Kurds, but may have to increase to reflect the fact that the KRG is now also responsible for Kirkuk and other areas.) The two sides would then account for the net balance of all the sales revenue according to the new revenue sharing agreement. Either way, the Kurdish budget and the Iraqi budget would become separate and independent of each other. The Kurds will also demand as part of an agreement that Baghdad settle the outstanding balance from the government’s decision to slash or withhold past budget payments to Erbil. While a one-country-two-system solution (federalism for the Arab provinces and confederation with Kurdistan) is certainly a plausible future for Iraq, it may well be the least plausible. It’s less that federalism-confederalism would be complex (which it would be) and therefore prone to dysfunctionality, and more that so far it seems hard to imagine Iraq’s various warring factions agreeing to it. Maliki is determined to rule a highly centralized Iraq, and is determined to bring the Sunnis to heel. For their part, the Sunni groups either want to do the same to Maliki or else be left entirely alone—which may sound like federalism in theory, but in practice would probably amount to partition given the fear and antagonism they now nurture toward Maliki. The Kurds would have to decide between confederation and outright independence. Yet here we are. The circumstances of Iraq have worsened so dramatically that we—and the Iraqis and their neighbors—have **nothing but difficult choices**. There is no escaping the simple reality that restoring peace to Iraq will require a re-balancing or disengagement of the center from the periphery, either de facto or de jure. In the latter case, partition looms. Yet it would take a long and awful fight and still might not prove feasible. The alternative is federalism, which is both possible and attractive to most, but will be very difficult to pull off. Unfortunately, at this hour in Iraqi history, the question is not how to put humpty dumpty back together again, but merely what can be made of the broken pieces.

**Iraqi Federalism is the only way to solve conflict – their defense doesn’t assume new factors which increase the risk of war**

**Hassan 13** (Hassan, Journalist for The National, “Federalism could help ease Iraq's dangerous pressures”, <http://www.thenational.ae/thenationalconversation/comment/federalism-could-help-ease-iraqs-dangerous-pressures>, 5/22/13)

There is a certain power to the word taqseem in Arabic. It means any form of partition of a country, and has a cloud of connotations that can invite memories of colonial times and conspiracies by western-backed religious or ethnic minorities. That is why it is interesting to observe that the idea of decentralisation is, for the first time, being pushed by Iraq´s Sunnis, who are a majority in all Muslim countries except Iran and Iraq. Interest in federalism is **not new in Iraq**. It has been growing almost since the prime minister, Nouri Al Maliki, assumed the position of interior minister in 2010, as his attempt to centralise power grew more pronounced. Since then, he has marginalised Sunni-majority areas, politically and economically. What is new, however, is that federalism offers a solution to a problem that is now more urgent than ever. Decentralised governance appears to be the **only way** to avoid an inevitable return to the sectarian abyss, one likely to be **even more deadly** than the events of 2006. Iraq´s current crisis, with ominous bombings targeting both Sunni and Shia areas, is essentially caused by the stagnant political system, not by Mr Al Maliki, who has a popular base that cannot be ignored. The power-sharing system set in motion (or in stone, as it turned out) by the 2010 constitution has led to economic and political paralysis, leaving Sunni Iraqis feeling that they are disenfranchised, second-class citizens. Sunnis feel that the state failed to protect them and that the central government is and always will be controlled by sectarian parties that oppress or marginalise them. It is only a matter of time before Sunni-majority areas explode. In the current political order, the idea of coexistence is an illusion, plain and simple. Deep Sunni resentment of the central government is shown by the fact that extremist forces are side by side with pro-change protesters and tribal notables who once fought them alongside the central government. To be sure, Sunnis are still deeply divided over the idea of federation. Sheikh Abdulmalek Saadi, an influential Sunni cleric and mufti, has declared any calls for federalism to be haram, or religiously prohibited. Instead, he calls for dialogue with the Maliki government to address Sunnis´ legitimate demands, including anti-Baathification and antiterror laws that are seen as designed to target them. On the other hand, this month residents of Fallujah held an unprecedented conference on the merits of federalism. The way one speaker argued for federalism underlines the psychological bias against the idea: he gave the example of five brothers in one house - as they grow up and marry and have children, their infighting becomes intolerable. “What´s the solution?” he asked. “The clear solution, which we all know, is that the brothers move out and each has his own house. That way, they will be able to bring up their children as they wish, and protect themselves and prosper.” The calls for federalism in Sunni-majority areas are increasingly wrapped in sectarian language, which can be understood in the current context of religious polarisation. If the situation persists, this can lead only to greater radicalisation of the Sunni populace - which was once predominately secular - as Sunnis find shelter in traditional tribal and religious alliances. Federation has security and economic aspects. Would the Sunni population, whose technocrats have long been targeted by government security forces or compelled to leave the country, be able to handle security in their provincial areas? Will the power vacuum be filled by better-armed extremist forces? These factors must be considered before any transition to a federal system. But it is clear that the persistent crisis is empowering extremists. When Sunnis handle their own affairs in their regions, they are most likely to repudiate extremism. The marriage of convenience between tribes and jihadists would almost definitely break as Sunnis take up ownership of their own regions. The rampant corruption of the central government, and the lack of political will, impedes progress in Sunni-majority areas. Services and investment are desperately needed. Provincial governments, which would receive their shares of the national wealth, could answer to their local constituencies and would therefore be more likely to devote themselves to good governance and development in their regions, along with security - as demonstrated by the largely autonomous Kurdish north. And yet, even if Sunni Iraqis agreed on governing themselves, Mr Al Maliki remains ready to strike down any such proposal. However, if there were a Sunni consensus on the issue, Mr Al Maliki would have little leeway to continue to reject it. Federalism is spelt out in the 2010 constitution and the executive procedures law No. 13, 2008, a constitution that the prime minister tirelessly cites to justify his authoritarian moves. Federalism makes economic, political and security sense for Iraq, for both Sunni-majority areas and the nation at large. In the current toxic environment, a renewed sectarian war seems all too likely. Paradoxically, federation could bring Iraqis closer to each in the long run, as they start to take ownership of their regions and then understand that they need each other for trade and security. Only when the brothers move into separate houses do they start to value their kinship.

**They Say: “No Escalation”**

**Iraqi civil war spills over**

**Nagl and Burton 9** (John A, President of the Center for New American Security; Brian M, Research Assistant of the Center for New American Security; “After the Fire: Shaping the Future U.S. Relationship with Iraq” June 2009)

Finally, the United States must mitigate the consequences of violent internal conflict within Middle Eastern states. Civil strife and commu¬nal violence have the potential to spill over into neighboring states or provoke those states to intervene, overtly or by proxy, in order to manipulate internal political dynamics to their own advantage. Both spillovers and interventions have the potential to escalate one country’s internal strife into a **wider war** that engages multiple countries and destabilizes the entire region. A failed-state scenario in Iraq, which nearly occurred in 2006, would risk spillover and interventions involving Iraq’s neighbors, including key U.S. partners like Saudi Arabia and Turkey, and threaten the security of Iraq’s strategic resources. In a renewed Iraqi civil war, Iran would also be tempted to assert its power more forcefully, either through its militia proxies or perhaps directly, and attempt to advance its objectives by attacking U.S. allies in the region.14 Proactive U.S. coordination and support for allies and international organizations will be necessary to prevent or respond to regional crises. The United States must also commit to improving stability by helping Iraqis resolve their internal disputes, **supporting efforts to develop governance** and economic capacity, and engaging diplomatically with key international development organizations and potential regional adversaries.

**World war three results**

**Corsi 7** (Jerome, "War with Iran is imminent," Phd in Poly Sci @ Harvard, author, + staff reporter @ World Net Daily, 1-8, http://www.worldnetdaily.com/news/article.asp?ARTICLE\_ID=53669)

**If a broader war breaks out in Iraq**, Olmert will certainly face pressure to send the Israel military into the Gaza after Hamas and into Lebanon after Hezbollah. If that happens, it will **only be a matter of time** before Israel and the U.S. have no choice but to invade Syria. **The Iraq war could quickly spin into a regional war**, with Israel waiting on the sidelines ready to launch an air and missile strike on Iran that could include tactical nuclear weapons.

With Russia ready to deliver the $1 billion TOR M-1 surface-to-air missile defense system to Iran, military leaders are unwilling to wait too long to attack Iran. Now that Russia and China have invited Iran to join their Shanghai Cooperation Pact, will Russia and China sit by idly should the U.S. look like we are winning a wider regional war in the Middle East? If we get more deeply involved in Iraq, China may have their moment to go after Taiwan once and for all. **A broader regional war could easily lead into a third world war**, much as World Wars I and II began.

**Iraq civil war escalates**

**Ferguson 6** (Niall, Professor of History – Harvard University, “The Next War of the World”, Foreign Affairs, September / October, Proquest)

What makes the escalating civil war in Iraq so disturbing is that it has the potential to **spill over** into neighboring countries. The Iranian government is already taking more than a casual interest in the politics of post-Saddam Iraq. And yet Iran, with its Sunni and Kurdish minorities, is no more homogeneous than Iraq. Jordan, Saudi Arabia, and Syria cannot be expected to look on insouciantly if the Sunni minority in central Iraq begins to lose out to what may seem to be an Iranian-backed tyranny of the majority. The recent history of Lebanon offers a reminder that in the Middle East there is no such thing as a contained civil war. Neighbors are always likely to take an unhealthy interest in any country with fissiparous tendencies. The obvious conclusion is that a **new "war of the world"** may already be brewing in a region that, incredible though it may seem, has yet to sate its appetite for violence. And the ramifications of such a Middle Eastern conflagration would be **truly global**. Economically, the world would have to contend with oil at above $100 a barrel. Politically, those countries in western Europe with substantial Muslim populations might also find themselves affected as sectarian tensions radiated outward. Meanwhile, the ethnic war between Jews and Arabs in Israel, the Gaza Strip, and the West Bank shows no sign of abating. Is it credible that the United States will remain unscathed if the Middle East erupts? Although such an outcome may seem to be a low-probability, nightmare scenario, it is already more likely than the scenario of enduring peace in the region. If the history of the twentieth century is any guide, only economic stabilization and a credible reassertion of U.S. authority are likely to halt the drift toward chaos. Neither is a likely prospect. On the contrary, the speed with which responsibility for security in Iraq is being handed over to the predominantly Shiite and Kurdish security forces may accelerate the descent into internecine strife. Significantly, the audio statement released by Osama bin Laden in June excoriated not only the American-led "occupiers" of Iraq but also "certain sectors of the Iraqi people -- those who refused [neutrality] and stood to fight on the side of the crusaders." His allusions to "rejectionists," "traitors," and "agents of the Americans" were clearly intended to justify al Qaeda's policy of targeting Iraq's Shiites. The war of the worlds that H. G. Wells imagined never came to pass. But a war of the world did. The sobering possibility we urgently need to confront is that another global conflict is brewing today -- centered not on Poland or Manchuria, but more likely on Palestine and Mesopotamia.

**They Say: “No Middle East War Impact”**

**Extinction**

**Stirling 11** (The Earl of Stirling 11, Hereditary Governor and Lord Lieutenant of Canada, Lord High Admiral of Nova Scotia, MA in European Studies and B.Sc. in Political Science and History, “General Middle East War Nears - Syrian Events More Dangerous Than Even Nuclear Nightmare In Japan”, 3-30, http://europebusines.blogspot.com/2011/03/general-middle-east-war-nears-syrian.html)

Any Third Lebanon War/General Middle East War is apt to involve WMD on both side **quickly** as both sides know the stakes and that the Israelis are determined to end, once and for all, any Iranian opposition to a 'Greater Israel' domination of the entire Middle East. It will be a case of 'use your WMD or lose them' to enemy strikes. Any massive WMD usage against Israel will result in the usage of Israeli thermonuclear warheads against Arab and Persian populations centers in large parts of the Middle East, with the resulting spread of radioactive fallout over large parts of the Northern Hemisphere. However, the first use of nukes is apt to be lower yield warheads directed against Iranian underground facilities including both nuclear sites and governmental command and control and leadership bunkers, with some limited strikes also likely early-on in Syrian territory. The Iranians are well prepared to launch a global Advanced Biological Warfare terrorism based strike against not only Israel and American and allied forces in the Middle East but also against the American, Canadian, British, French, German, Italian, etc., homelands. This will utilize DNA recombination based genetically engineered 'super killer viruses' that are designed to spread themselves throughout the world using humans as vectors. There are very few defenses against such warfare, other than total quarantine of the population until all of the different man-made viruses (and there could be dozens or even over a hundred different viruses released at the same time) have 'burned themselves out'. This could **kill a third of the world's** total **population**. Such a result from an Israeli triggered war would almost certainly cause a **Russian-Chinese response** that would eventually finish off what is left of Israel and begin a truly global war/**WWIII** with multiple war theaters around the world. It is highly unlikely that a Third World War, fought with 21st Century weaponry will be anything but the Biblical **Armageddon**.

**Middle East war escalates and causes extinction.**

**Russell 09** (James A. Russell, managing editor of Strategic Insights, the quarterly ejournal published by the Center for Contemporary Conflict at the Naval Postgraduate School, Spring 2009, *Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East*, Security Studies Center)

These systemic weaknesses in the coercive bargaining framework all suggest that escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance. Given these factors, it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways. The international community must take this possibility seriously, and muster every tool at its disposal to prevent such an outcome, which would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.

**Impact — Nigeria**

**1NC — Nigeria Module**

**Nigeria models US federalism**

**McCarthy, 6** [Professor at the University of Oregan , Jered "A Country Report on Nigeria"2006 <http://www.kiwispanker.com/papers/nigeria.html>]

Since its independence, Nigeria has had three constitutions. The first one replaced its former, the Lyttleton Constitution of 1954, which created a federal administrative system with the country of Nigeria. This separated the powers from the great strength of the central government, something that most corrupt societies fear. The 1960 Independence Constitution declared Nigeria to be a united republic and to force the removal of the British monarchy and to replace it with a 5-year term president.7 The second constitution created the Second Republic in 1979. It replicated the United States constitutional system rather than the British. After the military regained control in 1984, the system diminished. These years saw major blood shed and a variety of military coups. Civilian order was restored in 1988 with the Third Republic; this was the first time the Sharia Law (Laws set in accordance with Islamic beliefs, like in Iran and many other Islamic nations) was even considered to be included in the constitution. Later, history would repeat itself and offer the civilian government back to the control of the military elite. These years were known as the Abacha regime;it was later replaced by the new civil Constitution of the Fourth Republic lead by Olusegun Obasanjo, a Yoruban Christian from the western states. This constitution is **much like the U.S. constitution** as well; it has a well executed system of **checks and balances** and all three of the branches **reflect that of the U.S. model.** Except that the new constitution will make certain that no one ethnic group can dictate the whole federal government. Executive Branch As listed above, the early government replicated that of the British government and placed a Prime Minister as the Head of Government. Under the second government, the Republic replicated that of the American way. Today, Nigeria continues to follow the U.S. model and it elects a President for two 4-year terms by a popular vote. The president governs with his senior government ministers and at least one of these ministers must come from each of the 36 states and must be confirmed by the Senate. The vice president, alike the U.S., is the second in command; though he or she must come from a different part of the country than the president, thus dividing the country to prevent ethnic majority rule. Today's vice president is a Muslim from the North, named Abubakar Atiku.10 Legislative Branch Alike the executive branch of government, Nigeria's National Assemble mimics that of the United States. It has a bicameral federal system that checks and balances the other two branches. The Senate (or the upper-chamber) represents the 36 states and the Federal Capital Territory of Abuja (much like the U.S.). It contains 109 members (3 from each state and one from the federal territory) and each state is divided into three districts. Senators are elected for 4-year renewable terms. The Senate also will elect a president to preside over the Senate; this person will serve as the third person in line in case of the death of the president.14 The House of Representatives is the lower-chamber and contains 360 members who are all elected on a popular basis in each of his district. Each member is elected for the same duration as those of the Senate. They also elect their own Speaker or the House.6 Judiciary Branch The Supreme Court is much like the U.S.'s system whereas it has both federal and state courts. The Judiciary branch of Nigeria's institution remains as the final corner of the triangle for Nigerian checks and balances. Although **Nigeria does copy the American model very closely**, there is one area where it is far reverse. In the Northern states, where Islamic decree is massive, the courts practice Sharia law to help convey ideas and judgments in that particular region.

**That’s key to prevent collapse of Nigeria and regional instability**

**Admolekun 5** [Ladipo, professor at the University of Ife, "Nigerian Federalism at the Crossroads: The Way Forward", Publius. Philadelphia: Summer 2005.Vol.35, Iss. 3, p. (proquest)

While reemphasizing the credit the military deserves for keeping Nigeria one through the thirty-month civil war of 1967-1970, it is important to stress that the enduring unity of the Nigerian federation cannot be assured through military-style centralism and uniformity. Persistent fears about the **fragility** of the federation after almost three decades of strict application of that approach, and about ten years of imitations of the same approach, constitute a strong justification for adopting and implementing a different approach. The desirable approach is a devolved federal system with the characteristics spelled out above. Only devolution can unleash the forces for consolidating democracy and achieving accelerated socioeconomic progress in Nigeria. The alternative to devolution will likely be the death of the federation.

**Collapse spills over**

**Gardner 6** [Dan Gardner, “Western world ignoring demise of Nigeria”, The Ottawa Citizen, 3/23/06, lexis]

Imagine a country that is one of the world's largest exporters of oil. Imagine a country in which ethnic and sectarian violence has killed thousands and driven millions from their homes, a country so fragile that a recent report commissioned by the CIA concluded there is a good chance it will collapse. Imagine a country that Osama bin Laden has declared to be "ripe for liberation." This country is not in the Middle East. It's also not on the minds of western media or politicians, despite the almost unimaginable havoc that would be unleashed if the feared collapse comes. It is Nigeria. A British invention, Nigeria is a country made up of some 250 ethnic groups and countless tribal subdivisions sharing only a weak national identity. It is also a country of intense and growing religious passions whose 132 million people are divided almost equally between Christians and Muslims. Violent earthquakes can erupt along any of these fault lines. In February, Muslims in the north murdered 50 Christians. Christians in the south retaliated by murdering Muslims. Thousands fled in terror. These latest clashes started with protests against the Danish cartoons, but most have less exotic origins. People fight for land or God. They fight to control local governments. They fight to avenge insults. In the Niger Delta, they fight for control of oil. Dozens die in one clash. Hundreds in another. It's low-grade warfare but the toll steadily climbs. By one estimate, 20,000 Nigerians have been killed in fighting since 1999, when democracy was restored after 16 years of military rule. And for every corpse, more than a hundred people have been driven from their homes. "The magnitude, scope, character and dimension of internally displaced persons in Nigeria is frightening," declared a report released last week by Nigeria's National Commission for Refugees. Since 1999, the commission says, three million people have fled. Their plight represents one of the gravest humanitarian crises in the world. It is also one of the most unrecognized. The bloody clashes in Nigeria almost never rate a mention in the western media and western politicians pay even less attention to the country than they do to other African hot spots. As a result, very few people in Canada realize how dangerous the situation has become. "While currently Nigeria's leaders are locked in a bad marriage that all dislike but dare not leave," states a 2005 report commissioned by the CIA, an event such as a coup attempt could spark open warfare and "outright collapse." AN OIL SHOCK The consequences would be immense. "If Nigeria were to become a failed state," the report concluded, "it could drag down a large part of the West African region." Millions would flee. There's also the matter of oil. Even now, world oil prices jump every time a bullet is fired in the Niger Delta. If Nigeria were to collapse, there could be an oil shock the like of which we haven't seen since the Iranian Revolution. And since the long-term energy strategy of the United States assumes rising African oil production, chaos in the Niger Delta would **almost certainly bring in the Marines**.

**That goes nuclear**

**Lancaster 00** (Carol, Associate Professor and Director of the Master's of Science in Foreign Service Program – Georgetown University, “Redesigning Foreign Aid”, Foreign Affairs, September / October, Lexis)

THE MOST BASIC CHALLENGE facing the United States today is helping to preserve peace. The end of the Cold War eliminated a potential threat to American security, but it did not eliminate conflict. In 1998 alone there were 27 significant conflicts in the world, 25 of which involved violence within states. Nine of those **intrastate conflicts** were in sub-Saharan Africa, where poor governance has aggravated ethnic and social tensions. The ongoing war in the Democratic Republic of the Congo has been particularly nightmarish, combining intrastate and interstate conflict with another troubling element: military intervention driven by the commercial motives of several neighboring states. Such motives could fuel future conflicts in other weak states with valuable resources. Meanwhile, a number of other wars -- in Colombia, the former Yugoslavia, Cambodia, Angola, Sudan, Rwanda, and Burundi -- have reflected historic enmities or poorly resolved hostilities of the past. Intrastate conflicts are likely to continue in weakly integrated, poorly governed states, destroying lives and property, creating large numbers of refugees and displaced persons, and threatening regional security. The two interstate clashes in 1998 -- between India and Pakistan and Eritrea and Ethiopia -- involved disputes over land and other natural resources. Such contests show no sign of disappearing. Indeed, with the spread of **w**eapons of **m**ass **d**estruction, these wars could prove **more dangerous than ever.**

**They Say: “No Modelling”**

**Nigerian constitution proves US is the model**

**Anugwam**, E-Lecturer University of Nigeria, **00**  
[Edylene, Journal of Social Development In Africa-“Ethnic Conflict and Democracy in Nigeria: The Marginalization Question”]

One way of tackling ethnic conflict is by adopting a political culture that makes adequate provision for all the interests and groups in a given society. Nigeria should therefore learn from the experiences of multi-ethnic developed nations. As Woolley and Keller (1994) rightly pointed out, **African countries** should **emulate** one of the fundamental principles of **American democracy,** which is the notion of majority rule and its complementary precept of minority rights. Federalism as a form of government and political arrangement is a viable way of achieving the above. Federalism may help to ameliorate ethnic rivalry where it is implemented to the letter. In this sense, federalism in Nigeria should be geared towards the American system. Woolley and Keller view federalism as ideal for the multiethnic and religious character of most African states, where certain national rights are established for all citizens, while at the same time allowing regional governments to make laws, rules and regulations that do not conflict with national codes. This kind of thinking must have informed the provision made in the new draft constitution in Nigeria for a representation formula, addressing the core ethnogeographical zones in the country. It recommends that the six most powerful and prestigious positions in central government should be zoned towards the six different geographical regions of the country. While this is a step in the right direction, it nevertheless falls short of matching the representational formula through strict rotation. In this case, it would be illegal for any region to corner one position indefinitely for itself, such as the presidency.

**They Say: “No Spillover”**

**Nigerian stability is key to African stability**

Chinwe **Esimai**, an attorney in New York, former editor with the Harvard Human Rights Journal, May **2006**, Current History

The recent violence is cause for concern because a stable Nigeria is essential to the **peace and security** **of the entire African continent**. The Nigerian army has led peacekeeping efforts in Liberia, Sierra Leone, and the Darfur region in Sudan. The nation also provides leadership in regional bodies such as the African Union and the Economic Community of West African States, which has provided peacekeeping forces in West Africa through its armed monitoring group, ECOMOG. Beyond the confines of the continent, Nigeria's importance as a dependable oil producer is growing in the face of turmoil in the Middle East. With a prominent position in the Organization of Petroleum Exporting Countries, Nigeria is Africa's largest oil producer, the world's eleventh-largest producer, and the fifth-largest supplier of America's crude oil imports. A stable and democratic Nigeria would serve a great many interests-including, obviously, those of most Nigerians. But unless the country succeeds in mending its religious and ethnic divides, preventing a resurgence of secessionist movements, and blocking a rumored bid by President Olusegun Obasanjo to stay in power, the likelihood of major turmoil and civil conflict will inexorably increase.

**Nigerian democratization leads to continent-wide stability**

Salih **Booker**, executive director at Africa Action and William Minter, senior research fellow at Africa Action, Winter **2003**, The U.S. and Nigeria: thinking beyond oil, accessed via ciaonet.org

Nigeria, Africa’s most populous nation, is also the **most important state in U.S.- Africa relations** today. Nigeria is America’s major trading partner in Africa. It plays the largest role of any country in peacekeeping efforts on the continent. Nigeria’s attempt to build democracy from the ashes of authoritarian rule will arguably have even more consequential effects for the continent than South Africa’s victory over apartheid in 1994. Although it is oil that attracts Washington’s attention the most, the ramifications of Nigeria’s success or failure will extend far beyond the energy sector. In past centuries, Nigeria’s territory was home to a series of powerful and technically advanced societies, renowned for their artistic, commercial and political achievements. It was also a pioneer in the movement for African independence. But since independence its growth has been stunted by internal conflict and military misrule. Yet today, Nigeria is again one of Africa’s most influential countries. Its unique human resources and vast oil reserves create the capacity for enormous prosperity and regional leadership. In 2002, Nigeria was the fifth-largest supplier of oil to the U.S., ranking behind only Canada, Saudi Arabia, Mexico and Venezuela. Along with Royal Dutch Shell, a British-Dutch firm, U.S. oil supermajors ChevronTexaco and Exxon Mobil Corp. dominate oil production in the oil-rich Niger Delta. Since emerging from military dictatorship in 1999, its nascent democratic institutions have survived huge challenges but have performed disappointingly in the eyes of tens of millions of Nigerians. Their capacity to deliver the peace and prosperity Nigerians want is still unproved. The fate of Nigeria has profound implications for the entire continent: both the potential and the obstacles are on the giant scale of the country itself.

**Nigerian stability is key to continental stability**

Thomas **Tsai**, Associate Editor of the Harvard International Review, Fall **2002**, Harvard International Review

Two future for Africa are possible—one with a democratic and stable Nigeria, and one with a Nigeria stricken by autocratic rule, corruption and intermittent coups. **An entire continent awaits the result of** the **Nigerian** experiment with **democracy**. Nigeria has the resources and can provide the leadership to foster greater regional and international cooperation, leadership that many of Nigeria’s neighbors need. A successful Nigerian democracy would provide hope for many of Africa’s other burgeoning democracies.

**They Say: “Federalism Not Key”**

**Federalism key to stability**

**Admolekun 5** [Ladipo, professor at the University of Ife, "Nigerian Federalism at the Crossroads: The Way Forward", Publius. Philadelphia: Summer 2005.Vol.35, Iss. 3, p. (proquest)

While reemphasizing the credit the military deserves for keeping Nigeria one through the thirty-month civil war of 1967-1970, it is important to stress that the enduring unity of the Nigerian federation cannot be assured through military-style centralism and uniformity. Persistent fears about the **fragility** of the federation after almost three decades of strict application of that approach, and about ten years of imitations of the same approach, constitute a strong justification for adopting and implementing a different approach. The desirable approach is a devolved federal system with the characteristics spelled out above. Only devolution can unleash the forces for consolidating democracy and achieving accelerated socioeconomic progress in Nigeria. The alternative to devolution will likely be the death of the federation.

**Multiple internal links**

**Bonn International Center for Conversion, 2008** (“Workshop Governing the Gift of Nature: the links between Governance, conflict and natural resources” http://www.gc2008.net/blog/?tag=conflict)

Professor Ayodeji Olukoju from the University of Lagos presented his case study on the Niger Delta in Nigeria where oil and gas form the backbone of the Nigerian economy. In his presentation, he gave a historical overview of the Niger delta, the link between natural resources and politics. According to Prof. Olukoju, resource management has shaped the political landscape of Nigeria since the countries’ independence, resulting in a wealthy elite supported by oil companies playing the ethnic card in local and national politics. This led to agitations amongst minority groups who felt that they were not only marginalized in politics but also denied the revenue from oil and gas present on their own land. The production of oil and gas led to environmental degradation and injustice amongst the local population (such as the Ogoni people) who stood up against the government and the major oil corporations. In the last decade, the Niger delta saw an increased militarization, even after the return to democratic rule. This resulted in a growing militancy amongst ethnic groups. According to Olukoju, the root causes of the support for the militant groups can be found in the high unemployment rates, high poverty, a growing perception of deliberate marginalization of ethnic groups in the Delta by the Nigerian state, and discriminatory employment practices against indigenous people by the oil firms. This led to the rise of militant groups such as the Movement for the Emancipation of the Niger Delta (MEND) who attack oil stations and kidnap politicians and personnel working at major oil companies. He argued that in order to solve the problem with the government and resource control, both a more decentralized form of Nigerian federalism and the fight against the high level of youth unemployment is necessary. The state needs to tackle the poor state of social infrastructure, providing better education and health care with the oil revenues, and reduce the militarization of the Niger delta

**Nigerian federalism key to its stability**

**Africa News, 2002** (“NDP Calls for True Federalism”, 9/5, lexis)

NATIONAL Democratic Party (NDP), one of the political associations seeking registration as a party, has called for true federalism in the country. Chief Kenny Martins, national publicity secretary of NDP, made the call in an interview with Daily Champion in Lagos. Chief Martins said that unless there is true federalism in Nigeria, the community could never flourish. "We in NDP believe that unless we have true federalism where the people are allowed to be ruled and governed by those things that are dear to them Nigeria will continue to have problems. "Before now, what we have always had is a central authority kind of thing, the type that really broke Nigeria after 1966," he said. "We also believe that even from the centre, some of the programmes we need to carry out should involve moving back to the rural areas, because if you can put infrastructures in the rural areas, you can de-urbanise the urban areas," he added. Speaking on the registration of political associations as parties, Chief Martins urged the Independent National Electoral Commission (INEC), to wake up to its responsibilities. He said that INEC had a role to play in ensuring that democracy is entrenched in the country because the country's democracy was still at the infant stage and needed to grow fully

**Nigerian federalism solves state collapse**

**Africa News** August 6, **2006** (“Poverty Eradication Through True Federalism” This Day) Lexis

If we must eradicate poverty from our land, we must return money, power and responsibility to the states as was the position before the military era. The current quest for power and influence at the centre in Nigeria will become unattractive and the Nigerian state will be saved from disintegration and wastage. What is business of the Federal Government's in the management of educational institutions in Nigeria? Once we have an educational policy in Nigeria, with the appropriate enactments of the National Assembly, the resources for education should be channeled to the states and the responsibilities of the Federal Government should only be limited to monitoring and compliance. Today, there are so many federal institutions and multitude of bureaucrats being paid from the national treasury. Which should not be. One begins to wonder what magic a bureaucrat in Abuja can do better, than the governor of a state in educating the citizens of their states.A change in the current direction will greatly help in developing our communities for good. There are other areas of federal control that in a true federalism should not be the pre-occupation of a federal government like housing, agriculture, road maintenance, health, sports and other social responsibilities of government. These can be better handled by the states. In fact, all social responsibilities in a true federalism should be the primary responsibility of the states. This is why I strongly belief that the military enacted 1999 constitution is a total aberration to the Nigeria people. A new constitution is urgently required.We need to realize that we cannot reduce or eradicate poverty in Nigeria except we devolve power and resources to the states. The current concentration of power, money and resources at the centre is the primary reason for the level of poverty we see everyday in our various communities.

**They Say: “No Africa War Impact”**

**Escalates – US will get drawn in**

**Lubeck** et al 200**7** (Paul Lubeck, professor of sociology at the University of California, Santa Cruz, Ronnie D. Lipschutz, professor of politics at the University of California, Santa Cruz, Michael Watts, director of African Studies at the University of California, Berkeley, “CONVERGENT INTERESTS: U.S. Energy Security and the“Securing” of Nigerian Democracy,” International Policy Report, February, http://www.ciponline.org/NIGERIA\_FINAL.pdf)

In this brief, we have marshaled evidence confirming the scale of mission creep into West Africa since 2001 on the part of American forces. Today, the U.S. military is patrolling the Gulf, training Nigerian security forces in the Delta and “ring fencing” Nigeria’s northern border with the help of American advisors. No large scale American military intervention in Nigeria is on the horizon, however, because of the reluctance of the overstretched and distressed U.S. military to become mired in another quagmire like Iraq. Nonetheless, there is an **unmistakable trend** toward increased American military involvement in West Africa’s oil regions and, more specifically, **in Nigeria’s Niger Delta**. As long as the United States’ energy security policy relies on increasing amounts of imported oil, and Nigeria depends completely on oil and gas exports to fund its mono-export economy, the security interests of Nigeria and the U.S. will remain deeply intertwined. In the Niger Delta, however, militarization cannot guarantee stability of supply. Naked force, even with the best American technical advisors and electronic gadgets, is doomed to failure and risks sliding more deeply into a low grade civil war—with the prospects of a massive escalation of violence and attacks on oil installations—that could result in a severe threats to American energy security. More ominously, the increased presence of American forces in the Gulf, coupled with the widespread perception within Nigeria of encirclement by the U.S., could ignite not only a strong anti-American “petro-nationalism,” but also contribute to a radical destabilization of an already fragile political situation in the run up to the 2007 elections. Terrorism, to be sure, is a serious global problem. But, given current American foreign and defense policies, Africans are justifiably skeptical of both American intentions and U.S. security strategies. According to Festus Boahen Aboagye, a former Ghanaian army colonel and military adviser at the African Union, “the best way to defeat terrorism… [is] to more aggressively encourage democracy and support the economies of the nations involved.”93 Indeed, the lavish funding of military programs like the TSCTI, which include the U.S. military providing medical and dental services to Africans in the Gulf, while State Department programs for development, gender equity, democracy, governance and conflict resolution are starved for money, constitutes a distortion of American foreign policy priorities. Why are civilian functions formerly housed under the State Department’s agencies—health, water, education— increasingly funded by the TSCTI and under military management? In the United States, progressives and their representatives in Congress should demand a redress of the balance between civilian activities in the State Department and military activities in the Pentagon. Unfortunately, the GWOT has militarized American foreign policy, and encouraged the gutting of funds for democracy and governance programs that historically have supported a robust and effective civil society in Nigeria. Any objective “cost-benefit” analysis of these policies will confirm this conclusion. A failure on the part of American policymakers to vigorously support both Nigeria’s democratic forces and the legislature’s oversight of the presidency not only threatens American energy security, but risks derailing what is arguably one of the most important – yet fraught – elections since the end of the Nigerian civil war. Only a properly funded democratization program will secure American and Nigerian security interests and quell the insurgencies, criminality and social banditry now rampant in the Delta. Democratization requires institutionalizing free and fair elections, addressing youth unemployment, compensating communities for damages, raising living standards, empowering civil society groups to monitor public funds and negotiating local resource control. We encourage civil society groups and legislators on both sides of the Atlantic to take up these challenges.

**Escalates to global nuclear war**

**Deutsch 1** (Dr. Jeffery, Founder – Rabid Tiger Project, Rabid Tiger Newsletter, Vol. 2, No. 7, 11-18, http://www.rabidtigers.com/rtn/newsletterv2n9.html)

The Rabid Tiger Project believes that a nuclear war is **most likely** to start in Africa. Civil wars in the Congo (the country formerly known as Zaire), Rwanda, Somalia and Sierra Leone, and domestic instability in Zimbabwe, Sudan and other countries, as well as occasional brushfire and other wars (thanks in part to "national" borders that cut across tribal ones) turn into a really nasty stew. We've got all too many rabid tigers and potential rabid tigers, who are willing to push the button rather than risk being seen as wishy-washy in the face of a mortal threat and overthrown. Geopolitically speaking, Africa is open range. Very few countries in Africa are beholden to any particular power. South Africa is a major exception in this respect - not to mention in that ~~she~~ also probably already has the Bomb. Thus, outside powers can more easily find client states there than, say, in Europe where the political lines have long since been drawn, or Asia where many of the countries (China, India, Japan) are powers unto themselves and don't need any "help," thank you. Thus, an African war can attract outside involvement very quickly. Of course, a proxy war alone may not induce the Great Powers to fight each other. But an African nuclear strike can **ignite a much broader conflagration**, if the other powers are interested in a fight. Certainly, such a strike would in the first place have been facilitated by outside help - financial, scientific, engineering, etc. Africa is an ocean of troubled waters, and some people love to go fishing.

## Impact — Constitution

### 1NC — Constitution Module

#### Constitution Turn:

#### A. Federal regulation of education is unconstitutional.

Salisbury 3 — David F. Salisbury, Director of the Center for Educational Freedom at the Cato Institute, former Associate Professor in the Department of Educational Research at Florida State University, holds a Ph.D. in Instructional Technology from Brigham Young University, 2003 (“28. Department of Education,” *Cato Handbook For Congress: Policy Recommendations For The 108th Congress*, Available Online at <https://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policymakers/2003/9/hb108-28.pdf>, Accessed 06-11-2017, p. 295-296)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

—Tenth Amendment to the U.S. Constitution

The U.S. Department of Education, formed in 1979 during the Carter administration, represents an intrusion by the federal government into an aspect of American society for which there is no constitutional authority. The U.S. Constitution gives Congress no authority whatsoever to collect taxes for, fund, or operate schools. Therefore, under the Tenth Amendment, education should be entirely a state and local matter.

For more than 200 years, the federal government had left education to those who were in the best position to oversee it—state and local governments and families. Richard L. Lyman, president of Stanford University, who testified at the congressional hearings on forming the new department, pointed out that ‘‘the two-hundred-year-old absence of a Department of Education is not the result of simple failure during all that time. On the contrary, it derives from the conviction that we do not want the kind of educational system that such arrangements produce.’’

Without question, the Framers intended that most aspects of American life would be outside the purview of the federal government. They never envisioned that Congress or the president would become involved in funding schools or mandating policy for classrooms. As constitutional scholar Roger Pilon has said: ‘‘From beginning to end the [Constitution] never mentioned the word ‘education.’ The people, in 1787 or since, have [end page 295] never given the federal government any power over the subject—despite a concern for education that surely predates the Constitution.’’

#### B. The Constitution is a moral decision rule. Ends-based disads can’t outweigh.

Bayer 11 — Peter Brandon Bayer, Lawyering Process Professor at the William S. Boyd School of Law at the University of Nevada-Las Vegas, former Assistant Professor and Director of the Legal Research, Analysis, and Writing Program at St. Thomas University School of Law, holds an LL.M. from Harvard Law School, a J.D. from New York University School of Law, and an M.A. in Sociology from New York University, 2011 (“Sacrifice and Sacred Honor: Why the Constitution is a ‘Suicide Pact’,” *William & Mary Bill of Rights Journal* (20 Wm. & Mary Bill of Rts. J. 287), December, Available Online to Subscribing Institutions via Lexis-Nexis)

Introduction

To be a true constitution, that which a society calls its constitution must enforce values so imperative, so fundamental, that the constitution comprises not only a way to live but more profoundly, a reason to die. Customarily through, for example, military service, individual citizens or groups of citizens may be required to risk their lives to preserve their constitution and the nation over which it presides. However, a true constitution rightfully demands that the entire constitutional order—the whole society regulated by that constitution—risk its own demise rather than betray the essential precepts that the constitution embodies. Only principles of such magnitude warrant inclusion in the supreme document of a particular people. n1 [\*290]

Simply believing that a particular constitution is worth dying for, however, is not enough. To be a legitimate constitution—to actually be worthy of such communal sacrifice—the given constitution must be moral; that is, both designed to enforce and actually capable of enforcing the abiding moral duties that demarcate legitimate from illegitimate governments.

Pursuant to the character of true and legitimate constitutions, the Constitution of the United States defines who we are, what we are and, most importantly, why we are. Our Constitution purports to set the governing minima without which no society may be legitimate. Accordingly, and quite deliberately, while a legal document, the Constitution is a profoundly moral thesis as well. It could not be otherwise because the Constitution's overarching endeavor is enforced morality, specifically "fundamental fairness" via due process of law n2 which, as Justice Felix Frankfurter aptly enthused, is "ultimate decency in a civilized society . . . ." n3 America's validation stems from the morality of the Constitution and how steadfastly we maintain it. n4

In contravention of our constitutional duty is the long-standing chestnut: the Constitution is not a suicide pact. n5 Of course, no one would argue that the Constitution is literally a "suicide pact," meaning the Constitution requires those governed thereunder to kill themselves. n6 Nor would reasonable theorists claim it to be a suicide pact [\*291] "in the sense that the Constitution was meant to fail." n7 Rather, commentators apply the not a suicide pact metaphor to support the Constitution of necessity, the premise that if circumstances raise significant jeopardy and lesser measures appear unavailing, government may do virtually anything—abridge or suspend any liberty—both to preserve the nation and to ensure the well-being of its institutions. n8

Several critics challenge that theory's empirical bases arguing, for example, that the definition of "necessity" is overinclusive. n9 Critics further argue that the Constitution of necessity betrays pivotal American principles of law, rights, dignity and separation of powers. n10 However, criticism usually stops well short of accepting the Constitution as a metaphorical "suicide pact," averring instead that necessity is the ultimate "compelling state interest," overpowering liberty if the exigency is dire enough. n11

I join the very few n12 who respond that, even if limited to situations of actual imminent danger to the very continuation of American society, necessity as the Constitution's "first principle" defies the Constitution's true moral nucleus that explains and justifies our nation: due process of law. While many articles challenge the Constitution of necessity as anathema to the inherent nature of American government, n13 such arguments alone cannot explain why, under sufficiently urgent circumstances, we ought not to abandon all constitutional liberty if that is what it takes, for however long it takes, with the earnest intent to restore liberty the very moment the danger has passed. n14 [\*292]

Accordingly, this Article proposes a deeper grounding to explain why the Constitution is a suicide pact. Specifically, morality, the very fabric of the Constitution, forbids us from abandoning our basic moral-societal precept of due process, even when faithful abidance is extraordinarily dangerous. We must understand that more than simple liberty is essential to our constitutional government. Rather, we must appreciate that government ensures liberty as integral to its unalterable duty to be moral. Liberty is not an end in itself, but a means; preserving morality is the end, the absolute goal of government. Thus, in a unique figurative sense, the Constitution must be a suicide pact, for as the prominent ethicist Immanuel Kant nobly appreciated regarding morality's overarching context, "Let justice be done even if the world should perish." n15

The proof takes several steps. Part I undertakes a thorough review of deontology, the philosophy arguing—correctly, I believe—that morality is transcendent, a set of a priori principles discernable through reason. Morality, then, does not care what the possible outcomes of a particular moral problem may be. n16 Pursuant to deontological philosophy, the "sacrifice," to which the title of this Article refers, is the duty to abide by morality no matter what the cost. n17

Thereafter, Part II argues that this Nation's originators were deontologists who declared in the Nation's founding document that government is legitimate only insofar as it safeguards morality derived from "the Laws of Nature and Nature's God," manifested as "unalienable Rights that among these are Life, Liberty and the pursuit of Happiness." n18 For the preservation of those moral principles, the Founders pledged their "Lives," "Fortunes," and "sacred Honor," n19 meaning that it is the duty of all Americans—their "sacred Honor"—to sacrifice, if necessary, their lives and property to defend legitimate government. We thus discover an interesting, informative and useful provenance linking the sacrifices attendant to deontological morality with the birth of the United States. n20

The Founders understood that their appreciation of, and dedication to, morality was incomplete—a confession analysts find apt as evinced by the presence of slavery, [\*293] along with several other strikingly unethical political and pragmatic arrangements surrounding both the Declaration and its later legal iteration, the Constitution. Indeed, the Founders expected future generations to enrich the moral bases of America, including repudiating ideas and practices that the Founders themselves accepted. n21 Part III asserts that the ethical theory of Immanuel Kant, as contemporarily understood, presents the improved moral philosophy hoped for by the Founders. Written shortly after the American Revolution, Kant's theory of dignity explains why obeying morality is more important than life itself; n22 a principle applicable not only to persons and groups, but also to nations and societies. Kantian ethics, therefore, explicate that the highest principle is not survival but, rather, moral rectitude.

Kant's ideas should control the understanding of the Constitution, most particularly the commands of due process of law, as Part IV explains. Although never explicitly cited as authority, Kant's dignity principle informs modern due process jurisprudence, which is sensible because the Constitution was drafted to enforce the moral quest commemorated in the Declaration. The comfortable application of Kantian ethics to constitutional due process demonstrates that, in the singular sense described above, the Constitution should be, must be and is a suicide pact.

# Affirmative

## 2AC

### 2AC — Federalism DA (Example)

#### Uniqueness overwhelms — the plan’s not sufficient. Their Roberts ev cites broader trends brought on by Trump.

#### State control on education policy is inevitable — informal powers.

Gerken 15 —Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, 2015 (“Federalism and Nationalism: Time for a Détente?,” *Saint Louis University School of* *Law*, Vol. 59, No. 997, September 4th, Available Online to Subscribing Institutions via SSRN, Accessed 06-26-2017, p. 1014-1018, Lil\_Arj)

In many ways, this mistake coincides with the larger error made by scholars of federalism. Because they look only to formal markers of power, they miss what one might call the “hydraulics” of state power. Even as federal schemes intrude on what were once largely state domains, the states have found ways to assert their power informally through networks and informal relationships and mutual dependence. Our politics have become nationalized, and yet states still play a vibrant role in national politics.61 The federal government has extended its statutory reach into traditional state domains like crime and healthcare, and yet states still find a way to exercise influence through channels that are less legible to law professors but no less important to policymakers.62

These broad points hold true in another traditional area of state concern: education. There has been a huge brouhaha over the “federalization”63 of [End Page 1014] education policy due in large part to No Child Left Behind (NCLB)64 and recent battles over the Common Core.65 But the mistake made by those who mourn the “federalization” of education policy was to think that function would follow form. Despite the expanded reach of federal education policy, the states remain the dominant force in primary and secondary education. That’s because, notwithstanding the federal government’s formal exercise of authority, it has run up against just the sort of administrative and political obstacles that would be instantly recognizable to the new nationalists.

NCLB, for instance, unquestionably altered the administrative structures in which schools operated.66 But states quickly took advantage of the discretion afforded to them in this cooperative federal regime to duck federal constraints by setting testing standards so low they were guaranteed to meet them.67 In the wake of NCLB’s passage, the federal government attempted to put teeth into the Act’s regulations68 only to encounter pragmatic resources barriers [End Page 1015] (specifically a lack of state capacity)69 as well as massive state resistance.70 Because the federal government provides only limited funding71 and plays a circumscribed role in the education arena, it depended heavily on state and localities to carry out its policies. Unsurprisingly, then, state resistance and regulatory evasions eventually forced the Bush administration to give out so many waivers that it effectively gutted large swaths of NCLB.72

The Obama Administration has spent a fair amount of political capital pushing back against the pushback. It has been using a combination of federal [End Page 1016] grants73 and waivers74 to move toward some modest level of standardization in states’ education curricula through the Common Core Standards (a goal that today’s political environment has prevented President Obama from achieving via formal legislation).75 It’s worth noting, however, that the Common Core Standards themselves emerged from a state-led process.76 Moreover, even as the federal government spends some of the political capital necessary to extend its reach, the Common Core’s day-to-day implementation is still being carried out by states and localities, and considerable state and local variation remains.77 While it is too early to offer a final assessment of the success of the [End Page 1017] Obama Administration’s efforts to influence education policy, it is clear that states and localities retain their dominant role in education policy. Moreover, given that “[a]lmost everything that matters” about the Common Core “depends on what happens next—in other words, on implementation,”78 it’s hard to imagine that the states and localities implementing the program are going to lose their sway in the future. Implementation, after all, is precisely where the power of the servant is at its zenith.

#### No internal link — federal overreach on education policy doesn’t affect the federal-state balance of power on other policy issues.

#### Trump violating Federalism now

Will ‘17

George Frederick Will is a Pulitzer Prize–winning political commentator. The authors received MA and PhD degrees in politics from Princeton University and has then taught political philosophy at the James Madison College of Michigan State University, at the University of Toronto, and at Harvard University - From the article: “Trump’s violations of federalism would make Obama jealous” – Washington Post - May 10, 2017 - https://www.washingtonpost.com/opinions/trumps-violations-of-federalism-would-make-obama-jealous/2017/05/10/7cf6b5d6-34dd-11e7-b4ee-434b6d506b37\_story.html?utm\_term=.501ab7c57fb7

Trump’s violations of federalism would make Obama jealous

“But what good came of it at last?”

Quoth little Peterkin.

“Why that I cannot tell,” said he,

“But ’twas a famous victory.”

— Robert Southey

“The Battle of Blenheim” (1798)

Southey, a pacifist, wrote his antiwar poem long after the 1704 battle for which the Duke of Marlborough was awarded Blenheim Palace, where his great-great-great-great-great-great-grandson Winston Churchill would be born. We, however, do not need to wait 94 years to doubt whether the Trump administration’s action against “sanctuary cities” is much ado about not much. Four months have sufficed to reveal ’twas a constitutionally dubious gesture.

The executive order was perpetrated in a helter-skelter, harum-scarum, slapdash manner five days after the inauguration, before the administration was humming like a well-tuned Lamborghini. The order says that sanctuary cities have caused “immeasurable harm” to “the very fabric of our republic,” a thunderous judgment offered without evidence of the shredded fabric or even a definition of “sanctuary city.”

The executive order is either a superfluous nullity or it is constitutional vandalism. It says cities “that fail to comply with applicable federal law” shall “not receive federal funds, except as mandated by law.” A U.S. district judge in Northern California has held that the executive order is “toothless” if it pertains to merely a few federal grants, and even they do not unambiguously state in their texts that funding is conditional on active cooperation with federal immigration enforcement. If, however, the order extends to other federal grants, it violates the separation of powers: The spending power is vested in Congress, so presidents cannot unilaterally insert new conditions on funding.

Several senior White House officials, operating in pre-Lamborghini mode, denounced this judge’s decision as another excess by the much-reversed U.S. Court of Appeals for the 9th Circuit. Actually, although this court might hear an appeal of the judge’s decision, it had nothing to do with the decision.

It is federal law that a state "may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." This does not, however, prevent any government entity from voluntarily withholding information.

Furthermore, the Supreme Court has held that the 10th Amendment ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people") means that the federal government may not "commandeer" state and local officials to enforce federal laws. The function of the anti-commandeering doctrine is, in the words of Justice Antonin Scalia, the "preservation of the states as independent and autonomous political entities."

Last Sunday, Texas Gov. Greg Abbott (R) signed legislation setting criminal and civil penalties for state and local officials who refuse to comply with federal immigration laws and detention requests. As policy, this may or may not be wise; as an exercise of the state's police power, it is not constitutionally problematic. But regarding the federal executive order, professor Ilya Somin of George Mason University's Antonin Scalia Law School says:

"Trump's order is exactly the kind of high-handed federal coercion of states and undermining of separation of powers that outraged conservatives under [President Barack] Obama. In fact, Obama did not go as far as Trump seems to do here. Obama never claimed sweeping authority to impose new conditions on federal grants beyond those specifically imposed by Congress."

#### Federalism is Resilient – no single area is key

Young ‘3

(Ernest, Professor of Law – University of Texas, Texas Law Review, May, Lexis)

One of the privileges of being a junior faculty member is that senior colleagues often feel obligated to read one's rough drafts. On many occasions when I have written about federalism - from a stance considerably more sympathetic to the States than Judge Noonan's - my colleagues have responded with the following comment: "**Relax**. The States retain **vast reserves** of autonomy and authority over **any number** of important areas. It will be a **long time, if ever**, before the national government can expand its authority far enough to really endanger the federal balance. **Don't make it sound like you think the sky is falling**."

#### Fair-weather federalism fails — it’s political opportunism without emotional force.

Hills 16 — Roderick M. Hills Jr., William T. Comfort, III Professor of Law at the New York University School of Law, earned a J.D. from Yale Law School and a B.A. in History from Yale University, 2016 (“Message to Trump-anxious decentralizers: Is your federalism insurance premium paid up?,” *PrawfsBlawg*, December 18th, Available Online at <http://prawfsblawg.blogs.com/prawfsblawg/2016/12/message-to-trump-anxious-decentralizers-is-your-federalism-insurance-premium-paid-up.html>, Accessed 07-09-2017, Lil\_Arj)

In a politico-legal ritual as timeless as the Gridiron Dinner, supporters of the Party that lost the Presidency are now discovering the virtues of federalism. Noah Feldman assures that "sanctuary cities" are safe from having their federal money yanked, because the Medicaid portion of NFIB v. Sebelius prohibits "coercive" conditions on federal grants. Jeff Rosen reminds us to take heart in Heather Gerken's "Progressive Federalism," in which national minorities can press ahead with state and local initiatives that would perish in a pigeonhole if suggested in the halls of Congress. The basic idea is that our constitution, with a small "c," contains norms about preserving decentralized political power that can serve as a firewall against Trump's excesses and foibles.

Far be it for me, a certified fan of federalism and decentralization, to look a gift horse in the mouth. If Trump's victory spurs my colleagues to endorse an institutional arrangement the benefits of which are timeless, that is a silver lining to a calamity, even if one suspects that the endorsing of federalism is a little bit opportunistic.

For the rhetoric of federalism to sound convincing, however, one needs to have paid up one's "federalism insurance premium." Otherwise, one's op-ed in favor of those labs o' democracy, those deciding dissenters, will sound (to quote Kurt Vonnegut) about as inspiring as the 1812 Overture played on a kazoo. What do I mean by "federalism insurance premium"? Think of a federal regime as an insurance policy, protecting the risk averse against loss of national power. When one's Party loses the commanding heights of the federal government, federalism insurance allows that Party to retreat into the provinces as a semi-loyal opposition, a shadow government waiting in the wings, advertising its virtues with Massachusetts Miracles and the Texas Way with Deregulated Housing and so forth.Like all insurance, however, the protection comes at a price: One must pay the "premium" of protecting subnational power when one controls the national government, tolerating subnational experiments that one regards as more Frankenstein than Brandeis.

So here is my question to all those new friends of federalism: Is your federalism insurance premium paid up? For instance, when the Obama Administration was forcing colleges and universities to adhere to federal procedural standards for sexual assault hearings contained in its "Dear Colleague" letter, did you stand up for those subnational institutions' right to resist coercive Title IX conditions on federal money? No? Then do not be surprised if your pro-federalism rhetoric about the immunity of sanctuary cities to "coercive" conditions falls a little flat.

We pay for constitutional insurance through self-control when we have power, not through rhetoric when we lose it. Through the exercise of self-control across different political regimes, each Party can slowly confer on institutional arrangements a permanence (sentimentalists would even say "sanctity") that survives change of regimes, sending a signal to their opponents that their self-control will be reciprocated when the tables are turned. The filibuster in the Senate is such a semi-permanent convention; Honored by both parties when the other was a minority who could use it to the incumbent Party's disadvantage, it has become entrenched by convention. Federalism, however, has never been favored by the Party in power long enough to make their pro-federalism protests convincing to their opponents (or even bystanders like myself) when they lose power. No one has paid their premium, so the insurance fund -- the emotional force of pro-federalism rhetoric -- is empty.

#### Constraints solve Trump lash-out

Goldsmith 17 (Jack, Henry L. Shattuck Professor at Harvard Law School, a Senior Fellow at the Hoover Institution, and co-founder of Lawfare. He teaches and writes about national security law, presidential power, cyber security, international law, internet law, foreign relations law, and conflict of laws. He served as Assistant Attorney General at the Office of Legal Counsel from 2003-2004, and Special Counsel to the Department of Defense from 2002-2003. “Checks on Presidential Power Are Stronger Than You Think” 1-20-17 https://www.thecipherbrief.com/article/north-america/checks-presidential-power-are-stronger-you-think-1091)

TCB: Which are the most resilient currently existing checks on his power, and which need to be bolstered?

JG: There are many, both inside and outside the Executive branch. On the inside, a bevy of lawyers, ethics monitors, inspectors general, and bureaucrats in the intelligence and defense communities have expertise, interests and values, and infighting skills that enable them to check and narrow the options for even the most aggressive presidents. On the outside, the press, which did such an extraordinary job of holding Bush, and to a lesser extent Obama, to account, is more motivated than ever to hold Trump accountable. The same goes for civil society groups like the ACLU, which have used lawsuits, reports, and Freedom of Information Act requests to expose government operations and misdeeds since 9/11, and whose coffers have ballooned since Trump’s election. Spurred on by the press and civil society, the judiciary, which often stood up to Bush, will stand up even more to Trump if he engages in excessive behavior. Finally, Congress has been more consequential in constraining the national security president since 9/11 than people realize. And as we have already seen in some pushback from Senators John McCain (R-AZ), Lindsey Graham (R-SC), and Rand Paul (R-KY), it will stand up to Trump on many issues, even though his party nominally controls Congress.

None of these institutions are perfect. They are especially ill-suited to prevent the President from using military force as he sees fit, which is why the Obama Administration’s precedents in this context are so troubling. But the institutions do a much better job in other national security contexts than they have been given credit for, and they will be watching president Trump with a very skeptical eye and an array of powers to push back.

#### Rights Turn:

#### A. “Progressive federalism” undermines rights for people of color — Voter ID laws prove.

Charles and Fuentes-Rohwert 15 — Guy-Uriel E. Charles, Charles S. Rhyne Professor of Law Senior Associate Dean for Faculty & Research at Duke Law School, the founding director of the Duke Law Center on Law, Race and Politics, previously was the Russell M. and Elizabeth M. Bennett Professor of Law at the University of Minnesota Law School, received his JD from the University of Michigan Law School and clerked for The Honorable Damon J. Keith of the United States Court of Appeals for the Sixth Circuit, and Luis Fuentes-Rohwert, Professor of Law and Harry T. Ice Faculty Fellow at Maurer School of Law at Indiana University, earned a LL.M. from Georgetown University School of Law, a Ph.D., J.D. and B.A. from the University of Michigan, 2015 (“Race, Federalism, and Voting Rights,” *The University of Chicago Legal Forum* (2015 U. Chi. Legal F. 113), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, p. 143-148, Lil\_Arj)

III. RACE AND FEDERALISM UP AND DOWN

Return now to the empirical question about the utility of federalism that we left open in the last Part. In this Part we want to introduce a consideration that has not been central to the modern federalism debate: whether federalism enhances the liberty of people of color. Chief Justice Roberts's desire in Shelby [End Page 143] County to return the federalism balance to what it was not only prior to the intervention of the 1965 Voting Rights Act, but also prior to the Nineteenth Century and the Civil War Amendments, could be sensible under the right set of assumptions. One of the supposed great virtues of (our) federalism is that it enhances liberty because it facilitates the ability of national or ethnocultural minorities to rule by becoming local majorities. 1 4 1 From this perspective, defending federalism is defending the liberty of local minorities against national majorities. But the question that anti-nationalists, in particular the anti-nationalists on the Court, often fail to ask is, liberty for whom? The critical inquiry for modern proponents of federalism is whether federalism works for racial minorities in the way that federalist theorists purport. Put differently, states' rights theorists 1 42 never pause to ask whether the states are truly in competition with the federal government for protecting the rights of racial minorities. They never pause to ask whether federalism is good for people of color.

Though past need not be prologue, the concept of states' rights has, to put the point mildly, a sordid past in American history. 1 4 3 Federalism has not generally been viewed as an institutional arrangement that enhances the liberty of racial minorities in the United States; in fact, it has been viewed as doing the opposite. 144 The way that racism has been deployed in the name of federalism is a problem for federalism's advocates. 14 5 Whether fair or not, states' rights in the United [End Page 144] States has generally been associated with racial inequality. 146 Conversely, federal power has generally been associated with racial equality.1 47 From the perspective of citizens of color, liberty has in fact been delivered not by federalism but by nationalism. 148 It thus would take a lot of chutzpah to curtail federal power, which is being deployed to protect liberty in an area where the states have engaged in notorious and rampant race discrimination, in the name of states' rights. But this is precisely what Chief Justice Roberts did in Shelby County.

Central to the Chief Justice's argument in Shelby County for recalibrating the balance between state and federal power is the premise that the states are no longer engaging in systematic racial discrimination of the type that gave rise to the 1965 Act.1 49 This argument prompted a dissenting response from Justice Ginsburg, who maintained that the states might go back to their old ways and use proxies that either directly or indirectly minimize the political power of racial minorities or indirectly do so.o50 Additionally, Justice Ginsburg argued that in the last fifty years, if not since Reconstruction, the federal government has assumed the primary responsibility and has in fact done a better job of protecting the electoral rights of racial minorities. 151 Thus, as between the states and the federal government, the federal government is the less risky option, the safer bet.

For both Roberts and Ginsburg, the federalism question (that is, how much reserved powers do the states have or should the states have as against the federal government in the voting domain) is a function of a predictive judgment: whether the states are likely to engage in racial discrimination in voting as they did before or whether we have we moved well beyond that era. If we think the states are likely to backtrack, we ought to [End Page 145] favor the federal government; but if we think the states are reformed, we should return to them the reserved powers they presumably possessed at the Founding. Both justices used memorable analogies to make their respective points: Roberts that robust federal power is no longer necessary and Ginsburg that the states are likely to backtrack without federal supervision. 152 During the oral arguments in Northwest Austin, Roberts characterized the argument that it is the VRA that is keeping the states from engaging in racial discrimination in voting to be as compelling as the old story that an "elephant whistle" explains the absence of elephants. That is, he continued, "I have this whistle to keep away the elephants. You know, well, that's silly. Well, there are no elephants, so it must work." 15 3 In her Shelby County dissent, Ginsburg retorted by characterizing the argument that the coverage formula is no longer necessary because states are not currently engaged in racial discrimination as "like throwing away your umbrella in a rainstorm because you are not getting wet." 154

Roberts and Ginsburg are undoubtedly engaged in an important debate. But in one critical respect, the battle between Roberts and Ginsburg and the sides that they represent is beside the point, if the point is about federalism. The federalism question should not be whether the states will or will not engage in discrimination if federal supervision is removed. The federalism question ought to be whether the states will compete with the federal government for the allegiance of racial minorities. If one important and central argument in favor of federalism, and thus Shelby County, is that devolution of power enhances liberty by facilitating self-rule by national minorities or ethnocultural minorities, the question that Chief Justice Roberts and Justice Ginsburg should have been debating is whether removing central supervision will now better permit racial minorities-who are also ethnocultural minorities-to engage in self-rule. Instead of asking whether the states are widely or systematically discriminating against their citizens of color, the Court should have asked how well are the states [End Page 146] representing the interests of their citizens of color. What is the congruence between the policy preferences of citizens of color in Alabama, Texas, North Carolina, Georgia, etc., and the legislative outcome of their respective states? How well are these citizens represented by their states? This should be the question for federalism in this context.

If one is inclined to be generous, one can view Chief Justice Roberts's opinion in Shelby County as deeply generative. Roberts wants a restart on race, history, and federalism. Recall here his point in Shelby County that history did not end in 1965.155 We have argued elsewhere Roberts used Shelby County to redeem the states.156 But the states are not all that Roberts wants to redeem; he also wants to redeem federalism from its sordid past, a laudable goal. The anti-nationalists aim to change the states' rights narrative so that the idea of states' rights is no longer synonymous with racial discrimination. Recall also Chief Justice Roberts's claim in Shelby County that the South has changed, or at the very least it does not differ much, if at all, from the North.157

The redemption of federalism is an intriguing and worthwhile project. It would be salutary and productive to get beyond the states' rights as racism meme. And it is not fair to federalism's advocates to constantly tar them with the putridity of the past. But redemption is not cheap. If federalism is to be redeemed, federalism must work for people of color as well. And if federalism is to "work" for people of color, it is not enough for proponents of federalism to show that the states will no longer engage in rampant racial discrimination.

Our task here is to introduce a distinction between an argument for states' rights premised on the idea that the states (or many of them) are no longer engaging in racial discrimination and an argument for states' rights in which the states are actively representing the interests of their citizens of color. From our perspective, the argument for federalism cannot be premised on the idea that the states are no longer discriminating against racial minorities. It is not sufficient to simply say that the states are indifferent. The Court should not interpret the Constitution in a way that would disempower the [End Page 147] federal government, which is the governmental entity that best represents the interests of citizens of color, and leave citizens of color to the indifference of the states. Indifference is not an argument for federalism. Federalism promises better representation, at least as compared to representation from the center or as compared to a unitary system. Our point is that the promise of better representation or the promise of competition for representation ought to be extended to people of color.158

This is why the argument between Roberts and Ginsburg is beside the point. The states' side of federalism must do what federalism theory expects devolution and decentralization to do. Federalism must defend and protect racial representation. The states must rival the federal government for the affections of racial minorities. It is not enough that federalism is not bad for people of color; federalism must be good for people of color. This is the task of federalism.

[Note to debaters: Shelby County — Shelby County v. Holder, a 2013 Supreme Court case that held that Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to preclearance.]

#### B. Federalism fails to protect minority rights — voting rights prove.

Charles and Fuentes-Rohwert 15 — Guy-Uriel E. Charles, Charles S. Rhyne Professor of Law Senior Associate Dean for Faculty & Research at Duke Law School, the founding director of the Duke Law Center on Law, Race and Politics, previously was the Russell M. and Elizabeth M. Bennett Professor of Law at the University of Minnesota Law School, received his JD from the University of Michigan Law School and clerked for The Honorable Damon J. Keith of the United States Court of Appeals for the Sixth Circuit, and Luis Fuentes-Rohwert, Professor of Law and Harry T. Ice Faculty Fellow at Maurer School of Law at Indiana University, earned a LL.M. from Georgetown University School of Law, a Ph.D., J.D. and B.A. from the University of Michigan, 2015 (“Race, Federalism, and Voting Rights,” *The University of Chicago Legal Forum* (2015 U. Chi. Legal F. 113), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, p. 148-151, Lil\_Arj)

Once the federalism argument is properly framed, we can see the potential for Shelby County to be deeply generative. If federalism protects liberty, it is only fair to ask, liberty for whom? By putting the federalism question on the table, we can ask seriously and non-cynically whether federalism can do the work of racial representation and thus further racial equality.159 Shelby County's reintroduction of federalism into the debate about whether the states or the federal government best protects people of color imposes a new burden on the states that they did not until now have to bear. To this point, the states had to bear the burden of non-discrimination, and had to do so at least since the passage of the Reconstruction Amendments. Moving forward, they must now bear the burden of actively and effectively representing the liberty interests of their citizens of color. This is the expectation for federalism post-Shelby County. The redemption project is worth taking seriously. It promises to be generative and promises to take us beyond tired recriminations.

Now consider federalism from a different vantage point, not that of redeeming the states, but that of progressives concerned [End Page 148] about the redemption of political-racial, gender, sexual, etc.- minorities. 160 For example, Professor Kathleen Sullivan argued almost a decade ago that "champions of liberal causes might need to rethink any reflexive recoil from" the federalism revolution wrought by the Rehnquist Court because it "might well contain seeds of a constitutional concept of social fluidity that can help to realize progressive as well as conservative ideals." 161 Professor Sullivan implicitly reasoned that the association of progressive equality with nationalism was historically contingent and always subject to a different political reality. The valence of federalism changed when the politics changed. Thus she noted:

But once the Republican Party obtained simultaneous control of the White House, House, and Senate for the first time since 1954, local and state initiatives began to do more than federal programs to advance progressive social ends. Gay weddings took place through the executive action of Mayor Gavin Newsom of San Francisco and the state constitutional interpretation of Chief Justice Margaret Marshall writing for the Massachusetts Supreme Judicial Court. Oregon pioneered physician-assisted suicide while California experimented with allowing severely ill patients to use marijuana medicinally. Suddenly states' rights were no longer just for segregationist southerners. Conversely, conservatives have sought to transform entrenched control of the federal government into nationwide social restrictions-from regulating late-term abortion to limiting stem-cell research-that were once unthinkable at the federal level.162

She concludes that federalism can serve as a handmaiden for social equality and need not be in service of inequality. Similarly, Professor Gerken has forcefully argued that:

[I]t 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. 1 6 3

Professor Gerken went on to note that "[fjederalism and localism ... depend on-even glory in-the idea of minority rule."1 64 She reminded us "what we have today is not your father's federalism."1 6 5

These are strong arguments in favor of reconceptualizing federalism as capable of redeeming people and not states. We are certainly open to this possibility. But at least in the context of voting, the early returns across the states are not very promising. We can look to North Carolina, or Indiana, or Wisconsin, or Texas, to name a few states. Following Shelby County, each of these states moved to change their electoral laws in ways that were inimical to the electoral liberty interests of the voters of color in their states. 166 These states are not engaged in protecting the rights of people of color, far from it. If we are going to empower the states as the primary guarantors of racial liberty, we must ensure that they are up to the task. That task is not about ascertaining whether the states are or are not engaged in racial discrimination. If we are engaged in that debate we are not engaged in the task that modernity expects of federalism. The question for federalism in the 21st century is whether the states will compete with the federal government to represent their citizens of color in the same way that they ostensibly compete to represent their white citizens. The [End Page 150] challenge for the Court and modern proponents of federalism is to encourage the states to take up the role that modern federalism has envisioned for them, or else neo-federalism should simply be dismissed like the old federalism.

[Note to debaters: Shelby County — Shelby County v. Holder, a 2013 Supreme Court case that held that Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to preclearance.]

#### C. Federalism rationale is *wrong* in civil rights context. It justifies *racist* and *heterosexist* roll-back.

Dorf ‘17

Michael C. Dorf is a Professor of Law at Cornell Law School. He has written or edited three books, including No Litmus Test: Law Versus Politics in the Twenty-First Century, and Constitutional Law Stories. Dorf is a former law clerk to Justice Anthony Kennedy of the U.S. Supreme Court. He graduated from Harvard College and Harvard Law School. While at Harvard as an undergraduate, he was the American Parliamentary Debate Association national champion. “SCOTUS Sends Transgender Restroom Case Back to 4th Circuit: Passively Virtuous or Subtly Vicious?“ - Dorf on Law - Wednesday, March 08, 2017 – http://www.dorfonlaw.org/2017/03/scotus-sends-transgender-restroom-case.html

That issue will now go back to the Fourth Circuit. As Sam Bagenstos, Marty Lederman, Leah Litman, and I noted here last week, an amicus brief we filed in the SCOTUS lays out a straightforward reason why Grimm should win under Title IX, even without a resolution of the question whether discrimination on the basis of gender identity is sex discrimination within the meaning of Title IX: the school board policy undoubtedly segregates on the basis of sex, and as applied to transgender students, such segregation amounts to unlawful discrimination because it impos the ses severe harm on such students without furthering any important institutional interests. Needless to say, we hope that the Fourth Circuit will now rule for *Grimm* on that basis (or another).

Meanwhile, in my latest Verdict column I explain why the Trump administration's justification for its volte-face--states' rights--should be rejected. The usual sorts of reasons for granting states flexibility--explicit statutory programs of cooperative federalism, local variation in conditions, experimentation--have relatively little purchase with respect to a federal civil rights statute. The column also considers the possibility that federalism could serve as a means of avoiding backlash, analogizing to the fears that led to the "all deliberate speed" formula in *Brown II* and the hand-wringing by Chief Justice Roberts in his dissent in *Obergefell v. Hodges*. As those examples themselves show, I conclude, it is easy to get carried away with a go-slow approach, and so the better course is usually for a court simply to apply its best legal judgment.

(Note to Students: Several Court cases are referenced in this evidence. *Grimm* is the appeal of a School Board decision to block trans~ students access to bathrooms that correspond to the gender identity. *Obergefell* is the Supreme Court decision on same-sex marriage. *Brown II* is the follow-up decision by the Supreme Court in 1955 (after the Brown I decision in 1954 which ruled against formal racial segregation in public schools). Brown II said that racial integration in schools should occur "with all deliberate speed”. This decision is often criticized for allowing State’s Rights to slow the pace of desegregation. The author of this card is arguing that federalism concerns – like those in these examples - can sometimes be used to slow-down implementation of such rulings.)

#### D. Racism is a d-rule.

Memmi 99 — Albert Memmi, Professor Emeritus of Sociology at the University of Paris, 1999 (*Racism*, Published by the University of Minnesota Press, ISBN 0816631654, p. 163-165)

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved.

Yet, for this very reason, it is a struggle to be undertaken without surcease and without concessions. One cannot be indulgent toward racism; one must not even let the monster in the house, especially not in a mask. To give it merely a foothold means to augment the bestial part in us and in other people, which is to diminish what is human. To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence. It is to accept the persistence of the dark [end page 163] history in which we still largely live. It is to agree that the outsider will always be a possible victim (and which man is not himself an outsider relative to someone else?). Racism illustrates, in sum, the inevitable negativity of the condition of the dominated; that is, it illuminates in a certain sense the entire human condition. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animality to humanity. *In that sense,* we cannot fail to rise to the racist challenge.

However, it remains true that one's moral conduct only emerges from a choice; one has to want it. It is a choice among other choices, and always debatable in its foundations and its consequences. Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order, for which racism is the very negation. This is almost a redundancy. One cannot found a moral order, let alone a legislative order, on racism, because racism signifies the exclusion of the other, and his or her subjection to violence and domination. From an ethical point of view, if one can deploy a little religious language, racism is "the truly capital sin."22 It is not an accident that almost all of humanity's spiritual traditions counsel respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. All things considered, we have an interest in [end page 164] banishing injustice, because injustice engenders violence and death.

Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. But no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. All unjust society contains within itself the seeds of its own death. It is probably smarter to treat others with respect so that they treat you with respect. "Recall," says the Bible, "that you were once a stranger in Egypt," which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming one again someday. It is an ethical and a practical appeal--indeed, it is a contract, however implicit it might be. In short, the refusal of racism is the condition for all theoretical and practical morality. Because, in the end, the ethical choice commands the political choice, a just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace. True, it is a wager, but the stakes are irresistible.

## Uniqueness

### 2AC — Non-Unique

#### Uniqueness overwhelms — the plan’s not sufficient. Their Roberts ev cites broader trends brought on by Trump.

#### State control on education policy is inevitable — informal powers.

Gerken 15 —Heather K. Gerken, J. Skelly Wright Professor of Law at Yale Law School, former Professor of Law at Harvard Law School, holds a J.D. from the University of Michigan Law School, 2015 (“Federalism and Nationalism: Time for a Détente?,” *Saint Louis University School of* *Law*, Vol. 59, No. 997, September 4th, Available Online to Subscribing Institutions via SSRN, Accessed 06-26-2017, p. 1014-1018, Lil\_Arj)

In many ways, this mistake coincides with the larger error made by scholars of federalism. Because they look only to formal markers of power, they miss what one might call the “hydraulics” of state power. Even as federal schemes intrude on what were once largely state domains, the states have found ways to assert their power informally through networks and informal relationships and mutual dependence. Our politics have become nationalized, and yet states still play a vibrant role in national politics.61 The federal government has extended its statutory reach into traditional state domains like crime and healthcare, and yet states still find a way to exercise influence through channels that are less legible to law professors but no less important to policymakers.62

These broad points hold true in another traditional area of state concern: education. There has been a huge brouhaha over the “federalization”63 of [End Page 1014] education policy due in large part to No Child Left Behind (NCLB)64 and recent battles over the Common Core.65 But the mistake made by those who mourn the “federalization” of education policy was to think that function would follow form. Despite the expanded reach of federal education policy, the states remain the dominant force in primary and secondary education. That’s because, notwithstanding the federal government’s formal exercise of authority, it has run up against just the sort of administrative and political obstacles that would be instantly recognizable to the new nationalists.

NCLB, for instance, unquestionably altered the administrative structures in which schools operated.66 But states quickly took advantage of the discretion afforded to them in this cooperative federal regime to duck federal constraints by setting testing standards so low they were guaranteed to meet them.67 In the wake of NCLB’s passage, the federal government attempted to put teeth into the Act’s regulations68 only to encounter pragmatic resources barriers [End Page 1015] (specifically a lack of state capacity)69 as well as massive state resistance.70 Because the federal government provides only limited funding71 and plays a circumscribed role in the education arena, it depended heavily on state and localities to carry out its policies. Unsurprisingly, then, state resistance and regulatory evasions eventually forced the Bush administration to give out so many waivers that it effectively gutted large swaths of NCLB.72

The Obama Administration has spent a fair amount of political capital pushing back against the pushback. It has been using a combination of federal [End Page 1016] grants73 and waivers74 to move toward some modest level of standardization in states’ education curricula through the Common Core Standards (a goal that today’s political environment has prevented President Obama from achieving via formal legislation).75 It’s worth noting, however, that the Common Core Standards themselves emerged from a state-led process.76 Moreover, even as the federal government spends some of the political capital necessary to extend its reach, the Common Core’s day-to-day implementation is still being carried out by states and localities, and considerable state and local variation remains.77 While it is too early to offer a final assessment of the success of the [End Page 1017] Obama Administration’s efforts to influence education policy, it is clear that states and localities retain their dominant role in education policy. Moreover, given that “[a]lmost everything that matters” about the Common Core “depends on what happens next—in other words, on implementation,”78 it’s hard to imagine that the states and localities implementing the program are going to lose their sway in the future. Implementation, after all, is precisely where the power of the servant is at its zenith.

## Link

### 2AC — Funding Coercion Non-Unique

#### Federal Funding Coercion link is terminally not-unique.

Loyola ‘16

et al; Mario Loyola is Senior Fellow at the Wisconsin Institute for Law & Liberty. He served in the Pentagon as a special assistant to the undersecretary of defense for policy. Loyola is a contributing editor at National Review and a senior fellow at the Texas Public Policy Foundation, where he was director of federalism and constitutional studies. He received a B.A. in European history from the University of Wisconsin-Madison and a J.D. from Washington University School of Law. Amicus Brief - GLOUCESTER COUNTY SCHOOL BOARD, Petitioner, v. G. G., BY HIS NEXT FRIEND AND MOTHER, DEIRDRE GRIMM, Respondent. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit – BRIEF OF AMICUS CURIAE WISCONSIN INSTITUTE FOR LAW & LIBERTY IN SUPPORT OF PETITIONER - September - Available at SCOUTS blog – along with all amicus briefs on this matter – http://www.scotusblog.com/wp-content/uploads/2016/10/16-273-cert-amicus-WILL-.pdf

A. Conditional Federal Funding Programs Are Inherently Coercive.

The Court has long recognized that conditional federal spending programs have the potential to coerce states into implementing federal policy, in violation of the Constitution's structural guarantees of federalism. Unfortunately, the Court has embraced a doctrine which seeks to elucidate whether the threatened penalty of losing federal funds is "mere encouragement" or "passes the point at which pressure turns into compulsion." Dole, 483 U.S. at 211. Experience has shown that this distinction is unworkable in practice, and, at least until NFIB v. Sebelius, provided states essentially no protection from federal coercion.

## Thumpers

### 2AC — Trump Thumps

#### Trump violating Federalism now

Will ‘17

George Frederick Will is a Pulitzer Prize–winning political commentator. The authors received MA and PhD degrees in politics from Princeton University and has then taught political philosophy at the James Madison College of Michigan State University, at the University of Toronto, and at Harvard University - From the article: “Trump’s violations of federalism would make Obama jealous” – Washington Post - May 10, 2017 - https://www.washingtonpost.com/opinions/trumps-violations-of-federalism-would-make-obama-jealous/2017/05/10/7cf6b5d6-34dd-11e7-b4ee-434b6d506b37\_story.html?utm\_term=.501ab7c57fb7

Trump’s violations of federalism would make Obama jealous

“But what good came of it at last?”

Quoth little Peterkin.

“Why that I cannot tell,” said he,

“But ’twas a famous victory.”

— Robert Southey

“The Battle of Blenheim” (1798)

Southey, a pacifist, wrote his antiwar poem long after the 1704 battle for which the Duke of Marlborough was awarded Blenheim Palace, where his great-great-great-great-great-great-grandson Winston Churchill would be born. We, however, do not need to wait 94 years to doubt whether the Trump administration’s action against “sanctuary cities” is much ado about not much. Four months have sufficed to reveal ’twas a constitutionally dubious gesture.

The executive order was perpetrated in a helter-skelter, harum-scarum, slapdash manner five days after the inauguration, before the administration was humming like a well-tuned Lamborghini. The order says that sanctuary cities have caused “immeasurable harm” to “the very fabric of our republic,” a thunderous judgment offered without evidence of the shredded fabric or even a definition of “sanctuary city.”

The executive order is either a superfluous nullity or it is constitutional vandalism. It says cities “that fail to comply with applicable federal law” shall “not receive federal funds, except as mandated by law.” A U.S. district judge in Northern California has held that the executive order is “toothless” if it pertains to merely a few federal grants, and even they do not unambiguously state in their texts that funding is conditional on active cooperation with federal immigration enforcement. If, however, the order extends to other federal grants, it violates the separation of powers: The spending power is vested in Congress, so presidents cannot unilaterally insert new conditions on funding.

Several senior White House officials, operating in pre-Lamborghini mode, denounced this judge’s decision as another excess by the much-reversed U.S. Court of Appeals for the 9th Circuit. Actually, although this court might hear an appeal of the judge’s decision, it had nothing to do with the decision.

It is federal law that a state "may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." This does not, however, prevent any government entity from voluntarily withholding information.

Furthermore, the Supreme Court has held that the 10th Amendment ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people") means that the federal government may not "commandeer" state and local officials to enforce federal laws. The function of the anti-commandeering doctrine is, in the words of Justice Antonin Scalia, the "preservation of the states as independent and autonomous political entities."

Last Sunday, Texas Gov. Greg Abbott (R) signed legislation setting criminal and civil penalties for state and local officials who refuse to comply with federal immigration laws and detention requests. As policy, this may or may not be wise; as an exercise of the state's police power, it is not constitutionally problematic. But regarding the federal executive order, professor Ilya Somin of George Mason University's Antonin Scalia Law School says:

"Trump's order is exactly the kind of high-handed federal coercion of states and undermining of separation of powers that outraged conservatives under [President Barack] Obama. In fact, Obama did not go as far as Trump seems to do here. Obama never claimed sweeping authority to impose new conditions on federal grants beyond those specifically imposed by Congress."

## Internal Link

### 2AC — Federalism Resilient

#### Federalism is Resilient – no single area is key

Young ‘3

(Ernest, Professor of Law – University of Texas, Texas Law Review, May, Lexis)

One of the privileges of being a junior faculty member is that senior colleagues often feel obligated to read one's rough drafts. On many occasions when I have written about federalism - from a stance considerably more sympathetic to the States than Judge Noonan's - my colleagues have responded with the following comment: "**Relax**. The States retain **vast reserves** of autonomy and authority over **any number** of important areas. It will be a **long time, if ever**, before the national government can expand its authority far enough to really endanger the federal balance. **Don't make it sound like you think the sky is falling**."

## AT: Trump Module

### 2AC — Trump Module

#### Fair-weather federalism fails — it’s political opportunism without emotional force.

Hills 16 — Roderick M. Hills Jr., William T. Comfort, III Professor of Law at the New York University School of Law, earned a J.D. from Yale Law School and a B.A. in History from Yale University, 2016 (“Message to Trump-anxious decentralizers: Is your federalism insurance premium paid up?,” *PrawfsBlawg*, December 18th, Available Online at <http://prawfsblawg.blogs.com/prawfsblawg/2016/12/message-to-trump-anxious-decentralizers-is-your-federalism-insurance-premium-paid-up.html>, Accessed 07-09-2017, Lil\_Arj)

In a politico-legal ritual as timeless as the Gridiron Dinner, supporters of the Party that lost the Presidency are now discovering the virtues of federalism. Noah Feldman assures that "sanctuary cities" are safe from having their federal money yanked, because the Medicaid portion of NFIB v. Sebelius prohibits "coercive" conditions on federal grants. Jeff Rosen reminds us to take heart in Heather Gerken's "Progressive Federalism," in which national minorities can press ahead with state and local initiatives that would perish in a pigeonhole if suggested in the halls of Congress. The basic idea is that our constitution, with a small "c," contains norms about preserving decentralized political power that can serve as a firewall against Trump's excesses and foibles.

Far be it for me, a certified fan of federalism and decentralization, to look a gift horse in the mouth. If Trump's victory spurs my colleagues to endorse an institutional arrangement the benefits of which are timeless, that is a silver lining to a calamity, even if one suspects that the endorsing of federalism is a little bit opportunistic.

For the rhetoric of federalism to sound convincing, however, one needs to have paid up one's "federalism insurance premium." Otherwise, one's op-ed in favor of those labs o' democracy, those deciding dissenters, will sound (to quote Kurt Vonnegut) about as inspiring as the 1812 Overture played on a kazoo. What do I mean by "federalism insurance premium"? Think of a federal regime as an insurance policy, protecting the risk averse against loss of national power. When one's Party loses the commanding heights of the federal government, federalism insurance allows that Party to retreat into the provinces as a semi-loyal opposition, a shadow government waiting in the wings, advertising its virtues with Massachusetts Miracles and the Texas Way with Deregulated Housing and so forth.Like all insurance, however, the protection comes at a price: One must pay the "premium" of protecting subnational power when one controls the national government, tolerating subnational experiments that one regards as more Frankenstein than Brandeis.

So here is my question to all those new friends of federalism: Is your federalism insurance premium paid up? For instance, when the Obama Administration was forcing colleges and universities to adhere to federal procedural standards for sexual assault hearings contained in its "Dear Colleague" letter, did you stand up for those subnational institutions' right to resist coercive Title IX conditions on federal money? No? Then do not be surprised if your pro-federalism rhetoric about the immunity of sanctuary cities to "coercive" conditions falls a little flat.

We pay for constitutional insurance through self-control when we have power, not through rhetoric when we lose it. Through the exercise of self-control across different political regimes, each Party can slowly confer on institutional arrangements a permanence (sentimentalists would even say "sanctity") that survives change of regimes, sending a signal to their opponents that their self-control will be reciprocated when the tables are turned. The filibuster in the Senate is such a semi-permanent convention; Honored by both parties when the other was a minority who could use it to the incumbent Party's disadvantage, it has become entrenched by convention. Federalism, however, has never been favored by the Party in power long enough to make their pro-federalism protests convincing to their opponents (or even bystanders like myself) when they lose power. No one has paid their premium, so the insurance fund -- the emotional force of pro-federalism rhetoric -- is empty.

#### Constraints solve Trump lash-out

Goldsmith 17 (Jack, Henry L. Shattuck Professor at Harvard Law School, a Senior Fellow at the Hoover Institution, and co-founder of Lawfare. He teaches and writes about national security law, presidential power, cyber security, international law, internet law, foreign relations law, and conflict of laws. He served as Assistant Attorney General at the Office of Legal Counsel from 2003-2004, and Special Counsel to the Department of Defense from 2002-2003. “Checks on Presidential Power Are Stronger Than You Think” 1-20-17 https://www.thecipherbrief.com/article/north-america/checks-presidential-power-are-stronger-you-think-1091)

TCB: Which are the most resilient currently existing checks on his power, and which need to be bolstered?

JG: There are many, both inside and outside the Executive branch. On the inside, a bevy of lawyers, ethics monitors, inspectors general, and bureaucrats in the intelligence and defense communities have expertise, interests and values, and infighting skills that enable them to check and narrow the options for even the most aggressive presidents. On the outside, the press, which did such an extraordinary job of holding Bush, and to a lesser extent Obama, to account, is more motivated than ever to hold Trump accountable. The same goes for civil society groups like the ACLU, which have used lawsuits, reports, and Freedom of Information Act requests to expose government operations and misdeeds since 9/11, and whose coffers have ballooned since Trump’s election. Spurred on by the press and civil society, the judiciary, which often stood up to Bush, will stand up even more to Trump if he engages in excessive behavior. Finally, Congress has been more consequential in constraining the national security president since 9/11 than people realize. And as we have already seen in some pushback from Senators John McCain (R-AZ), Lindsey Graham (R-SC), and Rand Paul (R-KY), it will stand up to Trump on many issues, even though his party nominally controls Congress.

None of these institutions are perfect. They are especially ill-suited to prevent the President from using military force as he sees fit, which is why the Obama Administration’s precedents in this context are so troubling. But the institutions do a much better job in other national security contexts than they have been given credit for, and they will be watching president Trump with a very skeptical eye and an array of powers to push back.

#### Rights Turn:

#### A. “Progressive federalism” undermines rights for people of color — Voter ID laws prove.

Charles and Fuentes-Rohwert 15 — Guy-Uriel E. Charles, Charles S. Rhyne Professor of Law Senior Associate Dean for Faculty & Research at Duke Law School, the founding director of the Duke Law Center on Law, Race and Politics, previously was the Russell M. and Elizabeth M. Bennett Professor of Law at the University of Minnesota Law School, received his JD from the University of Michigan Law School and clerked for The Honorable Damon J. Keith of the United States Court of Appeals for the Sixth Circuit, and Luis Fuentes-Rohwert, Professor of Law and Harry T. Ice Faculty Fellow at Maurer School of Law at Indiana University, earned a LL.M. from Georgetown University School of Law, a Ph.D., J.D. and B.A. from the University of Michigan, 2015 (“Race, Federalism, and Voting Rights,” *The University of Chicago Legal Forum* (2015 U. Chi. Legal F. 113), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, p. 143-148, Lil\_Arj)

III. RACE AND FEDERALISM UP AND DOWN

Return now to the empirical question about the utility of federalism that we left open in the last Part. In this Part we want to introduce a consideration that has not been central to the modern federalism debate: whether federalism enhances the liberty of people of color. Chief Justice Roberts's desire in Shelby [End Page 143] County to return the federalism balance to what it was not only prior to the intervention of the 1965 Voting Rights Act, but also prior to the Nineteenth Century and the Civil War Amendments, could be sensible under the right set of assumptions. One of the supposed great virtues of (our) federalism is that it enhances liberty because it facilitates the ability of national or ethnocultural minorities to rule by becoming local majorities. 1 4 1 From this perspective, defending federalism is defending the liberty of local minorities against national majorities. But the question that anti-nationalists, in particular the anti-nationalists on the Court, often fail to ask is, liberty for whom? The critical inquiry for modern proponents of federalism is whether federalism works for racial minorities in the way that federalist theorists purport. Put differently, states' rights theorists 1 42 never pause to ask whether the states are truly in competition with the federal government for protecting the rights of racial minorities. They never pause to ask whether federalism is good for people of color.

Though past need not be prologue, the concept of states' rights has, to put the point mildly, a sordid past in American history. 1 4 3 Federalism has not generally been viewed as an institutional arrangement that enhances the liberty of racial minorities in the United States; in fact, it has been viewed as doing the opposite. 144 The way that racism has been deployed in the name of federalism is a problem for federalism's advocates. 14 5 Whether fair or not, states' rights in the United [End Page 144] States has generally been associated with racial inequality. 146 Conversely, federal power has generally been associated with racial equality.1 47 From the perspective of citizens of color, liberty has in fact been delivered not by federalism but by nationalism. 148 It thus would take a lot of chutzpah to curtail federal power, which is being deployed to protect liberty in an area where the states have engaged in notorious and rampant race discrimination, in the name of states' rights. But this is precisely what Chief Justice Roberts did in Shelby County.

Central to the Chief Justice's argument in Shelby County for recalibrating the balance between state and federal power is the premise that the states are no longer engaging in systematic racial discrimination of the type that gave rise to the 1965 Act.1 49 This argument prompted a dissenting response from Justice Ginsburg, who maintained that the states might go back to their old ways and use proxies that either directly or indirectly minimize the political power of racial minorities or indirectly do so.o50 Additionally, Justice Ginsburg argued that in the last fifty years, if not since Reconstruction, the federal government has assumed the primary responsibility and has in fact done a better job of protecting the electoral rights of racial minorities. 151 Thus, as between the states and the federal government, the federal government is the less risky option, the safer bet.

For both Roberts and Ginsburg, the federalism question (that is, how much reserved powers do the states have or should the states have as against the federal government in the voting domain) is a function of a predictive judgment: whether the states are likely to engage in racial discrimination in voting as they did before or whether we have we moved well beyond that era. If we think the states are likely to backtrack, we ought to [End Page 145] favor the federal government; but if we think the states are reformed, we should return to them the reserved powers they presumably possessed at the Founding. Both justices used memorable analogies to make their respective points: Roberts that robust federal power is no longer necessary and Ginsburg that the states are likely to backtrack without federal supervision. 152 During the oral arguments in Northwest Austin, Roberts characterized the argument that it is the VRA that is keeping the states from engaging in racial discrimination in voting to be as compelling as the old story that an "elephant whistle" explains the absence of elephants. That is, he continued, "I have this whistle to keep away the elephants. You know, well, that's silly. Well, there are no elephants, so it must work." 15 3 In her Shelby County dissent, Ginsburg retorted by characterizing the argument that the coverage formula is no longer necessary because states are not currently engaged in racial discrimination as "like throwing away your umbrella in a rainstorm because you are not getting wet." 154

Roberts and Ginsburg are undoubtedly engaged in an important debate. But in one critical respect, the battle between Roberts and Ginsburg and the sides that they represent is beside the point, if the point is about federalism. The federalism question should not be whether the states will or will not engage in discrimination if federal supervision is removed. The federalism question ought to be whether the states will compete with the federal government for the allegiance of racial minorities. If one important and central argument in favor of federalism, and thus Shelby County, is that devolution of power enhances liberty by facilitating self-rule by national minorities or ethnocultural minorities, the question that Chief Justice Roberts and Justice Ginsburg should have been debating is whether removing central supervision will now better permit racial minorities-who are also ethnocultural minorities-to engage in self-rule. Instead of asking whether the states are widely or systematically discriminating against their citizens of color, the Court should have asked how well are the states [End Page 146] representing the interests of their citizens of color. What is the congruence between the policy preferences of citizens of color in Alabama, Texas, North Carolina, Georgia, etc., and the legislative outcome of their respective states? How well are these citizens represented by their states? This should be the question for federalism in this context.

If one is inclined to be generous, one can view Chief Justice Roberts's opinion in Shelby County as deeply generative. Roberts wants a restart on race, history, and federalism. Recall here his point in Shelby County that history did not end in 1965.155 We have argued elsewhere Roberts used Shelby County to redeem the states.156 But the states are not all that Roberts wants to redeem; he also wants to redeem federalism from its sordid past, a laudable goal. The anti-nationalists aim to change the states' rights narrative so that the idea of states' rights is no longer synonymous with racial discrimination. Recall also Chief Justice Roberts's claim in Shelby County that the South has changed, or at the very least it does not differ much, if at all, from the North.157

The redemption of federalism is an intriguing and worthwhile project. It would be salutary and productive to get beyond the states' rights as racism meme. And it is not fair to federalism's advocates to constantly tar them with the putridity of the past. But redemption is not cheap. If federalism is to be redeemed, federalism must work for people of color as well. And if federalism is to "work" for people of color, it is not enough for proponents of federalism to show that the states will no longer engage in rampant racial discrimination.

Our task here is to introduce a distinction between an argument for states' rights premised on the idea that the states (or many of them) are no longer engaging in racial discrimination and an argument for states' rights in which the states are actively representing the interests of their citizens of color. From our perspective, the argument for federalism cannot be premised on the idea that the states are no longer discriminating against racial minorities. It is not sufficient to simply say that the states are indifferent. The Court should not interpret the Constitution in a way that would disempower the [End Page 147] federal government, which is the governmental entity that best represents the interests of citizens of color, and leave citizens of color to the indifference of the states. Indifference is not an argument for federalism. Federalism promises better representation, at least as compared to representation from the center or as compared to a unitary system. Our point is that the promise of better representation or the promise of competition for representation ought to be extended to people of color.158

This is why the argument between Roberts and Ginsburg is beside the point. The states' side of federalism must do what federalism theory expects devolution and decentralization to do. Federalism must defend and protect racial representation. The states must rival the federal government for the affections of racial minorities. It is not enough that federalism is not bad for people of color; federalism must be good for people of color. This is the task of federalism.

[Note to debaters: Shelby County — Shelby County v. Holder, a 2013 Supreme Court case that held that Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to preclearance.]

#### B. Federalism fails to protect minority rights — voting rights prove.

Charles and Fuentes-Rohwert 15 — Guy-Uriel E. Charles, Charles S. Rhyne Professor of Law Senior Associate Dean for Faculty & Research at Duke Law School, the founding director of the Duke Law Center on Law, Race and Politics, previously was the Russell M. and Elizabeth M. Bennett Professor of Law at the University of Minnesota Law School, received his JD from the University of Michigan Law School and clerked for The Honorable Damon J. Keith of the United States Court of Appeals for the Sixth Circuit, and Luis Fuentes-Rohwert, Professor of Law and Harry T. Ice Faculty Fellow at Maurer School of Law at Indiana University, earned a LL.M. from Georgetown University School of Law, a Ph.D., J.D. and B.A. from the University of Michigan, 2015 (“Race, Federalism, and Voting Rights,” *The University of Chicago Legal Forum* (2015 U. Chi. Legal F. 113), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, p. 148-151, Lil\_Arj)

Once the federalism argument is properly framed, we can see the potential for Shelby County to be deeply generative. If federalism protects liberty, it is only fair to ask, liberty for whom? By putting the federalism question on the table, we can ask seriously and non-cynically whether federalism can do the work of racial representation and thus further racial equality.159 Shelby County's reintroduction of federalism into the debate about whether the states or the federal government best protects people of color imposes a new burden on the states that they did not until now have to bear. To this point, the states had to bear the burden of non-discrimination, and had to do so at least since the passage of the Reconstruction Amendments. Moving forward, they must now bear the burden of actively and effectively representing the liberty interests of their citizens of color. This is the expectation for federalism post-Shelby County. The redemption project is worth taking seriously. It promises to be generative and promises to take us beyond tired recriminations.

Now consider federalism from a different vantage point, not that of redeeming the states, but that of progressives concerned [End Page 148] about the redemption of political-racial, gender, sexual, etc.- minorities. 160 For example, Professor Kathleen Sullivan argued almost a decade ago that "champions of liberal causes might need to rethink any reflexive recoil from" the federalism revolution wrought by the Rehnquist Court because it "might well contain seeds of a constitutional concept of social fluidity that can help to realize progressive as well as conservative ideals." 161 Professor Sullivan implicitly reasoned that the association of progressive equality with nationalism was historically contingent and always subject to a different political reality. The valence of federalism changed when the politics changed. Thus she noted:

But once the Republican Party obtained simultaneous control of the White House, House, and Senate for the first time since 1954, local and state initiatives began to do more than federal programs to advance progressive social ends. Gay weddings took place through the executive action of Mayor Gavin Newsom of San Francisco and the state constitutional interpretation of Chief Justice Margaret Marshall writing for the Massachusetts Supreme Judicial Court. Oregon pioneered physician-assisted suicide while California experimented with allowing severely ill patients to use marijuana medicinally. Suddenly states' rights were no longer just for segregationist southerners. Conversely, conservatives have sought to transform entrenched control of the federal government into nationwide social restrictions-from regulating late-term abortion to limiting stem-cell research-that were once unthinkable at the federal level.162

She concludes that federalism can serve as a handmaiden for social equality and need not be in service of inequality. Similarly, Professor Gerken has forcefully argued that:

[I]t 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. 1 6 3

Professor Gerken went on to note that "[fjederalism and localism ... depend on-even glory in-the idea of minority rule."1 64 She reminded us "what we have today is not your father's federalism."1 6 5

These are strong arguments in favor of reconceptualizing federalism as capable of redeeming people and not states. We are certainly open to this possibility. But at least in the context of voting, the early returns across the states are not very promising. We can look to North Carolina, or Indiana, or Wisconsin, or Texas, to name a few states. Following Shelby County, each of these states moved to change their electoral laws in ways that were inimical to the electoral liberty interests of the voters of color in their states. 166 These states are not engaged in protecting the rights of people of color, far from it. If we are going to empower the states as the primary guarantors of racial liberty, we must ensure that they are up to the task. That task is not about ascertaining whether the states are or are not engaged in racial discrimination. If we are engaged in that debate we are not engaged in the task that modernity expects of federalism. The question for federalism in the 21st century is whether the states will compete with the federal government to represent their citizens of color in the same way that they ostensibly compete to represent their white citizens. The [End Page 150] challenge for the Court and modern proponents of federalism is to encourage the states to take up the role that modern federalism has envisioned for them, or else neo-federalism should simply be dismissed like the old federalism.

[Note to debaters: Shelby County — Shelby County v. Holder, a 2013 Supreme Court case that held that Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to preclearance.]

#### C. Federalism rationale is *wrong* in civil rights context. It justifies *racist* and *heterosexist* roll-back.

Dorf ‘17

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That issue will now go back to the Fourth Circuit. As Sam Bagenstos, Marty Lederman, Leah Litman, and I noted here last week, an amicus brief we filed in the SCOTUS lays out a straightforward reason why Grimm should win under Title IX, even without a resolution of the question whether discrimination on the basis of gender identity is sex discrimination within the meaning of Title IX: the school board policy undoubtedly segregates on the basis of sex, and as applied to transgender students, such segregation amounts to unlawful discrimination because it impos the ses severe harm on such students without furthering any important institutional interests. Needless to say, we hope that the Fourth Circuit will now rule for *Grimm* on that basis (or another).

Meanwhile, in my latest Verdict column I explain why the Trump administration's justification for its volte-face--states' rights--should be rejected. The usual sorts of reasons for granting states flexibility--explicit statutory programs of cooperative federalism, local variation in conditions, experimentation--have relatively little purchase with respect to a federal civil rights statute. The column also considers the possibility that federalism could serve as a means of avoiding backlash, analogizing to the fears that led to the "all deliberate speed" formula in *Brown II* and the hand-wringing by Chief Justice Roberts in his dissent in *Obergefell v. Hodges*. As those examples themselves show, I conclude, it is easy to get carried away with a go-slow approach, and so the better course is usually for a court simply to apply its best legal judgment.

(Note to Students: Several Court cases are referenced in this evidence. *Grimm* is the appeal of a School Board decision to block trans~ students access to bathrooms that correspond to the gender identity. *Obergefell* is the Supreme Court decision on same-sex marriage. *Brown II* is the follow-up decision by the Supreme Court in 1955 (after the Brown I decision in 1954 which ruled against formal racial segregation in public schools). Brown II said that racial integration in schools should occur "with all deliberate speed”. This decision is often criticized for allowing State’s Rights to slow the pace of desegregation. The author of this card is arguing that federalism concerns – like those in these examples - can sometimes be used to slow-down implementation of such rulings.)

#### D. Racism is a d-rule.

Memmi 99 — Albert Memmi, Professor Emeritus of Sociology at the University of Paris, 1999 (*Racism*, Published by the University of Minnesota Press, ISBN 0816631654, p. 163-165)

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved.

Yet, for this very reason, it is a struggle to be undertaken without surcease and without concessions. One cannot be indulgent toward racism; one must not even let the monster in the house, especially not in a mask. To give it merely a foothold means to augment the bestial part in us and in other people, which is to diminish what is human. To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence. It is to accept the persistence of the dark [end page 163] history in which we still largely live. It is to agree that the outsider will always be a possible victim (and which man is not himself an outsider relative to someone else?). Racism illustrates, in sum, the inevitable negativity of the condition of the dominated; that is, it illuminates in a certain sense the entire human condition. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animality to humanity. *In that sense,* we cannot fail to rise to the racist challenge.

However, it remains true that one's moral conduct only emerges from a choice; one has to want it. It is a choice among other choices, and always debatable in its foundations and its consequences. Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order, for which racism is the very negation. This is almost a redundancy. One cannot found a moral order, let alone a legislative order, on racism, because racism signifies the exclusion of the other, and his or her subjection to violence and domination. From an ethical point of view, if one can deploy a little religious language, racism is "the truly capital sin."22 It is not an accident that almost all of humanity's spiritual traditions counsel respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. All things considered, we have an interest in [end page 164] banishing injustice, because injustice engenders violence and death.

Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. But no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. All unjust society contains within itself the seeds of its own death. It is probably smarter to treat others with respect so that they treat you with respect. "Recall," says the Bible, "that you were once a stranger in Egypt," which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming one again someday. It is an ethical and a practical appeal--indeed, it is a contract, however implicit it might be. In short, the refusal of racism is the condition for all theoretical and practical morality. Because, in the end, the ethical choice commands the political choice, a just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace. True, it is a wager, but the stakes are irresistible.

### 1AR — Fair-weather Federalism Fails

#### Formal institutional restraints are key — Gerken’s federalism fails.

Hills 17 — Roderick M. Hills Jr., William T. Comfort, III Professor of Law at the New York University School of Law, earned a J.D. from Yale Law School and a B.A. in History from Yale University, 2017 ("A response to Heather Gerken: Why the politics of tolerant pluralism need the legal institutions of federalism," *PrawfsBlog*, January 3rd, Available Online at http://prawfsblawg.blogs.com/prawfsblawg/2017/01/a-response-to-heather-gerken-why-the-politics-of-tolerant-pluralism-need-the-legal-institutions-of-f.html#more, Accessed 07-09-2017, Lil\_Arj)

Heather Gerken has a characteristically thoughtful response to my post on the “federalism insurance premium.” Heather agrees with me that willingness of the party in power decentralize controversial issues is weakened by each side’s intolerance toward ideological disagreement. She also agrees that more tolerance would be a good thing: When Democrats hold the Presidency, they should allow Red states more latitude to adopt conservative policies, and vice versa.

Heather disagrees with me, however, about whether constitutional conventions and institutions of federalism are relevant solutions to this problem. In her words,

“… the give-and-take has more to do with politics than institutions. Put differently, it’s not federalism that matters here, but pluralism. And a pluralist system only flourishes when both sides are willing to live and let live…”

The core of our disagreement is, in short, about whether and how legal institutions promote pluralist politics. After the jump, I will explain why I think that Heather is mistaken to contrast institutions and politics as if they are distinct mechanisms for promoting pluralism. As I have argued in yet another post, politics depends on – indeed, are defined by – legal institutions. Saying that achieving pluralism is rooted in politics, not institutions is like saying that scoring touchdowns is rooted in athletic ability, not the rules of football. Of course, the sort of athletic ability needed to score a touchdown depends on the rules of football. Likewise, the particular sort of politics needed to entrench a convention of decentralization depends on legal institutions. Even tolerant voters and politicians need some assurance that their tolerance will be reciprocated by their rivals before surrendering their cherished policy priorities for the sake of allowing the rivals to impose dissenting subnational policies. Without some credible commitment of reciprocity, such tolerance brands the politician who practices it as a chump, not a pluralist.

Legal institutions allow such politicians to make such credible commitments such that they can be assured that their forbearing to centralize power when they control the presidency will later be rewarded by their rival's similar forbearance. To see this relationship between legal institutions and political pluralism, however, it helps to focus on a specific example.

1. Why is "tolerance" without institutions insufficient to protect pluralism?

Consider, for example, the question of whether a university should be permitted to use a "clear and convincing evidence" standard to determine whether or not a constituent of the university (student, staff, faculty, etc.) committed sexual assault against another constituent. As I have argued elsewhere, whether or not Title IX requires a mere "preponderance of the evidence" ("POTE") standard to insure adequate protection from gender-based inequality is a tricky question. The Party in Power (call them "PIP") could "be tolerant" by acknowledging the uncertainty and let different public and private institutions make the call. This "tolerant" stance will bitterly disappoint the supporters of the PIP who ardently believe that POTE test is the statutorily required standard. Such supporters, however, might be mollified if they were assured that, by honoring a norm of decentralization, PIP would protect the supporters from having the POTE standard prohibited when the rival party comes to power. After all, the rival party might believe that POTE denies the accused of due process -- that only "clear and convincing evidence" ("CACE") would insure adequate protection against false positives. In order to prevent the very worst-case scenario, the PIP's supporters might grudgingly accept limits on their power to impose what they regard as the ideal rules.

The problem, of course, is that there is no obvious mechanism by which the PIP can make an enforceable deal with the Party out of Power ("POOP") to insure that present forbearance will be reciprocated. Because the POOP cannot give assurance that they will reciprocate, the PIP's supporters rationally insist that the PIP go ahead and impose the PIP's ideal policy. PIP would be rational to do so even if POOP's and PIP's supporters both were "tolerant and pluralist" -- that is, even if each side would prefer to forgo their own best-case scenarios in order to insure against the triumph of their opponent's best-case scenarios. Without legal institutions to enforce a deal, the two sides are trapped in a prisoner's dilemma from which their political good faith, their tolerance, their pluralistic character -- all the stuff that, I am guessing, Heather would classify as "politics" -- cannot save them.

Heather argues that we suffer from too much polarization rather than bad institutions. "[T]he real problem," she notes, "is the underlying assumption that one’s opponent is closer to Frankenstein rather than to Brandeis." I suggest, however, that polarization should increase rather than decrease the willingness to cut deals with one's opponents in the name of tolerance. After all, if one's opponents' views are closer to one's own, then the prospect of being governed by their norms is not so terrible. It is precisely when we fear our opponents' values most intensely that we need to take out an insurance policy against being subject to those values. The Thirty Years' War was not settled by good character or pluralist politics: It was settled by good rules in the Treaty of Osnabruck that gave each side credible assurances that they would be protected from their rivals. Likewise, during intensely polarized periods of U.S. history, legalistic norms like the Missouri Compromise flourished precisely because high levels of distrust created incentives for each side to seek institutional protection from their rivals. (Barry Weingast argues that such institutional protections fell apart not because of polarization but because the parties tinkered with the rules, admitting California as a free state and thereby eliminating the enforcement mechanism that forced each side to stick with the deal).

2. How might legal institutions help us achieve the pluralism that we want?

I heartily agree with Heather that, without a minimum amount of good will as lubricant, the gears of even the most sophisticated constitutional mechanism will lock up. I think, however, that we have not exhausted the benefits of good institutions that can help distrustful parties achieve the repose that both sides might really want.

Consider, for instance, the possibility of taking issues off the national agenda more aggressively. Heather's "national federalism" depends on the idea that, by giving Congress plenary power to decide everything, the two political parties will have better incentives to "dissent by deciding," enlivening our political debate with subnational policies that they hope eventually to nationalize. (By scoring a hit Off-Broadway, as it were, the POOP can move their show to a Broadway Theater as a PIP). In Heather's world, every subnational government is a farm team for the Big League, so voters in every local election rationally think about the effects of their ballot on national issues.

The problem with such a world is that, by raising the stakes of subnational politics, it destroys those politics for subnational government. David Schleicher has nicely explained how our subnational elections have been transformed into "second-order elections" in which voters vote on city council members, state legislators, and (to a lesser extent) mayors and governors solely based on their assessment of the national parties. As David notes, the cost is the destruction of subnational politics for subnational government.

One solution to go back to your father's federalism -- i.e., that old-fashioned idea that certain issues should be presumptively walled off from national decision-making, if not with barbed wire fences and trenches, then at least with speed bumps that slow down national legislation and regulation. Require more rules to go through notice-and-comment rule-making. (Such a requirement would likely have stalled OCR's "Dear Colleague" letter on sexual assault). Invoke Pennhurst and anti-coercion norms to limit the degree to which new interpretations can be given to cross-cutting grant conditions like Title IX. Beef up anti-commandeering norms to protect sanctuary cities.

Such doctrines provide political cover to PIPs against their own followers, allowing them to be tolerant and pluralistic to the other side by explaining to their impatient followers that certain centralizing policies will take too long to enact and are a waste of political capital. Such rules also provide reassurance to POOPs governing subnational jurisdictions who can thereupon relax the perpetual campaign at the subnational level to nationalize every local experiment and instead focus on subnational government. (As an example, consider Governor Hickenlooper's focusing on purely subnational politics of regional transit without any agenda of nationalizing the result, building up trust through initiatives like Colorado's FasTracks regional light rail program).

My point is not to attack Heather's "national federalism" but only to suggest that her brand of federalism, lacking formal legal institutions to constrain national power, might have consequences for the politics of pluralism. To the extent that our rules reward defection from decentralizing norms and dangle the brass ring of total national power before our subnational politicians, it should not be astonishing that they follow the incentives we give them. Even well-meaning pluralists will abandon self-restraint, after all, if their own restraint is never reciprocated. Rather than give up on the rules and hope for less polarization, it might be a good idea to think about ways in which our rules makes polarization a little more rewarding and self-restraint, a bit less attractive.

### 1AR — Constraints Solve

#### International checks reinforce domestic constraints

Burdette 3-1 (Zachary, National Security Intern at the Brookings Institution and M.A. candidate at Georgetown University's Security Studies Program concentrating in military operations. “America’s Counterterrorism Partners as a Check on Trump” 3-1-17 https://www.lawfareblog.com/americas-counterterrorism-partners-check-trump)

President Trump has begun to shift U.S. counterterrorism policies toward an extreme paradigm that departs from both liberal and conservative orthodoxy. In his first weeks in office, Trump recast the enemy as radical Islam, reconsidered U.S. policy on black sites and torture, and instituted a travel ban covering seven Muslim-majority countries. The unifying logic of these approaches is one of defining Islam as the problem, unshackling humanitarian constraints, and adopting extreme tools to combat terrorism. In implementing this vision, Trump inherits an already formidable counterterrorism architecture and an expansive legal interpretation of executive war powers from the Obama administration.

Ideally, the checks and balances of the U.S. political system will force moderation and curtail executive overreach. The national security bureaucracy, Congress, the courts, the press, and civil society are—individually and collectively—powerful impediments to illegal and extreme counterterrorism measures. While there are fierce debates over how effectively these domestic constraints have operated in the past, the early judicial challenges to Trump’s counterterrorism policies suggest that domestic institutions could place meaningful constraints on the new administration.

International dynamics may reinforce these domestic checks and balances. U.S. allies and partners could leverage their continued cooperation on counterterrorism to pressure the Trump administration to exercise uncharacteristic self-restraint. In other words, the United States could soon face an uncomfortable dilemma: President Trump must either restrain his most hawkish impulses or his administration may find itself increasingly going it alone in the war on terror.

The Trump administration may not be concerned about such a possibility, given the President’s dismissive attitude toward American allies throughout the campaign, but it should be. Allies provide important assets in international counterterrorism operations, many of which the U.S. intelligence community would be hard-pressed to replace.

If partners believe the new administration’s counterterrorism policies are illegal or excessive, they will likely turn first to diplomatic condemnation to induce moderation. The collective voice of the international community shapes expectations about what is acceptable, which raises the political costs of crossing certain legal and political thresholds. Global outcry would lend weight and legitimacy to those inside the United States calling for restraint, serving as an external prompt to jumpstart dialogue and the internal processes of U.S. checks and balances. For example, international naming and shaming of the Obama administration helped end the U.S. practice of spying on the communications of certain allied heads of state.

While the Trump administration may prove itself immune to such international condemnation, there is some cause for optimism. In addition to his uncompromising demand for unconditional praise, one of Trump’s few consistencies is his lack of principled commitment to any particular policy. He flip-flopped on proposed counterterrorism measures when domestic audiences criticized him during the campaign. A concerted, global effort may have a similar effect during his presidency, especially if it were combined with fawning praise for his leadership when he moderates.

#### SecDef vetoes US lashout

Picht 16 James Picht, PhD, teaches economics and Russian at the Louisiana Scholars' College, Senior Editor for Communities Politics, CDN, 6/14/2016, “President Trump’s inability to accidentally start a nuclear war”, http://www.commdiginews.com/politics-2/president-trumps-inability-to-accidentally-start-a-nuclear-war-65654/

But we don’t want them used too easily. To set your mind at ease, there is no actual button on the president’s desk that can launch nuclear weapons. We need not worry that in a moment of inattention, the president will accidentally start a nuclear war. The system by which we launch nuclear weapons can’t be so easy that they can be launched by accident or on a whim. It can’t be so difficult that, when we detect Russian missiles flying at our cities and our military installations, the president can’t respond quickly and launch our own missiles before they’re reduced to radioactive slag. Those competing requirements mean that the system will be highly complex. It includes failsafes, backup systems, redundancies, and verification checks. When the order comes to launch the missiles, we want to be sure that it came from an authorized source that really, really meant it. The nuclear button isn’t real. There is a chain of command, and there are verification codes. The president can order the release of nuclear weapons, but the order must be confirmed by the secretary of defense. A “watch alert” is sent to the Joint Chiefs of Staff, and after the president reviews the war plans, an aid contacts the National Military Command Center. Trump seems lackadaisical about nuclear proliferation, speaking casually about the “inevitable” spread of nuclear weapons and the desirability of countries like Japan and Germany building nuclear arsenals of their own. His view of the subject seems predicated more on cost savings than on the history of nuclear non-proliferation or on national security concerns. That’s a real concern. Trump’s thin skin is not. The LBJ campaign’s infamous “daisy ad” against Barry Goldwater was demagoguery at its worst; it was intended to terrify voters and convince them that Goldwater might really launch an attack on the USSR. The evidence is that Trump is careless with his words, crude in his treatment of people he considers unimportant, and ignorant of foreign affairs. It is not that he is insane or looking forward to Armageddon. And unless he managed to fill the Department of Defense with lackeys who were as insane as he would have to be, he couldn’t start a nuclear war for no better reason than an offense to his very thin skin.

#### Pence has all the power – Trump is a puppet with no strings

Oh 16 – Writes for Mother Jones, managing editor of mother jones (INAE OH, “Donald Trump Reportedly Plans to Delegate All Domestic and Foreign Power to his VP”http://www.motherjones.com/politics/2016/07/donald-trump-mike-pence-running-mate-domestic-foreign-policy) RMT

A new report from the New York Times Magazine goes behind the scenes of the VP selection process and claims that Trump's first choice was his former rival, Ohio Gov. John Kasich. Perhaps more interestingly, the report sheds light on the unprecedented level of power Trump plans to delegate to his vice president if elected. According to the Times, Trump's son, Donald Trump Jr., was responsible for vetting the potential candidates. Here's a scene from one conservation he had with a Kasich adviser.

Did he have any interest in being the most powerful vice president in history?

When Kasich’s adviser asked how this would be the case, Donald Jr. explained that his father’s vice president would be in charge of domestic and foreign policy.

Then what, the adviser asked, would Trump be in charge of?

"Making America great again" was the casual reply.

If true, this means that Trump doesn't plan on doing much governing at all. It may also reveal that he actually agrees with Hillary Clinton's claim that he is temperamentally unfit to become president of the United States. As for Kasich, he declined the offer and isn't even showing up to the Republican convention that's taking place in his home state.

### 1AR — Rights Turn

#### Skewed local elections undermine “progressive” federalism — Ferguson proves.

Jordan 15 — Samuel P. Jordan, Professor of Law and Associate Dean for Research and Faculty Development at Saint Louis University School of Law, 2015 (“Federalism, Democracy, and The Challenge of Federalism,” *Saint Louis University Law Journal* (59 St. Louis U. L.J. 1103), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, p. 1111-1115, Lil\_Arj)

Now, let me to turn to what is perhaps the core argument put forward by Professor Gerken in her attempt to establish a detente. Contrary to what is often explicitly stated or assumed by proponents of nationalism, Professor Gerken presses the descriptive point that the devolution of power away from the federal government (or, the "center") does not always equate to a diminution of federal power or an erosion of federal interests.3 1 Instead, "devolution can further nationalist aims.' 32 Federalism can be a means to nationalist ends-thus, the nationalist school of federalism.

The justifications for this claim are numerous and are recounted eloquently in Professor Gerken's Article.33 For present purposes, I want to emphasize one: the "discursive benefits of structure." 34 The core idea is that decentralized locations of power can provide additional points of contact at which citizens can engage with the government, and that those multiple points of contact can, in Cristina Rodriguez's phrase, "simultaneously shape political consensus and channel ideological diversity." 35

Some of what we have seen in response to the events of Ferguson may be viewed through this lens. State and local structures have certainly served as sites of contestation and pluralist competition, and they have arguably facilitated interactions and conversation that may not have occurred through federal channels alone. That said, there is a dimension to the Ferguson experience that is deeply at odds with the descriptive account. As part of the "discursive benefits of structure," Professor Gerken posits that federalism can benefit racial minorities and dissenters by providing them with localized opportunities to "turn the tables" and wield the power of the majority.36 This is [End Page 1111] an account that runs counter to the traditional narrative of the nationalists that casts federalism as a threat to minority rights.37 It is an account that preferences insider status and the ability to exercise real power (even if subject to override) over tokenism that allows minorities to always be present but never to rule. 38 And it is an account that sets up structure as a companion to rights in the quest to further the federal project of protecting and empowering minorities. 39

One might expect that St. Louis County would be Exhibit A for this vision of decentralization as empowerment. St. Louis County is characterized by a highly fractured set of governance sites.40 And unlike in the federal context, where redistricting can distort the effects of shifts in residential patterns, the electoral boundaries for municipalities are (relatively) fixed. Thus, if residential patterns shift, electoral power should shift with it. The structure of St. Louis County government therefore seems well-suited to produce plentiful opportunities for minorities to be cast in the role of insider, to protect themselves through politics rather than through courts, and to build loyalty and promote civic identity.

And yet the experience in Ferguson does not bear that out. At the time of the Michael Brown shooting, roughly two-thirds of Ferguson's residents were African American. 4 1 But the mayor of Ferguson was white, five of six City Council members were white, the police force was overwhelmingly white, and six of seven members of the school board (which also includes parts of nearby Florissant) were white.42 [End Page 1112]

Much of the concern recently expressed by residents of Ferguson relates to their feeling that their government-their municipal government-is not responsive to their needs or respectful of their rights.43 And the actions taken in response to the events there have largely been the actions of outsiders. Rather than being in the position of a minority who feels oppressed by the tyranny of the majority, what has been expressed by residents of Ferguson are the frustrations of a majority who feels oppressed by the tyranny of the minority.

Why has this occurred? Part of the story may be the relatively rapid changes in demographics in the area. In 1990, Ferguson was seventy-four percent white; in 2000, it was fifty-two percent black; and in 2010, that new black majority had risen to sixty-seven percent.44 Because elections are occasional events, it may take time for electoral outcomes to catch up to the reality on the ground. More importantly, however, this is a story of turnout. Like many municipalities across the country, Ferguson holds municipal elections in odd-numbered years, and it holds them in April rather than November.45 One result of this scheduling is to substantially reduce voter turnout.4 6 Consider: in the 2012 general election, voter turnout in Ferguson was somewhere around fifty-four percent, but in the 2013 municipalities election a few months later, turnout was a relatively paltry 11.7%.47 This alone might be cause for some concern. Even more concerning is the fact that this reduction is far from uniform. Although Missouri does not track the race of voters, fairly sophisticated modeling suggests that the turnout among black and white voters was almost identical in the general election-fifty-five percent for whites and [End Page 1113] fifty-four percent for blacks. 48 In the municipal election, on the other hand, turnout was both much lower and dramatically skewed-seventeen percent for whites and only six percent for blacks.49 This three-to-one difference in turnout is enough to overcome the two-to-one difference in overall population, meaning that whites constituted the majority of voters in the municipal elections.50 There are a number of potential explanations for this discrepancy in turnout. First, the rapid shift in demographics in Ferguson is reflected in the average age of the white and black population. The white population is older, and older citizens tend to vote more regularly. 51 Patricia Bynes, the Democratic committeewoman for Ferguson, and others have also pointed to the transience of the minority population in Ferguson as an explanation for why blacks may be less inclined to participate in local elections. 52 This explanation is roughly consonant with William Fischel's "homevoter hypothesis," which posits that homeowners are more likely to vote than renters in local elections because they are more invested in the community. 53 If homeownership is not evenly distributed across races-and it is not in Ferguson or many other places 54—[End Page 1114] then this hypothesis has implications for the demographics of who actually votes in local elections relative to the voting population.55

Ultimately, this mismatch between demographics and electoral outcomes poses a challenge to the "discursive benefits of structure." Indeed, one prominent defender of localism has worried openly that Ferguson suggests the "problem of promoting the power of racial minorities through local autonomy ... seems to face some intractable obstacles. '56 More worrying still is that these obstacles are not unique to Ferguson, but are instead created by voting behavior and our democratic process.57

The response to these obstacles may simply be to say that they have little to do with a theory of federalism. After all, politics will always be imperfect, and yet we still have to come up with a workable system. By calling attention to them, perhaps I am just casting myself in the role of Mary Hume by claiming "almost perfect ... but not quite." 58 But many of these problems are unique to local elections, or are at least exacerbated by local elections. As a result, I worry that they pose a particular challenge to the claim that we may use decentralization as a mechanism to produce structural benefits for minorities. Professor Gerken's argument ultimately is that we need federalism to secure "a well-functioning democracy." 59 But the experience of Ferguson suggests that it may be equally true that we need democracy to secure a well-functioning federalism.

#### Federalism encourages civil rights abuses — federal regulation solves.

Nivola 17 — Pietro S. Nivola, Vice President and Director of Governance Studies at The Brookings Institution, former Associate Professor of Political Science at the University of Vermont, former Lecturer in the Department of Government at Harvard University, holds a Ph.D. from Harvard University, 2017 (“Respublica Complicata: An Essay in Memory of Martha A. Derthick (1933–2015),” *Publius*—The Journal of Federalism, March, Available Online at <https://academic.oup.com/publius/article/doi/10.1093/publius/pjw035/3063255/Respublica-Complicata-An-Essay-in-Memory-of-Martha>, Accessed 06-26-2017, Lil\_Arj)

Securing Rights and Other Essentials

A state-by-state approach has also too often fallen short in upholding civil rights, ensuring a sound social safety net, and regulating health hazards that cross state lines. Historically, because defaulting to it could beget local abuses, inertia, and freeloading, a strictly state-based agenda would eventually give way to a logical corrective: less federalism. By 1964, a national Civil Rights Act ultimately had to be summoned to meet the resistance of states in the south that were enforcing racial apartheid far into the twentieth century. The New Deal was invoked in large part because most states had been unable to rescue their impoverished inhabitants from the Great Depression. The nation’s Clean Air and Clean Water Acts might have been less necessary if the states, acting independently, had managed to curb extensive pollution that moved past their respective borders. Unless otherwise encouraged, a community whose contaminated air or water flows downstream to other places has little incentive to stop the cross-border spillover for their sake.

Derthick would be the first to recognize that such shortcomings of local control stem not infrequently from a basic difficulty Madison had identified in Federalist No. 10: a propensity of small polities to be captured by entrenched interests. Would a one-company town crack down on a factory that happens to be not only a wide-ranging polluter but also the local economy’s mainstay? Prior to, say, 1954, were recalcitrant state governors and legislatures, left to themselves, prepared spontaneously to desegregate schools? Even now, can individual states and localities, which must compete for investment (hence keep progressive tax rates in check) and avoid degenerating to welfare magnets, be especially eager to redistribute wealth to needy households? (Peterson 1995, 19, 27–30). In no small degree, performing roles like these has posed a challenge for society’s subnational governments if left entirely to their own devices. The remedy, of course, has been for the central government to add inducements and regulations aimed at overcoming the local derelictions.

#### “Progressive Federalism” is *worse* for trans-people in this administration.

Kotch 17 — Alex Kotch, Journalist at the Paste Magazine, 2017 (“Jeff Sessions' 'States' Rights' Claims in Transgender Policy are Part of a Disturbing Tradition,” *Paste Magazine*, March 2nd, Available Online at <https://www.pastemagazine.com/articles/2017/03/jeff-sessions-states-rights-claims-in-transgender.html>, Accessed 06-24-2017)

On Feb. 22, Attorney General Jeff Sessions announced that the Department of Justice and the Department of Education will not enforce Obama’s directive requiring schools to allow transgender students to use the restroom matching their gender identity. Sessions wrote, “Congress, state legislatures, and local governments are in the position to adopt appropriate policies or laws addressing this issue.”

Education Secretary Betsy DeVos echoed Sessions in her statement, saying that “this is an issue best solved at the state and local level.” In her recent Conservative Political Action Conference address, she said the federal guidance was “a very huge example of the Obama Administration’s overreach.”

The “states’ rights” argument has a long and sinister history, having been used by Confederates to justify keeping their slaves and by segregationists (including those in Sessions’ home state of Alabama) to keep their schools segregated.

Sessions was born in Hybart, Alabama, about 50 miles from Selma, in 1946, and he didn’t leave the state until half a century later, when he became a U.S. senator. So in the early 1960s, as his state was fighting desegregation, when police forces in Alabama and around the Deep South were beating, jailing and even killing black citizens for trying to register to vote, when the KKK and angry white mobs attacked their black neighbors and out-of-state civil rights activists, Sessions was an impressionable, conservative teenager.

It was in Sessions’ state, in 1965, that Bloody Sunday occurred, when police in Selma brutally attacked activists attempting to march to Montgomery to advocate black voting rights. He likely began school at Huntingdon College in Montgomery later that year.

As one might expect from a far-right conservative from the segregated Deep South, Sessions once said that the KKK was “ok” until he realized some of its members smoked pot, and that the NAACP and ACLU were “un-American” groups that “tried to force civil rights down the throats of people.” Just two years ago he defended the Confederate Flag.

His demonstrated racism was too much for the Senate to confirm him as a federal district court judge in 1986, but 31 years later, the Senate apparently thought his racism wasn’t enough to disqualify him from becoming the top lawyer in the country.

We now have an attorney general that white nationalist Trump adviser Steve Bannon credits with laying the groundwork for America’s populist nationalist movement long before Trump’s birtherism.

Sessions doesn’t just discriminate against African Americans; he is an outspoken opponent of both legal and illegal immigration, and he even employed Stephen Miller, an architect of Donald Trump’s Muslim ban, before he joined the Trump campaign. And he has consistently opposed LGBTQ equality. So it’s no surprise that Sessions would revive the states’ rights argument to justify discrimination against transgender people, members of our society who face an uphill battle just to gain basic human rights.

He’s done this before

So what happened the last time that Sessions’ invoked states’ rights to justify education policy?

The NYT recalled that in the early 1990s, Sessions, then attorney general of Alabama, fought a court decision that directed the state to remedy its inadequate funding of poor, predominantly black schools. Public schools in wealthy districts had twice the funds of schools in poor areas, and the latter schools were struggling to cover basic upkeep, accommodate special-needs students and pay their teachers. After 30 underfunded schools sued the state, and a district court judge ruled that the unequal school funding was unconstitutional, Sessions led the fight against that decision.

He called the ruling judicial overreach. The state and local governments could fix this on their own, Sessions somehow argued, despite the fact that they had utterly failed at providing equitable school funding over the 40 years since the Supreme Court ordered integration. A former chief justice of the Alabama Supreme Court said at the time that if Sessions was able to reverse the ruling, he would “consign an ever-growing number of Alabama schoolchildren to an unconstitutionally inadequate and inequitable education.”

The decision wasn’t overturned, but how to fix the inequity problem was left to the conservative state legislature, which did little to aid these poor schools. To this day, Alabama’s public schools are ranked among the worst in the nation.

And now, Sessions uses a states’ rights argument to discriminate against transgender and gender nonconforming people, but this time, he gets away with it easily. Allegedly DeVos wanted to keep the Obama guidelines in place, but Sessions and Trump threatened her, and she went along with them. This claim, however, is suspect, given her strict, conservative Christian faith and her family’s history of funding anti-LGBTQ hate groups.

### They Say: “Charles and Fuentes-Rohwert Conclude Neg”

#### Federalism subverts racial equality. This is the conclusion.

Charles and Fuentes-Rohwert 15 — Guy-Uriel E. Charles, Charles S. Rhyne Professor of Law Senior Associate Dean for Faculty & Research at Duke Law School, the founding director of the Duke Law Center on Law, Race and Politics, previously was the Russell M. and Elizabeth M. Bennett Professor of Law at the University of Minnesota Law School, received his JD from the University of Michigan Law School and clerked for The Honorable Damon J. Keith of the United States Court of Appeals for the Sixth Circuit, and Luis Fuentes-Rohwert, Professor of Law and Harry T. Ice Faculty Fellow at Maurer School of Law at Indiana University, earned a LL.M. from Georgetown University School of Law, a Ph.D., J.D. and B.A. from the University of Michigan, 2015 (“Race, Federalism, and Voting Rights,” *The University of Chicago Legal Forum* (2015 U. Chi. Legal F. 113), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, p. 151-152, Lil\_Arj)

CONCLUSION

We are in the midst of an important public conversation about race, federalism, and voting rights. It is a conversation about history, doctrine, and politics. The optimistic read on Shelby County is that it is forcing us to have a conversation [End Page 151] about the optimal structural and political arrangements for best representing the citizens of our polity, in particular citizens of color. Perhaps closer to reality, Shelby County is a legerdemain that is completely uninterested in representation and is simply intent on redrawing the federalism line as reset fifty years before. If so, the federalism enterprise ought to be subjected to critical inquiry. We must inquire why the project of racial equality must take a back seat to the federalism project. We must inquire why the Court is disempowering Congress as the political body that has best protected the electoral interests of people of color and empowering the states, the sovereigns that have historically shown a lesser inclination to extend these crucial protections. If federalism is to be redeemed, it must first prove that the states will actively compete with the federal government to protect the rights of racial minorities. Though history has not been kind to federalism, we ought to keep an open mind. However, in the immortal words of Ronald Reagan, we should trust, but verify.

[Note to debaters: Shelby County — Shelby County v. Holder, a 2013 Supreme Court case that held that Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to preclearance. Also, legerdemain — skillful use of one's hands when performing conjuring tricks.]

### 1AR — AT: Immigration

#### Expansive precedent prevents federal coercion on immigration — Trump can’t threaten sanctuary cities.

Culliton-González 17 — Katherine Culliton-González, Senior Counsel at *Demos*— a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy, Chair of the Voting Rights Committee of the Hispanic National Bar Association, former Director of the Voter Protection Program at Advancement Project, former Senior Attorney in the Voting Section of the Civil Rights Division of the U.S. Department of Justice, former Fulbright Scholar, graduated Valedictorian of the Washington College of Law of American University, 2017 ("Immigrant Sanctuary Policies: Threats to Retract Federal Funding are Overblown," *Demos*, March 10th, Available Online at http://www.demos.org/publication/immigrant-sanctuary-policies-threats-retract-federal-funding-are-overblown, Accessed 07-09-2017, Lil\_Arj)

As discussed in the recent report, SANCTUARY, SAFETY AND COMMUNITY: TOOLS FOR WELCOMING AND PROTECTING IMMIGRANTS THROUGH LOCAL DEMOCRACY (published jointly by Demos and LatinoJustice PRLDEF), threats to retract funding from “sanctuary” jurisdictions are overblown and should be resisted.1 The Tenth Amendment of the U.S. Constitution provides that “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. Const., Am. X. Supreme Court cases clearly demonstrate that under the Tenth Amendment, the federal government may not coerce state and local governments to enforce federal law through threats to withdraw federal funding, unless the funding is explicitly conditioned on assisting with federal immigration law enforcement – and minimal, if any, federal funding is conditioned on immigration law enforcement. The major applicable cases include:

* National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566 (2012), which prohibited funding conditions so coercive that they amount to a “gun to the head” of a state or local government, at 2602; and articulated that if conditions on some funds “take the form of threats to terminate other significant, independent grants, the conditions are properly viewed as [unconstitutional] means of pressuring the State to accept policy changes.” Id. at 2604.
* New York v. United States, 505 U.S. 144, 167 (1992), which held that spending “conditions must (among other requirements) bear some relationship to the purpose of federal spending.” The New York case also held that “the federal government cannot compel the states to enact or administer a federal regulatory program.” Id. at 188.
* In Printz v. United States, 521 U.S. 898, 935 (1997), an opinion authored by the late conservative Justice Antonin Scalia, the Court added that the federal government cannot compel state employees to participate in the administration of a federally-enacted regulatory scheme.
* The Fourth Circuit, which covers Maryland, has articulated these same rules. Maryland v. EPA, 530 F. 2d 215, 226 (4th Cir. 1975).
* Cities and counties may also raise Tenth Amendment claims. Lomont v. O’Neill, 285 F.3d 9, 13 (D.C. Cir. 2002); and in the case of sanctuary cities, they have done so. City of New York v. United States, 179 F.3d 29 (2d Cir. 1999), cert. denied, 528 U.S. 1115 (2000); Complaint, City and County of San Francisco v. Trump, No. 3:17-cv-00485 (N.D. Cal. 2017).

There are, of course, limits to states’ rights, such as when states violate fundamental constitutional rights. To be clear, we believe in a principled federalism based on the goal of an inclusive democracy. Yet even conservative constitutional experts agree that under the Constitution, very few if any federal funds can be cut off because of a jurisdiction’s refusal to enforce federal civil immigration law.

Professor Ilya Somin of the Cato Institute summarized the law as follows:

Few if any federal grants to state and local governments are conditioned on cooperation with federal deportation efforts. The Supreme Court has long ruled that conditions on federal grants to state and local governments are not enforceable unless they are “unambiguously” stated in the text of the law “so that the States can knowingly decide whether or not to accept those funds.” In ambiguous cases, courts must assume that state and local governments are not required to meet the condition in question. In sum, the Trump administration can’t cut off any federal grants to sanctuary cities unless it can show that those grants were clearly conditioned on cooperation with federal deportation policies.2

Accordingly, the threats of withdrawing federal funds in President Trump’s January 25 Executive Order are overblown and do not preclude state and local policies limiting participation in federal immigration enforcement.3 Moreover, even the language of the Executive Order is limited by saying that “[i]t is the policy of the executive branch to... [e]nsure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law.”4

There are only two federal statutes that restrict the parameters of state and local sanctuary policies, and neither preclude policies such as the Maryland Trust Act. These two statutes (8 U.S.C. §16445 and 8 U.S.C. §13736) only address information-sharing with the federal government. They do not prohibit limits on collecting immigration status information, or shielding such information through privacy protections such that it is not accessible to all state and local employees.7 Numerous “sanctuary” policies are not preempted or precluded by these statutes.8

Sanctuary policies are needed to protect the most fundamental values of American communities, and to protect jurisdictions against liability for violations of Due Process and Equal Protection that are likely to occur when state or local police, or other state and local institutions such as schools, participate in federal civil immigration law enforcement.9

Notwithstanding the Trump Administration’s efforts to threaten “sanctuary” policies, there are numerous legal and policy reasons for state and local jurisdictions to adopt them and resist the threats that federal funding may be retracted.

#### *Dole* precedent prevents federal immigration coercion on enforcement — federalism isn’t key.

Millhiser 17 — Ian Millhiser, a senior fellow at the Center for American Progress and the editor of ThinkProgress Justice, received his JD from Duke University and clerked for Judge Eric L. Clay of the United States Court of Appeals for the Sixth Circuit, 2017 (“BREAKING: Federal judge blocks Trump’s attack on ‘sanctuary cities’,” *Think Progress*, April 25th, Available Online at <https://thinkprogress.org/jeff-sessions-amateurish-unconstitutional-assault-on-immigrants-dd6ab8a1671e>, Accessed 07-09-2017, Lil\_Arj)

The Justice Department threatened to cut off grant funding to eight cities on Friday — unless those cities provide more support to federal officials trying to crack down on undocumented immigrants. But DOJ’s threat is unconstitutional and is highly unlikely to survive a lawsuit.

In fact, the Justice Department’s threat against these eight cities appears to be so amateurish and so poorly aligned with longstanding Supreme Court precedent that it raises serious questions about whether the threat was properly vetted.

At issue is funding for so-called “sanctuary cities,” a term that’s often used for cities that choose not to cooperate with federal efforts to arrest immigrants.

Under the Supreme Court’s “anti-commandeering doctrine,” the feds cannot order a state or local government to participate in a federal program. Thus, while a state or municipality may voluntarily agree to have its police force participate in federal immigration enforcement, state and local governments also have an absolute right to refuse to do so.

However, the federal government is permitted to offer states or localities a financial incentive to participate in a federal program. So the feds can create a grant program, but only make the grant money available to states or cities that comply with certain conditions — which means Congress could hypothetically pass a law stating a city may only receive certain federal funds if it agrees to make its police force available for immigration enforcement.

But there are constitutional limits on the federal government’s ability to impose such conditions upon a federal grant program. Among other things, the Supreme Court explained in South Dakota v. Dole, “if Congress desires to condition the States’ receipt of federal funds, it ‘must do so unambiguously” in a way that enables “the States to exercise their choice knowingly, cognizant of the consequences of their participation.’”

In other words, federal officials cannot surprise states or localities with new conditions attached to an existing grant program. Any conditions for funding need to be “unambiguously” conveyed to grant recipients in the law authorizing the grant.

Which brings us back to DOJ’s threats against the eight sanctuary cities. The Justice Department specifically threatened to cut off funding under the Edward Byrne Memorial Justice Assistance Grant, which provides funding for law enforcement and similar state and local programs.

While the statute authorizing this grant contains a number of conditions that are imposed on grant recipients — for example, the cities receiving the funds are typically forbidden from spending the money on non-police vehicles, on real estate, or on “luxury items” — it is silent regarding any obligation to enforce federal immigration law.

Earlier this month, Attorney General Jeff Sessions pointed to a different source of law, a 1996 statute, which, he claims, imposes certain obligations regarding immigration enforcement on grant recipients. Specifically, that statute provides that local governments may not restrict “any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”

So, for example, if a police officer encounters an undocumented immigrant, this statute purportedly prevents the police force from forbidding the officer from reporting that immigrant to federal officials.

But there are two problems with Sessions’ citation of this law that make his threat doubly unconstitutional.

The first is that the law, by its explicit terms, orders states and localities to manage their own employees in a certain way — which is almost certainly a violation of the anti-commandeering doctrine.

There is one dubiously reasoned court of appeals decision that suggests the anti-commandeering doctrine’s scope may be limited in this case. But even if it doesn’t apply here, there’s still nothing in the statute that provides so-called sanctuary cities with unambiguous notice that they could lose grant funds.

UPDATE (4:18 P.M.): A federal judge has blocked Sessions’ efforts.

@AP: BREAKING: US judge blocks Trump order to cut off funding to cities that limit cooperation with immigration authorities.

UPDATE (4:26 P.M.): The federal court’s order notes that the Trump administration’s attack on “sanctuary cities” suffers from various constitutional flaws. It imposes conditions on federal grant recipients without unambiguous legal authorization to do so, and it imposes conditions on those grant recipients that bear no relationship to the purpose of the grant. Both of these errors violate the Supreme Court’s holding in Dole.

### 1AR — AT: Marijuana (Racism Impact)

#### No federal enforcement on marijuana laws — Trump hasn’t addressed the Cole Memo.

Wilson 17 — Reid Wilson, accomplished journalist at *The Hill*, former chief political correspondent for The Morning Consult, George Washington University graduate, 2017 (“Confusion mounts over Trump administration’s stance on marijuana,” *The Hill*, February 28th, Available Online at <http://thehill.com/homenews/state-watch/321639-confusion-mounts-over-trump-administrations-stance-on-marijuana>, Accessed 07-05-2017, Lil\_Arj)

Neither Sessions nor Spicer addressed the Cole Memo, the Obama-era legal guidance that de-prioritized marijuana enforcement in states where the drug is legal. Since establishing their recreational marijuana regimes, Colorado, Washington, Oregon and Alaska have followed that federal guidance.

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#### Legalization doesn’t solve — “good moral character” clauses.

Yuen 17 — Beverly Yuen, Associate Professor and Chair, Sociology Department at Siena College, earned a Ph.D. in Sociology from The New School, a M.A. in Women’s Studies from San Diego State University, and a B.A. in Political Science from Eastern Washington University, 2017 ("As Marijuana Becomes Legal, The Legacy of Structural Racism Still Haunts Many," *Sociology In Focus*, February 6th, Available Online at http://sociologyinfocus.com/2017/02/as-marijuana-becomes-legal-the-legacy-of-structural-racism-still-haunts-many/, Accessed 07-09-2017, Lil\_Arj)

The “Good Moral Characters” Clause

In legal marijuana states, their laws often include a “good moral character” clause, requiring prospective owners and employees, to submit to a criminal background check. Marijuana legalization laws often ban workers with drug convictions from working in the industry, especially medical marijuana states. Oregon, Washington and Colorado makes exception for those with a prior conviction of the manufacture or possession of marijuana, on convictions older than five or ten years, if they have no more than one conviction. Under California’s Proposition 64, licensees cannot have a serious or violent felony conviction; simple marijuana convictions are excused. Nevada and Maine bar certain felony offenses, but overlooks those over 10 years. Massachusetts bars felons, but makes exception for marijuana offenses.

Previous Convictions & The Legal Marijuana Economy

The ACLU (2013) recently published a report called The War on Marijuana in Black and White, where the overviewed the differences in arrest rates for blacks and whites in all counties and states in the country. Overall, African Americans were arrested for Marijuana offenses at a rate of 3.73 times higher than white Americans. In some areas of the country, this racial disparity was as high as fifteen times as larger for African Americans compared to their white counterparts.

In states with a “good moral character” clause these prior convictions disproportionately prevent people of color from joining the newly legal marijuana economy. Only Oregon and California have included in their law the eligibility of individuals with previous marijuana convictions, to have their convictions set aside, sentences reduced, or records sealed. This process is far from automatic and requires an individual to hire a lawyer and go through the potentially lengthy and costly process of applying for such easement on their criminal record. Colorado only allowed an exemption for those whose cases were pending as the law was in transition. Some states had previously decriminalized marijuana charges, thus reducing further arrests, imprisonment, and fines. During the midterm election of 2014, California passed Measure 47, which automatically and retroactively downgraded many nonviolent drug related felonies to misdemeanors, resulting in ten thousand prisoners being eligible for immediate release. The D.C. Council decriminalized possession to a $25 fine, and then eased laws to seal marijuana convictions. However, in the states of Alaska, Washington, Nevada, Massachusetts, and Maine, the new legalization measure did not include a new statute regarding previous convictions.

Conclusion

The War on Drugs was instrumental in creating and reinforcing structural racism in the United States. As states continue to legalize marijuana, it is imperative that we apply retroactive relief to those who have only done what is now allowed under the new law. Furthermore, we must ensure that the racial inequality created by the War on Drugs is not allowed to prevent people of color from participating in the emerging marijuana economy.

#### Utilitarianism comes first – approaches can *only* be ethical when they consider externalities.

Chandler ‘14

(David Chandler is Professor of International Relations at the Department of Politics and International Relations, University of Westminster – “Beyond good and evil: Ethics in a world of complexity” – International Politics, Vol. 51, No. 4 (2014), pp.441-457 Available at: http://www.davidchandler.org/wp-content/uploads/2014/10/International-Politics-Evil-PUBLISHED-2.pdf)

Self-reflexive ethics redistribute responsibility and emphasize the indirect, unintended and relational networks of complex causation. Collective problems are reconceived ontologically: as constitutive of communities and of political purpose. This is why many radical and critical voices in the West are drawn to the problems of 'side effects', of 'second-order' consequences - of a lack of knowledge of the emergent causality at play in the complex interconnections of the global world. The more these interconnections are revealed, though the work of self-reflexivity and self-reflection, the more ethical authority can be regained by governments and other agents of governance. We learn and learn again that we are responsible for the world, not because of our conscious choices or because our actions lacked the right ethical intention, but because the world's complexity is beyond our capacity to know and understand in advance. The unknowability of the outcomes of our action does not remove our ethical responsibility for our actions, it, in fact, heightens our responsibility for these second-order consequences or side effects. In a complex and interconnected world, few events or problems evade appropriation within this framing, providing an opportunity for recasting responsibility in these ways. The new ethics of indirect responsibility for market consequences can be seen (observed) clearly in the idea of environmental taxation, both state-enforced through interventions in the market and as taken up by both firms and individuals. The idea that we should pay a carbon tax on air travel is a leading example of this, in terms of governmental intervention, passing the burden of such problems on to 'unethical' consumers who are not reflexive enough to consider the impact of package holidays on the environment. At a broader level, the personalized ethico-political understanding that individuals should be responsible for and measure their own 'carbon footprint' shifts the emphasis from an understanding of broader inter-relations between modernity, the market and the environment to a much narrower understanding of personal indirect responsibility, linking all aspects of everyday decision making to the problems of global warming (see, for example, Marres, 2012). The shared responsibility for the Breivik murders is not different -ontologically - from the societally shared responsibility for global warming or other problematic appearances in the world. Through our actions and inactions we collectively constitute the frameworks in which others act and make decisions -failing to raise our voice against 'borderline racism' or extremism in a bar makes us indirectly responsible for acts of racism or extremism in the same way that failing to save water or minimize air travel makes us indirectly responsible for the melting polar ice caps.

### 1AR — AT: Marijuana (Constitution Impact)

#### No federal enforcement on marijuana laws — Trump hasn’t addressed the Cole Memo.

Wilson 17 — Reid Wilson, accomplished journalist at *The Hill*, former chief political correspondent for The Morning Consult, George Washington University graduate, 2017 (“Confusion mounts over Trump administration’s stance on marijuana,” *The Hill*, February 28th, Available Online at <http://thehill.com/homenews/state-watch/321639-confusion-mounts-over-trump-administrations-stance-on-marijuana>, Accessed 07-05-2017, Lil\_Arj)

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#### The Constitution is an open-ended framework, not a “side constraint.”

Litchwick 11 — Dahlia Lithwick, journalist covering courts and the law for *Slate*, 2011 (“Read It and Weep,” *Slate*, January 4th, Available Online at http://www.slate.com/articles/news\_and\_politics/jurisprudence/2011/01/read\_it\_and\_weep.single.html, Accessed 04-30-2012)

This newfound attention to the relationship between Congress and the Constitution is thrilling and long overdue. Progressives, as Greg Sargent points out, are wrong to scoff at it. This is an opportunity to engage in a reasoned discussion of what the Constitution does and does not do. It's an opportunity to point out that no matter how many times you read the document on the House floor, cite it in your bill, or how many copies you can stuff into your breast pocket without looking fat, the Constitution is always going to raise more questions than it answers and confound more readers than it comforts. And that isn't because any one American is too stupid to understand the Constitution. It's because the Constitution wasn't written to reflect the views of any one American.

The problem with the Tea Party's new Constitution fetish is that it's hopelessly selective. As Robert Parry notes, the folks who will be reading the Constitution aloud this week can't read the parts permitting slavery or prohibiting cruel and unusual punishment using only their inside voices, while shouting their support for the 10th Amendment. They don't get to support Madison and renounce Jefferson, then claim to be restoring the vision of "the Framers." Either the Founders got it right the first time they calibrated the balance of power between the federal government and the states, or they got it so wrong that we need to pass a "Repeal Amendment" to fix it. And unless Tea Party Republicans are willing to stand proud and announce that they adore and revere the whole Constitution as written, except for the First, 14, 16th, and 17th amendments, which totally blow, they should admit right now that they are in the same conundrum as everyone else: This document no more commands the specific policies they espouse than it commands the specific policies their opponents support.

This should all have been good news. The fact that the Constitution is sufficiently open-ended to infuriate all Americans almost equally is part of its enduring genius. The Framers were no more interested in binding future Americans to a set of divinely inspired commandments than any of us would wish to be bound by them. As Justice Stephen Breyer explains in his recent book, Making Our Democracy Work: A Judge's View, Americans cannot be controlled by the "dead hands" of one moment frozen in time. The Constitution created a framework, not a Ouija board, precisely because the Framers understood that the prospect of a nation ruled for centuries by dead prophets would be the very opposite of freedom.

### 1AR — AT: Warming

#### No internal link — federalism doesn’t prevent Trump’s dangerous environmental executive orders.

#### Reject Podesta — he’s an unqualified partisan hack who spearheaded the colossal failure of Hillary Clinton’s presidential campaign.

#### No impact for a century — IPCC agrees.

Ridley 15 — Matt Ridley, Fellow of the Royal Society of Literature and of the Academy of Medical Sciences, Foreign Honorary Member of the American Academy of Arts and Sciences, Conservative Member of the House of Lords (UK), Author of several popular science books including *The Rational Optimist: How Prosperity Evolves* and *The Evolution of Everything: How Ideas Emerge*, former Science Editor at *The Economist*, former Visiting Professor at Cold Spring Harbor Laboratory in New York, holds a D.Phil. in Zoology from Magdalen College, Oxford, 2015 (“Climate Change Will Not Be Dangerous for a Long Time,” *Scientific American*, November 27th, Available Online at http://www.scientificamerican.com/article/climate-change-will-not-be-dangerous-for-a-long-time/, Accessed 07-17-2016)

The climate change debate has been polarized into a simple dichotomy. Either global warming is “real, man-made and dangerous,” as Pres. Barack Obama thinks, or it’s a “hoax,” as Oklahoma Sen. James Inhofe thinks. But there is a third possibility: that it is real, man-made and not dangerous, at least not for a long time.

This “lukewarm” option has been boosted by recent climate research, and if it is right, current policies may do more harm than good. For example, the Food and Agriculture Organization of the United Nations and other bodies agree that the rush to grow biofuels, justified as a decarbonization measure, has raised food prices and contributed to rainforest destruction. Since 2013 aid agencies such as the U.S. Overseas Private Investment Corporation, the World Bank and the European Investment Bank have restricted funding for building fossil-fuel plants in Asia and Africa; that has slowed progress in bringing electricity to the one billion people who live without it and the four million who die each year from the effects of cooking over wood fires.

In 1990 the Intergovernmental Panel on Climate Change (IPCC) was predicting that if emissions rose in a “business as usual” way, which they have done, then global average temperature would rise at the rate of about 0.3 degree Celsius per decade (with an uncertainty range of 0.2 to 0.5 degree C per decade). In the 25 years since, temperature has risen at about 0.1 to 0.2 degree C per decade, depending on whether surface or satellite data is used. The IPCC, in its most recent assessment report, lowered its near-term forecast for the global mean surface temperature over the period 2016 to 2035 to just 0.3 to 0.7 degree C above the 1986–2005 level. That is a warming of 0.1 to 0.2 degree C per decade, in all scenarios, including the high-emissions ones.

At the same time, new studies of climate sensitivity—the amount of warming expected for a doubling of carbon dioxide levels from 0.03 to 0.06 percent in the atmosphere—have suggested that most models are too sensitive. The average sensitivity of the 108 model runs considered by the IPCC is 3.2 degrees C. As Pat Michaels, a climatologist and self-described global warming skeptic at the Cato Institute testified to Congress in July, certain studies of sensitivity published since 2011 find an average sensitivity of 2 degrees C.

Such lower sensitivity does not contradict greenhouse-effect physics. The theory of dangerous climate change is based not just on carbon dioxide warming but on positive and negative feedback effects from water vapor and phenomena such as clouds and airborne aerosols from coal burning. Doubling carbon dioxide levels, alone, should produce just over 1 degree C of warming. These feedback effects have been poorly estimated, and almost certainly overestimated, in the models.

The last IPCC report also included a table debunking many worries about “tipping points” to abrupt climate change. For example, it says a sudden methane release from the ocean, or a slowdown of the Gulf Stream, are “very unlikely” and that a collapse of the West Antarctic or Greenland ice sheets during this century is “exceptionally unlikely.”

If sensitivity is low and climate change continues at the same rate as it has over the past 50 years, then dangerous warming—usually defined as starting at 2 degrees C above preindustrial levels—is about a century away. So we do not need to rush into subsidizing inefficient and land-hungry technologies, such as wind and solar or risk depriving poor people access to the beneficial effects of cheap electricity via fossil fuels.

#### Climate change is not catastrophic — their impacts exaggerate.

Tol 14 — Richard Tol, Professor of Economics at the University of Sussex, Professor of the Economics of Climate Change at the Vrije Universiteit Amsterdam, Member of the Academia Europaea—a European non-governmental scientific association, served as Coordinating Lead Author for the IPCC *Fifth Assessment Report Working Group II: Impacts, Adaptation and Vulnerability*, holds a Ph.D. in Economics and an M.Sc. in Econometrics and Operations Research from the VU University Amsterdam, 2014 (“Bogus prophecies of doom will not fix the climate,” *Financial Times*, March 31st, Available Online at <https://next.ft.com/content/e8d011fa-b8b5-11e3-835e-00144feabdc0>, Accessed 07-15-2016)

Humans are a tough and adaptable species. People live on the equator and in the Arctic, in the desert and in the rainforest. We survived the ice ages with primitive technologies. The idea that climate change poses an existential threat to humankind is laughable.

Climate change will have consequences, of course. Since different plants and animals thrive in different climates, it will affect natural ecosystems and agriculture. Warmer and wetter weather will advance the spread of tropical diseases. Seas will rise, putting pressure on all that lives on the coast. These impacts sound alarming but they need to be put in perspective before we draw conclusions about policy.

According to Monday’s report by the Intergovernmental Panel on Climate Change, a further warming of 2C could cause losses equivalent to 0.2-2 per cent of world gross domestic product. On current trends, that level of warming would happen some time in the second half of the 21st century. In other words, half a century of climate change is about as bad as losing one year of economic growth.

Since the start of the crisis in the eurozone, the income of the average Greek has fallen more than 20 per cent. Climate change is not, then, the biggest problem facing humankind. It is not even its biggest environmental problem. The World Health Organisation estimates that about 7m [million] people are now dying each year as a result of air pollution. Even on the most pessimistic estimates, climate change is not expected to cause loss of life on that scale for another 100 years.

## AT: Warming Module

### 2AC — Warming Module

#### No internal link — federal overreach on education policy doesn’t affect state control of environmental policy.

#### Federalism isn’t key — States will fill in anyways.

Waters ‘17

Hannah Waters is an associate editor at Audubon.org. Audubon is a non-profit environmental organization dedicated to conservation. Audubon is one of the oldest of such organizations in the world and uses science, education and grassroots advocacy to advance its conservation mission - “U.S. Exit from Paris Climate Agreement Sets America on Lonely, Misbegotten Path” – Audubon - June 01, 2017 - #CutWithKirby - http://www.audubon.org/news/us-exit-paris-climate-agreement-sets-america-lonely-misbegotten-path

Those actions don’t make the U.S. climate movement hopeless; it just means that the onus to reduce U.S. emissions will fall on citizens, states, and local governments without help from the federal government.

Already around the country, states and cities are setting their own carbon emissions goals and passing laws to meet them. After Trump's address, 61 U.S. mayors made a promise to uphold the goals laid out by the Paris Agreement, while the governors of Washington, New York, and California announced a new climate alliance. California is leading the effort in other ways, too: Yesterday its State Senate passed a bill to produce all of its energy from renewable or zero-carbon sources by 2045. Twenty-eight other states plus Washington, D.C. have set similar renewable energy standards. Many corporations have followed by setting their own reduced emissions targets.

All of these efforts ensure a U.S. market for renewable energy sources, which are already thriving. Solar and wind prices are falling fast, and last year the number of solar installations doubled compared to the year before.

Even though Trump is having the nation exit the Paris Agreement, the American people and local governments can still make a difference and help the countries that remain commited to the pact curb global emissions. If the international community holds it together and millions of U.S. residents commit to climate action locally, Trump may end up being a catalyst for the climate action that he so decries as unfair to American interests.

#### Federalism exacerbates environmental destruction and warming — causes a race to the bottom.

Beasley 17 — Ally Beasley, a Junior Editor on the Michigan Journal of Environmental & Administrative Law, earned a MPH in Public Health from the University of California, Berkeley, and a B.S. in Zoology Biomedical Science from the University of Oklahoma, 2017 ("The Challenges of Federalism in Environmental Regulations: Scott Pruitt and the EPA," *Michigan Journal of Environmental & Administrative Law* Online, June 15th, Available Online at http://www.mjeal-online.org/the-challenges-of-federalism-in-environmental-regulations-scott-pruitt-and-the-epa/, Accessed 07-10-2017, Lil\_Arj)

On February 17, 2017 Congress confirmed former Oklahoma Attorney General Scott Pruitt, an outspoken critic of “federal overreach”[1] as the new Administrator of the U.S. Environmental Protection Agency.[2] The subsequent release of his close ties to major agricultural and oil and gas industry stakeholders[3], put the influence of extractive industries on environmental decision-making in the national spotlight. Does Pruitt’s problematic history in Oklahoma and determination to fight “federal overreach” indicate a grim future for the EPA?

Pruitt’s legacy in Oklahoma and statements about his future plans do not bode well for an EPA whose mission is to “protect human health and the environment.”[4] First, his demonstrated collusion with the oil and gas industry as Oklahoma Attorney General is not likely to subside when he is acting as Administrator of the EPA. At the time of this writing, additional information is still emerging regarding the full nature and extent of these industry ties.[5] Second, and relatedly, Pruitt’s dedication to a concept of federalism that prioritizes the interests of extractive industries in the name of “state sovereignty”[6] is not compatible with leading a federal agency in combating environmental problems such as climate change and pollution that transcend geopolitical boundaries.

Pruitt’s biography page on the EPA website emphasizes his zeal for minimizing federal regulations.[7] The bio states, “he is recognized as a national leader in the cause to restore the proper balance between the states and federal government, and he established Oklahoma’s first federalism unit to combat unwarranted regulation and overreach by the federal government.”[8] The Oklahoma Attorney General’s Office describes the “federalism unit” as “dedicated to representing the interests of the state and challenging the federal government when it has overreached its authority and encroached on the state’s ability to craft its own solutions…”[9]

One need only look to environmental and public health disasters such as Love Canal[10] and Valley of the Drums[11], which prompted the enactment of CERCLA (aka the Superfund act) in 1980, for reminders of the potentially dire consequences of leaving environmental regulation to the states. Then again, Pruitt has espoused skepticism about anthropogenic climate change, including during his confirmation hearing, in which he acknowledged that “human activity contributes to [climate change] in “some manner” but questioned the conclusiveness of the science on the need to implement mitigation and adaptation measures and curtail greenhouse gas emissions.[12] Most recently, he has expressed doubt that Carbon Dioxide is a major contributor to climate change.[13] Accordingly, some states might actually be better equipped to combat these pressing environmental issues than the federal government under the current administration. Overall, however, the highly variable and uneven nature of states’ willingness to prioritize protection of public health and the environment both illustrates and exacerbates the problem with Pruitt at the helm of the EPA.

Oklahoma provides a case study for these problems. The oil and gas industries have long been an integral and controversial segment of Oklahoma’s economy. A short drive through downtown Oklahoma City reveals several buildings, office parks, and sports arenas bearing the names of prominent energy companies such as Devon and Chesapeake.[14] As of 2016, Oklahoma ranked 5th in the nation in crude oil and total energy production,[15] and 3rd in the nation for natural gas production,[16] producing about 1/10th of the nation’s natural gas.[17] It also ranked 17th in CO2 emissions as of 2014,[18] despite ranking 28th in population and 35th in population density.[19]

However, jobs and environmental protection are not and do not need to be diametrically opposed. For one, renewable energy can be a promising option for energy-producing states like Oklahoma, which already contributes considerably to wind-energy production and has the potential to supply wind power to about 10% of the nation.[20] That said, certain existing industry practices with detrimental effects on the environment and public health can and should be curtailed. For example, several Oklahoma citizens, academics, and environmental groups have expressed concern over the effects of hydraulic fracturing (fracking) on drinking water and seismic activity in the state.[21] In a November 2016 letter, EPA Region 6 leaders expressed concern that Oklahoma was not doing enough to address these issue.[22] Despite Pruitt’s assurance that fracking is “nothing new” and Oklahoma has had a “robust regulatory scheme” since the 1940s,[23] the number of earthquakes registering over a 3.0 has increased over tenfold since 2010, with a dramatic jump from a range of 35-67 in 2010-2012 to 110 in 2013 and a range of 579 to a high of 903 in 2014-2016.[24] The Oklahoma Geological Survey consensus is that these quakes cannot be attributed entirely to “natural causes”[25] and the quakes have already caused considerable damage in parts of the state, particularly in tribal communities. The Pawnee Nation recently sued several oil companies for wastewater injection activity near the epicenter of a damaging 5.8 earthquake last fall.[26] Additionally, despite the skepticism and outright denial of anthropogenic climate change by Pruitt and by Oklahoma senators such as Jim Inhofe[27], Oklahoma is already seeing detrimental effects of climate change[28]. Increased drought, heat, and extreme weather events such as the tornadoes and severe storms for which Oklahoma is already infamous will continue to threaten public health and agricultural production.[29]

Despite these scientifically valid concerns, Pruitt has continued to place industry interests above public health and environmental protection in Oklahoma. He has sued the Environmental Protection Agency of which he is now in charge of 14 times, and in 13 of those suits, stakeholders from regulated industries (primarily agriculture/factory farms and energy) were parties.[30] In these suits, Pruitt and his industry allies and fellow state Attorney Generals tied to extractive industries challenged the EPA’s cross-state pollution rule,[31] limits on mercury that would save tens of thousands of lives,[32] the Clean Power Plan (multiple times)[33] and even the Clean Water Rule (aka the Waters of the United States Rule, expanding federal jurisdiction over certain surface waters to combat pollution),[34] despite his espoused commitment to preserving clean water. The legal hook for Pruitt in most of these cases rested on assertions that the EPA was overstepping its authority and unduly intruding on state sovereignty, although in many instances, he also mentioned what he saw as unnecessarily burdensome costs to industry imposed by EPA regulations.[35] In many of these cases, such as the 2013 opposition to the Clean Air Rule, the Courts didn’t buy appellants’ arguments about federal overreach.[36]

While some states may indeed be well-equipped to tackle challenges such as climate change and pollution, and states are already charged with several aspects of environmental protection under the current EPA structure, Oklahoma illustrates that leaving environmental protection solely to the states could leave states with heavy ties to extractive industries unprotected or even encourage a “race to the bottom” to attract ostensibly lucrative polluting industries to states with lax environmental standards.[37]

Pruitt’s plans for the EPA are not yet set in stone, and not all of them may come to fruition. However, his industry ties and recent statements he has made about climate change are cause for concern. In statements to CNBC just last week[38] Pruitt expressed that he does not believe that Carbon Dioxide is a primary contributor to global warming, despite scientific consensus to the contrary.[39] If his attitudes towards the role of the federal government in regulating polluting industries and his statements about climate change are indicative of the EPA’s future under his auspices, he may attempt to delay the development of new rules and standards (including elements of the Clean Power Plan, which, as mentioned previously, he repeatedly challenged while Oklahoma Attorney General), scale back enforcement of environmental regulations, place more industry-friendly voices on his scientific advisory boards, and attempt to shrink the EPA’s budget. Recent news reports indicate that the EPA’s budget could be cut by as much as 25%, severely diminishing not only capacity at federal headquarters, but also in the regional offices that play a more direct role in assisting states with their own environmental regulatory efforts.[40] In a recent speech to EPA employees, Pruitt emphasized the importance of states and his concept of federalism, and, in a telling omission, listed the “stakeholders” with whom he was committed to working: “industry, farmers, ranchers, and business owners” but not community groups (particularly those in overburdened or under-resourced communities), concerned citizens, scientists, health organizations, or environmental groups.[41] Given the lengthy process by which EPA promulgates new rules and re-writes old ones,[42] and the opportunity for groups to sue the EPA when it fails to enforce its own statutes,[43] it seems likely that Pruitt’s EPA will scale back environmental regulation through inaction, deference to industry and “state sovereignty,” and budget cuts rather than overt re-writing of the law. With issues such as climate change, however, the nation and the planet cannot afford stagnation. Global average CO2 levels already appear to have permanently surpassed the symbolic threshold of 400 parts per million (ppm), significantly reducing the chances of curtailing global temperature rise beyond the 2° Celsius goal reached in the Paris Agreement,[44] an critical international climate agreement that Pruitt has called “a bad deal.”[45] An issue so urgent, with causes and effects that do not obey state or national borders, cannot be left solely to the states.

#### No impact for a century — IPCC agrees.

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The climate change debate has been polarized into a simple dichotomy. Either global warming is “real, man-made and dangerous,” as Pres. Barack Obama thinks, or it’s a “hoax,” as Oklahoma Sen. James Inhofe thinks. But there is a third possibility: that it is real, man-made and not dangerous, at least not for a long time.

This “lukewarm” option has been boosted by recent climate research, and if it is right, current policies may do more harm than good. For example, the Food and Agriculture Organization of the United Nations and other bodies agree that the rush to grow biofuels, justified as a decarbonization measure, has raised food prices and contributed to rainforest destruction. Since 2013 aid agencies such as the U.S. Overseas Private Investment Corporation, the World Bank and the European Investment Bank have restricted funding for building fossil-fuel plants in Asia and Africa; that has slowed progress in bringing electricity to the one billion people who live without it and the four million who die each year from the effects of cooking over wood fires.

In 1990 the Intergovernmental Panel on Climate Change (IPCC) was predicting that if emissions rose in a “business as usual” way, which they have done, then global average temperature would rise at the rate of about 0.3 degree Celsius per decade (with an uncertainty range of 0.2 to 0.5 degree C per decade). In the 25 years since, temperature has risen at about 0.1 to 0.2 degree C per decade, depending on whether surface or satellite data is used. The IPCC, in its most recent assessment report, lowered its near-term forecast for the global mean surface temperature over the period 2016 to 2035 to just 0.3 to 0.7 degree C above the 1986–2005 level. That is a warming of 0.1 to 0.2 degree C per decade, in all scenarios, including the high-emissions ones.

At the same time, new studies of climate sensitivity—the amount of warming expected for a doubling of carbon dioxide levels from 0.03 to 0.06 percent in the atmosphere—have suggested that most models are too sensitive. The average sensitivity of the 108 model runs considered by the IPCC is 3.2 degrees C. As Pat Michaels, a climatologist and self-described global warming skeptic at the Cato Institute testified to Congress in July, certain studies of sensitivity published since 2011 find an average sensitivity of 2 degrees C.

Such lower sensitivity does not contradict greenhouse-effect physics. The theory of dangerous climate change is based not just on carbon dioxide warming but on positive and negative feedback effects from water vapor and phenomena such as clouds and airborne aerosols from coal burning. Doubling carbon dioxide levels, alone, should produce just over 1 degree C of warming. These feedback effects have been poorly estimated, and almost certainly overestimated, in the models.

The last IPCC report also included a table debunking many worries about “tipping points” to abrupt climate change. For example, it says a sudden methane release from the ocean, or a slowdown of the Gulf Stream, are “very unlikely” and that a collapse of the West Antarctic or Greenland ice sheets during this century is “exceptionally unlikely.”

If sensitivity is low and climate change continues at the same rate as it has over the past 50 years, then dangerous warming—usually defined as starting at 2 degrees C above preindustrial levels—is about a century away. So we do not need to rush into subsidizing inefficient and land-hungry technologies, such as wind and solar or risk depriving poor people access to the beneficial effects of cheap electricity via fossil fuels.

### 1AR — Federalism Isn’t Key

#### Paris withdraw has spurred States to compensate for Federal inaction.

Uren ‘17

Adam Uren – Senior Producer, Go Media and 2014 winner of the Online Journalist of the Year as awarded by The Association of British Insurers Financial Media Awards - “4 reasons why the U.S. leaving Paris climate deal might not be the end of the world” – Go MN - June 5, 2017 - #CutWithKirby - http://www.gomn.com/news/4-reasons-u-s-leaving-paris-climate-deal-might-not-end-world/

As we say above, the Paris Agreement was a series of voluntary commitments to reducing emissions, but now that the U.S. is no Longer pursuing these emissions targets at the federal Level, it doesn't stop governments from doing so at the state and local level.

In the wake of Trump's decision, the states of California, Washington and New York formed a coalition committed to upholding the Paris accord, which has since been joined by 10 more states (including Minnesota). Between them, more than 30 percent of U.S. carbon emissions come from these states.

In Minnesota, although he said the decision to withdraw was "damaging," gov. Mark Dayton said his state would continue to pursue its aggressive strategy to reduce carbon and other greenhouse gas emissions.

A similar coalition has been springing up at city-level as well, with St. Paul Mayor Chris Coleman and Minneapolis Mayor Betsy Hodges among the mayors of 82 cities that as of Friday had pledged to uphold the spirit of the Paris Agreement.

The White House is actively encouraging this, with spokesman Sean Spicer saying on Friday, according to the Malt online: "We believe in states' rights and so, if a locality, municipality or a state wants to enact a policy that their voters, or their citizens believe in, then that's what they should do."

### 1AR — Federalism Causes Warming

#### Their author concludes federal action is key — they can’t solve.

Burtraw 17 — Dallas Burtraw, Darius Gaskins Senior Fellow with the nonpartisan think tank Resources for the Future, served on the National Academy of Sciences Board on Environmental Studies and Toxicology and on the U.S. Environmental Protection Agency’s Advisory Council on Clean Air Compliance Analysis, served on California’s Economic and Allocation Advisory Committee advising the governor’s office and the Air Resources Board on implementation of the state’s climate law, earned a PhD in economics from the University of Michigan, an MPP in public policy from the University of Michigan, and a BS in community economic development from University of California at Davis, 2017 (“States Could Take Lead On Environmental Regulation Under Trump,” *NPR*, January 18th, Available Online at <http://www.npr.org/2017/01/18/510472419/states-could-take-lead-on-environmental-regulation-under-trump>, Accessed 07-10-2017)

But the problems cannot ultimately be solved without some sort of federal involvement. The states can go so far, but they cannot really leverage the kind of actions that's necessary, especially on climate, at the international level. That requires a role for the federal government to coordinate and compel international partners to do their part.

### 1AR — No Warming Impact

#### Climate change is not catastrophic — their impacts exaggerate.

Tol 14 — Richard Tol, Professor of Economics at the University of Sussex, Professor of the Economics of Climate Change at the Vrije Universiteit Amsterdam, Member of the Academia Europaea—a European non-governmental scientific association, served as Coordinating Lead Author for the IPCC *Fifth Assessment Report Working Group II: Impacts, Adaptation and Vulnerability*, holds a Ph.D. in Economics and an M.Sc. in Econometrics and Operations Research from the VU University Amsterdam, 2014 (“Bogus prophecies of doom will not fix the climate,” *Financial Times*, March 31st, Available Online at <https://next.ft.com/content/e8d011fa-b8b5-11e3-835e-00144feabdc0>, Accessed 07-15-2016)

Humans are a tough and adaptable species. People live on the equator and in the Arctic, in the desert and in the rainforest. We survived the ice ages with primitive technologies. The idea that climate change poses an existential threat to humankind is laughable.

Climate change will have consequences, of course. Since different plants and animals thrive in different climates, it will affect natural ecosystems and agriculture. Warmer and wetter weather will advance the spread of tropical diseases. Seas will rise, putting pressure on all that lives on the coast. These impacts sound alarming but they need to be put in perspective before we draw conclusions about policy.

According to Monday’s report by the Intergovernmental Panel on Climate Change, a further warming of 2C could cause losses equivalent to 0.2-2 per cent of world gross domestic product. On current trends, that level of warming would happen some time in the second half of the 21st century. In other words, half a century of climate change is about as bad as losing one year of economic growth.

Since the start of the crisis in the eurozone, the income of the average Greek has fallen more than 20 per cent. Climate change is not, then, the biggest problem facing humankind. It is not even its biggest environmental problem. The World Health Organisation estimates that about 7m [million] people are now dying each year as a result of air pollution. Even on the most pessimistic estimates, climate change is not expected to cause loss of life on that scale for another 100 years.

#### No catastrophic impact — they overestimate the predictive power of models.

Ridley 15 — Matt Ridley, Fellow of the Royal Society of Literature and of the Academy of Medical Sciences, Foreign Honorary Member of the American Academy of Arts and Sciences, Conservative Member of the House of Lords (UK), Author of several popular science books including *The Rational Optimist: How Prosperity Evolves* and *The Evolution of Everything: How Ideas Emerge*, former Science Editor at *The Economist*, former Visiting Professor at Cold Spring Harbor Laboratory in New York, holds a D.Phil. in Zoology from Magdalen College, Oxford, 2015 (“My Life As A Climate Lukewarmer,” *Times* (UK), January 19th, Available Online at <http://www.rationaloptimist.com/blog/my-life-as-a-climate-lukewarmer.aspx>, Accessed 07-16-2016)

I was not always a lukewarmer. When I first started writing about the threat of global warming more than 26 years ago, as science editor of The Economist, I thought it was a genuinely dangerous threat. Like, for instance, Margaret Thatcher, I accepted the predictions being made at the time that we would see warming of a third or a half a degree (Centigrade) a decade, perhaps more, and that this would have devastating consequences.

Gradually, however, I changed my mind. The failure of the atmosphere to warm anywhere near as rapidly as predicted was a big reason: there has been less than half a degree of global warming in four decades — and it has slowed down, not speeded up. Increases in malaria, refugees, heatwaves, storms, droughts and floods have not materialised to anything like the predicted extent, if at all. Sea level has risen but at a very slow rate — about a foot per century.

Also, I soon realised that all the mathematical models predicting rapid warming assume big amplifying feedbacks in the atmosphere, mainly from water vapour; carbon dioxide is merely the primer, responsible for about a third of the predicted warming. When this penny dropped, so did my confidence in predictions of future alarm: the amplifiers are highly uncertain.

Another thing that gave me pause was that I went back and looked at the history of past predictions of ecological apocalypse from my youth – population explosion, oil exhaustion, elephant extinction, rainforest loss, acid rain, the ozone layer, desertification, nuclear winter, the running out of resources, pandemics, falling sperm counts, cancerous pesticide pollution and so forth. There was a consistent pattern of exaggeration, followed by damp squibs: in not a single case was the problem as bad as had been widely predicted by leading scientists. That does not make every new prediction of apocalypse necessarily wrong, of course, but it should encourage scepticism.

What sealed my apostasy from climate alarm was the extraordinary history of the famous “hockey stick” graph, which purported to show that today’s temperatures were higher and changing faster than at any time in the past thousand years. That graph genuinely shocked me when I first saw it and, briefly in the early 2000s, it persuaded me to abandon my growing doubts about dangerous climate change and return to the “alarmed” camp.

Then I began to read the work of two Canadian researchers, Steve McIntyre and Ross McKitrick. They and others have shown, as confirmed by the National Academy of Sciences in the United States, that the hockey stick graph, and others like it, are heavily reliant on dubious sets of tree rings and use inappropriate statistical filters that exaggerate any 20th-century upturns.

What shocked me more was the scientific establishment’s reaction to this: it tried to pretend that nothing was wrong. And then a flood of emails was leaked in 2009 showing some climate scientists apparently scheming to withhold data, prevent papers being published, get journal editors sacked and evade freedom-of-information requests, much as sceptics had been alleging. That was when I began to re-examine everything I had been told about climate change and, the more I looked, the flakier the prediction of rapid warming seemed.

I am especially unimpressed by the claim that a prediction of rapid and dangerous warming is “settled science”, as firm as evolution or gravity. How could it be? It is a prediction! No prediction, let alone in a multi-causal, chaotic and poorly understood system like the global climate, should ever be treated as gospel. With the exception of eclipses, there is virtually nothing scientists can say with certainty about the future. It is absurd to argue that one cannot disagree with a forecast. Is the Bank of England’s inflation forecast infallible?

#### Our impact defense is consistent with the scientific consensus.

Ridley 15 — Matt Ridley, Fellow of the Royal Society of Literature and of the Academy of Medical Sciences, Foreign Honorary Member of the American Academy of Arts and Sciences, Conservative Member of the House of Lords (UK), Author of several popular science books including *The Rational Optimist: How Prosperity Evolves* and *The Evolution of Everything: How Ideas Emerge*, former Science Editor at *The Economist*, former Visiting Professor at Cold Spring Harbor Laboratory in New York, holds a D.Phil. in Zoology from Magdalen College, Oxford, 2015 (“My Life As A Climate Lukewarmer,” *Times* (UK), January 19th, Available Online at <http://www.rationaloptimist.com/blog/my-life-as-a-climate-lukewarmer.aspx>, Accessed 07-16-2016)

Incidentally, my current view is still consistent with the “consensus” among scientists, as represented by the reports of the Intergovernmental Panel on Climate Change. The consensus is that climate change is happening, not that it is going to be dangerous. The latest IPCC report gives a range of estimates of future warming, from harmless to terrifying. My best guess would be about one degree of warming during this century, which is well within the IPCC’s range of possible outcomes.

Yet most politicians go straight to the top of the IPCC’s range and call climate change things like “perhaps the world’s most fearsome weapon of mass destruction” (John Kerry), requiring the expenditure of trillions of dollars. I think that is verging on grotesque in a world full of war, hunger, disease and poverty. It also means that environmental efforts get diverted from more urgent priorities, like habitat loss and invasive species.

#### Our authors aren’t climate deniers — the IPCC is on *our* side.

Wente 14 — Margaret Wente, Columnist for *The Globe and Mail*, Director of the Energy Probe Research Foundation, holds an M.A. in English from the University of Toronto, 2014 (“Don’t bash the global lukewarmers,” *The Globe & Mail*, April 10th, Available Online at <http://www.theglobeandmail.com/opinion/dont-bash-the-global-lukewarmers/article17906081/>, Accessed 07-17-2016)

What if global warming isn’t an existential threat to the planet after all? What if many of its impacts are more or less manageable? Wouldn’t that be a relief?

Well, no. Not if you’re Greenpeace or the Sierra Club, or any number of environmental activists who need prophecies of doom to raise money. Not if you’re a climate scientist who depends on a steady stream of research funding to stay in business. Not if you’re a politician who likes to bash the other side for its appalling lack of action.

But that’s what the UN’s own panel on climate change suggests. Compared to its last report in 2007, the new Intergovernmental Panel on Climate Change report released last week is notably more subdued. Gone are the melting Himalayan glaciers, the monster hurricanes, the millions of climate refugees fleeing floods and drought. It says no species have yet been extinguished by climate change. And, it says, there’s a lot we can do to adapt.

You won’t have caught this nuance in media reports, which relied on a far more dramatic 49-page summary. Worst Is Yet To Come, said a headline in the New York Times. The CBC, for instance, used the report as an excuse to bash the Harper government for not restricting coal exports.

Almost all reporting about climate change is binary: There are warmers and deniers, and few in between. But the real fight isn’t like that at all, observes climate critic Matt Ridley. It’s between warmers and lukewarmers – people who believe climate change is an urgent, existential threat and those who think it’s not that big a deal.

Unfortunately, the warmers have done their best to lump the lukewarmers in with the deniers. When Richard Tol, a Dutch professor of the economics of climate change, withdrew from the IPCC writing team because he thought the tone was too alarmist, he was denounced and ostracized. His belief is that by the end of the century, the overall effects of climate change will be damaging – but that warming will also have some positive effects that shouldn’t be ignored. “The idea that climate change poses an existential threat to humankind is laughable,” he wrote in the Financial Times.

“I don’t think anybody really knows what’s happening,” James Lovelock, the eminent environmental scientist, told the British Broadcasting Corp. last week. “They just guess.” He told the Guardian that environmentalism “has become a religion,” and doesn’t pay enough attention to the facts.

Much of the public seems to agree. The number of Americans who think the news media are exaggerating global warming has grown to 42 per cent, according to Gallup – and the fear-based approach has clearly backfired, Ted Nordhaus and Michael Shellenberger of the Breakthrough Institute wrote recently in The New York Times. If anything, it increases people’s skepticism about the problem. It’s not hard to figure out why. Cry “wolf” too often, and people start to tune you out.

For what it’s worth, this is not an argument for doing nothing. It would be good to reduce our dependency on fossil fuels. Energy companies should be held to high environmental standards. Yet no matter what we do, the world is not about to give up fossil fuels, and cheap, reliable substitutes are a long way down the road.

Personally, I wish we’d spend more time on real catastrophes today than on hypothetical ones half a century from now. Perhaps the worst environmental problem in the world is indoor air pollution from cooking fires, which kills 4.3 million people a year prematurely – mostly women and children. Maybe we could do something about that.

I can’t predict what the temperature will be 50 years from now, and neither can anybody else. What I will predict is that historians will look back and marvel that we got so hysterical about global warming. The planet is resilient. And people are, too.

## AT: Leadership Module

### 2AC — Leadership Impact Module

#### No internal link — the federal government is compartmentalized. Education policies don’t distract State and Defense from conducting foreign policy.

#### No U.S. leadership impact — benefits are empirically disproven.

White 16 — Hugh White, Professor of Strategic Studies at the Australian National University, former Intelligence Analyst with Australia’s Office of National Assessments and Senior Official with Australia’s Department of Defence, 2016 (“What’s So Great About American World Leadership?,” *The Atlantic*, November 23rd, Available Online at <https://www.theatlantic.com/international/archive/2016/11/trump-world-order-foreign-policy/508547/>, Accessed 02-19-2017)

So it appears the American electorate no longer accepts the American role in the world that policymakers have long taken for granted. And what if the electorate is right? Maybe the foreign-policy assumptions of the past few decades do need to be overhauled. The record, after all, is not very impressive. So far this century, America has failed to achieve most of the key national-security objectives it has set for itself.

Does that sound harsh? Here is a list, in no particular order, of some key goals both the Bush and Obama administrations set for themselves in foreign policy: Prevent North Korea getting nuclear weapons; prevent Iran getting nuclear weapons and contain its growing influence in the Middle East; transform Iraq and Afghanistan into stable, progressive, pro-Western states, or at least leave them as minimally functioning countries; contain and eventually crush jihadist extremism; harness the Arab Spring to enhance U.S. influence in the Arab world; reconcile Russia to the U.S.-led order and resist its efforts to rebuild a sphere of influence in Eastern Europe; resist China’s challenge to the U.S.-led order in Asia; broker a durable settlement between Israel and the Palestinians; and prevent another 9/11 on U.S. soil.

Of all these, the only clear success is the avoidance of another direct major attack on America itself. The nuclear deal with Iran may prove a partial success, but even there the best we can hope is that an Iranian nuclear capability has been deferred. All the rest have been total failures. And yet these are exactly the kind of goals that America should have been able to achieve if it was to fulfill the orthodox vision of its global leadership. That vision is, or has been, that America can and should create and uphold in every region of the world an international order which is based on American values and which supports America’s interests. And it should be able to do that without incurring the immense costs and risks it bore in the conflicts of the last century. It is a noble vision, and the world would be a better place if it was realized. But the record suggests it does not corresponded to reality. We’d better ask why.

#### Impact not unique — USFG domestic responsibilities are already massive. *Housing*, *infrastructure*, *Social Security*, and *job training* distract the USFG regardless of the plan.

#### Rivlin is wrong — “marble cake” federalism is good and inevitable.

Kincaid 95 — John Kincaid, Robert B. and Helen S. Meyner Professor of Government and Public Service and Director of the Meyner Center for the Study of State and Local Government at Lafayette College, Editor of *Publius*—The Journal of Federalism, former Executive Director of the U.S. Advisory Commission on Intergovernmental Relations, 1995 (“Foreword: The New Federalism Context of The New Judicial Federalism,” *Rutgers Law Journal* (26 Rutgers L.J. 913), Available Online to Subscribing Institutions via Hein Online, Accessed 06-26-2017, Lil\_Arj)

A private committee chaired by U.S. Senators Daniel J. Evans and Charles S. Robb proposed another swap in 1985.27 Reagan had convinced the Congress to consolidate 77 categorical grants into nine block grants in 1981 and otherwise reduce. the total number of funded grants from 539 in 1981 to 404 by 1984.28 However, the Congress soon increased the number of grants again, to 492 in 1989 and then 633 by 1995.29 More recently, Alice M. Rivlin, Director of President Clinton's Office of Management and Budget, proposed that the federal government "eliminate most of its programs in education, housing, highways, social services, economic development, and job training" so that the states can "take charge" of the nation's "productivity [End Page 918] agenda." 30 In turn, the federal government would ensure basic, universal health-care coverage and control health costs while also producing budget surpluses. President Clinton's "reinventing government" program includes sorting-out plans and proposals to consolidate many of the federal government's 633 grants-in-aid into a small number of block grants.3 1

The U.S. Supreme Court also endeavored to sort out federal and state functions during this period by trying, in National League of Cities v. Usery,32 to identify traditional state functions meriting Tenth Amendment protection against federal intrusion. Soon after this decision, however, the Court found it impossible to sort out such functions, especially state functions, and virtually abandoned the field nine years later, instructing the states to rely on the national political process rather than on the federal judicial process to protect their functional powers against federal encroachment. 33

If these political and judicial attempts to sort out functions have largely floundered in political and policy complexity, it should not be surprising that judges across the fifty states have not, during the same period, thoroughly sorted out their respective obligations under the Federal Constitution and their state constitution, or articulated a common, coherent theory of state constitutional jurisprudence distinct from federal constitutional jurisprudence. The federal system is, as Morton Grodzins observed, too fluid and chaotic to permit such neat theoretical developments in any definitive fashion.34 Grodzins did not regard this chaos as a failure, but as a generally positive feature of a democratic federal system premised on diversity, redundancy, multiple access to representative institutions, and checks and balances rather than on more streamlined principles of political centralization and administrative decentralization advocated by Tocqueville to accommodate what he regarded as the simple-minded intelligence of a [End Page 919] democratic age.35 This is not to recommend chaos theory as a new paradigm for state constitutional law analysis, but only to suggest that the complex rationality of a federal system observed by Tocqueville may, like a free-speech market, give the appearance of unintelligibility, even while a pattern of ordered discourse may be at work to bring emergent properties of the system into view.

#### Trump’s dysfunctionality makes the impact inevitable.

Sokolsky and Miller 17 — Richard Sokolsky, Nonresident Senior Fellow in the Russia and Eurasia Program at the Carnegie Endowment for International Peace, former Member of the Secretary of State’s Policy Planning Office, holds an M.A. from the School of Advanced International Studies at Johns Hopkins University, and Aaron David Miller, Distinguished Scholar and Vice President for New Initiatives at the Woodrow Wilson International Center for Scholars, served in the U.S. Department of State for 24 years, holds a Ph.D. in American Diplomatic and Middle East History from the University of Michigan, 2017 (“Trump’s Foreign Policy: 100 Days of Global Bafflement,” *Politico*, April 24th, Available Online at <http://carnegieendowment.org/2017/04/24/trump-s-foreign-policy-100-days-of-global-bafflement-pub-68763>, Accessed 06-27-2017)

3. Trump’s Foreign Policy Process Is Deeply Dysfunctional.

There have been times during the past 100 days when the administration looked like the gang who couldn’t shoot straight. Of course, all administrations suffer from infighting and turf wars, and new administrations always take some time to get their sea legs. But in the six administrations in which we worked, we have never seen a national security decision making process as dysfunctional as this one. What makes it so?

First, there is the president’s heavy-handed and uncoordinated intervention in the policy making process. His off-hours twitter storms have left allies and friends uncertain and confused about U.S. policies and intentions. Being unpredictable can sometimes create leverage in a transaction, but when taken to an extreme, as has happened, it can also damage American credibility, leadership and influence.

Second, there is the cacophony of voices—or in some cases no voices at all. On a number of issues, notably U.S. policy toward Syria, Israeli-Palestinian peace and North Korea, the president and his foreign policy team are not using the same set of talking points—as when U.S. Ambassador to the U.N. Nikki Haley declared that peace in Syria would require Assad’s departure while Tillerson stated that Assad’s fate was up to the Syrian people to decide. The mixed signals sow further confusion and doubt about who’s speaking for the administration on foreign policy. The failure so far of Tillerson and the State Department to effectively articulate and explain U.S. foreign policy is a particular problem, leaving foreign governments guessing about American plans.

Third, effective policy coordination and execution has been MIA largely because almost none of the key policy positions at State or Defense has been filled. Without officials at the deputy, under secretary, assistant secretary, and deputy assistant secretary levels offering ideas, issuing strategic direction and policy guidance, the bureaucracy is left rudderless and U.S. embassies are left without instructions or guidance to explain American policy to the host government.

Fourth, all administrations like to centralize control over sensitive foreign policy issues in the White House, but this typically occurs within a structured interagency decision-making process; ideas bubble up through the bureaucracy in the form of papers, meetings and more meetings. We have seen no evidence that such a process is in place on most issues; instead, there is an ad hoc and improvisational quality to many of Trump’s decisions. More importantly, the portfolios for many important foreign policy issues, such as China, Mexico and Middle East peace, have been handed to Jared Kushner, the president’s son-in-law, a foreign policy neophyte overloaded with responsibilities that no mortal can manage and lacking the government experience to work the system to see his preferences enacted.

Kelly, Mattis, McMaster and Tillerson have had a modicum of success lately in bringing a semblance of order to an unruly process. But the administration still does not have the right people in the right positions and with the right process to consistently produce, articulate and implement coherent and sustainable policies.

Over time, this situation may improve as the president begins to understand that people, process and experience matter, and that you can’t have an effective foreign policy without them. But we’re betting the current dysfunction isn’t going to disappear quickly. This will not be a linear process—there will be more zigs and zags because all too often Trump will continue to be Trump—impulsive, pugilistic and volatile.

#### Disaster response turn —

#### A. Federalism fails to respond to crises — cooperation is essential.

Donahue & Tuohy 6 — Amy K. Donahue, an associate professor of Public Policy at the University of Connecticut, has served as a technical advisor to the Office and Department of Homeland Security, and served as Senior Advisor to the NASA administrator, holds a Ph.D. in Public Administration and a M.P.A. from the Maxwell School of Citizenship and Public Affairs at Syracuse University, and Robert V. Tuohy, Vice President for Strategic Planning at Hicks & Associates, assists the Department of Homeland Security in assessing emergency response preparedness and addressing the nation’s Border & Transportation Security technology needs, served as the director of Science and Technology Plans & Programs in the Office of the Secretary of Defense, holds a B.A. in Applied Behavioral Sciences from the National-Louis University, and an M.S. in Science and Technology Commercialization from the University of Texas at Austin, 2006 (“Lessons We Don’t Learn: A Study of the Lessons of Disasters, Why We Repeat Them, and How We Can Learn Them,” *Homeland Security Affairs*, Article 4, Summer, Available Online at <https://www.hsaj.org/articles/167>, Accessed 06-26-2017)

Conclusions

The fact that challenges to learning lessons persist, despite regular experience with them, is a serious concern. In today’s environment, where the emergency response mission space is expanding dramatically to include broader homeland security responsibilities, the ability to capitalize on experience and improve capacity is ever more important. But organizations cannot just be told to “change.” Enduring change needs to address the structure, system, and culture of an organization so that patterns of behavior can be adjusted. Truly institutionalizing a new process requires long-term commitment. This is what makes learning processes especially vulnerable: there are too many short-term distracters. Other political priorities, sensational concerns like terrorism, workforce turnover, other concurrent organizational change efforts, and daily missions all conspire to derail organizational transition. As a practical matter, then, the main problem with lesson learning can be seen as a lack of will and commitment, rather than a lack of ability. If lessons learned become a priority for leaders – especially local leaders who will be called to manage disasters directly – then lessons learned have a better chance of becoming a priority for everybody. Moreover, this commitment needs to be vertical; federal agencies must also commit to identifying and learning the lessons that are relevant to them. As one responder put it, “You can fix all the wagons locally, but if the wheels fall off FEMA’s wagon, the system fails.”

An additional conclusion is that most big lessons are inter-agency lessons. Learning them requires learning within and across agencies. It is not enough for agencies to try to learn these kinds of lessons in isolation. Despite its profound advantages, federalism gets in our way: we have national, state, and local governments but few robust regional forums for decision-making. Our system lacks substantial support and incentives for regional (multi-state within the nation, or multi-local within and across states) activities and for broad integration across the response disciplines. Disasters are regional – they do not recognize jurisdictional boundaries or disciplinary parochialism. Our systems for learning from disasters must therefore span these barriers.

#### B. Unmitigated disasters increase the risk of war — new research.

Carrington 16 — Damian Carrington, head of environment at the Guardian, internally citing Professor John Schellnhuber, director of the Potsdam Institute for Climate Impact Research in Germany, 2016 (“Disasters linked to climate can increase risk of armed conflict,” *The Guardian*, July 25th, Available Online at <https://www.theguardian.com/environment/2016/jul/25/disasters-linked-to-climate-can-increase-risk-of-armed-conflict>, Accessed 06-28-2017, Lil\_Arj)

Climate-related disasters increase the risk of armed conflicts, according to research that shows a quarter of the violent struggles in ethnically divided countries were preceded by extreme weather.

The role of severe heatwaves, floods and storms in increasing the risk of wars has been controversial, particularly in relation to the long drought in Syria. But the new work reveals a strong link in places where the population is already fractured along ethnic lines.

Previous work has shown a correlation between climate disasters and fighting but the new analysis shows the disasters precede the conflict, suggesting a causal link. Experts have warned that an increase in natural disasters due to global warming is a “threat multiplier” for armed violence. The scientists behind the new research say it could be used to predict where future violence might flare, allowing preventative measures to be taken.

“Armed conflicts are among the biggest threats to people, killing some and forcing others to leave their home and maybe flee to faraway countries,” said Prof John Schellnhuber, director of the Potsdam Institute for Climate Impact Research in Germany and one of the research team. The combination of climate disasters and ethnic tensions make an “explosive mixture,” he said.

“People have speculated about climate links with conflict: some people say yes, some say no. But we find a really robust link,” Schellnhuber said.

“Economic and social disruption caused by climate disasters are in general not significantly linked to the outbreak of armed conflict, except in one class of countries or regions: where you have pre-fracturing by ethnic difference. The analysis also shows clearly the shock precedes the conflict era and so this is the first step to unravel the causal tangle involved in this environment-conflict relationship.”

The research, published in the Proceedings of the National Academy of Sciences, found that 23% of the armed conflicts in ethnically divided places were linked to climate disasters, compared to just 9% of all armed conflicts. Schellnhuber speculated that ethnic divisions might mean that the impact of a climate disaster would disproportionately impact one group more than another, due to their location or poverty level. “People immediately start scapegoating then,” he said.

The research team concluded: “This has important implications for future security policies as several of the world’s most conflict-prone regions, including north and central Africa as well as central Asia, are both exceptionally vulnerable to [manmade] climate change and characterised by deep ethnic divides.

“Recent analyses of the societal consequences of droughts in Syria and Somalia indicate that such climatological events may have already contributed to armed conflict outbreaks or sustained the conflicts in both countries.”

Schellnhuber said the climate-conflict link will be even more important in the future: “In 50 years from now, under a business-as-usual scenario, 80-90% of disasters will be driven by climate change. Then the whole thing really explodes.”

He said cross-referencing predictions of where extreme weather is likely to increase with places that are ethnically divided could provide a way to see trouble ahead. “You could construct a conflict ‘radar’ system to anticipate hotspots where the probability of armed conflict is high. Then you could try to diffuse certain things, or say, given the current migration debate, see where the potential sources of emigration are.”

Prof Solomon Hsiang, at the University of California Berkeley and not part of the new research, showed in 2011 that changes to the climate were linked to 20% of civil wars since 1950. He said: “The linkage between large-scale climatic changes and violence is a remarkable finding of the last several years and has major implications for societies around the world, both today and in the future.”

“Recent studies have demonstrated that these patterns hold around the world, throughout human history, and at all scales of social organisation: from violence within families all the way up to full scale civil war,” Hsiang said.

“This new study corroborates these earlier results, demonstrating that they can be recovered using an alternative statistical approach. It is important that these types of findings are replicated and demonstrated to be robust by numerous research teams since the consequences for society are so critical.”

Previous work has focused on linking conflicts with meteorological data, such as temperature and rainfall. The new analysis, however, used the economic impact of climate disasters, which takes into account the vulnerability of the nation affected. “Both Syria and California have now experienced the biggest drought on record, but there is no civil war in California,” said Schellnhuber.

He said the new work showed another, very significant, benefit of action to halt global warming: “Our study adds evidence of a very special co-benefit of climate stabilisation: peace.”

#### C. Ineffective responses to natural disasters undermine growth and worsen exponentially — positive feedback loop.

Sodhi 16 — ManMohan S. Sodhi, Professor in Operations and Supply Chain Management at Cass Business School, City University London, holds a PhD at the University of California, Los Angeles, and his undergraduate at the Indian Institute of Technology,, 2016 (“Natural disasters, the economy and population vulnerability as a vicious cycle with exogenous hazards,” Journal of Operations Management, Volume 45, July, Available Online to Subscribing Institutions via Science Direct, Accessed 06-27-2017, p. 101-113, Lil\_Arj)

Abstract

One way to understand the growing impact of disasters is as the output of a positive feedback, or reinforcing, loop. This paper hypothesizes that population vulnerability of a country transforms exogenous hazards to disaster impact for that country, which negatively impacts its economy as measured by per capita income and its growth. This impact in turn increases the vulnerability of the country's population thus creating a reinforcing loop. Therefore, like the output of any positive feedback loop, disaster impact would grow exponentially. Having analysed data over 50 years (1963–2012) and 179 countries, we find the results to be consistent with this conceptual model. We also find that disaster impact worldwide has indeed grown exponentially over this period even after normalizing for the growing global population and global income. These findings indicate the existence of a feedback loop that requires strategic rethinking about disaster management and development jointly to break this vicious cycle.

#### D. Economic collapse causes extinction.

Auslin 9 – Michael Auslin, Resident Scholar at the American Enterprise Institute, and Desmond Lachman, Resident Fellow at the American Enterprise Institute, “The Global Economy Unravels”, Forbes, 3-6, http://www.aei.org/article/100187

What do these trends mean in the short and medium term? The Great Depression showed how social and global chaos followed hard on economic collapse. The mere fact that parliaments across the globe, from America to Japan, are unable to make responsible, economically sound recovery plans suggests that they do not know what to do and are simply hoping for the least disruption. Equally worrisome is the adoption of more statist economic programs around the globe, and the concurrent decline of trust in free-market systems. The threat of instability is a pressing concern. China, until last year the world's fastest growing economy, just reported that 20 million migrant laborers lost their jobs. Even in the flush times of recent years, China faced upward of 70,000 labor uprisings a year. A sustained downturn poses grave and possibly immediate threats to Chinese internal stability. The regime in Beijing may be faced with a choice of repressing its own people or diverting their energies outward, leading to conflict with China's neighbors. Russia, an oil state completely dependent on energy sales, has had to put down riots in its Far East as well as in downtown Moscow. Vladimir Putin's rule has been predicated on squeezing civil liberties while providing economic largesse. If that devil's bargain falls apart, then wide-scale repression inside Russia, along with a continuing threatening posture toward Russia's neighbors, is likely. Even apparently stable societies face increasing risk and the threat of internal or possibly external conflict. As Japan's exports have plummeted by nearly 50%, one-third of the country's prefectures have passed emergency economic stabilization plans. Hundreds of thousands of temporary employees hired during the first part of this decade are being laid off. Spain's unemployment rate is expected to climb to nearly 20% by the end of 2010; Spanish unions are already protesting the lack of jobs, and the specter of violence, as occurred in the 1980s, is haunting the country. Meanwhile, in Greece, workers have already taken to the streets. Europe as a whole will face dangerously increasing tensions between native citizens and immigrants, largely from poorer Muslim nations, who have increased the labor pool in the past several decades. Spain has absorbed five million immigrants since 1999, while nearly 9% of Germany's residents have foreign citizenship, including almost 2 million Turks. The xenophobic labor strikes in the U.K. do not bode well for the rest of Europe. A prolonged global downturn, let alone a collapse, would dramatically raise tensions inside these countries. Couple that with possible protectionist legislation in the United States, unresolved ethnic and territorial disputes in all regions of the globe and a loss of confidence that world leaders actually know what they are doing. The result may be a series of small explosions that coalesce into a big bang.

### Extend: “No U.S. Leadership Impact”

#### The world is too complex for U.S. management *even if* there’s “total focus” on foreign policy.

Richman 14 — Sheldon Richman, Vice President of the Future of Freedom Foundation, former senior editor at the Cato Institute and Institute for Humane Studies at George Mason University, holds a degree from Temple University, 2014 (“Best Thing to Do in Foreign Policy is Nothing,” *Reason*, July 25th, Available Online at <http://reason.com/archives/2014/07/25/best-thing-to-do-in-foreign-policy-is-no>, Accessed 08-25-2014)

The heartbreaking violence in the Middle East, Ukraine, and elsewhere carries many messages, but here's one Americans shouldn't miss: The United States — no matter who the president is — cannot manage world conflict. The corollary is that when a president tries to manage it, things will usually get worse. Foresight is always defective, and tragic unintended consequences will prevail.

The foreign-policy "experts" in both major political parties, and the intelligentsia generally, think otherwise. No matter who holds power, we can expect the opposition to complain that the chief executive poorly anticipated and thus improperly responded to world events.

If this charge weren't so ominous, it would be comical to hear Republicans berating Barack Obama for failing to be "proactive," for repeatedly being caught by surprise, and for not exerting "American leadership" to keep the world's hot spots under control and, most important, in harmony with "American interests."

But contrary to what Republicans say (or what Democrats would say if a Republican were in power), the fault lies not in the president — at least not this fault — but in the mission itself: anticipating change and managing world conflict. No president can do that competently. Why not? Because the task is not doable, and danger lies in thinking it is. Moreover, the delusion that it is doable almost always makes situations worse than they otherwise would be — weapons proliferate, violence spreads, noncombatant casualties multiply — and all this creates enemies for the American people.

Who thinks that's a good thing? I doubt the American people would if they understood what their so-called leaders — misleaders and misrepresentatives are better terms — are doing to them, not to mention what the "leaders" are doing to the hapless subject populations abroad that suffer because of U.S.-supported machinations.

The world is complex. Specifically, individual societies are infinitely complex, historically, politically, and culturally, and thus beyond the full comprehension of any person or group. Even societies ruled and ostensibly planned by dictators have informal, hidden, and spontaneous aspects that no one can fully grasp, especially outsiders. Written laws are often irrelevant to the unwritten rules and customs actually governing a society. And each society consists of many moving parts (religious, ethnic, etc.)

Anyone who still thinks a U.S. president with expert advisers can determine the opportune moment to send armed forces into a country to effect regime change — or to arm a presumed moderate opposition — and have everything come out as planned fails to grasp this and hasn't been paying attention for the last dozen years. The same goes for anyone who still believes America's latest brain trust can smoothly dictate political events in another country, say Ukraine, from behind the scenes with money funneled through innocent-sounding organizations like the National Endowment for Democracy.

The problem with these grand plans is that there are human beings on the other end — people who have their own preferences about what should take place and who are likely to resent foreign or foreign-backed interference. Another stumbling block to presidential world-building is that historical regional powers — say, Russia or Iran — don't look kindly on the United States asserting its will in their neighborhoods, just as American presidents have not welcomed foreign influence in Latin America. To many people in the world, American exceptionalism means that the United States alone gets to regard every region as within its sphere of influence. Responses to American arrogance produce many of the "crises" that the chief executive will be accused of having failed to anticipate and preempt. But no one can hope to manage the world.

The basic failure is the intervention itself. There will be crises enough without a U.S. president helping to create them.

Afghanistan, Iraq, Syria, Libya, Palestine/Israel, Ukraine and so many more in the past are all variations on a theme. Ignorant intervention begets bad consequences — unintended or not — perhaps not for American politicians or those who peddle war materiel, but certainly for those who bear the brunt in the target countries and the Americans who kill, die, and pay the economic cost.

Managing world conflict is beyond the power of any mortal. Don't demand that a president do it.

#### No leadership impact — the U.S. is *not* indispensable.

Zenko 14 — Micah Zenko, Douglas Dillon Fellow with the Center for Preventive Action at the Council on Foreign Relations, former Research Assistant at the Belfer Center for Science and International Affairs at the Kennedy School of Government at Harvard University, former Researcher at the Brookings Institution, 2014 (“The Myth of the Indispensable Nation,” *Foreign Policy*, November 6th, Available Online at <http://foreignpolicy.com/2014/11/06/the-myth-of-the-indispensable-nation/>, Accessed 08-10-2015)

Indispensables also hold an unrealistic faith in the latent power of leadership that flows from suppose it indispensable-ness. During a House hearing in September, Gerald Feierstein, Principal Deputy Assistant Secretary of State for Near Eastern Affairs, declared: "When the United States stands up and demonstrates resolve and demonstrates a direction, the international community generally supports and falls into place behind." Really? This hypothesis would surprise anyone who tracks multilateral fora where U.S. officials state their policy positions and then repeatedly fail to compel other leaders to get in line — see, for example, the Climate Change Conference in Copenhagen in December 2009, and the WTO trade talks since the Doha Round opened in 2001.

And if Feierstein is referring only to warfare, then why do so few countries with deployable military assets participate in U.S.-led campaigns in a meaningful way? The United States provided the majority of the actual combat forces and airpower in Iraq, Afghanistan, and Libya, and is doing so again in the air campaign to counter the Islamic State (IS). Most countries that could participate have either declined to do so, or are taking part by providing such limited and constrained capabilities that they are not significantly enhancing the coalition’s capabilities. In each of these military interventions, the United States decried unilateralism, attempted to form a large coalition, and then found itself paying most of the costs, dropping most of the bombs, sacrificing the most soldiers, and losing most of his credibility.

Whether it is multilateral talks or military operations, other governments do not do as Washington demands because, quite simply, it is not in their national interests to do so. Moreover, the United States refuses to employ the political will or coercive leverage to force them to. The point being is that few, if any, substantive and enduring foreign-policy activities can be done unilaterally, and asserting one’s indispensability does nothing to alter others’ interests. It is often stated that countries in the Middle East or East Asia are looking for America "to lead," but they actually want U.S. leadership on their terms, and in support of their own narrow objectives. The moment that leadership conflicts with the visions and objectives those countries hold, they cease or severely limit their partnerships with the United States.

Finally, the Indispensables belief that America’s role in the world is "absolutely necessary" in all areas is simply arrogant. It discounts the tremendous and essential contributions from non-U.S. countries, international non-governmental organizations, and civil society. This includes the 128 countries contributing 104,184 troops and police forces currently deployed in support of sixteen U.N. peacekeeping operations worldwide. The United States provides only 113 troops to U.N. peacekeeping operations, but, importantly, foots 27 percent of the bill and provides logistics support. Or, consider the billions of dollars from the Gates Foundation, Norwegian Refugee Council, Mercy Corps, International Red Cross and Red Crescent, and countless others, which improve the lives of the poorest and most in need. Each of these public health, humanitarian, and development organizations offer the deep pockets and political neutrality that allows them access to areas where the United States simply cannot or will not go.

The reason that the United States is not the indispensable nation is simple: the human and financial costs, the tremendous risks, and degree of political commitment required to do so are thankfully lacking in Washington. Moreover, the structure and dynamics of the international system would reject or resist it, as it does in so many ways that frustrate the United States from achieving its foreign policy objectives. The United States can be truly indispensable in a few discrete domains, such as for military operations, which as pointed out above has proven disastrous recently. But overall there is no indispensable nation now, nor has there been in modern history. Indispensables may feel compelled to repeat this feel-good myth, but nobody should believe them.

### 1AR — Disaster Turn

#### Federal intervention on domestic policy is good — disaster relief.

Beauchamp 12 — Zack Beauchamp, Editor at Vox, previously a reporter at ThinkProgress and a Research Associate at the University of Oxford, 2017 (“Why The Federal Government Should Handle Disaster Relief,” *ThinkProgress*, October 30th, Available Online at <https://thinkprogress.org/why-the-federal-government-should-handle-disaster-relief-b3c991bbd4a0>, Accessed 06-26-17)

Almost on cue after Hurricane Sandy, conservatives and libertarians have begun arguing that the federal government should get out of the business of providing disaster relief. The function could be delegated to states and the private sector, they claim, echoing an argument advanced by Mitt Romney last year.

But they’re wrong. The private sector and states cannot muster the resources that the federal government can. To deal with massive disasters like Sandy, we need the feds.

Conservatives touting the market often refer to one paper, by Professor Stephen Horwitz, arguing that Wal-Mart responded more efficiently to Hurricane Katrina than the federal government. While it’s widely agreed that Wal-Mart played an important role in the aftermath of the 2005 storm, it amounted to only $17 million in direct donations and roughly $25 million when you include in-kind work. By contrast, the federal government spends $10 billion every year on routine disaster preparedness, a figure that spikes in the case of severe disasters like Katrina. It’s simply inconceivable that corporations would be capable of filling that gap on their own.

But isn’t most of that federal money wasted? Not really, say the experts. Michigan State Professor Saundra Schneider wrote in her survey of recent American disaster relief efforts that “for the vast majority of natural disasters, public institutions respond very well.” When asked if the private sector could fill-in for the government, she scoffed. “The government is the only entity that has the power and resources to deal with this disaster of this scope,” Schneider said. “[There’s] a pretty strong consensus in the literature, especially the social science literature, that that’s needed.”

Indeed, the Federal Emergency Management Agency (FEMA) itself has had a rather sterling track record in responding effectively to crises like Sandy — but while the agency suffered under both Presidents Bush, it prospered during the Clinton administration. During the Bush administrations, FEMA was considered a backwater agency, led by unqualified nominees and given relatively little attention. The results were catastrophically bad responses to 1992’s Hurricane Andrew and 2005’s Hurricane Katrina. After Andrew, President Clinton’s renewed attention on FEMA revitalized the agency, resulting in a substantially more effective agency. As The New Republic’s Jonathan Cohn notes, FEMA’s response to last year’s tornadoes was generally considered exceptional. And New Jersey Governor Chris Christie, a prominent Romney surrogate and vice presidential contender, has praised the organization’s swift response to Sandy, saying “The federal government’s response has been great…The President has been outstanding in this and so have the folks at FEMA.”

Currently, federal, state, and local governments all play critical roles in managing disaster relief. The system works in the following way: local governments respond first, turn to the state government if the disaster exceeds their resources, who in turn may ask FEMA to step-in. This system works pretty well — as Richard Sylves, a disaster expert at the University of Delaware, notes, most disasters are handled by local and occasionally state governments. This means that most disaster relief is already delegated locally.

The principal federal role, Sylves writes, is to “supplement, not supplant, the efforts of others…[federal aid is designed to] stimulate and guide emergency planning efforts, furnish substantial response efforts after (and sometimes before) a governor secures help from the President, and fund many disaster mitigation efforts.” In other words, the feds provide money, material and coordination states can’t give on their own. Natural disasters often spill across state lines, requiring coordination and cooperation between states with different economic abilities and constraints. Moreover, the sheer expense of disaster relief stretches the limited resources of poor states and states with restrictive balanced budget amendments. Effective response to major disasters requires federal assistance.

### 1AR — Disaster Impact

#### Natural disasters increase the risk of conflict and violence while exacerbating poverty — effective disaster responses solve.

Xu et al. 16 — Jiuping Xu, Professor at Business School of Sichuan University, earned a doctoral degree of Applied Mathematics of Tsinghua University, doctoral degree of Physics and Chemistry of Sichuan University, and Ziqi Wang, works at Institute of Emergency Management and Reconstruction in Post-disaster, Sichuan University, and Feng Shen, works at the School of Finance, Southwestern University of Finance and Economics, and Chi Ouyang, works at Institute of Emergency Management and Reconstruction in Post-disaster, Sichuan University, and Yan Tu, works at School of Management, Wuhan University of Technology, 2016 (“Natural disasters and social conflict: A systematic literature review,” International Journal of Disaster Risk Reduction

Volume 17, August, Available Online to Subscribing Institutions via Science Direct, Accessed 06-27-2017, Lil\_Arj)

4.1. Findings

From the systematic three-dimensional Description-Theme-Mechanism analysis, it was found that natural disaster caused social conflicts did not follow the simple logic that “natural disaster A leads to conflict B”. In most studies, the natural disaster caused social conflict had an overall adverse impact on the society and increased social risk. In most instances, the natural disaster caused social conflicts increased the risk of future social crises and impeded existing social crisis recovery efforts. This was particularly obvious at the local level, where the identified common negative tendencies were found to be:

1. Natural disaster caused social conflicts were found to almost always increase local social risk and destroy local people's lives, which further disrupted their response capacities and increased poverty levels [39,81]. This intensified social disorder and instability resulting from the disaster greatly increased the risk of social crisis and commonly undermined government coping strategies [45,31].

2. Natural disasters such as drought and earthquake were found to gradually deepen overall social conflict and crisis risk in disaster areas, especially in larger areas where the people faced higher levels of poverty and competition over limited resources [45,7].

3. Natural disasters, and particularly climatological disasters, were found to be more likely to trigger longer cumulative social contradictions than any other type of natural disasters [55,71]. These events often caused local political tensions and even national level crises, and distracted government attention from the immediate and urgent natural disaster issues [15,16].

4. Social conflicts caused by natural disasters as well as the impact of the disaster itself were found to worsen the vulnerabilities of children and older people and increase gender-related violence [40,42].

5. Timely national and international disaster assistance was found to greatly reduce the risk of natural disaster caused social conflicts. However, unsustainable disaster assistance and inappropriate volunteer services were shown to often cause new adverse community impacts and increase local social risk [88].

#### Their evidence underestimates the impact — ‘hidden’ impacts.

Coffman and Noy 11 — Makena Coffman, Associate Professor of Urban and Regional Planning at the University of Hawaii – Manoa, and Ilan Noy, Chair in the Economics of Disasters & Professor of Economics, Victoria University of Wellington, New Zealand, 2011 (“Hurricane Iniki: measuring the long-term economic impact of a natural disaster using synthetic control,” Environment and Development Economics, Volume 17, Issue 2, April, Available Online to Subscribing Institutions via Cambridge Core, Accessed 06-28-2017, Lil\_Arj)

While this analysis provides no specific recommendations on disaster mitigation strategies, it sheds light on the ‘true’ costs of a disaster event. The long-term impacts of disaster events are, in a sense, ‘hidden’ due to the difficulty in attributing them to an event with the passage of time. As this study documents, the long-term costs of disasters can be substantial and thus should not be ignored when cost-benefit analyses of disaster mitigation and resiliency programs are used to determine policy choices.

## AT: Iraq Module

### 2AC — No Middle East Impact

#### ( ) Mid-East wars obviously don’t go nuclear – there have been many such wars and their own Pollack ev admits as much.

#### ( ) Many checks on Mid-East escalation.

James **Dobbins 15**, a veteran diplomat who most recently served as the State Department's special representative for Afghanistan and Pakistan, is a senior fellow at the nonprofit, nonpartisan RAND Corporation, “Reports of Our Global Disorder Have Been Greatly Exaggerated,” 7-22-15, <http://www.rand.org/blog/2015/07/reports-of-our-global-disorder-have-been-greatly-exaggerated.html>

The world is more dangerous than it was a few years ago, and the mounting chaos in the Middle East has fed wider, more **exaggerated anxieties**. Many observers feel that the pace of technological change is quickening, that the international order is **disintegrating**, that power is shifting from national governments to individuals and nonstate actors, and that America's capacity to lead is waning. Oftentimes, however, these portents of disaster and decline are **overstated**. Certainly, computers and the Internet are driving rapid change, but the pace is not more rapid or revolutionary than that following the introduction of the steam engine, electricity, radio, telephones, internal combustion engines, airplanes, and the atomic bomb. The Chinese economy has grown compared to the United States, but the United States has, for many years, been growing faster than most of Europe, Russia, and much of East Asia. Russia is misbehaving, but nothing on the scale of the former Soviet Union. The Middle East is in turmoil, **but even taking into account the chaos** in that region, **inter**- and **intrastate conflicts** continue to **decline** (as revealed in Steven Pinker's The Better Angels of Our Nature), as do the **casualties** and **destruction they produce**. States are being challenged by terrorists and insurgent groups in the Middle East, as they once were in Southeast Asia, Latin America, and the Balkans. Twenty years ago this month, Christian insurgents executed in cold blood more than 7,000 Muslim prisoners in Srebrenica, matching in scale and ferocity the horrors perpetrated by the Islamic State today. It's also true that prior eras have seen much greater shifts in the global power balance than those underway today. World War I brought the collapse of the Ottoman and Austrian empires and the creation of more than a dozen new countries, including nearly all those in the modern Middle East. During the two decades after World War II, control over more than half the world's surface shifted radically, as dozens of “nonstate actors” — then known as liberation movements — seized power and set up new regimes. Change occurred at an even greater speed during the first few years of the George H.W. Bush administration, with the unification of Germany, the disintegration of the Warsaw Pact, and the collapse of the Soviet Union. Most of these earlier geopolitical shifts were favorable to the United States in contrast to current developments in the Arab world. Not surprisingly, people are more likely to notice the pace of change for the worse, as opposed to that for the better. Nevertheless, it would be hard to maintain that the distribution of power among states is changing more quickly today than after 1918, 1945, or 1989. **But are states as a whole losing their grip**? Is power devolving to individuals and groups outside officialdom? The continued expansion of international trade, finance, travel, and communications has increased vulnerabilities even as it has widened horizons, increased opportunity, and lifted people around the world out of poverty. Terrorists and criminals can mix with the millions of tourists and business people who cross national boarders every day, but security agencies also have new and more powerful tools to track and **impede** their **movements**. Contagious diseases can spread more rapidly, but resources to contain them can also be mobilized more quickly. The communications revolution empowers individuals and states alike. Violent extremists can more easily spread their ideology, recruit followers, and orchestrate attacks, but security authorities can more easily collaborate to foil these attempts. As physical infrastructure becomes more dependent on digital controls, the possibility for catastrophic interference grows, requiring ever higher levels of digital safeguards. There is admittedly a race between the forces of order and disorder in all these domains, but it is not one that effective states are predestined to lose.

### 2AC — No Modeling

#### ( ) Federalism modeling is false---diverse systems

Habisso ‘12 Tesfaye Habisso is a former Ethiopian ambassador to South Africa, “Can Ethnic Federalism Help to Manage Ethnic Conflicts and Accommodate National Diversity?”, 10/11/ <http://www.tigraionline.com/articles/article121023.html>)

Apart from the defining characteristics mentioned above, federal systems can take a variety of shapes and there is no single “model” of federalism! The qualifying adjectives, which are added to the word, such as “quasi-federalism”, “centralized federalism”, “decentralized federalism”, “symmetrical federalism”, ”asymmetrical federalism”, “cooperative federalism” or “executive federalism” give a first glance at this diversity. If we have a look at the existing, real federal systems around the world (for example, Australia, Belgium, Canada, Germany, India, Malaysia, Nigeria, Ethiopia, Switzerland and the United States), we realize that each federal system is a system sui generis (or unique to each country or state), both in circumstances which gave birth to it and in the forms that it takes: the relation between the governments on the different levels, the degree to which the subunits are represented within central institutions and the allocation of powers and competencies, differ tremendously between those federal systems. Some federations emerged from a voluntary contract between previously autonomous states, such as the United States, Switzerland and Canada. In these cases, autonomous states transferred part of their powers to a new central authority. In other cases, unitary states undertook a constitutional reform and restructured as federal systems, so powers were given from an existing national government to the newly created subunits. The second mechanism, which is rather seldom, holds true for Ethiopia and Belgium. The existing federal systems also differ with regard to their formation. Federalism, when considered as a principle, can be realized in highly different institutional arrangements and political mechanisms. In fact, there is a wide range of federal types and no federal system can be simply adopted and introduced in another state because each institutional design has to consider the specific ethnic composition of a country, the existing identities, the political cleavage structure, its socio-economic state and its history, in short, the “spirit and soul of the people”, as the great 18th century French philosopher Montesquieu, stated a long time ago. Thus any federal institutional system in Ethiopia may borrow features from existing federal systems but in its overall structure it is likely to be unique to Ethiopia. Ethnic federalism, it is widely believed among social elites in Ethiopia, was adopted as a response to the age-long aspirations of Ethiopia’s diverse “nations, nationalities and peoples” (more than eighty cultural-linguistic communities or ethnic groups) as forcefully propagated by the Ethiopian Student Movement and all progressive forces of the country since the 1960s and 1970s for self-rule and shared-rule and vehemently opposed to the policy of centralization and assimilation pursued by the past successive regimes of the country. Thus, the programme of ethnic federalism undoubtedly reflected the “soul and spirit” of the Ethiopian “nations, nationalities and peoples”, and today ethnic federalism just works well for them, even though some advocates of the nation-state model of nation-building do not support it at all whereas some political forces such as the Oromo Liberation Front (OLF) and the Ogaden National Liberation Front (ONLF) believe that the implementation of ethnic federalism is still not deep enough, that is, the FDRE Constitution that recognizes the constitutional right of self-determination is not fully and satisfactorily implemented to grant them full autonomy due to the ruling party’s and state’s alleged centralizing role. Finally, it must be clearly and firmly stated that it is absolutely difficult to formulate abstract generalizations about federal institutions and the prospects for their stability, since it might well be that institutions that work perfectly in one context will fail to perform if transplanted to another. This paper rejects the notion that federalism can be a one-size-fits-all solution to ethnic and other forms of intrastate conflict. Instead, it proposes a vision of federalism deeply rooted in the specific features of diverse societies.

### 1AR — No Modeling

#### Countries don’t model U.S. policy – it’s a myth.

Moravcsik ‘5

Andrew - Professor of Government and Director of the European Union Program at Harvard University, January 31, 2005, Newsweek, “Dream On, America,” lexis

Not long ago, the American dream was a global fantasy. Not only Americans saw themselves as a beacon unto nations. So did much of the rest of the world. East Europeans tuned into Radio Free Europe. Chinese students erected a replica of the Statue of Liberty in Tiananmen Square. You had only to listen to George W. Bush's Inaugural Address last week (invoking "freedom" and "liberty" 49 times) to appreciate just how deeply Americans still believe in this founding myth. For many in the world, the president's rhetoric confirmed their worst fears of an imperial America relentlessly pursuing its narrow national interests. But the greater danger may be a delusional America--one that believes, despite all evidence to the contrary, that the American Dream lives on, that America remains a model for the world, one whose mission is to spread the word. The gulf between how Americans view themselves and how the world views them was summed up in a poll last week by the BBC. Fully 71 percent of Americans see the United States as a source of good in the world. More than half view Bush's election as positive for global security. Other studies report that 70 percent have faith in their domestic institutions and nearly 80 percent believe "American ideas and customs" should spread globally. Foreigners take an entirely different view: 58 percent in the BBC poll see Bush's re-election as a threat to world peace. Among America's traditional allies, the figure is strikingly higher: 77 percent in Germany, 64 percent in Britain and 82 percent in Turkey. Among the 1.3 billion members of the Islamic world, public support for the United States is measured in single digits. Only Poland, the Philippines and India viewed Bush's second Inaugural positively. Tellingly, the anti-Bushism of the president's first term is giving way to a more general anti-Americanism. A plurality of voters (the average is 70 percent) in each of the 21 countries surveyed by the BBC oppose sending any troops to Iraq, including those in most of the countries that have done so. Only one third, disproportionately in the poorest and most dictatorial countries, would like to see American values spread in their country. Says Doug Miller of GlobeScan, which conducted the BBC report: "President Bush has further isolated America from the world. Unless the administration changes its approach, it will continue to erode America's good name, and hence its ability to effectively influence world affairs." Former Brazilian president Jose Sarney expressed the sentiments of the 78 percent of his countrymen who see America as a threat: "Now that Bush has been re-elected, all I can say is, God bless the rest of the world." The truth is that Americans are living in a dream world. Not only do others not share America's self-regard, they no longer aspire to emulate the country's social and economic achievements. The loss of faith in the American Dream goes beyond this swaggering administration and its war in Iraq. A President Kerry would have had to confront a similar disaffection, for it grows from the success of something America holds dear: the spread of democracy, free markets and international institutions--globalization, in a word. Countries today have dozens of political, economic and social models to choose from. Anti-Americanism is especially virulent in Europe and Latin America, where countries have established their own distinctive ways--none made in America. Futurologist Jeremy Rifkin, in his recent book "The European Dream," hails an emerging European Union based on generous social welfare, cultural diversity and respect for international law--a model that's caught on quickly across the former nations of Eastern Europe and the Baltics. In Asia, the rise of autocratic capitalism in China or Singapore is as much a "model" for development as America's scandal-ridden corporate culture. "First we emulate," one Chinese businessman recently told the board of one U.S. multinational, "then we overtake."

## AT: Nigeria Module

### 2AC — No Africa War Impact

#### ( ) African war impact won’t escalate – many recent tensions in the region disprove their claim.

#### ( ) African war won’t escalate

Schear 16 **–** Dr. James A. Schear, PhD, Global Fellow with the Africa Program at the Woodrow Wilson, “FORGING SECURITY PARTNERSHIPS IN AFRICA: WHAT LIES AHEAD?”, Wilson Quarterly, Winter, http://wilsonquarterly.com/quarterly/the-post-obama-world/forging-security-partnerships-in-africa-what-lies-ahead/

More than a generation later, the tempo of political violence has **greatly subsided** across large areas of southern and eastern Africa and, more recently, in parts of coastal west Africa. Tragically, other venues — most notably central Africa’s Great Lakes region, as well as the Maghreb and Sahel to the north — are still riven by deep-set instabilities. And, yes, colonial-era legacies do still exert some malign influences, state fragility poses perennial relapse risks, and new threats are ever-evolving.

Despite these complexities, any geostrategist would have to acknowledge contemporary Africa’s **positive features**. The continent has not seen a war between sovereign states since the late 19**90s**, when Eritrean and Ethiopian forces waged large-scale mechanized warfare along their (still) disputed border. Nor is Africa a venue for aggressively overreaching **hegemons**. None of its largest, strongest countries — Angola, Ethiopia, Kenya, Nigeria, South Africa and Tanzania — are locked into polarizing rivalries with each other, and **growing economic interdependencies** within and beyond their regions have tended, on balance, **to aid local stability**. This is all good news, but alas, it is only part of the story.

#### ( ) African wars won’t draw-in great powers.

Lloyd Thrall 15, Associate at the RAND corporation, M.A. in international studies and diplomacy, SOAS, University of London, PhD student in War Studies at King’s College London, "China’s Expanding African Relations Implications for U.S. National Security," 2015, http://www.rand.org/content/dam/rand/pubs/research\_reports/RR900/RR905/RAND\_RR905.pdf

There is **little credible potential for** a Sino-American **conflict over resources in Africa.** Contrary to popular and perennial assumptions about resource wars, industry and energy analysis sources project adequate supply of conventional hydrocarbons **beyond 2035**.6 Given reservoir depletion curves, any tightening of supply would be gradual. The adequacy of supply is further augmented when tertiary production and unconventional sources are considered (such as shale and tar sands). U.S. strength in unconventional sources, and potential energy independence, **further reduces the likelihood of a conflict.** Even in a future with **vastly** **inflated** hydrocarbon **prices**, these costs **pale in comparison to** those associated with a Sino-American **war,** the economic costs of which likely fall more heavily on China than the United States.7 Global hydrocarbon resources are distributed via a **fungible global market,** with many stakeholders and moderate **diversity of supply.** This enables importing states to buy a predictable supply of hydrocarbons at reasonable and competing prices over long contracts. African sources do not constitute a majority of this supply chain, and **supposed victory in a theoretical great-power resource war would not guarantee security of resource supply**. In sum, the potential for either China or the **U**nited **S**tates to be willing to **enter war with a nuclear adversary over African oil,** let alone other, **less valuable resources,** is **extraordinarily small**.8

### 2AC — No Modeling

#### ( ) Federalism modeling is false---diverse systems

Habisso ‘12 Tesfaye Habisso is a former Ethiopian ambassador to South Africa, “Can Ethnic Federalism Help to Manage Ethnic Conflicts and Accommodate National Diversity?”, 10/11/ <http://www.tigraionline.com/articles/article121023.html>)

Apart from the defining characteristics mentioned above, federal systems can take a variety of shapes and there is no single “model” of federalism! The qualifying adjectives, which are added to the word, such as “quasi-federalism”, “centralized federalism”, “decentralized federalism”, “symmetrical federalism”, ”asymmetrical federalism”, “cooperative federalism” or “executive federalism” give a first glance at this diversity. If we have a look at the existing, real federal systems around the world (for example, Australia, Belgium, Canada, Germany, India, Malaysia, Nigeria, Ethiopia, Switzerland and the United States), we realize that each federal system is a system sui generis (or unique to each country or state), both in circumstances which gave birth to it and in the forms that it takes: the relation between the governments on the different levels, the degree to which the subunits are represented within central institutions and the allocation of powers and competencies, differ tremendously between those federal systems. Some federations emerged from a voluntary contract between previously autonomous states, such as the United States, Switzerland and Canada. In these cases, autonomous states transferred part of their powers to a new central authority. In other cases, unitary states undertook a constitutional reform and restructured as federal systems, so powers were given from an existing national government to the newly created subunits. The second mechanism, which is rather seldom, holds true for Ethiopia and Belgium. The existing federal systems also differ with regard to their formation. Federalism, when considered as a principle, can be realized in highly different institutional arrangements and political mechanisms. In fact, there is a wide range of federal types and no federal system can be simply adopted and introduced in another state because each institutional design has to consider the specific ethnic composition of a country, the existing identities, the political cleavage structure, its socio-economic state and its history, in short, the “spirit and soul of the people”, as the great 18th century French philosopher Montesquieu, stated a long time ago. Thus any federal institutional system in Ethiopia may borrow features from existing federal systems but in its overall structure it is likely to be unique to Ethiopia. Ethnic federalism, it is widely believed among social elites in Ethiopia, was adopted as a response to the age-long aspirations of Ethiopia’s diverse “nations, nationalities and peoples” (more than eighty cultural-linguistic communities or ethnic groups) as forcefully propagated by the Ethiopian Student Movement and all progressive forces of the country since the 1960s and 1970s for self-rule and shared-rule and vehemently opposed to the policy of centralization and assimilation pursued by the past successive regimes of the country. Thus, the programme of ethnic federalism undoubtedly reflected the “soul and spirit” of the Ethiopian “nations, nationalities and peoples”, and today ethnic federalism just works well for them, even though some advocates of the nation-state model of nation-building do not support it at all whereas some political forces such as the Oromo Liberation Front (OLF) and the Ogaden National Liberation Front (ONLF) believe that the implementation of ethnic federalism is still not deep enough, that is, the FDRE Constitution that recognizes the constitutional right of self-determination is not fully and satisfactorily implemented to grant them full autonomy due to the ruling party’s and state’s alleged centralizing role. Finally, it must be clearly and firmly stated that it is absolutely difficult to formulate abstract generalizations about federal institutions and the prospects for their stability, since it might well be that institutions that work perfectly in one context will fail to perform if transplanted to another. This paper rejects the notion that federalism can be a one-size-fits-all solution to ethnic and other forms of intrastate conflict. Instead, it proposes a vision of federalism deeply rooted in the specific features of diverse societies.

### 1AR — No Modeling

#### Countries don’t model U.S. policy – it’s a myth.

Moravcsik ‘5

Andrew - Professor of Government and Director of the European Union Program at Harvard University, January 31, 2005, Newsweek, “Dream On, America,” lexis

Not long ago, the American dream was a global fantasy. Not only Americans saw themselves as a beacon unto nations. So did much of the rest of the world. East Europeans tuned into Radio Free Europe. Chinese students erected a replica of the Statue of Liberty in Tiananmen Square. You had only to listen to George W. Bush's Inaugural Address last week (invoking "freedom" and "liberty" 49 times) to appreciate just how deeply Americans still believe in this founding myth. For many in the world, the president's rhetoric confirmed their worst fears of an imperial America relentlessly pursuing its narrow national interests. But the greater danger may be a delusional America--one that believes, despite all evidence to the contrary, that the American Dream lives on, that America remains a model for the world, one whose mission is to spread the word. The gulf between how Americans view themselves and how the world views them was summed up in a poll last week by the BBC. Fully 71 percent of Americans see the United States as a source of good in the world. More than half view Bush's election as positive for global security. Other studies report that 70 percent have faith in their domestic institutions and nearly 80 percent believe "American ideas and customs" should spread globally. Foreigners take an entirely different view: 58 percent in the BBC poll see Bush's re-election as a threat to world peace. Among America's traditional allies, the figure is strikingly higher: 77 percent in Germany, 64 percent in Britain and 82 percent in Turkey. Among the 1.3 billion members of the Islamic world, public support for the United States is measured in single digits. Only Poland, the Philippines and India viewed Bush's second Inaugural positively. Tellingly, the anti-Bushism of the president's first term is giving way to a more general anti-Americanism. A plurality of voters (the average is 70 percent) in each of the 21 countries surveyed by the BBC oppose sending any troops to Iraq, including those in most of the countries that have done so. Only one third, disproportionately in the poorest and most dictatorial countries, would like to see American values spread in their country. Says Doug Miller of GlobeScan, which conducted the BBC report: "President Bush has further isolated America from the world. Unless the administration changes its approach, it will continue to erode America's good name, and hence its ability to effectively influence world affairs." Former Brazilian president Jose Sarney expressed the sentiments of the 78 percent of his countrymen who see America as a threat: "Now that Bush has been re-elected, all I can say is, God bless the rest of the world." The truth is that Americans are living in a dream world. Not only do others not share America's self-regard, they no longer aspire to emulate the country's social and economic achievements. The loss of faith in the American Dream goes beyond this swaggering administration and its war in Iraq. A President Kerry would have had to confront a similar disaffection, for it grows from the success of something America holds dear: the spread of democracy, free markets and international institutions--globalization, in a word. Countries today have dozens of political, economic and social models to choose from. Anti-Americanism is especially virulent in Europe and Latin America, where countries have established their own distinctive ways--none made in America. Futurologist Jeremy Rifkin, in his recent book "The European Dream," hails an emerging European Union based on generous social welfare, cultural diversity and respect for international law--a model that's caught on quickly across the former nations of Eastern Europe and the Baltics. In Asia, the rise of autocratic capitalism in China or Singapore is as much a "model" for development as America's scandal-ridden corporate culture. "First we emulate," one Chinese businessman recently told the board of one U.S. multinational, "then we overtake."

## AT: Constitution Module

### They Say: “Constitution Impact”

#### No impact or it’s inevitable — other federal education policies will continue to exist under Trump.

#### Federal control over education is constitutional — Article 1, Section 8.

LWVUS 11 —- League of Women Voters of the United States, an American civic organization that was formed to help women take a larger role in public affairs as they won the right to vote, 2011 (“The Educational Study: The Role of the Federal Government in Public Education,” *League of Women Voters,* Available Online at http://lwv.org/content/history-federal-government-public-education-where-have-we-been-and-how-did-we-get-here)

From the very beginning of our Republic, a well-educated citizenry was thought to be essential to protect liberty and the general welfare of the people. Even before the Constitution was established, the Land Ordinance of 1785 and the Northwest Ordinance of 1787 included responsibilities of the nation for an education system. Education has long been considered a national concern by the federal government. Through federal action, education has been encouraged and financially supported from the first Northwest Ordinance in 1785 to the present. Article 1, Section 8 of the Constitution granted Congress the power to lay and collect taxes to provide for the general welfare of the United States. It is under this “general welfare” clause that the federal government has assumed the power to initiate educational activity in its own right and to participate jointly with states, agencies and individuals in educational activities.

During the first century of our new nation, Congress granted more than 77 million acres of the public domain as an endowment for the support of public schools through tracts ceded to the states. In 1841, Congress passed an act that granted 500,000 acres to eight states and later increased land grants to a total of 19 states. The federal government also granted money, such as distributions of surplus federal revenue and reimbursements for war expenses, to states. Though Congress rarely prescribed that such funds be used only for schools, education continued to be one of the largest expenses of state and local governments so the states used federal funds whenever possible for education.

Two of our constitutional amendments played an important role in public education. In 1791, the 10th Amendment stated, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Public education was not mentioned as one of those federal powers, and so historically has been delegated to the local and state governments.

In 1868, the 14th Amendment guaranteed rights to all citizens by stating, “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens in the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.”

#### Federal involvement in education is justified — recent legislation.

Hornbeck 17 — Dustin Hornbeck, holds a Ph.D. Student in Educational Leadership and Policy, Miami University, 2017 ("Federal role in education has a long history," *The Conversation*, April 26th, Available Online at <http://theconversation.com/federal-role-in-education-has-a-long-history-74807>, Accessed 06-26-2017)

As for the federal government’s role, education is not specifically addressed in the Constitution, but a historical precedent of central government involvement does exist.

In 1787, the Continental Congress, the central government of the United States between 1776 and 1787, passed the Northwest Ordinance, which became the governing document for Ohio, Illinois, Indiana, Michigan, Wisconsin and part of Minnesota.

The ordinance included a provision encouraging the creation of schools as a key component of “good government and the happiness of mankind.” Just two years earlier, the Land Ordinance of 1785 required land to be reserved in townships for the building of schools.

The role of the federal government in general grew much larger after the Great Depression and World War II, but this growth largely excluded K-12 education until the 1960s. In 1964, President Lyndon B. Johnson included education policy in his vision of a “Great Society.”

Elementary and Secondary Education Act

In 1965, President Johnson signed the Elementary and Secondary Education Act (ESEA) into law. This law decidedly changed the role of the federal government in the world of K-12 education.

ESEA doubled the amount of federal expenditures for K-12 education, worked to change the relationship between states and the central government in the education arena, called for equal treatment of students no matter where they reside and attempted to improve reading and math competency for children in poverty.

ESEA was passed with the intention of bridging a clear gap between children in poverty and those from privilege. Title I of the ESEA, which is still referenced frequently in K-12 education policy, is a major provision of the bill, which distributed federal funding to districts with low-income families.

ESEA today

ESEA is still the law of the United States today. However, the law has required periodic reauthorization, which has led to significant changes since 1965. One of the most well-known reauthorizations was President George W. Bush’s No Child Left Behind (NCLB) Act of 2001. NCLB called for 100 percent proficiency in math and reading scores nationwide by 2014, and expanded the role of standardized testing to measure student achievement.

Under President Barack Obama, Race to the Top was established, requiring states to compete for federal grants through a point system, which rewarded certain educational policies and achievements. This resulted in nationwide changes in the way teachers are evaluated, and placed even more emphasis on test results.

#### The Constitution is an open-ended framework, not a “side constraint.”

Litchwick 11 — Dahlia Lithwick, journalist covering courts and the law for *Slate*, 2011 (“Read It and Weep,” *Slate*, January 4th, Available Online at http://www.slate.com/articles/news\_and\_politics/jurisprudence/2011/01/read\_it\_and\_weep.single.html, Accessed 04-30-2012)

This newfound attention to the relationship between Congress and the Constitution is thrilling and long overdue. Progressives, as Greg Sargent points out, are wrong to scoff at it. This is an opportunity to engage in a reasoned discussion of what the Constitution does and does not do. It's an opportunity to point out that no matter how many times you read the document on the House floor, cite it in your bill, or how many copies you can stuff into your breast pocket without looking fat, the Constitution is always going to raise more questions than it answers and confound more readers than it comforts. And that isn't because any one American is too stupid to understand the Constitution. It's because the Constitution wasn't written to reflect the views of any one American.

The problem with the Tea Party's new Constitution fetish is that it's hopelessly selective. As Robert Parry notes, the folks who will be reading the Constitution aloud this week can't read the parts permitting slavery or prohibiting cruel and unusual punishment using only their inside voices, while shouting their support for the 10th Amendment. They don't get to support Madison and renounce Jefferson, then claim to be restoring the vision of "the Framers." Either the Founders got it right the first time they calibrated the balance of power between the federal government and the states, or they got it so wrong that we need to pass a "Repeal Amendment" to fix it. And unless Tea Party Republicans are willing to stand proud and announce that they adore and revere the whole Constitution as written, except for the First, 14, 16th, and 17th amendments, which totally blow, they should admit right now that they are in the same conundrum as everyone else: This document no more commands the specific policies they espouse than it commands the specific policies their opponents support.

This should all have been good news. The fact that the Constitution is sufficiently open-ended to infuriate all Americans almost equally is part of its enduring genius. The Framers were no more interested in binding future Americans to a set of divinely inspired commandments than any of us would wish to be bound by them. As Justice Stephen Breyer explains in his recent book, Making Our Democracy Work: A Judge's View, Americans cannot be controlled by the "dead hands" of one moment frozen in time. The Constitution created a framework, not a Ouija board, precisely because the Framers understood that the prospect of a nation ruled for centuries by dead prophets would be the very opposite of freedom.