NDCA_States CP + Federalism (Intro Level)

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States CP (Negative Position and Affirmative Answers)

*** Negative Position ***

— Solvency —

1NC States CP – Generic

The fifty states and relevant territories in the United States should [insert action of the plan]

The counterplan solves best – federal reforms have little to no effect on the criminal justice system – state action is key at every level

Pfaff 2018 – professor of law at Fordham Law School. He is the author of Locked In: The Real Causes of Mass Incarceration and How to Achieve Real Reform

(John F. Pfaff January 2018 "A Smarter Approach to Federal Assistance with State-Level Criminal Justice Reform" American Enterprise Institute: Economic Perspectives https://www.aei.org/wp-content/uploads/2018/01/A-Smarter-Approach-to-Federal-Assistance-with-State-Level-Criminal-Justice-Reform.pdf) IB

Despite some of the most extreme ideological divides in modem times, both chambers of Congress have recently made genuine bipartisan efforts to reform our nation's criminal justice system, especially its reliance on incarceration. The need for such reform is clear. The United States has the highest incarceration rate in the world, detaining nearly 25 percent of the world's prisoners, and we surely lead the world when it comes to the fraction of people with any sort of criminal record or conviction.1 And a growing body of research suggests that incarceration does not provide the public-safety returns that its pro ponents claim.2 So far, most congressional efforts have focused on fixing the federal system.3 While much is wrong with the federal system, **it is ultimately a relatively minor player in criminal justice**: **State systems hold nearly 90 percent of all prisoners and far greater percentages of pretrial detainees, parolees, and probationers**. It is thus encouraging to see that one recent federal proposal, the Reverse Mass Incarceration Act (RMIA), takes direct aim at the bigger state systems. Yet there is reason to be concerned about just what the federal government can accomplish. Many of our nation's criminal justice problems are inherently hard to correct, and the federalized nature of law enforcement raises unique challenges for any congressional or presidential response to state and local problems. The goal of this policy brief is threefold. First, it will highlight several aspects of criminal justice policy that make federal solutions tricky. Second, it will examine why previous federal efforts to shape state criminal justice policies (in particular, the Violent Crime Control and Law Enforcement Act of 1994 and the Adam Walsh Child Protection and Safety Act of 2006) underperformed and why the current RMIA faces similarly dim prospects. And third, and hopefully more productively, it will suggest how the federal government can adapt it proposals to address these challenges and thus effectively help states reduce their excessive reliance on incarceration. **In the end, state and county governments will have to take the lead in righting our criminal justice system**. But the federal government can take steps to help them accomplish their goals; as we will see, in some cases that assistance could prove to be quite significant. That past efforts have been unsuccessful does not mean the federal government can do nothing. With criminal justice reform still a rare space of bipartisan agreement, more effective federal involve ment can surely yield important dividends. The Complicated Nature of Criminal Justice Reform Federal intervention in state criminal justice policy faces at least three serious challenges. First, the localized nature of criminal justice makes direct, or even indirect, federal involvement tricky. Second, the problems that drive mass incarceration are often complicated political and institutional defects that do not have easy fixes, especially given the limits the federal government already faces. And third (and this problem afflicts local, state, and federal reformers alike), significant reform requires us to tackle the third rail of criminal justice reform: treating those convicted of violence differently. Localism. Start with the problems of localism. **Almost everyone who has contact with the criminal justice system** is arrested by city police or county sheriffs, charged and convicted by county prosecutors, sentenced by county or state judges, held in county jails or state prisons or supervised by county probation officers, and released by state parole boards, all according to laws passed by state legislators, who represent often quite local districts. **At no point do we see the federal government in that list**, and that is

not a mistake; well over 90 percent of those who go through the criminal justice system will have **no interaction with federal authorities at all.** This raises two serious issues. First, if the federal government is going to shape state policy, **it can only do so indirectly. The federal government cannot** impose criminal laws on the states or **tell states what their criminal codes must look like**,4 and the Department of Justice (DOI) has almost **no oversight authority** over police, prosecutors, judges, or other state and local law enforcement officials. Unfortunately-and this is the second issue-**even indirect efforts face serious challenges**. If nothing else, most criminal justice actors are elected and respond primarily to local conditions, **limiting the impact of any federal bully pulpit**. Take prosecutors, who are almost all directly elected by county electorates. Prosecutors have played perhaps the biggest role in driving up prison populations, especially since crime started to fall in the 1990s (Pfaff 2017c, 2013, 2012), and two examples-one from New York and the other more national-show how locally focused they are.

Solvency—States Solve CJR

The counterplan uses federalism to promote CJR better and ensures enforcement at the local level

Pfaff 17 - Professor of Law at Fordham Law School in New York City (John, "Mass Incarceration Is a Local Affair," *Democracy Journal*, https://democracyjournal.org/arguments/mass-incarceration-is-a-local-affair/)//BB

In recent years, bipartisan efforts to scale back the United States's unprecedented reliance on incarceration had started to show some signs of success, with prison populations falling in nearly half the states nationwide between 2010 and 2015. Yet in 2016, Trump pulled off an upset victory in part by tapping into Americans' continued fear of violence, relying aggressively on "tough on crime" rhetoric. Despite all the chaos currently embroiling his Administration, many are understandably nervous that his presidency could still derail these relatively nascent reform efforts. Thankfully, I think (and hope) these fears are likely misplaced, and contrary to many commentators I do not expect that the Trump Administration will have much impact on reform. Many of you will already know the story behind the recent prison reform efforts. In the 1970s, the U.S. incarceration rate was comparable to that of other western countries, at about 100 per 100,000 (for comparison, the rate in England and Wales in 1970 was approximately 80 per 100,000). Over the next 35 years, however, it steadily and relentlessly rose, essentially quintupling by the 2000s. We now have the world's highest incarceration rate—and, to quote a hoary statistic, we are home to 5 percent of the world's population but roughly 25 percent of its prisoners. The countries that come close to us are mostly autocratic or semi-autocratic regimes including Russia, Cuba, and Turkmenistan. After several decades of low and falling crime rates, however, the budget-eviscerating 2008 financial crisis appears to have produced a genuinely bipartisan effort to scale back incarceration (and its costs). And in 2010, total prison populations dropped for the first time since 1972; by 2015, state and federal prison populations had fallen by a bit more than 5 percent. This was not a dramatic drop, but after so many years of unceasing growth, it was an accomplishment to celebrate, and one that indicated reforms like expanding parole and cutting sanctions for certain crimes were starting to succeed. Reform's biggest vulnerability, however, is that Americans remain fearful of crime, even as crime rates have dropped to near-historic lows. And from its start, Donald Trump's campaign aimed to stoke those fears. He launched his campaign with a speech vilifying immigrants as violent criminals, and his inauguration address replaced Reagan's "morning in America" with "American carnage." He soon after nominated Jeff Sessions, a staunch opponent of criminal justice reform, as his attorney general. Sessions, in turn, has persistently advocated for 1980s-style "tough on crime" policies, such as insisting federal prosecutors impose the toughest prison sentences they can. Yet I still remain cautiously hopeful. The Administration's rhetoric certainly doesn't help matters, but in the end, the federal government **has very little control** over criminal justice. About 90 percent of all prisoners—and a far greater percentage of those in jails, on probation, or who are arrested every year—are handled by states and counties, not by the federal government. And the federal government **cannot directly tell states what to do** when it comes to dealing with these individuals. For example, they cannot make local governments change their laws, enforce existing laws more aggressively, or determine who is released on parole or who is sent back to prison. The federal government has only two indirect tools at it disposal: incentive grants and the bully pulpit. And **neither is as powerful as many people think**. Take grants. State and local governments spend about $200 billion per year on criminal justice (about $100 billion on

policing, $50 billion on prisons, $30 billion on jails, and $20 billion on courts and other expenses). Federal criminal justice grants come to about 2-3 percent of that total. So these grants are not irrelevant, but the amounts are likely not large enough of a carrot to change behavior all that much. In fact, states have a history of paying seemingly little attention to fiscal offers and threats from the federal government. When the federal government offered states up to $10 billion to toughen their sentencing laws as part of the 1994 Violent Crime Control Act, most states ignored the program; the federal government eventually paid out less than $3 billion of the $10 billion on offer. Conversely, when the federal government threatened in 2006 to strip states of some grants if they did not adopt specific sex offender registry requirements, almost two-thirds of states chose to lose funding rather than comply—most because the costs of compliance were too high, but at least one (Nebraska) out of opposition to the policy itself. As for the bully pulpit, it's surely the case that harsh, tough-on-crime rhetoric will make reformers' jobs somewhat tougher, but the overall impact is likely to be **slight**. Prison growth is driven, first and foremost, by local county prosecutors, and these prosecutors are **focused almost entirely on local issues** and interests and politics. A striking example: In 1973, New York State adopted the remarkably harsh "Rockefeller Drug Laws," named after then-Governor Nelson Rockefeller, who pushed for these laws partly in response to rising drug-related violence, but also to further his presidential aspirations. Remarkably, though, by 1984 the number of people in prison in New York on drug charges had barely changed. Local prosecutors essentially ignored the law—and, by extension, Rockefeller's bully pulpit. That all changed in 1984, when the number of people in prison for drugs rose sharply, and continued to rise until the mid-1990s. This still had little to nothing to do with state issues and, again, everything to do with local crime. In 1984, crack, and the violence associated with its markets, tore across New York, and local prosecutors cracked down in response. New York has since reformed the Rockefeller Laws twice, in 2004 (weakly) and in 2009 (more significantly). Yet the number of people in state prison for drugs started to decline years before the reforms were passed—in 1995—the two reforms did not appear to affect that decline at all. Again, local prosecutors changed their behavior in response to improving local conditions, consistently paying little attention to what was happening in Albany. If New York prosecutors have been willing to ignore Albany, why would they pay attention to what is being said by even more remote politicians in Washington, D.C.? More than likely, they won't; what prosecutors care about is their county electorates. And, at least in more populous counties, local politics still seem to favor reform. The 2016 election provides several interesting examples of this. In red and blue states alike, voters frequently approved smart-on-crime initiatives (including two focused on decriminalizing drugs in strongly pro-Trump Oklahoma) and elected reform-minded prosecutors in places ranging from Corpus Christi and Dallas in Texas, to Jacksonville, Florida, to Chicago, Illinois. In some ways, the localism of prison growth acts a **bulwark against the Trump Administration**, since no single federal law or executive order can tell police and prosecutors and governors what to do. **Federalism**, here, **is a shield**.

Solvency—States Solve Policing

State legislative reforms can assure police accountability.

Stoughton et al. 20 - Professor of law at the University of South Carolina.

(Seth Stoughton, Jeffrey J. Noble, Former deputy chief of police at the Irvine Police Department in California, Geoffrey P. Alpert, Criminology professor at the University of South Carolina, 6-3-2020; "How to Actually Fix America's Police," *Atlantic*, https://www.theatlantic.com/ideas/archive/2020/06/how-actually-fix-americas-police/612520/)

STATE INTERVENTION **State legislatures**, which can often move **much faster** than the pace of national politics, have their **own** five **objectives** to **focus on.** To begin with, 36 states have statutes that govern the use of both deadly and nondeadly force, while six states have statutes only for deadly force. More than three-quarters of the **58 total state statutes** (some states have more than one) were adopted prior to or during the 1970s, and most **have not been recently amended**. In the absence of statutes, states regulate police use of force through judicial decisions. But even where state statutes do exist, the courts that interpret them unfortunately tend to rely on the **Fourth Amendment law**. This is a **problem** for two reasons. First, the Fourth Amendment regulates police seizures, but state law is supposed to regulate use of force, and not all uses of force count as seizures. (Several courts have held, for example, that an officer shooting at someone but instead striking a bystander does not constitute a seizure.) State law is supposed to be broader than the Fourth Amendment, which means that referring to Fourth Amendment doctrines in the interpretation of state law can provide less protection than state lawmakers intended. Second, and perhaps more important, those Fourth Amendment doctrines are a mess; they provide little meaningful guidance that officers in the field can use to determine when and how much force to use, and the guidance they provide to courts reviewing use of force is often flawed. Worse, many of the state statutes and common-law doctrines are **contrary to good practices**. Some states allow officers to use force to make an arrest if they believe the arrest is lawful, even if it isn't and their belief is unreasonable. Others are woefully outdated, and still provide a defense to officers who use deadly force to prevent the escape of a fleeing felon. And most states authorize officers to use "reasonably necessary" force, but do not bother to define what reasonable force is or explain how officers should determine that it is necessary. Very few states admonish officers to use appropriate tactics or punish officers for egregious mistakes that contribute to avoidable use of force. **States can do better**. In the past several years, for example, both Washington State and California have **amended their statutory regimes**, giving officers the authority to use force in the situations that require it while also providing **meaningful guidance** to officers and courts about what those situations are. California allows officers to use deadly force against "imminent threats of death or serious bodily injury," and says that an "imminent threat" exists when "a person has the present ability, opportunity, and apparent intent" to cause such harm. **Definitions** like this, which draw from best practices in policing, give officers the leeway to protect themselves and others while also **prohibit**ing them from acting on **unfounded** or **purely speculative fears. State legislatures** can also **amend** law-enforcement officers' bills of rights and the laws that govern the **collective-bargaining rights of police unions**. Most states permit or encourage **collective bargaining** for police unions—even states that, like Wisconsin, otherwise take a dim view of public-sector unions. Police unions do some good work; research suggests that officers at unionized agencies are, on average, higher paid and more professional than officers at nonunionized agencies. However, unions have leveraged the collective-bargaining process to create **labyrinthine procedural protections** that can make it exceptionally difficult to **investigate, discipline, or terminate officers**. Some of the **limits** on investigation—such as delaying interviewing an officer after a critical incident for several "sleep cycles"—are based on **faulty reasoning** and have been thoroughly debunked by credible scientific research. Too often, discipline is precluded by **unnecessary** or **inappropriate** procedural violations; in some cities, for example, civilians can file a complaint only during a limited period after an incident, sometimes as short as 30 days. When officers are disciplined, that discipline is subject to grievance and arbitration procedures; at one agency, a study found that arbitrators "routinely cut in half" the severity of disciplinary sanctions imposed by agency management. Officers should have a right to appeal disciplinary findings, but only when they are arguing that the agency's decision was arbitrary and capricious or that the agency did not act in good faith. By **protecting** bad officers, collective-bargaining agreements and state laws **contribute to misconduct**. Further, state legislatures can do a better job of **certifying** and, when necessary, **decertifying** officers. Currently, most states require most officers to

be certified by a standards-and-training commission. Such commissions set minimum training requirements, but state law can impose **specific training** that the state commission has, thus far, **omitted** from the academy curriculum. **Washington State**, for example, now requires both **violence de-escalation training** and **mental-health training**, and the commission must "consult with law enforcement agencies and community stakeholders" in developing that training. And while most states allow for decertification—which prevents someone who has engaged in misconduct from continuing to work in that state as an officer—that authority can be tightly limited. In some states, an officer can be decertified only after a criminal conviction for a felony or serious misdemeanor. Even in states that have more permissive decertification regimes, decertification is often used only sparingly. From the 1960s until 2017, only about 30,000 officers were decertified, and three states —Florida, Georgia, and North Carolina—make up about half of those. As the decertification expert Roger Goldman has said, that isn't because those states have a higher proportion of bad officers; it is because those states "have very active decertification programs." States have good reason to **strengthen their commitment** to **policing the police**: According to a recent study, officers who are hired by another police agency after being terminated or resigning in lieu of termination from a prior agency are more likely than other officers to engage in future misconduct. A persistent culture of secrecy regarding personnel matters has not helped. Many states have **sharply limited** the public's right to access officers' **disciplinary files** or agency use**-of-force investigations**. Although there is, and must be, room for certain employee information to be kept confidential, an officer's actions while dealing with members of the community and the steps that an agency takes to investigate those actions are **clearly matters of public interest**. The states that have passed **broad sunshine laws**, such as Florida, have taught us that public access can be a **crucial component of police accountability** without impeding proper police action. States that allow agencies to shred disciplinary records after a set period, sometimes as short as six months, are effectively making patterns of misconduct by problem employees significantly more difficult to detect. States should follow the lead of Florida and, more recently, California in passing public-records laws ensuring that disciplinary records and reports pertaining to critical incidents such as police shootings or other serious uses of force cannot be hidden. Finally, states can **rethink** their approach to **criminalization**. "Overcriminalization" has been broadly discussed; there are so many laws that violations are ubiquitous. If everyone is a criminal, officers have almost **unfettered discretion** to **pick and choose** which laws to **enforce** and whom to **stop**, **frisk**, **search**, or **arrest**. And, as the saying goes, when all you have is a hammer, every problem looks like a nail. For too long, the **hammer** of criminal law has been used against a **wide array of social ills**. The result is police **over-involvement** in matters that would be far better left to **other government institution**s and **social-service providers,** including school discipline, poverty, homelessness, and substance abuse. The opioid crisis remains a stark reminder that the United States cannot **arrest its way out of addiction**. The troubling discrepancies between how police have been cast as soldiers in the War on Drugs—a war that, despite almost identical drug-use rates between white and black Americans, is fought mostly in poor and minority communities—and how police have been seen as an adjunct to the public-health authorities addressing opioid abuse in suburban middle- or upper-class neighborhoods should be a stark warning for state legislators to rethink the scope of criminal law.

Solvency—States Solve Policing

States solve best – they are a perfect middle ground between over-federalization and reliance on local reforms

Gass 2017 – staff writer

(Henry Gass April 20, 2017 "Across US, states answering cries for police reforms" https://www.csmonitor.com/USA/Justice/2017/0420/Across-US-states-answering-cries-for-police-reforms) IB

The week that Freddie Gray died in a Baltimore hospital in April 2015, while the city burned and protesters across the country demanded police reforms, legislators in Colorado were gathered to deliver just that. The Colorado lawmakers were grappling with 10 bills aimed at instituting reforms of law enforcement policies and procedures, ranging from restrictions on the use of chokeholds to the collection of data on officer-involved shootings. Half of Colorado's "Rebuilding Trust Package" – as Democratic lawmakers there dubbed it – failed that week, but Gov. John Hickenlooper went on to sign five of those bills that year, followed by two more (refashioned from failed 2015 bills) in 2016. And Colorado is only one example of states taking a serious look at judicial reform in the wake of the national debate around policing and police violence – particularly in communities of color. Nevertheless, these legislative efforts have largely been overshadowed by the protests that have precipitated them. In 2015 and 2016, 34 states and the District of Columbia enacted at least 79 bills, resolutions, or executive orders that changed policing policies and practices, according to a report released by the Vera Institute of Justice. That's almost four times as many as the 20 passed between 2012 and 2014, a Vera spokesman says. In recent years, it has been left to individual departments to enact reforms if they deem them necessary, or – when especially troubled departments are either unwilling or unable to change – to the US Department of Justice, typically via a court-ordered "consent decree" that requires departments to implement certain reforms. **The emerging role of states in policing reform is critical,** says Jim Bueermann, the president of the Police Foundation and the former chief of police in Redlands, Calif., since they can strike the perfect balance between being close enough to the streets to understand specific local policing issues and solutions, while having the broad authority to pass laws that affect every policing agency in their state**. "States are the sweet spot between the federal government passing laws and the 17,000 communities [with law enforcement agencies] passing laws**," says Mr. Bueermann. Creating consensus **If enough states legislate reforms**, he says, **it could contribute to a national consensus on what constitutes good policing policies**. "If you get 50 states to develop a national coherence around what constitutes good policing," he adds, "we would take a quantum leap forward in helping people understand the values of policing, the challenges police face every day, and police departments would better understand how they have to reform their own operations."

Solvency—States Solve Sentencing

The counterplan solves and creates the momentum for federal follow-on
Prison Fellowship 2017

("THE IMPORTANCE OF STATE JUSTICE REFORM" Prison Fellowship https://www.prisonfellowship.org/2016/07/importance-state-justice-reform/ Published 2016-07-12 modified 2017-09-26) IB

Efforts to bring about criminal justice reforms on the federal level have hit upon a bit of a rough patch in recent weeks. With the focus in Washington shifting toward the general elections in November, some members of Congress have determined that maintaining a "tough on crime" approach to criminal justice is beneficial to their reelection efforts, while others have opted to back-burner the issue until their campaigns have concluded. As a result, legislation such as the Sentencing Reform and Corrections Act, which has received an unusually high level of bipartisan support, faces an uphill battle to passage before the Congressional session concludes. But does this mean that criminal justice reform is a lost cause for 2016? Actually, no. Far from it. In an article in the Washington Post, Keith Humphreys makes a point largely lost in the discussion surrounding justice reforms—that over 87 percent of those currently serving sentences in American prisons are doing so in state facilities, not national. Because of this, **any meaningful reduction in incarceration rates will necessarily involve reforms on the state level.** And while progress may appear to have stalled on the federal level, state reform measures are continuing to advance through their respective legislatures. Earlier this week, the governor of Alaska signed into law a bill reforming that state's criminal justice system. Reform efforts are also underway in many states across the nation, including Georgia, Michigan, Maryland, Utah, and California. **States** often **serve as incubators for reform**, testing out policies and practices on a smaller scale, **and providing federal reform efforts with the necessary documentation and evidence to move forward.**

Counterplan solves best – federal action risks establishment of intra-state competition models that produce harsher sentencing guidelines in states that opt out
National Conference of State Legislatures 2020

(Policies for the Jurisdiction of the Law, Criminal Justice and Public Safety Committee https://www.ncsl.org/ncsl-in-dc/task-forces/policies-law-and-criminal-justice.aspx) IB

Sentencing, Corrections and Recidivism Reduction

Federal jurisdiction for crimes also covered under state law can create competition to escalate punishments and build more prisons. **This** competition **is shortsighted, expensive and unnecessary**. The national government should refrain from making federal crimes of state offenses or from enhancing sentences for crimes that are more properly the domain of states. NCSL supports federal leadership and funding for state criminal offender reentry initiatives and criminal justice reinvestment approaches. These initiatives assist states in addressing recidivism and reentry of offenders back into communities in meaningful, cost-effective ways. State and local governments should be afforded maximum flexibility in using federal funds within criminal justice systems, including but not limited to offender needs for drug treatment and mental

health services. NCSL opposes any legislation that would restrict state flexibility in sentencing and corrections policy. NCSL urges the federal government to address federal expungement requirements which can impede reentry and job security.

Solvency—Experimentation

The counterplan solves best – state action provides space for experimentation and innovation

National Conference of State Legislatures 2020

(Policies for the Jurisdiction of the Law, Criminal Justice and Public Safety Committee https://www.ncsl.org/ncsl-in-dc/task-forces/policies-law-and-criminal-justice.aspx) IB

Congress must allow states flexibility to shape public policy. Creative solutions to public problems can be achieved more readily when state laws are accorded due respect. **Every pre-emptive law diminishes other expressions of self-government**; therefore, state legislators believe that state laws should never be pre-empted without substantial justification, compelling need, and broad consensus. Our federalism anticipates diversity; our unity does not anticipate uniformity. While proponents of pre-emption may claim expected benefits, these must be balanced against the potential loss of accountability, innovation and responsiveness. Pre-emption may be warranted in specific instances when it is clearly based upon provisions of the U.S. Constitution authorizing such pre-emption and only when it is clearly shown (1) that the exercise of authority in a particular area by individual states has resulted in widespread and serious conflicts imposing a severe burden on national economic activity or other national goals; (2) that solving the problem is not merely desirable, but necessary to achieve a compelling national objective; and (3) that pre-emption of state laws is the only reasonable means of correcting the problem. The authority of Congress under the Supremacy Clause to pre-empt state legislation is exercised by the federal government assuming responsibility for regulating under federal law. In addition, the Supremacy Clause allows the federal government to offer states the option of regulating pursuant to federal standards. The power of Congress to thus pre-empt state authority must not be expanded to permit the federal government to commandeer states to administer federal programs. Congress shall provide reasonable notice to state legislative leaders and governors of any congressional intent to pre-empt and shall provide them with opportunity for formal and informal comment prior to enactment. To ensure that the national legislature knows the effects of its decisions on other levels of government, members of Congress shall investigate which of their state's laws would be pre-empted by federal legislation before they vote on the pre-emptive legislation. Congress shall develop processes to understand better the impact of proposed bills on federalism. Congress shall refer bills that affect state powers and administration to intergovernmental subcommittees. **States should not be undercut through the regulatory process**. It is not acceptable for unelected federal agency officials to exercise legislative authority in the guise of regulation and to pre-empt the decisions of the elected legislatures of the sovereign states. Any agency intending to pre-empt state laws and rules must have the express authority or clear evidence from Congress of the intent to pre-empt. The Executive Order on Federalism (E.O. 13132) provides guidance for agency examination of intergovernmental impact and should be codified and enforced. Circumvention of rule-making procedures through interim final rule-making and the like, should be prohibited. An appropriate congressional committee shall review agency regulations to identify unjustified intrusions into state sovereignty.

— AT Perm —

AT Perm—Collapses Innovation

Overlapping laws deter innovation and enforcement at the state level even if the laws carry parallel language

National Conference on State Legislators 2010

(August 2010 "2008 - 2009 Policies for the Jurisdiction of the: Law and Criminal Justice Committee" National Conference on State Legislators https://www.ncsl.org/ncsl-in-dc/standing-committees/law-criminal-justice-and-public-safety/2008-2009-polices-law-and-criminal-justice-comm.aspx) IB

States and local governments have the predominant burden of ensuring public safety through the criminal justice system, and the juvenile justice systems. The national government should refrain from making federal crimes of state offenses or from enhancing sentences for crimes that are more properly the domain of states. Federal jurisdiction must be justified by significant improvements in interstate law enforcement or protection of federal constitutional rights. A mere showing that the Constitution may allow federal jurisdiction is not sufficient basis for expansion. **Nationalizing broad areas of crime policy has the same effect as preemption** by deterring innovation, diminishing community responsibility, and reducing accountability. Congress should rely on the Assimilation of Crimes Act, rather than creating a federal criminal code that parallels state laws. The federal government should work with states to examine ways that conflicts in jurisdiction can be avoided.

AT Perm—Crowds Out State Action

Federal policies crowd out the states—reduces demand for state action

Adler 2007 – Professor of Law and Co-Director, Center for Business Law and Regulation, Case Western Reserve University School of Law

(Jonathan H "WHEN IS TWO A CROWD? THE IMPACT OF FEDERAL ACTION ON STATE ENVIRONMENTAL REGULATION", 31 Harv. Envtl. L. Rev. 67)

A second potential negative indirect effect of federal regulation on state regulatory choices **is crowding out**. This occurs because federal regulation **may serve as a substitute for state-level regulation, thereby reducing the benefits of adopting or maintaining state-level protections**. Insofar as voters in a given state demand a certain level of environmental protection, there is no reason to expect states to duplicate federal efforts when a federal program satisfies that demand, particularly if a state has not already created such a program. If the federal floor is greater than or equal to the level of environmental protection demanded by a state's residents, **that state has no reason to adopt environmental regulations of its own** once the federal government has acted. To the extent that this effect occurs, it is separate from--perhaps even in addition to--the signaling effect described above. The claim here is not simply that states regulate less than they would absent federal regulation--although this claim is almost certainly true. Rather, the claim is that some states that would adopt regulations more protective than the federal floor, absent the imposition of federal regulation, have not done so due to federal regulation and may not do so in the future. If this hypothesis is correct, the net effect of federal environmental regulation in at least some states **could be less** environmental protection than would have been adopted had the federal government not intervened. To see how this could occur, recall that the demand for environmental regulation in any given jurisdiction tends to increase over time as wealth, [*99] technical capability, scientific knowledge, and environmental impacts increase. n131 In any given state (as in the nation as a whole), there is an initial period ("Period A") during which the demand for a given type of environmental protection is relatively low. The costs of adopting environmental regulations in this period are greater than the benefits of adopting any such protections. These costs include the costs of developing, drafting, and passing legislation; the costs of creating a new policy program, drafting and implementing regulations, defending the regulations from any potential legal or administrative challenges, creating a means to monitor and enforce regulatory compliance; and so on. In addition, there are opportunity costs of devoting state resources and political capital to the cause of environmental protection as opposed to some other policy goal. As discussed earlier, the demand for environmental protection has tended to increase over time along with increases in living standards. n132 At the same time, increases in technical knowledge and administrative efficiency may lower the costs of a given regulatory program. Eventually, a state will enter a second period ("Period B") in which the benefits of a given environmental regulatory program are greater than the costs of initiating, implementing, and operating such a program. Absent any federal interference, the hypothetical state will not adopt environmental regulations in Period A, but will adopt such regulations in Period B. See Figure 3. This is the environmental transition discussed in Part I. In Period A, the demand for environmental protection is insufficient to justify the costs of implementing environmental protection measures. By Period B, however, the demand for environmental protection has risen due to increases in wealth and knowledge, among other factors. At the same time, increases in technical capacity and scientific understanding have reduced the cost of adopting environmental protections. As a result, in Period B a state will adopt Q[B] amount of environmental protection. n133 [*100] The timing of Period A and Period B will vary from state to state. This is clearly the case as different states have enacted different environmental regulatory measures at different times--some before the adoption of federal environmental regulation, some after, and some not at all. Looking at the history of various environmental concerns, such as air quality, water quality, or wetlands, it is clear that many states moved from Period A to Period B for these environmental concerns at various times prior to the onset of federal regulations in the 1970s. In many other states, however, a federal regulatory floor was adopted before the onset of Period B. [*101] For states that went through their environmental transition and entered Period B prior to the enactment of federal environmental protection, whether the adoption of a federal regulatory floor increased the aggregate level of environmental protection in that state depended upon whether preexisting state policies offered greater or lesser levels of protection than the relevant federal policies. For states in which the onset of Period B begins after the adoption of federal regulations, the enactment of a federal regulatory floor will, at the time of enactment, increase the aggregate level of environmental protection in that state. However, this may not be the case over time. In states that desire a greater level of protection than that provided by the relevant federal regulations, it is not clear that the existence of the federal regulatory floor will result in an equal or greater level of protection than would be adopted were it not for the federal regulations. This is because federal regulation

will, **to some extent, act as a substitute for state regulation**. As a result, the adoption of federal regulation has the potential to reduce the demand for state regulation and, in some instances, even result in less aggregate regulation in a given state than would have been adopted absent federal intervention. In short, federal regulation can crowd out state regulation. **The potential for such a crowding-out effect is illustrated** in Figure 4. The existence of federal regulation will reduce the demand for state regulation by an amount equal to the extent to which federal regulation is a substitute for state regulation of the same environmental concern (Q[FReg]). This substitution effect will reduce the net benefit of adopting state-level environmental regulations from OCQ[B] to OC'Q'[B]. By reducing the net benefits of state-level environmental regulation in this manner, federal regulation has the potential to crowd out state-level environmental protections, even if the quantity of environmental protection demanded in the state is greater than that provided by the federal government. In such cases, the aggregate level of environmental protection will be lower with federal regulation than it would be without it. [*102]

— Theory —

50 State Fiat Good

Uniform 50 State fiat is good--

1. Its predictable – The states CP is an important test of the desirability and necessity of federal action

2. Key to negative ground – states act as a limit on the topic-small affs with no real fed key warrant won't be run by the aff- that creates a functional limit on the topic and focuses the debate on the best affs- we can debate the core of emissions policy

3. No abuse – the CP fiats all 50 states as one unitary actor – comparison of one actor versus another as opposed to one actor versus multiple actors – and this is equally true because use of the USFG also fiats multiple actors across multiple branches of the government

4. Uniformity is predictable on this topic

Barkow 2011 – Professor of Law and Faculty Director, Center on the Administration of Criminal Law, New York University School of Law

(Rachel E. Barkow "Federalism And Criminal Law: What The Feds Can Learn From The States" vol. 109 no. 4 Michigan Law Review pp. 519-580 2011) IB

Criminal law enforcement in the United States is multijurisdictional. Local, state, and federal prosecutors all possess the power to bring criminal charges. An enduring question of criminal law is how authority should be allocated among these levels of government. In trying to gain traction on the question of when crime should be handled at the federal level and when it should be left to local authorities, courts and scholars have taken a range of approaches. Oddly, one place that commentators have not looked for guidance on how to handle the issue of law enforcement allocation is within the states themselves. States have the option of vesting authority in a state-level actor-typically, the attorney general-or in local district or county attorneys. This choice, like the choice between federal and state authority, also requires a balancing of the advantages of centralization against the loss of local values. How states choose to strike that balance is therefore informative for the question of local versus federal authority in that states are weighing the same issues. This Article accordingly looks to the states for guidance on when criminal enforcement responsibility should rest with local authorities and when it should reside with a more centralized actor (be it one at the state or federal level). A comprehensive empirical survey of criminal law enforcement responsibility in the states including a review of state codes and caselaw and interviews with state prosecutors-reveals remarkable similarity among the states about the degree of local control that is desirable**. The states are virtually unanimous** in their deference to local prosecutors, the relatively small number of categories they identify for centralized authority in a state-level actor and their support of local prosecution efforts with resources instead of direct intervention or case appropriation. **The state experience** thus **provides an alternative model of central-local cooperation to the one used at the federal level.** The Article explains that a main source of the difference in approach is sentencing policy. In the states, questions of procedure and sentencing are irrelevant to the allocation of power because they are the same at both levels of government**. States** thus **serve as laboratories where sentencing differences and variation in procedural rules are taken out of the equation** and the focus is on institutional competence. In contrast, the federal government typically decides whether to vest authority in federal prosecutors based on whether or not it agrees with local sentencing judgments. Because sentencing proves to be so central to federal prosecutions of local crime, the Article concludes by urging those interested in federalism to pay greater attention to the role of sentencing as a driver of the federal government's decision to get involved with questions of local crime.

*** Affirmative Answers ***

— Federal Action is Key —

2AC—Fed Key—Prosecutorial Discretion

The counterplan cant solve – federal prosecutors would see state prosecutions as too lenient and intervene by making the cases federal

Barkow 2011 – Professor of Law and Faculty Director, Center on the Administration of Criminal Law, New York University School of Law

(Rachel E. Barkow "Federalism And Criminal Law: What The Feds Can Learn From The States" vol. 109 no. 4 Michigan Law Review pp. 519-580 2011) IB

Sentencing policy differences are often at the root of the differing approaches of the states and the federal government in addressing the central-local balance. As noted above, local and state prosecutors apply the same state laws, so there is no set sentencing differential when one or the other brings the case. In contrast, federal law typically establishes higher sentences than state law for the same conduct,2 92 so one of the chief motivators for federal involvement is a different view of what sentence is appropriate. Congress is often quite explicit about this. For example, when it passed the Violence Against Women Act that provided a civil remedy for gender-motivated crimes of violence that were already covered by state law, it explained that a reason for the intervention was "unacceptably lenient punishments" for those convicted in state courts.293 It is not just Congress that is making decisions with a focus on sentencing. That same factor is also the most persuasive explanation for why federal prosecutors are more likely to use their discretionary power than statewide prosecutors are in those states where state prosecutors can intervene at their discretion. When federal prosecutors choose to exercise their discretion to 294 bring a prosecution instead of leaving the matter to localities, they are making a decision to charge a defendant under a federal law that typically imposes a more severe sentence, 295 through either a mandatory minimum or the application of guidelines that have high rates of compliance among federal judges.296 For example, former Attorney General Alberto Gonzales touted the use of the federal RICO law to target gangs because it "is an innovative approach to fighting criminals with tough penalties that may be unavailable in the state system."97 Similarly, when former Attorney General William Barr announced support for Project Triggerlock, a program that uses federal firearms laws to prosecute "the most dangerous violent criminals in each community," he noted that "[v]iolent criminals typically prosecuted in State court will be prosecuted Federally to take advantage of stiff mandatory sentences without the possibility of parole." 298 Indeed, the motto for Project Triggerlock was "[a] gun plus a crime equals hard Federal time."m9 The U.S. attorney's office in Richmond adopted a similar program, Project Exile, because it made use of stiffer federal sentences and the federal prison system, which was likely to mean the offender served his or her time far from home.3 0 Thus, in the 1990s, **the federal government made an "institutionalized commitment ... to take cases that would have otherwise been pursued locally" precisely because federal sentences were more severe. The United States Attorneys' Manual makes this explicit.** In advising federal prosecutors whether or not to decline to prosecute because a matter could be brought in another jurisdiction, the manual tells federal prosecutors to consider "[t]he other jurisdiction[']s ability and willingness to prosecute effectively" and "[t]he probable sentence or other consequences if the person is convicted in the other jurisdiction.,32 The manual reflects the Department's view that the two are inextricably linked by explaining that "[t]he ultimate measure of the potential for effective prosecution in another jurisdiction is the sentence, or other consequence, that is likely to be imposed if the person is convicted. 303 Thus, the Department's own express policies reflect that increased federal involvement in local matters is often based on the fact that federal prosecutors disagree with state judgments about the appropriate sentence for criminal conduct and what makes an "effective" prosecution.so To the extent federal procedural advantages are cited as justifying federal involvement in local crime, those procedural advantages are often dependent upon the ability of federal prosecutors to credibly threaten defendants with longer sentences to gain cooperation. For example, when John Jeffries and Judge John Gleeson argue that federal prosecutors do a better job bringing organized crime cases than state and local prosecutors, they argue it is because of various aspects of federal law. Although their list of federal procedural advantages includes the ability to use uncorroborated accomplice testimony and hearsay evidence before the federal grand jury, the real driving force aiding

federal prosecutors is federal sentencing law. Jeffries and Gleeson themselves admit as much, noting that "much of the credit for [federal prosecutors and investigators'] success [against organized crime] goes to the effect of the Sentencing Guidelines." 30 ' After all, it is the operation of the guidelines that gets accomplices to testify in the first place, whether before a grand jury or at trial. **Without that threat, the other differences would not matter** nearly as much, if **at all**. Sentencing therefore drives much of the federal push for involvement, whether by legislators or prosecutors.

1AR—Fed Key—Prosecutorial Discretion

Even if its legal at the state level, local law enforcement will threaten federal charges to coerce plea agreements – nullifies the benefits of the aff

Divine 2020 - Yale Law School, J.D.

(Joshua M Divine 2020 "Statutory Federalism And Criminal Law" Virginia Law Review, Vol 106, pp 127-196) IB

The gatekeeping role local officials play also gives both police and prosecutors much more leverage over defendants. This power enables them to use threats of federal prosecution as leverage in plea negotiations. Although local prosecutors do not have as much gatekeeping influence as police because they are second in line as gatekeepers, they too possess power to convey cases to federal prosecutors. One study found that prosecutors who threaten defendants with possible federal prosecution extract plea agreements where defendants face sentences "higher than the standard state plea for similar crimes."264 The gatekeeping function also enables police in some locations to make arrests **even when they lack probable cause** to believe a defendant committed a crime under state law. Although courts are split on the issue, some courts allow state officials to arrest individuals for violating federal law **even when the underlying conduct is legal under state law**.265 This gatekeeping role thus gives local law enforcement greater arrest powers than they otherwise would have.

2AC—Fed Key—Local Enforcement

Local law enforcement will circumvent – they will just push cases to the federal level to avoid the counterplan

Divine 2020 - Yale Law School, J.D.

(Joshua M Divine 2020 "Statutory Federalism And Criminal Law" Virginia Law Review, Vol 106, pp 127-196) IB

The gatekeeping role local officials play **enables them to circumvent constraints imposed by state law**. Nowhere is this clearer than with sentencing law. The stark differences between state and federal incarceration periods, plus the gatekeeping role local officials play, give local officials tremendous power to create significant sentencing disparities among similarly situated offenders. (Again, some officials may not use this power, but they nonetheless possess it.) Because of Congress's decision to drastically expand the scope of federal criminal law jurisdiction, **nearly all conduct that would violate state criminal law also can be prosecuted federally**.234 Yet almost **across the board, Congress has authorized**—and even mandated—**far harsher sentences** than have state legislatures. Some federal sentences are ten or twenty times as harsh as state sentences.235 In one case, the U.S. Sentencing Guidelines required a sentence of 188 to 235 months for distributing controlled substances while state sentencing guidelines prescribed a sentence of just 18 to 20 months.236 In another, a drug offender faced a four-year sentence in state court but life without parole in federal court.237 Not only are sentences higher, but federal offenders typically serve larger proportions of their sentences. Federal offenders who display "exemplary compliance" with disciplinary directives can receive credit for 419 days for every 365 served.238 So a federal offender with a good disciplinary record can obtain release after serving about 87% of his sentence. But sentence proportions are very different in the states. In Missouri, certain felony offenders need only serve 15% of their sentences before becoming eligible for parole.239 Even for repeat offenders, Missouri sometimes requires only that offenders serve 40% of their sentences.240 Because incarceration periods are much longer under federal law, the choice whether to prosecute a defendant in state court or federal court —for the same conduct—is more consequential to the defendant than any other decision. As one scholar has noted, the disparity in how much time persons spend incarcerated if convicted federally instead of under state law creates "a kind of cruel lottery."241 Exploiting this disparity, **officials routinely shift defendants to federal court simply to obtain higher sentences**,242 **and they openly admit doing so**.243 When he was Attorney General, Jeff Sessions asked local officials to "steer more gun-crime cases to federal court, where offenders face an average of six years in prison, compared with the lighter punishments that can result from state convictions."244 **Shifting defendants for these reasons is official Department of Justice policy.** Since at least 1988, the DOJ manual has directed officials to weigh "[t]he probable sentence or other consequences if the person is convicted in the other jurisdiction."245 The manual states that sentencing disparity is one of the most important factors for prosecutors to consider. It stresses that "[t]he ultimate measure of the potential for effective prosecution in another jurisdiction is the sentence, or other consequence, that is likely to be imposed if the person is convicted."246 As one scholar put it, this "language appears virtually to instruct federal prosecutors to go after particular defendants on the basis that a harsher sentence can be obtained under federal law."247 Local officials have the power to create sentencing disparity between similarly situated offenders by choosing to convey information about some defendants to federal officials. Federal officials have a much higher rate of convictions and guilty pleas248 in part because they can choose to "charge only rock-solid cases."249 Local officials cannot force federal officials to take cases, but they can increase the likelihood that federal officials will take a case by making an arrest, pouring more investigation resources into a case, and conveying all that information to federal officials. **This ability greatly enhances the enforcement discretion of local officials**—discretion that receives little oversight under current procedures. Consider the case of Mark Palmer and Jack Roberts, two joint partners of a marijuana-growing venture. Despite their equal involvement in the unlawful scheme, their sentences could not have been more different. Local officials chose to charge Roberts locally under state law. He received a fine of just $1,000, reduced to $176 because of financial insecurity.250 Palmer was far less fortunate. In a move the Ninth Circuit declared "troubling" but legal, local officials sent his case file to federal officials. Palmer received a mandatory minimum sentence of ten years.251 Local officials were the gatekeepers for Palmer's conviction. The DEA learned about Palmer only because local enforcement officials informed the agency of their investigation into Palmer.252 Their decision to shift information about Palmer's case created stark disparity between Palmer's and Roberts's sentences. **The ability of local officials to circumvent constraints imposed by state law extends much further than evading state**

sentencing constraints. Defendants in state court often possess greater procedural and substantive rights than defendants in federal courts because most (although not all) procedural protections under federal law are constitutional and apply both to states and the federal government. So to the extent states have different procedural requirements, those provisions tend to give defendants greater protection. For example, the Fourth Amendment does not recognize a right against the government searching trash left at the curb,253 but materially identical provisions in some state constitutions do.254 The gatekeeping role local officials play allows them to evade these protections. A New Jersey investigator, for example, can search a person's trash in violation of the New Jersey Constitution without having to worry that a judge will suppress the evidence so long as prosecution occurs in federal court.255 Likewise, under federal law, obtaining bail or pretrial discovery is harder,256 asset forfeiture is harsher,257 and statutes of limitations are longer,258 so local officials can evade defendant-friendly state policies **in all these areas** by shunting cases to federal prosecutors. In the light of the greater protections generally afforded under state law, it should not be surprising that the rate of conviction is far higher in federal courts.259 **Evading state constraints is easier than ever before**. The status of local police as gatekeepers of federal information gives them new bargaining power over prosecutors. Police "used to be wholly dependant [sic]" on local prosecutors.260 But **federal dependence on local police has given those police "bargaining leverage over local prosecutors."**261 As one police captain reported, "it's like buying a car: we're going to the place [federal or state] we feel we can get the best deal."262 Police in New York City have used their informational monopoly to skirt local prosecutors in favor of federal prosecutors because they disagreed with the decision by local prosecutors to put first-time firearm offenders through diversion programs instead of into prison.263

1AR—Fed Key—Local Enforcement—Circumvention

Local law enforcement will circumvent the counterplan

Divine 2020 - Yale Law School, J.D.

(Joshua M Divine 2020 "Statutory Federalism And Criminal Law" Virginia Law Review, Vol 106, pp 127-196) IB

Second, dynamic incorporation can strengthen separation of powers by providing state legislatures with greater opportunities to exercise oversight for enforcement discretion. Few realize that local police heavily influence federal prosecutions and thus **can evade state law**. Local police often are the information gatekeepers both for local and federal prosecutors. So local police often can avoid more defendant-friendly state sentencing laws, substantive laws, or procedures simply by shifting defendants to federal court. This forum shopping might be beneficial in some contexts. But the problem is that it is exercised with little or no external accountability.

— Perm —

2AC—Perm—Coordination Key

Coordination is key – reforms only at the state level are inadequate

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(Ames Grawert PUBLISHED: January 2, 2020 "How to Fix the Federal Criminal Justice System (in Part)" Brennan Center for Justice https://www.brennancenter.org/our-work/research-reports/how-fix-federal-criminal-justice-system-part)

People often talk about reforming "the criminal justice system." But there is no single such system in the United States. When counting state and local jurisdictions, there are really thousands of "systems," all with their own distinct challenges. Improving them takes work on the local, state, and federal levels. Given that federal prisons hold just over 12 percent of the national prison population, federal justice reform might seem like it should be a low priority. But it still holds more than any single state, **making federal reform a vitally important step on the path to ending mass incarceration**. And mandatory minimum sentences, which are often applied to drug cases, can create uniquely unjust outcomes. To understand how to fix these problems, it's important to know what makes the federal justice system different in the first place. Different cases, different priorities The most common crimes, such as assault and theft, are generally prosecuted by cities, counties, and states. Federal law enforcement handles a narrower set of issues, like crimes that cross state lines or involve federal law. (For how to address the issues facing state criminal justice systems, see this companion expert brief.) It's no surprise, then, that the federal prison population looks different than the states'. Nearly half of all people in federal prison are incarcerated for drug offenses, compared to just 15 percent in state prisons —the product of a Supreme Court case allowing Congress to exercise broad regulatory authority over drugs, and a series of laws where Congress did just that. People convicted of weapons offenses —19 percent of people in federal prison —make up another large part of the federal prison population, as do those held on immigration offenses, comprising 6 percent. Comparatively, more than half of those in state prison are incarcerated for crimes classified as violent, like assault and robbery. The unique role of federal sentencing Perhaps surprisingly, stays in federal prison are generally shorter than those in state prisons: an average of about 4 years in federal prison compared to about six-and-a-half years in state facilities. But some federal offenses carry significant, often inflexible penalties. This is due to the prevalence of "mandatory minimums" in the federal system —laws requiring that upon conviction of a certain offense, the defendant must be sentenced to a minimum term of imprisonment. Mandatory minimum penalties figure especially prominently in drug cases. According to the U.S. Sentencing Commission, an agency with an important but advisory say in how federal crimes are sentenced, around half of all drug offenders in FY 2018 were subject to a mandatory minimum at sentencing. More generally, around a quarter of all federal cases triggered a mandatory minimum that year. These penalties tend to fall hardest on people of color: focusing again on FY 2018, roughly 70 percent of offenders convicted of a crime carrying a mandatory minimum were Black or Latino. To be sure, these mandatory punishments aren't unique to the federal system. New York imposes minimum penalties for many felonies, for example. But given the federal government's outsized role in drug enforcement, federal mandatory minimums have become synonymous with the drug war. Mandatory minimums empower federal prosecution Mandatory minimum penalties also give prosecutors significant power over the sentence a defendant ultimately receives. If a prosecutor charges a defendant with a crime carrying a mandatory minimum, the judge's hands are tied: the court will not be able to impose a sentence below the one required by statute, preventing any judicial consideration of mercy. Knowing this, federal prosecutors can (and do, as NYU Law professor and sentencing expert Rachel Barkow writes) at times leverage the threat of a mandatory minimum to induce plea bargains and cooperation. While it's not unique to the federal system, this is an important dynamic in federal drug enforcement, and helps explain some recent debates around federal criminal justice policy. In May 2017, for example, then-Attorney General Jeff Sessions rescinded Obama-era guidance that instructed federal prosecutors to consider charging some drug offenses in a way that wouldn't trigger a mandatory minimum. Sessions argued that reversing the rule would restore "tools" that prosecutors need to "dismantle drug trafficking enterprises," an oblique reference to using the threat of mandatory minimums to induce cooperation. On the other hand, this change took one path to prosecutorial mercy off the table, meaning people would likely face longer prison sentences. Again, many state prosecutors enjoy comparable discretion. But the length and prevalence of federal mandatory minimums makes the problem

especially stark in the federal system. And, the federal Bureau of Prisons remains the nation's largest incarcerator, magnifying the impact of unfair federal penalties. Different bail and pretrial detention practices In some areas the federal system is ahead of the states. Most jurisdictions use cash bail, where people accused of a crime remain in jail until trial unless they pay a certain amount of money (or have a bail bondsman pay that amount, for a hefty fee). Functionally, this system ties someone's freedom to their ability to pay for it. Originally, that was how the federal system worked too. "All too often we imprison men for weeks, months, and even years," President Lyndon Johnson said, "solely because they cannot afford bail." The Bail Reform Act of 1966 changed that, sweeping the old system aside and making pretrial release the default for most federal crimes. Some Reagan-era changes narrowed that rule. But today, money bail is rarely used in federal courts. If the government can prove someone is dangerous or poses a flight risk, they can be detained pending trial. Otherwise, conditions are set to ensure they return to court. Pretrial supervision may also be ordered, in which case a pretrial service officer may check in on someone accused of a crime, ensure compliance with any release conditions, and remind them of their required court appearances. Federal pretrial release isn't perfect, but it's well ahead of where many of the states are today. It also offers ongoing proof that cash bail isn't necessary to preserve public safety —something state reform advocates can point to in their own work. What reform must accomplish Between the huge number of people locked up in the federal justice system and the unfair sentences some are serving in it, **reforming the federal justice system is an imperative that we simply cannot ignore**. But any proposals must be tailored to the unique role of the federal government in the national criminal justice infrastructure. Last year saw a major reform bill enacted: the First Step Act, which cut some federal drug sentences and sought to improve conditions in federal prison. But the law is what it claims to be: just a first step in a much longer process. Other changes —like modernizing the federal clemency process and diverting people who commit lower-level crimes to alternatives to incarceration —will also be necessary to improve the federal justice system and the lives of the people caught up in it.

— Theory —

States CP Bad – 2AC

States CP is a voting issue –

1: Steals 1AC

a) we can't garner offense because they just replace USFG with states

b) shift debate one speech later which destroys in-depth clash and leads to poor argument development

2: Artificially Contrived-No comparative literature exists for ALL 50 states acting at the exact same time means its unpredictable and not real world. We should strive to maintain debate as real world as possible in order to make debate most valuable.

3: Multiactor fiat bad- no one agent has control over multiple entities and it allows them to shift out of our offense because they can use another actor to take out our turns

4: Counterinterpretation- the neg gets any counterplan with one actor solves their neg flex/education offense

Federalism DA (Negative Position and Affirmative Answers)

*** Negative Position ***

1NC

1NC—Federalism Net Benefit

Federal decisions on criminal justice would break the presumption against preemption over state police powers – that's key to coronavirus quarantines

Blake and Arianina **20** [David Blake is a partner and chairs the state attorneys general practice at Squire Patton Boggs LLP. Kristina Arianina is a senior associate at the firm. Potential Federal Vs. State Conflicts Due To COVID-19. April 9, 2020. https://www.law360.com/articles/1262048/potential-federal-vs-state-conflicts-due-to-covid-19]

States also have the ability to use their **police powers** to enforce any declarations during emergencies. For example, state **police powers** allow them to put in place isolation and **quarantine laws** to prevent or stop the spread of disease, even over the objections of those affected and despite the inherent loss of liberty by those impacted. Such orders must be temporary and well justified but they are very powerful when used. In accordance with these powers, states' shelter-in-place orders have forced the closure of an untold number of nonessential businesses and restricted the freedom of movement of their citizens except for essential needs such as limited visits to grocery stores or the doctor's office. Over 40 states had some variation of a shelter-in-place order, covering 97% of Americans. It is now a crime to leave your home unless the government has decreed it is OK. The federal government also has surprisingly powerful tools at its disposal during extraordinary health-related emergencies. For example, the basis for the federal government's authority to prescribe a quarantine and other health measures is based on the commerce clause, which gives Congress exclusive authority to regulate interstate and foreign commerce. The Public Health Service Act gives the U.S. Department of Health and Human Services the authority to impose quarantines to prevent the spread of communicable diseases "from foreign countries into the United States and within the United States and its territories/possessions." The authority for carrying out these measures has been delegated to the U.S. Centers for Disease Control and Prevention. Through the CDC, the federal government has the authority to "take measures to prevent the entry and spread of communicable diseases from foreign countries into the United States and between states." However, the HHS and CDC rarely use the quarantine powers and have traditionally deferred to state and local health authorities. So has, so far, the president. The **Federal Government** Is **Not King** On March 16, President Trump published "Coronavirus Guidelines for America—15 days to slow the spread," recommending that Americans "[l]isten to and follow the directions of your state and local authorities." On March 26, when many states had shelter-in-place orders extending into May and June, President Trump sent a letter to governors informing them that his administration was working on the new guidelines that would reopen parts of the stalled U.S. economy as soon as possible. Current federal social distancing guidelines expire April 30. So what would happen if President **Trump** were to relax the federal guidelines yet governors determine stay-at-home orders remain indispensable to manage the health crisis in their states? The preemption doctrine is **legally complex** and normally the supremacy clause of the U.S. Constitution would suggest federal law is "the supreme law of the land." But the application of the following principles to the potential conflict between states and the federal government in the context of COVID-19 pandemic — where the states have adopted stricter measures than the federal government to preserve health and safety — **most likely** would result in **state policies** trumping Trump's efforts to open the country for business before governors agree. First, when a federal statute contains an express preemption clause, as long as the statute is constitutional, it forecloses a potential state argument against preemption.[1] In other words, if a federal statute says it preempts state laws on the same subject, it mostly likely does. The PHS Act, however, does not contain an express preemption clause. In fact, it could be read as prohibiting the abrogation of a state or local quarantine as it states: "Nothing in this section … may be construed as superseding any provision under State law … except to the extent that such a provision conflicts with an exercise of Federal authority under this section." The federal PHS power here would only work to create more restrictive policies, not eviscerate state orders in the name of the economy. The federal wrench, at least in this situation, only ratchets in the wrong direction of where the president seems to want to go. Second, **courts** are likely to **find against** the **federal preemption** of **state** exercise of **police powers** by federal law in the **areas traditionally reserved** for the **states**, such as public health, **safety** and welfare. In these cases, the **presumption against preemption** may apply.[2] **Quarantines** historically fall within the **states' police power**. The U.S. **Supreme Court** recognized this as early as in 1824[3] and again in 1902: "from an early day the power of the States to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants … is beyond question."[4]

Coronavirus could kill millions

Chappell 20 (Bill, Reporter and Producer for NPR "'We Are At War,' WHO Head Says, Warning Millions Could Die From COVID-19." NPR, 3/26/20, https://www.npr.org/sections/coronavirus-live-updates/2020/03/26/822123471/we-are-at-war-who-head-says-warning-millions-could-die-from-covid-19, Accessed 7/5/20, GDI – JMoore)

"We are at war with a virus that threatens to tear us apart," World Health Organization Director-General Tedros Adhanom Ghebreyesus told world leaders Thursday, in a special virtual summit on the COVID-19 pandemic. The deadly coronavirus, Tedros said, "is the defining health crisis of our time." As the WHO head spoke, the number of coronavirus cases worldwide was reaching the 500,000 mark. More than 20,000 people have died, and both Italy and the U.S. are poised to surpass China atop the list of countries with the most coronavirus cases. In the U.S., thousands of National Guard members are bolstering vital support systems, such as helping to distribute supplies at food banks. An increasing share of the world's population is under orders to stay at home; many schools and businesses are being told to shut down. Two weeks after deeming the viral respiratory disease a global pandemic, Tedros told those attending the G20 Extraordinary Leaders' Summit on COVID-19, "The pandemic is accelerating at an exponential rate." He noted that while it took weeks for the first 100,000 cases to accrue, the most recent 100,000 cases were reported over the course of just two days. Millions of people could die if governments don't take aggressive action against the coronavirus, Tedros said. The summit's participants included the world's most powerful leaders, from President Trump to China's President Xi Jinping.

--- Links ---

L—CJR—AT: Criminal Justice = Federal Jurisdiction

States possess primary authority for defining and enforcing criminal law

Barkow 5 [Rachel E. Barkow, Associate Professor, NYU School of Law. FEDERALISM: OUR FEDERAL SYSTEM OF SENTENCING. Stanford Law Review, 2005. www.stanfordlawreview.org/wp-content/uploads/sites/3/2010/04/Barkow_0.pdf]

When it comes to **criminal law** enforcement, as the **Supreme Court** has recognized, "**[s]tates** historically have been **sovereign**."8 This Part discusses the reasons for the states' primary responsibility for crime control. Part I.A begins with the Constitution and its federalism requirements. Part I.B then discusses the functional arguments for keeping most matters of crime control with the states.

A. The Constitution and Federalism

The Framers vested the **federal government** with **few** explicit **criminal enforcement powers**.9 Congress therefore promulgates most federal crimes under its **Commerce Clause** powers.10 In 1995, the Supreme Court made clear in United States v. **Lopez**11 that this authority is **limited** and does **not allow** Congress to take an **expansive view** of federal **criminal** law **enforcement**. The Supreme Court held in Lopez that Congress had exceeded its powers in enacting the Gun-Free School Zones Act of 1990, which made it a federal crime to possess a firearm within 1000 feet of a school. Although the decision was a marked shift from the lax enforcement of the Commerce Clause that prevailed in the almost six decades of Supreme Court jurisprudence prior to Lopez, the decision was grounded in "first principles" of constitutional law: that the "the powers delegated ... to the federal government are few and defined" whereas those vested in the states "are numerous and indefinite."

Whatever the scope of the **Commerce Clause** in **other** substantive **areas**, it is **particularly important** to adhere to a strict dichotomy between federal and state authority when it comes to **criminal law** enforcement. Indeed, this was a critical part of the Court's decision in Lopez. The Court emphasized that "[w]hen Congress criminalizes conduct already denounced as criminal by the States, it affects a 'change in the sensitive relation between federal and state criminal jurisdiction.'"13 As the Court made clear, "[u]nder our **federal system**, the '**States** possess **primary authority** for **defining** and **enforcing** the **criminal law**.'"14

L—Policing

National policing regulations undermine federalism and worsen policing quality – the squo is headed in the right direction

Mayer 12 [Matt A. Mayer is a Visiting Fellow at The Heritage Foundation and author of Homeland Security and Federalism: Protecting America from Outside the Beltway. Federalism Allows Law Enforcement to Determine Counterterrorism Policies That Work Best. March 26, 2012. https://www.heritage.org/terrorism/report/federalism-allows-law-enforcement-determine-counterterrorism-policies-work-best]

The **10th Amendment** of the U.S. Constitution simply 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." Those 28 words confirm that states possess the ability to tailor policies that best address the issues they confront. Because of the various demographic differences among the states, a **one-size-fits-all policy** may **not work** or may not work most effectively and efficiently in a particular state.

When the **federal government** **nationalizes** an **inherently state** or local **issue**, it **ensures** that whatever policy it produces will **fail** to solve the problems. We know from the welfare reforms in the 1990s that a policy solution in one state may not work well in another state, which demonstrated the importance of states maintaining the flexibility and authority to tackle issues as they see fit. A robust policy competition among the states will enable America to find out what works and what does not. Domestic counterterrorism policy is no different.

Each Community Presents **Unique Challenges** Requiring **Unique Solutions**

America, thankfully, does not have a **national police force**. The Federal Bureau of Investigation (FBI) has authority over federal crimes, including terrorism, and exercises its authority by investigating and arresting suspected terrorists. With only 15,000 agents for the entire United States, the FBI lacks the resources to protect every American city. Because of this inherent limitation, outside of constitutional and legislative protections, America's law enforcement community is **not covered** by a **one-size-fits-all policy** on how best to protect U.S. cities.

State and local law enforcement entities are **not displaced** by **federal authorities** (except in some very narrow areas of national control) and instead retain their **inherent** sovereign **authority** to design counterterrorism programs that are tailored to the needs of each community. These needs are typically defined by **demographics**, **risk assessments**, **community norms**, and other factors **unique** to **each jurisdiction**. The ideal outcome for Americans is one where there is strong cooperation and true partnering between the FBI and other federal law enforcement agencies and state and local law enforcement entities. We are **getting closer** to that **ideal** with **each passing year**.

The NYPD Example

Recently, the New York Police Department (NYPD) received potentially unfair negative media coverage about its counterterrorism policies, specifically its Muslim surveillance program. The focus of criticism involves the NYPD's surveillance of Muslim college students, restaurants, and mosques throughout the northeast United States. The NYPD insists that its policies and practices adhere to the 1985 Handschu v. Special Services Division guidelines, as modified via judicial approval in 2002 after the September 11, 2001, terrorist attacks. Recent events in France may bolster the NYPD's case on the importance of conducting surveillance of individuals based on leads.

In Handschu, the court held that the NYPD's surveillance of political activity had violated the First Amendment's free speech clause. The decision resulted in a set of guidelines that regulated the NYPD's programs covering political activity. To engage in surveillance, the 1985 guidelines required a warrant based on suspicion of criminal activity and prohibited certain activities absent unlawful conduct. In 2002, a federal judge modified the Handschu guidelines to reflect the new realities arising from the terrorist threat.

In response to the criticism, New York City Mayor Michael Bloomberg stated: "They are permitted to travel beyond the borders of NYC to investigate cases. They can look at websites [and] they can watch television to detect unlawful activities or where there might be unlawful activities to get leads. We don't target individuals based on race or religion. We follow leads and we are consistent, I

think, with the guidelines resulting from the Handschu federal court decision." In a speech at Fordham Law School, NYPD Commissioner Ray Kelly indicated that the NYPD surveillance program has helped stop more than a dozen terrorist plots against New York City, despite the fact that "no other police department in the country is bound by these rules, which restrict police powers granted under the Constitution."

Time will tell if the NYPD adhered to the Handschu guidelines. The point here is that a dual sovereignty has provided the NYPD and its leaders with the flexibility and authority to develop policies specific to the enormous challenges faced in New York City, which is America's most at-risk city with the highest population density and countless vulnerabilities. No other American city must confront the terrorist threats that New York City faces.

On the Other Coast

Across the country in Los Angeles, the policies implemented by the NYPD may not work. Los Angeles faces a different set of challenges, so the Los Angeles Police Department (LAPD) may choose to utilize different methods for securing its city.

For example, under the leadership of Deputy Chief Michael Downing, the commanding officer of the Counterterrorism and Special Operations Bureau, the LAPD launched a Liaison Section to serve as the face of the LAPD to the various Muslim communities. Because of the community norms in Los Angeles and the importance the LAPD has placed on developing strong relationships with its Muslim communities, the Liaison Section is specifically walled off from the intelligence and investigation elements at the LAPD.

Officers in the Liaison Section routinely spend time among the Muslim population, including at restaurants, mosques, and even private celebratory events. The relationships developed through this outreach program are genuine and stronger because of the compartmentalization policy. When an event occurs that causes conflict, LAPD Liaison Section officers can serve as honest brokers to reduce or eliminate any tensions.

If an LAPD investigation results in counterterrorism actions within a particular part of the Muslim community, the Liaison Section officers can seriously state they did not have any knowledge of the investigation and did not provide any information to the investigators. Again, this critical fact leads to a far more positive and productive environment in Los Angeles.

These two examples present two different approaches to the same issue. **Without** a **federalist approach**, the **nationalization** of domestic counterterrorism policies by the **FBI** would result—as does every other nationalized program—in a **one-size-fits-all policy** that would be less effective and, therefore, a less secure America.

Forbearance Is Okay

With all of the media and **civil liberties** attention being given to the **NYPD** and its surveillance policy, pressure will build on **Congress** to do something—hold a hearing or **pass a law**. **State** or local oversight **entities**, including the courts, will review what has actually occurred in New York City and either **affirm** the work done **or require changes** to the policy. **Either way**, Congress should exercise **forbearance** and respect the **constitutional right** of those **state** or local **entities** to do their jobs.

Federalism Is Alive and Well

Despite the belief that **state** and local involvement in **law enforcement** is no longer relevant or useful, it is being used **responsibly** across America by state and local entities. These entities must have the **flexibility** and **authority** to design policies based on each entity's particular demographics and needs. These unique approaches will help counterterrorism officials identify best practices and implement better programs. More critically, federalism will keep us safer.

L—Death Penalty

Federal Death Penalty preserves federalism – provides states political cover and allows to be laboratories of criminal justice policy – turns case

Campbell 11 (Michele Martinez Campbell, Associate Professor of Law, Vermont Law School, "FEDERALISM AND CAPITAL PUNISHMENT: NEW ENGLAND STORIES." Vermont Law Review, Vol. 36, Fall 2011, https://lawreview.vermontlaw.edu/wp-content/uploads/2012/02/12-Martinez-Campbell-Book-1-Vol.-36.pdf, Accessed 6/9/20, JMoore)

The federal death penalty can play a salutary role in preserving state abolitionism in the face of political pressure and should be viewed as a **help** rather than a hindrance to **robust federalism.** The Petit and Jacques case studies, read together, suggest that state diversity in sentencing policy is more resilient where federal capital charges are available to address those rare murder cases that generate political backlash. **Federal capital punishment**, rather than squelching states' freedom of choice in capital sentencing, can **preserve the ability of the states to function as "laboratories"** 296 **of criminal justice policy.** Polls demonstrate that sentiment in favor of abolishing capital punishment is lukewarm at best. 297 Even in states with no death penalty, abolitionism hangs by a thread and a highprofile, particularly shocking murder can pose a serious threat to a state abolitionist sentencing regime. The availability of the federal death penalty in those cases can blunt public outrage sufficiently to **protect state abolitionism.**

--- Internal Links ---

Internal Link—Spillover—General

Federal mandates spillover to crush federalism—The plan enables boarder bullying in other areas.

Somin 5/1/2020

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

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

Internal Link—Spillover—CJR

Criminal law is the greatest issue of federalism – each time congress oversteps, it expands power of the federal government over states

Walsh 11 [Brian W. Walsh, Former Senior Legal Research Fellow, Heritage. Doing Violence to the Law: The Over-Federalization of Crime. June 9, 2011. https://www.heritage.org/crime-and-justice/commentary/doing-violence-the-law-the-over-federalization-crime]

The power to punish **criminally**—including the deprivation of one's personal liberty and even one's life—is the **greatest power** that government regularly exercises with respect to its own citizens. As Professor Herbert Wechsler famously characterized it, **criminal law** "governs the **strongest force** that we permit official agencies to bring to bear on individuals." Perhaps **the central question** that the Framers of the Constitution and the Bill of Rights debated, and to which they gave painstaking consideration, was how best to protect individuals from the **unfettered power** of government. They were well acquainted with abuses of the criminal law and **criminal process** and so endeavored to place in our founding documents significant safeguards against unjust criminal prosecution, conviction, and punishment.

In fact, they understood so well the nature of criminal law and the natural tendency of government to abuse it, that two centuries later, the most important procedural protections against unjust criminal punishment are derived directly or indirectly from the Constitution itself, specifically the Fourth, Fifth, Sixth, and Eighth Amendments.

But despite these protections, the wholesale **expansion** of **federal criminal law**—both as to the number of offenses and the subject matter they cover—is a **major threat** to Americans' **civil liberties**. **Each time** Congress crafts a **criminal law** covering a **new subject matter**, it **effectively expands** the **power** of the **federal government**. And the types of crimes that Congress now often creates—lacking a true actus reus or a meaningful mens rea requirement—can effectively circumvent the Bill of Rights' procedural protections.

Of similar concern, criminal offenses that exceed the limits of Congress's limited, enumerated power are **breaches** of one of the **primary structural limitations** that constitutional **federalism** imposes on the federal government. After countenancing for decades Congress's almost unlimited criminalization of conduct that is inherently local in nature (as long as, that is, the Constitution's Commerce Clause was invoked to justify the assertion of congressional authority) the Supreme Court rediscovered constitutional limits in United States v. Lopez and United States v. Morrison. In both of these cases, the Court explained that such limits on federal commerce power are consistent with and flow from the fact that Congress is a body of limited, enumerated powers.

The federal offense of carjacking is a quintessential example of Congress's overreaching assertions of federal criminal jurisdiction. The federal carjacking offense is currently defined as taking a motor vehicle "from the person or presence of another by force and violence or by intimidation." The federal jurisdictional "hook" for this carjacking offense is that the vehicle must have been "transported, shipped, or received in interstate or foreign commerce," but how many vehicles have not? Actual commissions of carjackings take place almost uniformly within a single locale of a single state, yet federal criminal law now purports to authorize federal prosecutors to be the ones to charge and prosecute local carjackings. Such **breaches** of constitutional **federalism** are **not mere breaches** of technical and **theoretical niceties**, for the power to **criminalize** is the power to **coerce and control**. The purpose of constitutional federalism is akin to the purpose of **limited government itself**: to guard against accumulation of power by a single sovereign—i.e., the federal government—as a "double security . . . on the rights of the people." Thus, if there were no limits on Congress's power to criminalize, there would be **no limits** on the power of the **federal government** to **coerce** and control **Americans**.

--- Impacts ---

2NC—Federalism Key to Stop COVID

Federalism can effectively address the pandemic – empirically effective for progressive policies, local differences mean public health is best addressed locally

Hecht 4/27 Sean B. Hecht is the Co-Executive Director of the Emmett Institute on Climate Change and the Environment, Evan Frankel Professor of Policy and Practice, and Co-Director of the Frank G. Wells Environmental Law Clinic at UCLA School of Law, April 27 2020, "In Support of Public Health Federalism" Legal Planet, https://legal-planet.org/2020/04/27/in-support-of-public-health-federalism/

But federalism—the division of authority between state and local governments, on one hand, and the federal government on the other—doesn't have to tilt in one (rightward) political direction**. Some issues are indeed best handled at the local or state level, either for reasons that transcend left-right politics, or because that actually facilitates progressive solutions**. Ceding "federalism" to the right wing ignores the ways in which it's often completely appropriate to address major challenges in ways that differ locally. And where federalism provides a floor, rather than a ceiling, to public health protection (meaning that states have to do at least as much to protect health as federal standards dictate), it is often most effective—and also most congruent with progressive values. This isn't a comment on the constitutional dimensions of federalism. I agree with my colleague Jonathan Zasloff that Congress likely could constitutionally pass, under its power to regulate interstate commerce, a law "ordering a nationwide shelter-in-place order to last 90 days" under appropriate circumstances. I also agree with Jonathan, to a point, when he says Combatting [GOP governors'] localized obtuseness is precisely why the Framers gave Congress regulatory authority. In our justified desire to resist arbitrary authoritarianism from the White House, we must remember that national crises require national solutions. But I have to disagree with Jonathan's argument that Trump's (short-lived) claim that he had the authority to "reopen" businesses and institutions "did not violate federalism in the least." And more importantly, I must disagree with his assertion that "Federalism Is For Suckers." Federalism can be employed to ensure there are national solutions to national crises, while still leaving important authority to local governments—**including the authority to do more than the federal government** (like, for example, the federal government we have right now) would. State and local governments possess, presumptively, broad "police power" authority to protect public health. Despite the modern connotations of the word "police," this power forms the basis for virtually all claims of state and local authority to regulate conduct, from prevention of public nuisance to regulation of noxious land uses to just about everything local and state governments do to protect residents' quality of life. States in most US jurisdictions have delegated much of this authority to local governments, including cities and counties. And it especially encompasses broad powers over public health, traditionally a primarily local function. The leading case in this area, from 1904, is Jacobson v. Massachusetts, in which the U.S. Supreme Court found that Massachusetts's mandatory smallpox vaccination program was a lawful exercise of that authority. The police power is extraordinarily strong, even intruding into areas that might otherwise be considered violations of civil liberties. As Justice Harlan said in Jacobson: [T]he liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. This court has more than once recognized it as a fundamental principle that 'persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state; of the perfect right of the legislature to do which no question ever was, or upon acknowledged general principles ever can be, made, so far as natural persons are concerned.' The opinion is noteworthy for its broad upholding of state and local government authority to regulate for the common good, (The opinion also opened the door to deference even to odious state policies. Unfortunately, abuses of the Jacobson principle, including the infamous, and now discredited, opinion of Justice Holmes in Buck v. Bell upholding forced sterilization of patients judged to be "feeble minded," were common in the early 20th century. And police power to this day can be applied in ways

that disproportionately impact groups lacking political representation.) But back to federalism: Importantly, federal courts have recognized that where otherwise lawful, state and local exercises of local public health police power constitute the law of the land, unless and until Congress specifically legislates to the contrary. This principle has been recognized by the U.S. Supreme Court since at least 1886, when the Court in Morgan's Steamship Co. v. Louisiana Board of Health said: [Q]uarantine laws belong to that class of state legislation which, whether passed with intent to regulate commerce or not, must be admitted to have that effect, and which are valid until displaced or contravened by some legislation of congress. The matter is one in which the rules that should govern it may, in many respects, be different in different localities, and for that reason be better understood and more wisely established by the local authorities. It's clear that state and local governments have broad authority to address COVID-19 or other public health threats in the absence of Congressional action, and similarly that a court, or a President, lacks the ability to override that state and local authority**. So federalism certainly matters, in that important sense**. And this is sensible**: public health—encompassing everything from sanitation to local mosquito control to most transmissible diseases—is best addressed, for the most part, at a local level.** But Jonathan is correct that Congress could, if it wanted to, use its Commerce Clause authority to provide a national solution to virtually any aspect of this national crisis. In fact, there are already existing federal authorities that explicitly coexist alongside state authority, including the power to take actions to protect public health where local authorities aren't doing their job. Pointedly, those authorities—including the Public Health Act and its implementing regulations—are a one-way ratchet: they allow the federal government to override some state actions that aren't protective enough, but not to do what Trump suggests and order actions less protective of public health than what states do. For example, the PHA regulations empower the Director of the Centers for Disease Control and Prevention (CDC) to act in specified ways where "measures taken by health authorities of any State or possession (including political subdivisions thereof) are insufficient to prevent the spread of any of the communicable diseases from such State or possession to any other State or possession." But notably, Congress has said that the law authorizing those regulations may not "be construed as superseding any provision under State law (including regulations and including provisions established by political subdivisions of States), except to the extent that such a provision conflicts with an exercise of Federal authority under this section…." Not only does Congress certainly possess the authority to address a national crisis that spans all 50 states and far beyond, it has actually done so in the PHA—at least to the extent that it has authorized certain measures (including quarantine, "inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in [CDC's] judgment may be necessary" to protect public health). But those authorities are subject to the non-preemption clause above, and also do not authorize the President to order anything to reopen, or any action that harms public health. Congress has employed and recognized federalism here in a particular way: the federal government may act in specified ways where a local or state response has been insufficient. Otherwise, state and local law controls. So, according to Congress, federalism does matter here. As shown above, the Public Health Act doesn't give the President the authority to override health-protective state policies with less-protective federal policies. So I have to conclude Public Health Act authority simply may not be used to override state and local authority to do what Trump has suggested: force the reopening of closed businesses and institutions and relax social distancing. On the other hand, the federal government may also use Public Health Act authority to take "other measures, as in [CDC's] judgment may be necessary"; this might allow the federal government to require more such measures than states and localities already exercise. (It is unclear, though, how or to what extent those measures could be reconciled with the non-preemption clause in the law, if a state were to affirmatively legislate the reopening of its businesses or institutions. It seems unlikely Congress considered this situation when it drafted the Public Health Act.) Local authorities have police powers for a reason. They are typically responsive to political pressure, and have local resources to deploy in response to local needs. They also enable states and counties in California to exercise public health authority, a power that would be disastrous in an administration like the current one if left to the federal government, in the flip-side scenario to Jonathan's (federalization of less-protective policy through laws passed by Congress). Here, federalism can be used effectively and constitutionally to provide assurances of some federal backstop on the level of public health protection, and not just to erode or limit protections. Our federal environmental laws recognize this same principle, for example in enshrining the waiver of preemption for California to regulate mobile sources of air pollution and in federal non-preemption of stricter state regulation (including common law claims) of air and water pollution from factories. While a surprising number of states have even enacted legislation preventing themselves from regulating pollution more strictly than the federal government, this fact together with the actions of states like California just shows the value of a system where a federal backstop exists alongside local authorities. Federalism isn't for suckers. **We shouldn't be skeptical of federalism as a principle, but rather we should employ it in service of governance goals that help our country**. In fact, we already do.

2NC—Federal Response to COVID → Overburdened Healthcare

Increased federal control leads causes massive spikes and overloads the health system

Hodge 20 [James G. Hodge, Jr., Peter Kiewit Foundation Professor of Law and Director of the Center for Public Health Law and Policy at the Sandra Day O'Connor College of Law, Arizona State University. "Federal vs. State Powers in Rush to Reopen Amid Coronavirus Pandemic," Just Security, 4-27-2020, https://www.justsecurity.org/69880/federal-vs-state-powers-in-rush-to-reopen-amid-coronavirus-pandemic/]

The cumulative public health consequences of these "**back to business**" strategies are largely unknown. Many public health **experts and health care workers fear the worst** – namely a **rapid rise** in COVID-19 cases lending to a **second wave** over the summer and into the early fall. **Strains on health care systems may be insurmountable given there is no cure**, treatments are resource intensive (and often futile), access to tests and personal protective equipment (PPE) is highly inadequate, and safe and effective vaccines are still months away.

The Federalism Quandary

Even less defined are the legal ramifications behind the political grandstanding about reopening or maintaining stay home and other mitigation orders. National and state responses to COVID-19 are severely testing constitutional structural principles of federalism at the heart of public health responses.

Following multiple federal missteps early in the pandemic around testing, coordination, and messaging, substantial constitutional challenges have surfaced. On April 13, the president claimed all-**inclusive federal power to require state action**, **specifically to open up the economy** and override New York and other states' mitigation efforts. Two days later he pushed responsibilities back to the states to **follow forthcoming White House reopening guidelines**. When some states balked, Attorney General William Barr **threatened to sue states and localities** whose infection control measures counter federal objectives. After Georgia laid out aggressive reopening measures, Trump criticized a political ally, Kemp, for proceeding too quickly (after initially supporting the governor).

Americans are left wondering, "which level of government is actually in charge here?" In the face of a pandemic like COVID-19, the answer under principles of federalism is increasingly clear: neither. Constitutional federalism is designed to assure political accountability at each level of government not so much through clear demarcations of power, but rather through incentives to engage in collaborative responses.

Impact—COVID

Failure to act now could see a spike in preventable deaths

Bendix 20 (Aria, Senior Reporter at Business Insider, covering urban and environmental science. "The US's second peak may be less deadly than the first — but coronavirus fatalities in the next 3 months could still rival US combat deaths during World War I." Business Insider, 7/5/20, https://www.businessinsider.com/us-coronavirus-deaths-could-rise-soon-2020-7, Accessed 7/6/20, GDI – JMoore)

Indeed, projections from the University of Washington's Institute for Health Metrics and Evaluation (IHME) suggest that this new peak is not expected to be as deadly as the one in April.

That's primarily because increased testing means more mild cases are being confirmed, and young people represent a larger share of coronavirus cases than they did at the start of the outbreak. (We know now that COVID-19 is far less fatal in younger people.) In Florida, the median age of coronavirus cases has dropped to 35, compared 65 in March. Cases among people under 40 are also rising in Arizona, California, Minnesota, Ohio, South Carolina, and Texas.

But even if higher case counts don't bring a proportional surge in deaths, there is still reason for alarm. The IHME model projects that the US will see nearly 50,000 new coronavirus deaths from July to October 1. That's close to the number of US combat deaths recorded during World War I.

Put another way, the model expects the US to see 500 or more people die of COVID-19 every day for the next three months, on average. The projection accounts for seasonality, the amount of testing being done, and how often people are interacting with others outside their household.

Currently, more than 128,000 people have been killed by COVID-19 in the US, so the additional projected deaths represent a nearly 40% increase. These deaths are expected to arrive as other countries' daily cases and deaths continue to drop precipitously.

And if that wasn't concerning enough, there's still a strong possibility that coronavirus deaths will rise in the near future.

*** Affirmative Answers ***

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2AC—AT Link—Federal Jurisdiction

There's no debate that the aff area is exclusively federal authority – that doesn't implicate federalism

Barkow 11 [Rachel E. Barkow, Professor of Law and Faculty Director, Center on the Administration of Criminal Law, New York University School of Law. FEDERALISM AND CRIMINAL LAW: WHAT THE FEDS CAN LEARN FROM THE STATES. Michigan Law Review, Volume 109, Issue 4. 2011. https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1165&context=mlr]

311. There is also **no serious debate** or **disagreement** with the **federal** government addressing crime that "intrudes upon **federal functions**, harming **entities** or personnel acting in a **federal capacity**, or when it addresses offenses committed on **sites** where the **federal** government has **territorial responsibility**, or when it addresses matters of **international crime**." Task Force, supra note 10, at 47.

2AC—AT Link—Constitutional Rights

Protecting constitutional rights in criminal justice is federal jurisdiction

FCNL 20 [The Friends Committee on National Legislation is a lobbying organization in the public interest founded in 1943 by members of the Religious Society of Friends. FCNL works for social and economic justice, peace, stewardship of the environment, and good government in the United States. State and Federal Responsibilities for Criminal Justice. Last updated 2020. https://www.fcnl.org/updates/state-and-federal-responsibilities-for-criminal-justice-117]

The federal government is also **responsible** for ensuring that **constitutional**ly-guaranteed **rights** of all persons (convicts, defendants, and people on the street, alike) are **not trammeled** by the criminal justice system. For example,

- The **Fourth** Amendment protects against **unreasonable search and seizure**.
- The **Fifth** Amendment protects persons against **double jeopardy** and self-incrimination, and provides for **due process**.
- The **Sixth** Amendment guarantees defendants a **speedy and public trial**, the opportunity to **confront witnesses** for the prosecution and to obtain witnesses for the defense, and to have **counsel**.
- The **Eighth** Amendment protects against **cruel and unusual punishments**.
- The **Fourteenth** Amendment assures **equal protection** of the laws for all in the U.S.

2AC—Death Penalty

Federal capital punishment in non-death states undermines federalism – Supreme Court Interventions stops the feds over-expansion

Mannheimer 17 (Michael J. Zydney Mannheimer, Professor of Law and Associate Dean for Faculty Development of the Salmon P. Chase College of Law at Northern Kentucky University, "The Coming Federalism Battle in the War over the Death Penalty." Arkansas Law Review, Vol. 70, No. 2, https://scholarworks.uark.edu/cgi/viewcontent.cgi?article=1015&context=alr, Accessed 6/8/20, JMoore)

In both the short term and the long term, we can expect more federal capital prosecutions in non-death penalty states. We can also expect more federalism based arguments by federal capital defendants against this application of the death penalty. We have already begun to see these arguments in federal district courts and at some point, federal appeals courts and perhaps the Supreme Court will have to weigh in.

As discussed above, in the long-term, the federal death penalty will likely grow as capital punishment recedes in the states. Short-term prospects for application of the federal death penalty in non-death states appear similar. Recall that Attorneys General in the George W. Bush administration sought the death penalty in non-death states nearly four times as often as those in the Obama administration: thirty-nine versus ten. The very fact that the Justice Department is in Republican hands for at least the next four years indicates that the numbers may again spike very soon.

Moreover, President Trump famously took out full page advertisements in the four major New York newspapers in 1989 calling for New York to bring back the death penalty after five teenagers were accused (and later convicted) of raping and nearly killing a woman in Central Park.171 In October 2016, despite virtually conclusive evidence that the five had been wrongly convicted,172 Trump continued to assert that they were guilty.173 Attorney General Jeff Sessions has pointed to Trump's position in that case as evidence that he "believes in law and order."174 These sentiments perhaps signal that the use of the federal death penalty will increase across the board in the next four years.

Federal capital defendants, however, have begun to raise arguments that the Constitution forbids the imposition of the federal death penalty in non-death penalty states. Sometimes, the argument relies solely or primarily on the notion that such use of federal capital punishment constitutes "cruel and unusual punishment" in violation of the Eighth Amendment.175 Sometimes, the defendant makes a more generalized argument based on the Tenth Amendment or general federalism principles.176 District courts that have addressed these arguments have thus far uniformly rejected them.177

One can certainly understand the hesitancy that district courts have shown in embracing the argument that federalism principles embedded in the Constitution prohibit the federal government from imposing the death penalty in some states but not others. It is, to be sure, a novel argument. But the argument is novel precisely because the practice of seeking the federal death penalty in non-death penalty states is itself novel—at least by reference to the long sweep of American history. One can only hope that, if and when the issue reaches the Supreme Court, the Justices will display the same sort of skepticism over the constitutionality of the practice that they have done in scrutinizing other unprecedented federal schemes.178

For those who would like to see a judicially enforced robust federalism in this area, there is some glimmer of hope. In his lone dissent in Taylor v. United States, Justice Thomas not only lamented the vast expansion of the reach of the Commerce Clause,179 but he also went on to specifically criticize the reflexive application of that jurisprudence beyond the economic and regulatory realm, where it was created, to the criminal sphere. He wrote: "[T]he substantial-effects test gained momentum not in the criminal context, but instead in the context in which courts most defer to the Government: the regulatory arena. Without adequate reflection, the Court later extended this approach to the criminal context."180 Thus, it appears that at least one sitting Justice may be

willing to re-think an expansive view of federal power in the area most traditionally reserved for the states: the definition and punishment of criminal offenses. Given the specific constitutional injunction against "cruel and unusual punishments," a principled line could be drawn at the imposition of a type of punishment foreign to the people of a state.

--- Internal Link ---

2AC—AT Spillover

No spillover or nonunique

Constantine 16 [Molly; 4/21/16; B.A. in Political Science and Government from Boston University, administrative coordinator; Thesis, "The Capitol in the Classroom: Implementing the Common Core in an Era of Coercive Federalism," open.bu.edu/bitstream/handle/2144/16144/Constantine.HonorsThesis.pdf]

The challenges with implementing the federal programs have raised great concerns. Bowling and Pickerill discuss the challenges faced by states as the system of federalism our nation employs becomes less distinct.5 They note that as of 2012, the state of our federalism can no longer be designated as **one specific type**. This can be attributed by, "challenges at the federal level-the **party polarization**, the **budget** deficit, the level of tax increases and **spending cuts** required, and the inability of lawmakers to compromise," which have then trickled down to subnational governments in the process.6 This fragmented federalism is especially prominent in education policy, as Bowling and Pickerill explain. The **overlapping existence** of **N**o **C**hild **L**eft **B**ehind, the No Child Left Behind **waivers**, Race to the Top, and the end of the American Recovery and **Reinvestment** Act of 2009 has led to great confusion. The lack of clarity in policy causes difficulty in determining the authority of the federal government and the states. One result of this **fragmented federalism** is the creation of **state-specific policy**. The inability of the federal government to offer more specific policy causes states to create policy catering to their needs. Recent education policies fall in line with the current period of **coercive federalism**, as federal policies seek to address the disparity in academic achievement amongst students of different socioeconomic backgrounds, formally known as the achievement gap. Traditionally, education has been the responsibility of state governments. However, reforms to the education system over the past two decades have placed **greater authority in** the hands in **the federal government**, largely evident through federal incentives programs and policies aimed to instate nation-wide academic standards.

1AR—AT Spillover

One Federal violation won't spillover – many safeguards check.

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Jenna Bednar, April 17 2020, "Of course Trump's authority isn't 'total.' Here are 3 myths about how federalism works," Washington Post, - 4/17 - https://www.washingtonpost.com/politics/2020/04/17/course-trumps-authority-isnt-total-here-are-3-myths-about-how-federalism-works/

Instead of coordinating a national pandemic response, the federal government has compounded the collective action problem, as shown by Jared Kushner's striking assertion that the national stockpile is "ours" and not a resource for the states. **The founders pointedly included safeguards to prevent national government overreach** or shirking; those include **the judiciary, separation of powers, state representation in federal decisions, intergovernmental councils, the people themselves and states' ability to push back**. Another safeguard emerged later: **the party system**. In a robust federal system, these reinforce one another, a kind of fail-safe system intentionally full of redundancies. The founders worked to design an institutional immune system so that no single person or faction could disrupt the government. They hoped that federalism might sustain democracy. What might threaten this robustness would be what the Federalist Papers called a "lack of diverse interests": If the judiciary, the branches of federal government and the internal workings of political parties were all aligned in their thinking or had a culture of obedience, and if the public were apathetic or ill-informed, then the safeguards may simultaneously fail. Where Trump has faced limits to his attempts to expand powers, he has attempted to skirt them: purging internal oversight by firing inspectors general and on Wednesday, making the extraordinary threat to adjourn Congress so he can make recess appointments. Will the pandemic serve as a catalyst, making it even easier for the president to accumulate power, or awaken the slumbering safeguards? **The governors' decisive responses to the pandemic may suggest that the safeguards can again constrain the federal government.**

--- Impact ---

2AC—No Impact—Over-Federalization

The impacts of over-federalization are a myth – states have found ways to work within federal frameworks to avoid any major complications

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[Susan R., Ingrid, last reviewed 5/17/13, *Emory Law Journal, Volume 62, Forthcoming Sept. 2012, U of Texas Law, Public Law Research Paper No. 223*, "Debunking Claims of Over-Federalization of Criminal Law", page 77-78, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2050081, accessed 5/25/2020, GNL]

The widely-reported "problem" of over-federalization of crime is largely a myth. Through the empirical data presented in Part I, including federal caseload data from 1940 to 2010, current federal prison-population data, comparisons of federal and state court felony convictions, and an analysis of frequently used federal statutes, we have provided ample support for our claim that, **despite the large number of federal criminal proscriptions now in existence, the sheer number of criminal statutes in effect at a given time has no demonstrable impact on the balance of power between state and federal law enforcement systems.** In fact, **state and federal law enforcement entities continue to share the workload much as they always have**, with states dominant in areas of traditional local concern, such as violent and property crime, and the federal government tackling problems of national and international significance. The reality on the ground, then, is vastly different from the conclusory argument advanced by some, that is, that Congress' promiscuous habit of enacting too many criminal proscriptions has resulted in a significant disruption of traditional federal-state relations. As the data reveals, no such seismic shift has occurred.

While some critics have expressed dissatisfaction with the prevalence of federal prosecutions in areas of concurrent federal/state jurisdiction, particularly in the controlled substance area, such dissatisfaction is likewise not a function of a recent over-federalization phenomenon. Controlled substance cases on the federal level are prosecuted pursuant to essentially a single statute enacted in 1970. 299 Importantly, these areas of concurrent or overlapping jurisdiction have not been particularly problematic for state systems, which continue to prosecute the vast majority (more than 95%) of criminal conduct occurring within their borders. Because federal criminal proscriptions do not preempt state law, and because the federal system is very small relative to the states' systems, criminal law enforcement in this country remains the province of state and local criminal justice systems. Individuals who engage in misconduct that violates both state and federal laws have no cause to complain upon prosecution, especially because federal prosecutors will not charge them successively if the state chooses to prosecute first, and various checks and balances ensure that federal prosecutors use good judgment in selecting which defendants are appropriate for federal charges.

Finally, overbroad or vague federal criminal proscriptions, while admittedly troubling, are not a product of over-federalization itself. Vague federal statutes, particularly in the area of fraud, derive from the common law and have been in existence for decades (for example, the frequently charged mail fraud statute, the enactment of which dates back to 1876.) While vague statutes have created temporary but serious problems in the federal system, the Supreme Court has managed to interpret such federal proscriptions in a manner that balances the amount of

breadth needed to capture new forms of criminal conduct against the level of narrowing necessary for fairness. The Court has taken a similarly active role in curbing what might otherwise constitute strict liability offenses by imposing extra-textual mens rea requirements, particularly in the area of regulatory offenses. The Court's active involvement in these areas has and continues to serve as a powerful antidote to the perceived ills of Congressional overreaching, poor statutory drafting, and regulatory criminalization.

2AC—AT Federalism Solves Coronavirus

Federalism worsens coronavirus response

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One of the **weirdest things** in this weird historical moment is the **hodgepodge** nature of the coronavirus responses from **different state**, county, and local **governments** throughout the **U**nited **S**tates. In essentially every other country on earth, central government authorities are directing and running the response to Covid-19.

If Italy shuts down, it's the Italian government that decides to do it. If Germany chooses to end hotel stays, it's Chancellor Angela Merkel who makes the call. But in the U.S., separate Bay Area counties can go one way, the mayor of New York another, and the governor of Massachusetts yet a third. There's little if any **national coordination**.

It **hardly** seems like an optimal arrangement during a **global pandemic**.

The explanation for this bizarre diversity of uncoordinated responses can't be laid solely at the feet of President Donald Trump, despite his alarming lack of leadership. The **deeper explanation** is the distinctive, peculiar system of U.S. **federalism**. We have a national **C**enters for **D**isease **C**ontrol and Prevention and a **F**ederal **E**mergency **M**anagement **A**gency. But they **don't exercise** direct **supervisory authority** over state, county or local boards of health — just as Trump has no supervisory authority over state, county or local executives.

Most of the time, the pervasively federal nature of how government power is deployed in the U.S. goes unnoticed, simply because it seems so normal to Americans. We take it for granted that schools, say, don't fall into a national bureaucracy and aren't under a single national set of standards. We accept that police forces are uncoordinated and that they don't work for the Federal Bureau of Investigation.

When we do notice federalism, we tend to **accept its inefficiencies** because of the desirable democratic benefit we think it provides: We get better self-government, we think, when decisions are made nearer to home, not far off in Washington, D.C.

The **unique conditions** of a **pandemic** call that tradeoff of **inefficiency-for-democracy** into **question**. The virus isn't local. It's global. It **doesn't respect state** of national **borders**, no matter that many national governments are trying to close their borders to keep it out.

When it comes to strategies for containment, **non-coordination** seems not **charmingly democratic** but **worrisome**. **If some states** or cities are **too slow** to control the virus, that will **affect all the others** – because the virus will gain steam and eventually spread even to the places that have imposed controls.

Weak pandemic control is the ultimate example of what economists call a negative externality, a spillover effect that harms others, not just those who are acting (or failing to act) themselves.

In a perfect world, the ideal answer to these federalism-based coordination problems would be for the **federal government** to **preempt state actors** and agencies and **command and control** a **national response**. Federal law allows for roughly that approach. Technically, states would have to agree to put their officials under federal direction; states can't be "commandeered" without their consent. But presumably in a time of emergency, most states would fall into line.

That isn't happening. The **federal response** so far has been **haphazard** and **inadequate**. We would be **much better off** with **strong leadership**, informed by public health science and policy, but we don't have that right now.

1AR—AT Federalism Solves Coronavirus

Absolute state control is bad for federalism – prevents effective coronavirus response

Cooper 20 [Ryan Cooper is a national correspondent at TheWeek.com. His work has appeared in the Washington Monthly, The New Republic, and the Washington Post. America's fake federalism. April 19, 2020. https://theweek.com/articles/909388/americas-fake-federalism]

But in fact, the **U.S. version** of **federalism** is largely **disintegrating or fake**. On the one hand, President Trump's abject failure to coordinate a national response to the novel coronavirus pandemic has forced states to **jury-rig** new **federal structures** themselves. On the other, the rump federal government is not actually constructed according to federalist principles — it is a **minoritarian system** which grants **certain states** enormous leverage over **national policy**.

To begin, the Trump administration has refused to set up a rational system to allocate medical supplies like protective gear and ventilators across the country. The Defense Production Act allows the president to nationalize factories during an emergency, or instruct them to produce important materials, which any sane person would have done months ago. Trump still refuses to do this on a systematic basis, so states have been desperately bidding against each other and the federal government and foreign governments for supplies. Indeed, Trump's FEMA has routinely been seizing shipments of protective equipment en route to hospitals or state governments, for unclear reasons or purposes. Meanwhile, even after he stopped relentlessly downplaying the threat of the virus, Trump has continually undermined Democratic governors by blaming them for equipment shortages and testing delays.

Now Trump and the right-wing agitprop machine are beginning to **demand** that the **economy** be **reopened** long before the virus is under control. He recently falsely claimed that he has **"total" power** to decide when states should reopen, and while he characteristically backed off that statement later, on Friday he recklessly **encouraged** the tiny groups of **right-wing nuts** who have been protesting state-level restrictions (after watching Fox News, of course).

All this is why three groups of states have created **ad-hoc coalitions** to manage their fight against the epidemic. At time of writing, California, Oregon, and Washington have created a Western States Pact; Minnesota, Wisconsin, Michigan, Illinois, Ohio, and Kentucky have created another pact in the Midwest; and New York, New Jersey, Connecticut, Massachusetts, Pennsylvania, Rhode Island, and Delaware have created a third in the Northeast. More states are likely to join, or create their own pacts.

The basic point is to rationally deploy medical supplies and hospital capacity, coordinate relief efforts to the hardest-hit communities, and carefully manage the easing of lockdown measures across states to prevent new infection surges from crossing state borders. In other words, they are doing what Trump should have done this entire time — except **incompletely**, and **without** nearly the **resources** available to the **federal government**.

A **federal system** has **some advantages**, but the lesson is that **individual regions** simply **cannot go it alone** when faced with a **nationwide emergency**. There must be an **overarching authority** to **manage** the **overall response** — because if there isn't, states will be forced to create one on the fly. What we're seeing today is precisely why the Articles of Confederation was abandoned as an **unworkable mess**.