# CP- States 2.0

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#### States are the laboratories of democracy—the CP creates binding and efficient legislation that solves the aff.

Gelb 17 Director of Pew’s public safety project, B.A. from UVA, M.P.P from the Kennedy School @ Harvard. Adam. “Congress Should Study the States as It Considers Reviving Criminal Justice Reform.” The Pew Charitable Trusts, PEW, 30 Oct. 2017, www.pewtrusts.org/en/research-and-analysis/analysis/2017/10/30/congress-should-study-the-states-as-it-considers-reviving-criminal-justice-reform.

**Legislation introduced** in the U.S. Senate earlier this month by Senators Chuck Grassley (R-IA), Dick Durbin (D-IL), and others and a hearing expected next month in the House of Representatives are part of **a renewed push among lawmakers to improve the federal criminal justice** system. As Congress revisits the issue, its efforts should be informed by the experiences of states across the country **where far-reaching, bipartisan legislation and new approaches to crime and punishment are protecting public safety and holding offenders accountable while cutting the cost of prisons**. The number of federal prisoners ballooned from 25,000 in 1980 to a high of 220,000 in 2013, [driven in large part by higher incarceration rates for drug offenders](http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return). Changes adopted by all three branches of government that have begun to prioritize federal prison space for people convicted of more serious and violent offenses have pared that number back to about 185,000 today. Nevertheless, 1 in 2 federal inmates is still a drug offender. The surge in federal incarceration came at an enormous cost. In fiscal year 2017, taxpayers spent almost as much on federal prisons—about $7 billion—as they did to fund the entire Justice Department in 1980. The Bureau of Prisons budget now accounts for about [a quarter of the department’s expenditures](http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2015/02/federal-prison-system-shows-dramatic-long-term-growth), crowding out dollars for the FBI, the Drug Enforcement Administration, federal prosecutors, and crime-fighting initiatives in communities. Despite this considerable investment, however, the [public health and safety return has been weak](http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return). **Stiffer penalties for drug offenses were intended to dry up the supply of drugs, but today, illicit substances are more widely available, cheaper, and generally more pure than they were three decades ago.** And after battling crack cocaine and methamphetamines, **the nation now faces the opioid crisis. Further, longer prison terms were supposed to keep people locked up and off the streets and to deter them from committing future crimes when they got out. But that also didn’t work**: Federal drug offenders who served shorter sentences under a 2007 U.S. Sentencing Commission directive had lower recidivism rates than those who spent more time behind bars. In October 2015, Sens. Grassley and Durbin were among a group of senators that introduced the Sentencing Reform and Corrections Act (S. 2123) to improve these outcomes. **The bill would have expanded “safety valves”—conditions under which judges could impose sentences below mandatory minimum levels**—for those convicted of low-level drug offenses, retroactively reduced penalties for certain crack cocaine offenders sentenced under a system that Congress abolished in 2010, and created a program to let some nonviolent offenders earn time off their prison terms for productive behavior. The Congressional Budget Office estimated that the modest changes in the bill could have saved taxpayers $722 million over 10 years, but after more than a year of negotiation, **Congress failed to vote on the legislation. This inaction stands in stark contrast to a wave of bipartisan, evidence-based criminal justice reforms in the states**, many of which go much further than what is under consideration in Washington. **Since 2010,** [**31 states**](http://www.pewtrusts.org/~/media/assets/2017/03/pspp_national_imprisonment_and_crime_rates_fall.pdf) **have shown that it’s possible to cut crime and imprisonment at the same time while saving taxpayers billions of dollars. For example: In 2007, Texas passed criminal justice reforms that diverted low-level offenders into alternatives to incarceration** and established a robust program that allowed them to earn time off their probation for productive behavior. Texas’ reforms led to $3 billion in savings and cut recidivism by 46 percent—all while the crime rate continued to decline. Alaska enacted reforms in 2016 that prioritized prison space for the most serious offenses by reducing and eliminating prison sentences for low-level crimes, such as drug possession. The law is expected to avert projected prison growth of 27 percent and reduce the current population by 13 percent, cutting costs by an estimated $380 million. Of that, $98 million will be reinvested in evidence-based programs to reduce recidivism, protect public safety, and improve victims’ services. Earlier this year, **Louisiana passed the most comprehensive sentencing and corrections reform in its history**, potentially enabling it to shed its status as the nation’s most incarcerated state by the end of 2018. The reforms include overhauling drug sentences, eliminating some mandatory sentences, and allowing prisoners to serve shorter terms if they complete programming designed to reduce reoffending. **The law represents a broad, bipartisan consensus among legislators, law enforcement, advocates, business, and faith leaders and is expected to avert $262 million in spending over 10 years**. Seventy percent of the savings is slated for reinvestment in services to reduce recidivism and support victims. As Sens. Grassley and Durbin attempt to revive federal criminal justice reform, their **colleagues on Capitol Hill would do well to study state efforts. Over the past decade, the laboratories of democracy have been generating valuable lessons for how to secure better public safety results with fewer taxpayer dollars.**

#### It runs under the radar—voters don’t care.

Disanto 163/18/16. (Jill Disanto, writer for PhysOrg citing Daniel Hopkins who is a political scientist and researcher at UPenn. Researcher explores why voters ignore local politics. March 18, 2016. <http://phys.org/news/2016-03-explores-voters-local-politics.html>)

Daniel Hopkins, a political scientist at the University of Pennsylvania, says that, while today's voters are more engaged in federal elections, they've pretty much abandoned state and local politics. In a book that he's developing, The Increasingly United States, Hopkins, whose research as an associate professor focuses on American elections and public opinion, says American federalism was based on the idea that voters' primary political loyalties would be with the states. But that idea has become outdated. "With today's highly nationalized political behavior, Americans are no longer taking full advantage of federalism. Contemporary Americans are markedly more engaged with national politics than with the state or local politics," Hopkins says. "We now know more about national politics, vote more often in national elections and let our national loyalties dictate our down-ballot choices." The book presents evidence about Americans' voting and political engagement and offers two reasons to explain why today's voters are paying more attention to federal elections. The first, Hopkins says, is a landscape in which the political parties offer similar choices at the national level. "Just as an Egg McMuffin is the same in any McDonald's, America's two major political parties are increasingly perceived to offer the same choices throughout the country," Hopkins says. The second reason is the changes in the media and how Americans get their news, an environment that allows people to follow their interests in national-level politics, making local and state-level politics easy to ignore, he says. "As Americans transition from print newspapers and local television news to the Internet and cable television, they are also leaving behind the media sources most likely to provide state and local information," Hopkins says. "The result is a growing mismatch between the varied challenges facing states and voters' near-exclusive focus on national politics." For The Increasingly United States, Hopkins examined historical and recent surveys from the 50 states, along with election results from gubernatorial and mayoral races dating back nearly a century. He also traced the evolution of political media coverage from The Los Angeles Times' coverage during the Great Depression through the expansion of local television news during the 1960s and the role of social media today. "Voters' attention, engagement and campaign contributions are targeted more toward national politics," Hopkins says. "This 'nationalization' is likely to have profound consequences for state and local politics and policymaking. Accordingly, this book seeks to document and explain the nationalization of contemporary Americans' political behavior." With a secondary appointment in Penn's Annenberg School for Communication, Hopkins studies questions related to racial politics, ethnicity, immigration and urban politics.

#### Leads to follow on and checks federal encroachment

Lesser 18 [Eric P. Lesser (In his second term in the Massachusetts State Senate, where he serves as Co-Chair of the Joint Committee on Economic Development & Emerging Technologies, Vice Chair of the Joint Committee on Financial Services, and leads Millennial Outreach for the State Senate. During his first term in office, Senator Lesser helped pass significant new laws related to substance abuse treatment and prevention, job training, and promotion of tourism and the arts. Prior to becoming a State Senator, Lesser worked in the Obama White House, first as Special Assistant to Senior Adviser David Axelrod, and later as Director of Strategic Planning for the President’s Council of Economic Advisers. He traveled to 47 states and six countries with then-Senator Obama and his senior team as a young aide on President Obama’s historic 2008 presidential campaign. Lesser has been described as “the face of the promised Obama political generation” by the New York Times. Senator Lesser holds a number of national recognitions, including a Rodel Fellowship in Public Leadership at the Aspen Institute, and is a leader with NewDEAL, a national network of progressive state and local elected officials. He earned his undergraduate and law degrees from Harvard University and is a member of the Massachusetts Bar; January 11, 2018; “Criminal Justice Reform Starts and Ends with the States”; Harvard Law Review; <https://blog.harvardlawreview.org/criminal-justice-reform-starts-and-ends-with-the-states/> //BWSWJ]

Criminal justice reform has the attention of the country, but it is at the state and local level where reform will be implemented. Much of the conversation about criminal justice reform has revolved around high-profile incidents in major U.S. cities like Cleveland and New York City — and on what the federal Department of Justice can do in response. But state and local officials are responsible for 90 percent of the prison population. Most observers agree that our federal and state prisons have a mass incarceration problem: too many people are locked up for minor offenses and too large a proportion of those behind bars are people of color, both of which point to inherent biases in our criminal justice system. Many local factors influence who goes to prison and why, from the number of public defenders available to serve the accused to the number of clinic beds available for drug addicts who need treatment instead of jail time. These are some of the reasons why I continue to advocate for increased funding for local legal aid and measures to combat our opioid epidemic as a State Senator. States are the traditional “laboratories of democracy,” the places where new ideas and approaches can be experimented with despite political [gridlock] ~~paralysis~~ in Washington. State governments have considerable latitude to direct their own policymaking and, if successful, provide models for national policies. Reforming Criminal Justice In October, the Massachusetts State Senate passed a comprehensive criminal justice reform bill which tackled a host of issues, including excessive bail, mandatory minimums, and solitary confinement sentencing. The Massachusetts House passed its own version in November, and the two bodies are now negotiating a final version to present to Governor Charlie Baker. Because low-income offenders are often jailed due to their inability to pay criminal fines, the Senate bill lowered the fee brackets on a number of offenses. The Senate bill also reduced or removed a number of mandatory minimum sentences on drug offenses, allowing judges greater discretion in assigning jail time or other deterrents such as community service hours. Additionally, the Senate bill limited the use of solitary confinement in recognition of the fact that it can be harmful to inmates’ mental health and can exacerbate already existing mental disorders. Indeed, any attempt at criminal justice reform must reckon with the realities and inadequacies of our mental health care system — another realm that is largely under local control. There is a constellation of state agencies and organizations that are outside the justice system but can have substantial impacts on it — and on how effective reform can be. These include state departments of health, education, and child services, as well as community organizations like Boys and Girls Clubs and homeless shelters. All of these provide services that keep people, especially young people, from turning to criminal activities. They can also help formerly incarcerated people transition back into civilian life. Focusing on the Right Things One of the more significant pieces of the criminal justice reform package passed by the Massachusetts Senate was the emphasis on treating drug addictions instead of criminalizing them. Sixty-eight percent of individuals in local jails have a substance abuse disorder. In response, the bill expands drug diversion programming, requires the examination of prisoners for drug dependency and whether medication-assisted treatment is appropriate, and establishes a pilot program within select state prisons to evaluate inmates’ access to appropriate treatment for opioid addictions. Sending these people to prisons instead of treatment centers creates a vicious cycle of unmonitored drug use, inevitable hospital visits, and short-term jail sentences that do nothing to cure addictions or curb criminal behavior — a revolving prison door. Working with (and Against) the Federal Government Of course, state and local governments are also the primary entities that can implement federal regulations and recommendations regarding most law enforcement, since the federal government does not control local police forces. In December 2014, President Obama created the Task Force on 21st Century Policing to identify and share policy recommendations with state and local leaders. The goal was to improve police-community relations and make crime prevention efforts as effective — and fair — as possible. The Task Force’s recommendations included strategies to achieve more diversity in police forces, expand civilian oversight of law enforcement and prohibit racial profiling in policing, all of which Massachusetts can and should do more to act on. I’m proud that, in the Massachusetts Senate, we included in our criminal justice reform legislation a requirement that law enforcement train officers in bias-free policing and de-escalation techniques, one major recommendation of the Task Force. The federal government can give states an incentive to follow its policy recommendations through the use of federal grants, and the Justice Department under President Obama backed up the Task Force’s recommendations with $100 million in grants to state and local police departments. On the other hand, the states are also a bulwark against federal encroachment and overreach. While the states are responsible for implementing federal policies, they can also limit federal influence where they see state law taking precedence. In our federal system of government, the residual power not included in the Constitution rests with the states, not with the Federal government. In the absence of a specific federal question, state law prevails. This tremendous power can be used on behalf of defendants, as we have seen with California’s “sanctuary state” law shielding immigrants by limiting how state and local law enforcement cooperate with federal Immigration and Customs Enforcement. Or it can be used to increase the state’s own authority, as with Florida’s alleged subversion of medical marijuana dispensaries approved by voters in 2016. Our Framers designed a system that would put the states themselves, and the three branches of the federal government, in competition with one another. Through that competition between the Judiciary and the Presidency, the Congress and the state legislatures, the governors and the judges, the Framers believed that two things would happen. First, freedom would be protected because no single authority would become absolute. Second, just like competition in the free market economy, competition between states, and between the three branches, would allow the best ideas to bubble to the surface while continuously being refined and improved.

## Solvency

### OV

### XT: Follow On

#### State trends and experience influence Federal legislation

Mossberger 99 (Karen, Prof and Dir of Public Affairs at Arizona State, “State-Federal Diffusion and Policy Learning: From Enterprise Zones to Empowerment Zones”, Oxford University Press, 29(3), p. 49, <http://www.jstor.org/stable/3331108>) ALH

The above definition of learning allows for the borrowing of general lessons from the state experience, as well as the borrowing of specific policies. When national (or even subnational governments) learn from the experience of many states or many local governments, what diffuses may be general lessons based on program evaluations or trends rather than specific policy designs. In the case of the state enterprise zones, the U.S. Department of Housing and Urban Development (HUD) and such organizations as the National Association of State Development Agencies (NASDA) and the American Association of Enterprise Zones (AAEZ) circulated summary information about the evaluation research, and "how-to" advice or local programs. In fact, many experience of other states programs recalled this summary for marketing the zones. Few emulated the programs of specific states. The diffusion of summary information research suggests that policymakers may know only about selected ideas, drawn from a variety of states. How do federal actors learn about state programs? Federal sources information about state policies may include the media, activist governors, policy entrepreneurs, consultants, interest groups, or organizations representing state and local governments. Jack Walker suggested that and professional organizations serve as important channels of interstate policy diffusion.

### ---immigration

#### State trends and experience influence Federal legislation – specific to immigration.

Cade 13 Cade, Jason A. “THE PLEA-BARGAIN CRISIS FOR NONCITIZENS IN MISDEMEANOR COURT.” Cardozo Law Review, 2013, www.cardozolawreview.com/content/34-5/CADE.34.5.pdf. Assistant Professor, University of Georgia Law School. A.B., University of North Carolina at Chapel Hill. J.D., Brooklyn Law School. Jason A. Cade joined the University of Georgia School of Law faculty in 2013 and was promoted to associate professor in the fall of 2017. He teaches Immigration Law and directs the school’s Community Health Law Partnership (Community HeLP) Clinic. //nhs-VA

Congress could also restore opportunities for state or federal adjudicators to exercise post-conviction discretion to mitigate immigration consequences in appropriate cases. For example, as immigration law becomes increasingly intertwined with criminal justice systems it may make sense to give trial judges the authority to make recommendations against deportation, especially in plea-bargain cases where counsel is not appointed.340 The over-inclusive dragnet created by the convergence of immigration enforcement and criminal law also supports an expansion of immigration judge discretionary authority, to account for cases where the enforcement scheme results in manifest disproportionality.341 Additionally, Congress could clarify that all convictions pardoned or expunged by states are no longer deportable offenses, so that states could correct injustices in the most egregious cases and reward those who have clearly rehabilitated.342 While these reforms would not remove the risk that a noncitizen might face deportation based on a minor conviction for a crime she did not commit, they would at least allow more opportunities for the consideration of equitable or mitigating factors. Other meaningful possibilities for federal reform include amending the INA to provide that deportation consequences not be imposed on the basis of convictions where there was no right to counsel in the criminal proceeding. The INA could also be amended to allow defendants to enter state diversionary programs in minor cases without fear of deportation. While immigration law tends to be particularly entrenched and subject to political gridlock,343 significant federal legislative reform appears a more realistic possibility following the 2012 reelection of President Obama.344 Indeed, the growing state and local level reforms discussed below may coalesce as a catalyst for legislative amendments to the INA. On the other hand, federal immigration reforms that significantly benefit noncitizens with criminal history remain less likely.345 As of the time editing for this Article concluded, none of the legislative reforms I have suggested here appear to be under consideration by Congress. The executive branch could also take actions that would ameliorate some of the corrosive effects of the ICE jail immigration enforcement programs. While such voluntary restriction has seemed unlikely in view of the political economy of immigration enforcement against noncitizens encountering the criminal justice system, the Obama Administration has demonstrated more recently that it is sometimes willing to tolerate fewer apprehensions of deportable noncitizens where there are high collateral costs to justice. For instance, the federal government has terminated or modified immigration enforcement programs where the DOJ has found evidence of local discriminatory policing practices against immigrants.346 On December 21, 2012, John Morton issued a new memorandum purporting to bring the use of detainers in line with the priorities for immigration enforcement previously expressed in the DHS policy memoranda issued in 2010 and 2011.347 The 2012 memo asks ICE agents and officers (but not CBP agents) to refrain from issuing detainers in criminal cases in certain circumstances.348 It remains to be seen, of course, whether this policy will be ignored on the ground level, just as the prior top-down prosecutorial discretion memoranda largely have been.349 Even assuming good faith, the guidance offered in the new detainer directive is vague and offers enough loopholes that its practical effect is in some doubt. Nevertheless, if sufficient political pressure is exerted in light of the negative consequences of ICE programs for the integrity of criminal justice systems, DHS might determine that further, more specific modifications of the detainer programs are warranted. Perhaps as more jurisdictions enact policies that resist compliance with detainers,350 especially where issued against noncitizens not charged with serious offenses, the federal government will continue to revise its enforcement policies with an eye towards fostering cooperation rather than dissonance with local jurisdictions.

### XT: solve better

#### Plan doesn’t solve– federal mandates drive state resistance and Trump screws it up – only states can reform the criminal justice system since most incarcerations occur at that level

Lopez 17 German Lopez, I have written for Vox since it launched in 2014, with a focus on drugs, guns, criminal justice, race, and LGBTQ issues. Previously, I worked at CityBeat, a local newspaper in Cincinnati, covering politics and policy at the local and state level. “If you care about ending mass incarceration, look at what Philadelphia just did.” Vox. November 8, 2017. https://www.vox.com/policy-and-politics/2017/11/8/16622438/larry-krasner-philadelphia-election-prosecutor

Civil rights attorney Larry Krasner once [joked](https://www.theatlantic.com/politics/archive/2017/11/larry-krasner-philadelphia-da/544937/) that he was “completely unelectable.” But on Tuesday, he blew those expectations away: Despite opposition from much of the local criminal justice establishment, he won the race for Philadelphia’s district attorney. The victory is a big deal not just because Krasner is a very progressive attorney who will shape local policy. It also signifies the exact kind of action that voters will have to take in the next few years and decades if they want to unravel mass incarceration. Krasner’s victory had mostly been assured in a Democratic stronghold like Philadelphia once he won the party’s primary back in May. But even back then, he stood out. The other candidates in the primary race ran on relatively progressive platforms, but Krasner had the strongest progressive record on criminal justice issues. He has sued law enforcement and government agencies more than 75 times, and he had worked for Black Lives Matter, Occupy Philly, and protesters at the 2000 Republican National Convention in Philadelphia. As [Holly Otterbein wrote in Philadelphia magazine](http://www.phillymag.com/news/2017/05/16/larry-krasner-wins-district-attorney-race/) at the time, the primary was a surprising turn of events for a city that’s known for some of the toughest criminal justice policies in the nation, and whose district attorney’s office has been mired by scandal — District Attorney Seth Williams [left office and pleaded guilty](http://www.philly.com/philly/news/crime/philly-da-seth-williams-xxxxxxxx-20170629.html) to bribery charges earlier this year. After the primary, Otterbein wrote: It is a stunning victory in a city that elected Lynne Abraham — once dubbed [the “deadliest DA” in America](http://www.nytimes.com/1995/07/16/magazine/the-deadliest-da.html?pagewanted=all) by the New York Times — four times in a row. Krasner campaigned on the most progressive agenda of all the candidates, promising to end “mass incarceration” by effectively starving the criminal justice system. He vowed never to ask for cash bail for nonviolent offenders, pursue the death penalty, or bring cases based on illegal searches. He also said he would expand the city’s drug courts and diversion programs for low-level offenders. Krasner’s support for reform led to big-time opposition from the criminal justice establishment — including the police union, the Fraternal Order of Police — during the primary and general election. Yet in a city that is heavily Democratic, Krasner soared to victory pretty easily after the primary. By [the latest count](http://phillyelectionresults.com/), he got 75 percent of the vote on Tuesday, while Republican opponent Beth Grossman got only 25 percent. It’s exactly these types of elections that will decide the future of incarceration. While much media attention has gone to reforming the federal system, the great majority of incarceration occurs at the local and state level: [The latest data](https://www.bjs.gov/content/pub/pdf/p15.pdf) by the US Bureau of Justice Statistics shows that about 87 percent of US inmates are held in state prisons. Local prosecutors are very powerful in these systems. They effectively decide who goes to prison and who doesn’t, and how long someone will go to prison for — by unilaterally choosing what charges to bring against anyone. Yet even as the movement for criminal justice reform has built up around the nation, prosecutors have largely avoided the spotlight as some of the main drivers of mass incarceration. Krasner’s election, along with some other elections we’ve seen in the past couple years, show that may be changing. Prosecutors are key drivers of mass incarceration Typically, discussions of the criminal justice system focus on lawmakers, prisons, the police, and maybe judges. Rarely, however, is the most powerful actor in this system mentioned: the prosecutor. Prosecutors are enormously powerful in the US criminal justice system, in large part because they are given so much discretion to prosecute however they see fit. For example, former Brooklyn District Attorney Kenneth Thompson in 2014 [announced](http://www.nytimes.com/2014/07/09/nyregion/brooklyn-district-attorney-to-stop-prosecuting-low-level-marijuana-cases.html) that he would no longer enforce low-level marijuana arrests. Think about how this works: Pot is still illegal in New York state, but Brooklyn’s district attorney flat-out said that he would ignore an aspect of the law — and it’s completely within his discretion to do so. Prosecutors make these types of decisions all the time: Should they bring the type of charge that will trigger a lengthy mandatory minimum sentence? Should they bring a charge that’s only a misdemeanor? Should they strike a deal for a lower sentence, but one that can be imposed without a costly trial? Courts and juries do, in theory, act as checks on prosecutors. But in practice, they don’t: More than [90 percent](http://criminal.findlaw.com/criminal-procedure/plea-bargain-pros-and-cons.html) of criminal convictions are resolved through a plea agreement, so by and large prosecutors and defendants — not judges and juries — have almost all the say in the great majority of cases that result in incarceration or some other punishment. John Pfaff, a criminal justice expert at Fordham University, has found evidence that prosecutors have been the key drivers of mass incarceration in the past couple of decades. Analyzing [data](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1990508) from state judiciaries, he compared the number of crimes, arrests, and prosecutions from 1994 to 2008. He found that reported violent and property crime fell, and arrests for almost all crimes also fell. But one thing went up: the number of felony cases filed in court. Prosecutors were filing more charges even as crime and arrests dropped, throwing more people into the prison system. Prosecutors were driving mass incarceration. Pfaff provided a real-world example of this kind of dynamic in his book, [Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform](https://go.redirectingat.com/?id=66960X1516588&xs=1&url=https%3A%2F%2Fwww.amazon.com%2FLocked-Causes-Incarceration-Achieve-Reform%2Fdp%2F0465096913): “Take South Dakota, which in 2013 passed a reform bill that aimed to reduce prison populations. The law did lead to prison declines in 2014 and 2015, yet at the same time prosecutors responded by charging more people with generally low-level felonies, and over these two years total felony convictions rose by 25 percent.” In the long term, this could lead to even larger prison populations. Now apply this story on a national scale. There is less crime compared to the 1990s. Police are making fewer arrests. Lawmakers are slowly reducing the length of prison sentences. Yet until 2010, incarceration rates had continued climbing nationwide — and, as Pfaff pointed out, the recent drop in incarceration would be much less pronounced if it wasn’t for court-ordered drops in California’s prison population. Prosecutors have been abetting more and more incarceration while other actors in the system have been pulling back. Reformers are now grappling with the role of prosecutors Despite the role of prosecutors in driving up mass incarceration, reformers have for the most part ignored these actors over the past few years. Pfaff noted: “No major piece of state-level reform legislation has directly challenged prosecutorial power (although some reforms do in fact impede it), and other than a few, generally local exceptions, their power is rarely a topic in the national debate over criminal justice reform.” The Krasner election shows this may be finally turning around. Philadelphia Justice and Public Safety, financed by billionaire donor and criminal justice reformer George Soros, put more than $1 million into the race. Soros has also put money in other races, previously [helping defeat](http://www.vox.com/2016/3/15/11243056/anita-alvarez-kim-foxx-cook-county-prosecutor) a “tough on crime” prosecutor in the Chicago area and pouring money into races ranging from Mississippi to New Mexico. The American Civil Liberties Union, with support by Soros, also played a big role in the Philadelphia campaign. As [Ben Wofford reported for Politico](http://www.politico.com/magazine/story/2017/05/16/the-aclus-radical-plan-to-fight-jeff-sessions-215139) in May, the national civil rights organization canvassed for people to get out to vote for the district attorney. While the ACLU never formally endorsed a candidate (due to its tax status), it was widely believed that Krasner was the group’s favorite in the race. “If we’re ever going to genuinely transform our nation’s criminal justice system, then we have to overhaul prosecutorial practices,” Udi Ofer of the ACLU told Politico. “If there’s one person in the system that can end mass incarceration tomorrow if they wanted to, it’s prosecutors.” This won’t lead to reform overnight. Krasner himself said, “Not everything you try to do is easily within reach.” And as [Maura Ewing reported for the Atlantic](https://www.theatlantic.com/politics/archive/2017/11/larry-krasner-philadelphia-da/544937/?utm_source=fbb), the attorneys working under Krasner still have a lot of discretion in the courtroom, and those who oppose Krasner’s policy ideas may try to stifle their implementation in the real world. It will likely take time for Krasner to weed out these internal opponents to his agenda and get true reform moving. But it’s a start — not just because prosecutors are so powerful, but also because it’s at the local and state level where the real action in criminal justice happens. In criminal justice, it’s local and state systems that matter The Philadelphia election illuminates one potential bright spot as President Donald Trump resides in the White House: Although Trump [ran on “tough on crime,” pro–mass incarceration policies](https://www.vox.com/policy-and-politics/2017/4/28/15457902/trump-criminal-justice-100-days), the reality is most incarceration is done at the local and state level — giving reformers an avenue to pursue reform even as Trump remains in office. Consider the statistics: In the US, federal prisons house [about 13 percent](http://www.bjs.gov/content/pub/pdf/p15.pdf) of the overall prison population. That is, to be sure, a significant number in such a big system. But it’s relatively small in the grand scheme of things, as this chart from the [Prison Policy Initiative](http://www.prisonpolicy.org/graphs/state_driver_rates_1925-2012.html)shows: [Prison Policy Initiative](http://www.prisonpolicy.org/graphs/state_driver_rates_1925-2012.html) One way to think about this is what would happen if Trump used his pardon powers to their maximum potential — meaning he pardoned every single person in federal prison right now. That would push down America’s overall incarcerated population from [about 2.1 million to about 1.9 million](http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All). That would be a hefty reduction. But it also wouldn’t undo mass incarceration, as the US would still lead all but one country in incarceration: With an incarceration rate of about 603 per 100,000 people, only the tiny island country of Seychelles would [come ahead](http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All). Similarly, almost all police work is done at the local and state level. There are [about 18,000 law enforcement agencies](http://justice.uaa.alaska.edu/forum/28/2-3summerfall2011/f_lawenf_census.html) in America — only a dozen or so of which are federal agencies. While the federal government can incentivize states to adopt specific criminal justice policies, [studies](http://www.vox.com/2016/2/11/10961362/clinton-1994-crime-law) show that previous efforts — such as [the 1994 federal crime law](http://www.vox.com/2016/2/11/10961362/clinton-1994-crime-law) — had little to no impact. By and large, it seems cities and states will only embrace federal incentives on criminal justice issues if they actually want to adopt the policies being encouraged. Criminal justice reform, then, is going to fall almost wholly to cities and states. That’s why Krasner’s victory is such a big deal: In the age of Trump, it shows criminal justice reform still has a lot of room for victory where these kinds of wins can matter most.

## Answers to Answers

### AT: Permutation do Both

### AT: Other Perms

#### The federal government doesn’t include the states

Congress 95 (1995-1996) 104th Congress, House Report 104-081 - Part 1 http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp104&sid=cp104WKeId&refer=&r\_n=hr081p1.104&item=&&&sel=TOC\_849926&

The term `United States' means the Federal Government of the United States, consisting of the legislative branch, the judicial branch, and the executive branch thereof, and each and every department, agency, or instrumentality of any such branch, including the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, any office, commission, bureau, or other administrative subdivision or creature thereof, and the governments of the territories and possessions of the United –States.

### AT: Theory (if Kicking)

### AT: Theory (if extend)

**Education—it’s the core controversy and they have an adequate lit base.**

Lawson 13 – JD @ U Michigan (Aaron, “EDUCATIONAL FEDERALISM: A NEW CASE FOR REDUCED FEDERAL INVOLVEMENT IN K-12 EDUCATION,” *2013 BYU Educ. & L. J. 281*, Lexis)//BB

**A** crucial **part of the debate over education law and policy asks:** Who should be creating education policy? When education policy is formulated, what is at stake is nothing less than success in life for our nation's young people. The twenty-first century has seen a pronounced shift in the way education policy decisions are made, as the educational policy making and regulatory epicenter has begun shifting from the state to the federal level, particularly with the passage of No Child Left Behind ("NCLB") 1 and Race to the Top ("RTTT"). 2 NCLB comprehensively reformed the Elementary and Secondary Education Act (ESEA), the primary federal education law. 3 Among the major changes were requirements (1) that states establish yearly testing of students in grades three through eight for reading and math and in three grades for science; 4 (2) that states establish standards for the adequate yearly progress of its students, incorporating a goal of total proficiency in all subjects by 2013-14; 5 (3) that students be allowed to transfer out of schools deemed in need of [\*282] improvement; 6 and (4) that states develop a number of new accountability measures to measure the progress of students with limited English language proficiency. 7 The focus on testing was meant to provide some accountability on the part of schools to parents and taxpayers and focus schools' efforts towards groups of students in need. 8 RTTT, on the other hand, was less a legislative program and more a set of spending conditions. 9 In order to receive money from the RTTT fund, states must submit ambitious plans in four core areas: (1) adoption of standards geared to workplace preparedness, (2) building systems to measure student success, (3) increasing teacher effectiveness, and (4) improving the lowest achieving schools. 10 States were encouraged, as part of their funding applications, to develop budgets reflecting the changes they proposed, and the Department of Education provided guidance as to the size of these budgets. 11 For the purpose of this Comment, what is important about these programs is not what they contain, but the fact that they represent a much larger role for the federal government in education. **A** growing body of legal scholarship **argues that an increased role for the federal government in education is a normatively desirable development**. One scholar, for instance, argues that limited state bureaucratic capabilities, which she asserts have developed compliance functions at the expense of true policy expertise, counsel in favor of an increased federal role. 12 Likewise, Professor Kimberly Jenkins Robinson, who served in the General Counsel's office at the U.S. Department [\*283] of Education, 13 noting the persistence of interstate educational disparities since Brown v. Board of Education, 14 argues that an increased federal role in education is necessary because history teaches that states are incapable, on their own, of addressing disparities in educational opportunity. 15 Another scholar argues that the central role education has always held in our society necessitates recognition of education as a judicially-enforceable fundamental right. 16 Similarly, Goodwin Liu, recently appointed to the California Supreme Court, argues that the very text of the Fourteenth Amendment and the concept of national citizenship at least authorizes, if not compels, the creation of a "common set of educational expectations for meaningful national citizenship." 17 However, increased federal involvement in education is worrisome for other reasons, explored below. **This Comment pushes back on scholarship that supports federal solutions for the nation's education issues and argues that countervailing considerations militate in favor of less federal involvement in education**. Every state constitution, in contrast with the Federal Constitution, contains some guarantee of education. 18 State [\*284] courts split into two groups on how to give effect to these guarantees: (1) by evaluating education policy under Equal Protection by declaring education a fundamental right or by treating wealth as a suspect classification, 19 or (2) by evaluating education policies under a framework of educational adequacy. 20 In either case, these clauses establish substantive educational guarantees on the state level that do not exist at the federal level and provide the courts with a role in ensuring the fulfillment of these guarantees. 21 These clauses also help to create a valuable political dynamic, which has inured to the benefit of children. As part of this political dynamic, courts define the contours of these affirmative guarantees, and the legislature fulfills its own constitutional duty by legislating between those boundaries. 22 However, when the federal government legislates or regulates in a given field, it necessarily constrains the ability of states to legislate in that same field. 23 In the field of education, the ability of courts to protect the rights of children is dependent on the ability of legislatures freely to react to courts. As such, anything that constrains state legislatures also constrains state courts and upsets this valuable political [\*285] dynamic created by the interaction of state legislatures and state courts. An expansive federal role in educational policymaking is normatively undesirable when it threatens to interfere with this political dynamic. This dynamic receives scant attention in the literature described above. However, mindfulness of this dynamic is crucial to the proper placement of the educational policymaking and regulatory epicenter. Constraints on state legislatures would not be as problematic if the federal government had proven itself adept at guaranteeing adequate educational opportunity for all students. However, RTTT and NCLB have, in some cases, proven remarkably unhelpful for poor and minority students. 24 These negative outcomes, of course, are not guaranteed. However, **the fact that federal involvement in education has produced undesirable outcomes for poor and minority students should cause policymakers to reexamine whether it is most desirable for the federal government to play such a significant role in education**. This Comment argues that it is not.

**Uniform state compacts have occurred over education policy**

Mountjoy 4, (Analyst @ The Council of State Governments, Interstate cooperation: Interstate compacts make a comeback, www.csg.org/knowledgecenter/docs/ncic/Comeback.pdf)

Several interstate compacts have 50-state membership, or close to it, and are managed by administrative or regulatory agencies. The American Association of Motor Vehicle Administrators oversees the Drivers’ License Compact, which facilitates recognition of drivers’ licenses issued in other states. The Interstate Compact for Education, administered by the Education Commission of the States, maintains close cooperation among executive, legislative, professional and educational leadership on a nationwide basis at the state and local levels.

### AT: Links to Politics

### AT: Federal Prisons

#### The solvency deficit is minimal—less than 5% of inmates are in federal prisons, over 1/3 aren’t convicted and thus can’t receive education, and they don’t have jurisdiction of native prisons.

Wagner 14 Initiative, Prison Policy. attorney and the Executive Director of the Prison Policy Initiative. “Mass Incarceration: The Whole Pie.” Mass Incarceration: The Whole Pie | Prison Policy Initiative, 12 Mar. 2014, [www.prisonpolicy.org/reports/pie.html](http://www.prisonpolicy.org/reports/pie.html). DLuo

Wait, does the United States have 1.4 million or more than 2 million people in prison? And do the 688,000 people released every year include those getting out of local jails? Frustrating questions like these abound because our systems of federal, state, local, and other types of confinement — and the data collectors that keep track of them — are so fragmented. There is a lot of interesting and valuable research out there, but definitional issues and incompatibilities make it hard to get the big picture for both people new to criminal justice and for experienced policy wonks. On the other hand, piecing together the available information offers some clarity. This briefing presents the first graphic we’re aware of that aggregates the disparate systems of confinement in this country, which hold more than 2.4 million people in 1,719 state prisons, 102 federal prisons, 2,259 juvenile correctional facilities, 3,283 local jails, and 79 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, and prisons in the U.S. territories. Jail churn is particularly high because at any given moment most of the 722,000 people in local jails have not been convicted.... While the numbers in each slice of this pie chart represent a snapshot cross section of our correctional system, the enormous churn in and out of our confinement facilities underscores how naive it is to conceive of prisons as separate from the rest of our society. In addition to the 688,000 people released from prisons each year, almost 12 million people cycle through local jails each year. Jail churn is particularly high because at any given moment most of the 722,000 people in local jails have not been convicted and are in jail because they are either too poor to make bail and are being held before trial, or because they’ve just been arrested and will make bail in the next few hours or days. The remainder of the people in jail — almost 300,000 — are serving time for minor offenses, generally misdemeanors with sentences under a year. So now that we have a sense of the bigger picture, a natural follow-up question might be something like: how many people are locked up in any kind of facility for a drug offense? While the data don’t give us a complete answer, we do know that it’s 237,000 people in state prison, 95,000 in federal prison, and 5,000 in juvenile facilities, plus some unknowable portion of the population confined in military prisons, territorial prisons and local jails.

#### It’s state jurisdiction—multiple examples.

Mitchell 17, Michael. “Changing Priorities: State Criminal Justice Reforms and Investments in Education.” *Center on Budget and Policy Priorities*, Center on Budget and Policy Priorities, 10 Oct. 2017, www.cbpp.org/research/changing-priorities-state-criminal-justice-reforms-and-investments-in-education.

State incarceration rates have risen primarily because states are sending a much larger share of offenders to prison and keeping them there longer. States can reduce their incarceration rates – without harming public safety – by reclassifying low-level felonies to misdemeanors where appropriate, expanding the use of alternatives to prison (such as fines and victim restitution), shortening jail and prison terms, and eliminating prison sentences for technical violations of parole/probation where no new crime has been committed. A number of states have enacted criminal justice reforms in recent years. Some have reduced prison populations sharply; reforms in New Jersey, New York, and California for example, helped drive down prison populations in each of those states by roughly 25 percent – while crime rates have continued to fall.

#### Hawaii proves.

Mitchell 17 , Michael. “Changing Priorities: State Criminal Justice Reforms and Investments in Education.” *Center on Budget and Policy Priorities*, Center on Budget and Policy Priorities, 10 Oct. 2017, www.cbpp.org/research/changing-priorities-state-criminal-justice-reforms-and-investments-in-education.

States can reduce their incarceration rates and realize significant long-term budget savings without harming public safety.[[44]](https://www.cbpp.org/research/changing-priorities-state-criminal-justice-reforms-and-investments-in-education" \l "_ftn44) To do this, state policymakers need to enact reforms that target the main drivers of high incarceration rates: the number of people admitted (or re-admitted) into correctional facilities and the length of their prison stays. States should consider four basic kinds of reforms: Decriminalize certain activities and reclassify certain low-level felonies. The increased use of prison — and longer prison sentences — to punish crimes such as the possession of certain drugs, like marijuana, has contributed heavily to the growth in mass incarceration. Lawmakers should look to reduce or eliminate criminal penalties for such crimes when doing so would not affect public safety. Expand the use of alternatives to prison for non-violent crimes and divert people with mental health or substance abuse issues away from the criminal justice system altogether**.** Policymakers should assess the range of sentencing alternatives available in their state, such as drug and mental health courts and related treatment, community correction centers, community service, sex offender treatment, and fines and victim restitution. Whenever possible, people whose crimes stem from addiction or mental illness should be diverted into treatment programs rather than sent to prison. These treatment programs should be high-quality and adequately funded.[[45]](https://www.cbpp.org/research/changing-priorities-state-criminal-justice-reforms-and-investments-in-education" \l "_ftn45) Reduce the length of prison terms and parole/probation periods. Policymakers should reform unnecessarily harsh sentencing policies, including “truth-in-sentencing” requirements and mandatory minimum sentences, and allow inmates to reduce their sentences through good time or earned time policies. States also should expand programs that enable inmates meeting certain requirements to receive favorable decisions in parole hearings, especially in states where parole grant rates remain low. Funding for programs to help inmates meet these requirements, in areas such as substance abuse, anger management, literacy, or higher education, has not kept pace with the growth in state prison populations.[[46]](https://www.cbpp.org/research/changing-priorities-state-criminal-justice-reforms-and-investments-in-education" \l "_ftn46) Restrict the use of prison for technical violations of parole/probation**.** The share of individuals entering prison due to a parole violation grew rapidly between the late 1970s and the late 2000s. While it has fallen more recently, parole revocations accounted for more than a quarter of admissions to state prisons in 2013.[[47]](https://www.cbpp.org/research/changing-priorities-state-criminal-justice-reforms-and-investments-in-education" \l "_ftn47) Some of these violations are technical, such as missing a meeting with a probation officer or failing a drug test. States should heavily restrict the use of prison for technical parole violators and implement graduated sanctions for more serious parole violations. States can also adopt more effective probation policies. For example, Hawaii has sharply reduced probation revocations with a program that punishes infractions more quickly and with more certainty, but with much shorter periods of incarceration.[[48]](https://www.cbpp.org/research/changing-priorities-state-criminal-justice-reforms-and-investments-in-education" \l "_ftn48) These reforms are complementary; adopting just one or two won’t shrink a state’s prison population as much as a more comprehensive set of reforms that improves “front-end” sentencing and admission policies as well as “back-end” release and re-entry policies. What Policy Mechanisms Do States Need to Support Those Reforms? States wishing to use savings from criminal justice reforms for more productive purposes would do well to adopt planning and budgeting mechanisms that can help them shift priorities, including the following.

### AT: Preemption

### AT: Circumvention

### AT: Trump takes credit

#### But, he wouldn’t care---he only pays attention to mainstream media and is clueless about state politics.

Elliot 17 (Philip Elliot, reporter for TIME. Donald Trump Doesn't Understand Local Politics. That's Hurting His Presidency. October 26, 2017. time.com/4999355/tax-reform-donald-trump-local-politics/)

For **Trump**, who **has consumed a diet of cable TV news for years and never held elected office prior to the presidency**, **the budget vote was something to be considered at a macro leve**l. **The pundits would call it a win** for the president, **while national conservative groups would praise it** as a forward step for the cause of tax reform. **But no politician in the legislative branch is elected nationally**. **The men and women of Congress who will decide the fate of this tax reform proposal all report back to voters in their** districts and **states**, many of whom have parochial concerns like high state taxes they like to write-off. The House, where spending bills have to start, is preparing to release a draft of the tax plan Wednesday, with a committee rewrite slated for the following Monday. The Senate will take its red pen to it the week of Nov. 13 and have a floor vote on Nov. 20. The rapid pace is ambitious, for sure, but there are many pitfalls on its path. After all, this would be the most ambitious rewrite of the tax code since 1986. For his part, Speaker Paul Ryan recognized the pitfalls when asked about the state and local taxes on Thursday. “This budget that we just passed, that is really important for getting tax reform done,” he told reporters, painting it as merely one step in the process. “The Ways and Means Committee will be putting out the specific plan very shortly and they’re going to work with all of our members to look at, and consider and address their concerns.” But with lawmakers from states with high local taxes standing against what to them is a de facto tax hike, **the White House seemed only to rely on what cable news was saying**. **The President has long thrived on tapping into and, often, exacerbating the narrative on the minute-by-minute coverage from the macro level.** Yet sometimes he has understood the national mood so well he misses the local needs. For instance, **instead of holding a campaign-style victory event on Thursday, he met with families impacted by the opioid crisis in the White House’s East Room**. **That disconnect between the President’s enthusiasm and local lawmakers’ micro-level hesitancy has been on display before. On questions such as repealing Obamacare** and building a wall on the U.S.-Mexican border, many from the President’s own party balked. For instance, **Senators from states with thousands of constituents with health coverage because of the health care law weren’t eager to toss them from programs**. And border-state Senators, like Jeff Flake and John McCain, understood a brick-and-mortar garrison along the southern border spelled bad politics back home. Heading into next week, the President may again find his agenda stymied by parochial interests, and not just on the tax proposals. The Senate Banking Committee is scheduled to take up the nomination of Scott Garrett to lead the Export-Import Bank, an economic powerhouse that helps U.S. manufacturers looking to sell their goods abroad. Critics from across the spectrum have faulted the New Deal relic as corporate cronyism and a handout to some of the nation’s biggest corporations. Trump was a critic of the institution as a candidate. He called it “featherbedding” during the campaign. “When you think about free enterprise, it’s not really free enterprise,” Trump said at the time. Then, after meeting with CEOs who rely on Ex-Im funding for sales abroad, he switched gears and nominated Garrett. Allies said he saw the big picture beyond the slagging the bank took in conservative press and on Twitter. The nominee, a former Congressman from New Jersey, is no fan of the institution he has been tapped to lead. (In fact, it’s a common trait within the Cabinet, as this week’s TIME Magazine reports in its cover story.) The pick brought groans from throughout the Senate because it either gave new life to the institution or issued its death warrant depending on where one sat. Should Garrett hobble the bank or leave it impotent, that could cost jobs for states with major manufacturers who use its powers. For instance, Republican Sen. Tim Scott represents South Carolina, where Boeing has a huge footprint. Scott has a seat on the Banking Committee, where Republicans have only a one-seat advantage. It won’t be an easy week for Scott as he considers an institution that House Financial Services Committee Chairman Jeb Hensarling of Texas routinely calls “the Bank of Boeing.” Scott, for instance, has faced lobbying to reject that nomination, especially from the South Carolina Chamber of Commerce and other groups that benefit from Boeing’s economic power in the state. The National Association of Manufacturers also has run ads urging Scott to ditch Garrett. Yet, if Scott rejects Garrett, the bank stays in neutral and Boeing loses out. The Ex-Im bank’s board has lacked a quorum since 2015, meaning it can’t cut deals worth more than $10 million. If backers of the lending organization want it to get back to work, lawmakers need to confirm Garrett. But in doing so, they’re installing someone who has railed against the institution’s very mission. Complicating politics further has been a concerted effort among groups on the left to highlight earlier comments attributed to Garrett about LGBT rights. Some of Garrett’s potential supporters were left uneasy about elevating him to the new role and giving tacit endorsement of comments, some of which he said were misattributed or misconstrued. That record has made Democrats less willing to hold their nose in order to revive the bank. Welcome to the nuance that seldom makes its way to Trump’s Twitter feed. **The whole buffet makes sense from afar, but that random pickle on the chocolate cake is tougher to praise.** In **missing those small details**—**that issue that peels off lawmakers over the relatively local issue**—**Trump has at times stumbled**. **Trump is a big-picture New York developer, not someone who has spent his career listening to constituents’ complaints about trash pickup or potholes**. If he is to prevail on the taxes, he’ll need to start looking in lawmakers’ backyards for their sinkholes or treating them like the bodega owner down the block.

## AT: DAs to States

### AT: CA Delta Tunnels

### AT: TX Budget DA

# CP- State Courts

### 1nc- cp

#### The Supreme Courts of the fifty states and all relevant territories should uniformly [].

#### CP solves better and causes policy shifts.

Johnsen 15 (Dawn, Indiana University Maurer School of Law "State Court Protection of Reproductive Rights: The Past, the Perils, and the Promise" (2015). Articles by Maurer Faculty. Paper 2110)

Role of State Courts in "Our Federalism" The U.S. Constitution establishes a system of government in which the national and fifty state governments share authority. Although the precise nature of "our federalism" can be complicated and controversial in some contexts, the essential structure as it relates to the protection of reproductive rights is straightforward. Actions of state legislatures, executive officers, and other state actors are subject to judicial constraint, review, and interpretation by courts at the state and federal levels, applying state as well as federal law. Federal law is supreme, so states may not, for example, restrict the provision of abortion services in ways that conflict with rights guaranteed by the U.S. Constitution. Subject to this "federal floor of protection, '43 states may define and protect rights differently than federal guarantees, as state courts have in numerous cases affecting reproductive rights. Most fundamentally, each state is governed by its own constitution, which controls and constrains state action. Thus, individual rights and liberties are potentially doubly protected by state and federal constitutions, the provisions of which sometimes differ in significant respects, either textually or by interpretation. Indeed, prior to the Civil War and the fundamental changes effected by the Reconstruction Amendments, Americans often had only the state courts to turn to for even the most basic rights. State courts continue to decide the vast majority of cases: about 30,000 state court judges handle roughly thirty million cases, compared to 1,600 federal judges with just over one million cases." In addition to protecting their own citizens, state court decisions may serve as a model for other states or for the federal courts. Justice William Brennan put it well in a 1977 seminal essay on state court independence: "[S]tate courts cannot rest when they have afforded their citizens the full protections of the federal Constitution. State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law." 45 In practice, state courts often simply follow the federal courts' lead and interpret their constitutional protections to be coextensive with identical or analogous federal protections. U.S. history, however, is replete with examples of state courts interpreting their own constitutions differently, including to afford greater protection even in the absence of textual differences. One example that Justice Brennan likely had in mind when he urged state courts to act independently was a 1973 case in which he dissented from a five-Justice majority opinion that rejected a constitutional challenge to Texas's grossly unequal system for funding public education.46 Years later, on this issue of tremendous importance, the Texas Supreme Court unanimously rejected the U.S. Supreme Court's approach and held that the system violated the Texas Constitution.47 The cause of marriage equality provides an especially instructive and inspiring example. -As in the case of women's reproductive rights, advances in securing the right of gays and lesbians to marry has depended on both state and federal court rulings, premised on the same textual and conceptual bases: liberty, privacy, and equality.48 Moreover, the precise content of fundamental rights under the U.S. Constitution in both contexts may depend in part on our nation's "history and tradition" measured by state treatment of the issue. Lawrence v. Texas, for example, discussed the evolving nature of state criminalization of same-sex sodomy.49 Marriage equality advocates have prioritized efforts in state courts. In the words of Freedom to Marry's President Evan Wolfson, they have tried to "win more states" and ultimately persuade the Supreme Court to end marriage discrimination: "Using the struggle against race discrimination in marriage as a measure, [we are] still far short of the 34 states that had ended race-based marriage discrimination when the Supreme Court ruled in Loving v. Virginia (1967)."5 0 The differences, as much as the similarities, between marriage equality and reproductive rights help explain the potential of state courts. Although state courts always remain free to interpret their constitutions to provide independent and stronger protections, timing matters. State courts may rule in advance of the U.S. Supreme Court, as in the case of marriage equality (state and lower federal courts considered the issue contemporaneously), or afterwards, as when the Texas Supreme Court rejected the U.S. Supreme Court's approach to the inequality in public education funding." An absence of federal precedent requires state courts to exercise greater independence and affords them greater potential to inform federal courts interpreting the U.S. Constitution, as well as other states considering their own constitutions. As the next Part discusses, state rulings on restrictive abortion laws usually have followed U.S. Supreme Court rulings. A close examination reveals a relatively complex history of interaction-and the story continues.

## Solvency

### Solves Better

#### 1. State Courts solve better --- Fed courts are inefficient, take too long, and are vetoed by congress

Shepard 6 (Randall, Chief Justice of Indiana, “The New Role of State Supreme Courts as Engines of Court Reform,” New York University Law Review, 81(5), p. 1539)

Third, the rulemaking authority possessed by many state supreme courts authorizes quicker action across a broader range of subjects than is authorized in the federal system. The Federal Rules Enabling Act compels resort to elaborate machinery and confines the areas in which the U.S. Supreme Court may act. 17 All of the procedural rules of the Supreme Court are subject to veto by Congress, and the Court may act in some fields only when Congress gives specific approval. 18 While the rulemaking power of state courts varies, there are a substantial number of states in which the authority of the supreme court is plenary.1 9 Such authority has allowed many state courts to go beyond traditional rules of procedure and employ other rules of superintendence as effective methods of system reform.20 This brings me to identifying some of the primary ways in which state supreme courts have led efforts to remake the American system of justice.

#### 2. The Supreme Court can’t solve- can’t implement precedents and or ensure enforcement.

Berenji 8 (Shahin, USC BA in PoliSci, 2008, The US Supreme Court :A "Follower, not a Leader" of Social Change, Lethbridge Undergraduate Research Journal, 3(1), <https://www.uleth.ca/dspace/bitstream/handle/10133/1208/Berenji.pdf>?..) MAM

Similar to its dependency upon the “test case,” the Supreme Court also needs societal support to implement and enforce its Court precedents. Although it issues decisions, the Supreme Court cannot directly implement them, which severely constrains their impact upon society. Unlike the executive or the legislative branches of government, the Supreme Court cannot appropriate money to ensure the application of its policies. In addition, the Supreme Court cannot use the police or other law-enforcing entities to execute its decisions. As a result, the Supreme Court must rely on societal support, particularly the federal government, to ensure the implementation of its decisions. According to Alexander Hamilton, “[the Supreme Court] may truly be said to have neither force nor will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments” (Rosenberg 15). This dependency truly limits the power of the Court by making it difficult for the judicial institution to oppose the policies of society. In 1830, for instance, at President Andrew Jackson's urgency, Congress passed the Indian Removal Act, which allowed the relocation of most tribes in the eastern United States to reservations west of the Mississippi River. Following the impetus from this act, Georgia passed a series of state laws which enabled white settlers to seize Cherokee territory in the northwestern frontier of that state. The Cherokee Nation, however, made the claim that they were a sovereign political entity within the boundaries of Georgia. In the 1832 case of Worcester vs. Georgia, the Supreme Court sided with the Cherokee Indians, ruling that Georgia superceded federal jurisdiction over the Cherokee Nation. This decision marked the first time that the Court actively sought to protect a minority group from the ruling majority. Moreover, this decision declared that the actions of Georgia as well as those actions that were permissible under the 1830 Indian Removal Act were illegitimate and unconstitutional. Lacking either government or popular support, however, the Court's decision was not enforced, demonstrating the Court's inability to stymie change without majority consensus.

#### **Solves the aff- creates a unified, national, binding precedent that future courts can look too.**

Gleason and Howard 14 (Shane, Assistant Professor of Political Science at Idaho State University, Robert, Professor of Political Science at Georgia State University, “State Supreme Courts and Shared Networking: The Diffusion of Education Policy”, APSA 2014 Annual Meeting Paper, p. 1-3, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2454314>)

State court decisions play a prominent role in many policy areas. In our federalist system, many policy domains are left predominantly to the states, including such areas as marriage, divorce and, perhaps most prominently, education. Particularly since San Antonio Independent School District v. Rodriguez, 1 state supreme courts are often the final authority on education finance law. However, while the decisions of state supreme courts are final within their jurisdictions, state high courts often look to the decisions of other courts for guidance (e.g. Caldeira, 1985; Comparato and Gleason, 2013; Gleason and Comparato 2014). Education finance reform is a matter of policy, and while scholars have long recognized the diffusion of policy between state legislatures, no study has, as of yet, studied the diffusion of policy change through the use of state supreme court citations as diffusion mechanism. Traditionally, the literature on state courts holds that judicial decisions are a function of attitudes or policy preferences, constrained by institutional considerations, as well as the separation of powers system inherent in each state (Hall 1992, Brace and Hall 1990, 1995; Hall and Brace 1999). Much of this literature assumes that decisions reached by state courts of last resort are largely independent of other state courts of last resort. Each state court has its own preferences, laws, particular set of institutional constraints and confronts different governors, publics, and state legislatures in rendering decisions. In addition, legal factors such as precedent within the state, state legislative history and state constitutional and statutory language also play a role. However, this literature largely assumes that the decisions of one state supreme court are independent of decisions reached by neighboring state supreme courts. We contend that this assumption misses the judicial dialog between state high courts (e.g. Caldeira 1985; Comparato and Gleason, 2013). A small, but growing, literature finds state supreme courts often turn to each other for citations. This literature contends that state supreme courts look to their peers on other courts for guidance particularly when dealing with a new area of case law. Specifically, state supreme courts tend to cite their peers that are more professional and have specialized case law (Comparato and Gleason, 2013). Thus, if a court is deciding a securities case, they may turn to the New York Court of Appeals since that court has developed an extensive specialized case law in this area. While this literature is informative to the present study, it does not speak to the diffusion of policy, only the presence of citations. In this paper, we wed this literature to that analyzing state policy change. The diffusion literature shows state legislatures often adopt policy that has previously been adopted by neighboring states. Recent scholarship on policy diffusion has reached beyond the simple concept of geography by focusing on how states and nations learn from or emulate other nations or states, looking for leadership in a particular policy domain (Walker 1969; Boehmke 2009). Emulation does not depend upon neighboring geographic lines, but whether or not the policy has been adopted by a similarly situated state or nation, and whether or not the policy worked (Volden 2006; Gilardie and Fuglister 2008). In one of the rare instances where diffusion has been modeled for state courts decisions no influence was seen on state court decisions predicated on neighboring court decisions or neighboring legislative policy (Roch and Howard 2008; see also Cannon and Baum 1981). However, other research finds that geographic proximity does matter to citation patterns (Caldeira 1985). We contend that the lack of significant findings by Roch and Howard (2008) may be due to failure to account for the inherent interdependence of citation networks. Diffusion necessarily requires states to be considered in relationship to each other, rather than as independent observations as is typical in most research designs. Recent studies of diffusion note that social network analysis, which treats observations as interdependent, holds great promise for modeling diffusion networks (Desmarais et al., 2013). Drawing upon both previous work on state supreme court citations and legislative diffusion, we evaluate the diffusion of state supreme court education policy. In this manuscript we examine this citation of precedent in the promulgation of public school finance reform rulings. We do so through the examination of education policy diffusion through three successive waves of education finance reform. Importantly, because changes in the education finance has gone through three waves from 1974 to 2004, we contend that the underlying data generation process for the network has changed. This highlights the changing nature of the state supreme court policy network.

### Racial Equality

#### The Supreme Court stands in the way of racial equality – interpretations of amendments and rulings allow the government to discriminate under a mask of progress

Bodensteiner 9 (Ivan, Prof. of Law, Valparaiso University School of Law, The Supreme Court as the Major Barrier to Racial Equality, <http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1021&context=law_fac_pubs>) MAM

This Article suggests that the U.S. Supreme Court, through its decisions in cases alleging race discrimination, stands as a major barrier to racial equality in the United States. There are several aspects of its decisions that lead to this result. Between 1868 and 1954, the Equal Protection Clause of the Fourteenth Amendment, while it had been interpreted to strike down a few blatant forms of de jure discrimination, allowed government to separate the races based on the “separate but equal” fiction. Beginning in 1954, Brown and a series of subsequent decisions attacked this fiction, and for a period of nearly twenty years, the Court was intent on eliminating the vestiges of segregation in the schools, approving broad remedial orders. This changed drastically beginning in 1974 when the Court began limiting the available remedies and relieving school systems of the burdens imposed by court orders. Around the same time, the Court decided that equal protection plaintiffs needed to show a discriminatory governmental purpose in order to trigger meaningful constitutional protection. This meant that facially neutral laws and practices with discriminatory effects were largely constitutional. Beginning with Bakke in 1978, the Court made it difficult, and eventually nearly impossible, for government to take affirmative steps designed to promote equality. A majority of the Court determined that invidious and benign racial classifications should be treated the same under the Equal Protection Clause, with both subjected to strict scrutiny. This completed the Court’s interpretation of the Fourteenth Amendment in a manner that makes it a real barrier to racial equality: government is free to engage in invidious discrimination as long as it masks the real purpose, and affirmative steps designed by government to promote equality will be struck down as a violation of equal protection. Ironically, the constitutional amendment designed to promote freedom and equality for the newly-freed slaves now stands in the way of true freedom and equality.

### Due Process

#### State Courts specifically solve due process better.

Engstrom 16 (Alyssa, J.D. candidate, University of Southern California Gould School of Law, 2016; B.A., Political Science and History, University of Michigan, 2013, “THE HYDE AMENDMENT: PERPETUATING INJUSTICE AND DISCRIMINATION AFTER THIRTY-NINE YEARS”, http://gould.usc.edu/why/students/orgs/ilj/assets/docs/25-2-Engstrom.pdf)

It is highly unlikely that the Hyde Amendment will be repealed anytime soon, given the current political climate marked by a polarization of Congress and a shocking lack of bipartisanship. Despite this, state constitutions are a promising avenue for achieving individual liberties, as many state constitutions interpret privacy interests broader than the federal interpretations.192 Given that “[t]he U.S. Supreme Court has not clearly demarcated the boundaries of the due process right to privacy . . . [a] state court seeking to diverge from federal precedent is therefore likely to explore its own constitution’s due process clause.” 193 Further, “state courts may also perceive themselves as the primary guardians of state citizens’ individual rights and liberties and be more inclined to read their constitutions broadly.” 194 Success on a claim to the right to privacy, particularly regarding indigent pregnant women, will depend on the following: (1) the court’s perception of the state constitution as a guarantor of protection of citizens’ rights; (2) the court’s willingness to follow the U.S. Supreme Court’s recent right to privacy decisions; and (3) the court’s view of the right to privacy as demonstrated by state case law.195 Most courts which have challenged the abortion-funding restrictions based their challenges on due process concerns, specifically emphasizing that the states are “uniquely suited to protecting individual rights and liberties.” 196

### Follow On

#### Legislatures model.

Wilhelm 7 – (Teena Wilhelm is an Assistant Professor of Political Science at UGA, May 2007, “The Policymaking Role of State Supreme Courts in Education Policy,” Accessed 6/27/17,  [http://www.jstor.org/stable/40263422)](http://onlinelibrary.wiley.com/doi/10.3162/036298007780907914/abstract?systemMessage=Wiley+Online+Library+will+be+unavailable+on+Saturday+01st+July+from+03.00-09.00+EDT+and+on+Sunday+2nd+July+03.00-06.00+EDT+for+essential+maintenance.++Apologies+for+the+inconvenience)) //ak

This study has two primary implications regarding legislative-judicial relations and separation of powers in the policy game. First, courts shape legislative behavior. Contrary to our traditional under- standing of courts in the policymaking process, courts play an integral role in policymaking, by influencing both the number of legislative bill introductions and subsequent bill enactments. Legislatures, by virtue of their desire to create "successful" policy, anticipate institu-tional constraints, adjusting their legislative behavior accordingly. This adaptation shapes the amount of policy that legislatures introduce and enact. Fundamentally, the ideology of the state supreme court and the court's docket shape legislative behavior. Hence, state supreme courts can constrain or encourage legislative policymaking. Results show that legislatures are less likely to introduce policy in the face of a hostile court. Furthermore, legislatures are hindered more when they observe courts that are active in the policy area. By limiting the number of bills that are introduced, these courts also preemptively limit the number of laws enacted.

#### State court decisions spill up.

**Fitzpatrick 4** (November, Robert K., Litigation attorney, J.D. at NYU School of Law, “NEITHER ICARUS NOR OSTRICH: STATE CONSTITUTIONS AS AN INDEPENDENT SOURCE OF INDIVIDUAL RIGHTS”, NYU Law Review, <http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-79-5-Fitzpatrick.pdf>, p. 1869) MFE

Though **judicial federalism will have its greatest effect if it is so widespread as to prompt the Supreme Court to abandon its prior position on a constitutional issue**,236 **transforming the law of a few innovative states into the law of the entire nation**, it is not a failure if states simply continue to disagree. Diversity of social policy is, after all, frequently cited as one of the main advantages of federalism.2 37 **The limitations of judicial federalism, moreover, actually serve to legitimate the practice**. For example, **while the democratic accountability that results from the relative ease of amending state constitutions might make it less likely that state judges will make bold yet unpopular decisions protecting individual rights, 238 or that such decisions will long remain the law of the state, it has the benefit of removing, to some extent, the taint of countermajoritarianism that plagues many federal court opinions239 and thus** **enhances the legitimacy of those decisions that survive**.2 40

### Federalism

## Answers to Answers

### AT: Permutation

### AT: Jurisdiction

#### Yes jurisdiction – no exclusivity with regards to the CJS.

Gutman 13 Jeffrey S. “2.9 State Court Jurisdiction over Federal Claims.” 2.9 State Court Jurisdiction over Federal Claims | Federal Practice Manual for Legal Aid Attorneys, 2013, federalpracticemanual.org/chapter2/section9. Jeffrey Gutman is currently a senior fellow in the Global Economy and Development program at the Brookings Institution, focusing on issues of development effectiveness, infrastructure and urban development. He retired from the World Bank in 2010 after a 31-year career where he had extensive strategic, managerial and operational responsibilities covering economic development and poverty alleviation across a range of sectors and regions of the world. //nhs-VA

In determining whether state courts are allowed to entertain jurisdiction over federally created causes of action, the Supreme Court has applied a presumption of concurrency.[1](http://federalpracticemanual.org/chapter2/section9#footnote1_yimp08y) Under this presumption, state courts may exercise jurisdiction over federally created causes of action as long as Congress has not explicitly or implicitly made federal court jurisdiction exclusive.[2](http://federalpracticemanual.org/chapter2/section9#footnote2_p5dupi6)  An implied exclusivity can result from an “unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interest.”[3](http://federalpracticemanual.org/chapter2/section9#footnote3_m778as0) In considering whether a federal claim is incompatible with state court jurisdiction, the Court looks to “the desirability of uniform interpretation, the expertise of federal judges in federal law, and the assumed greater hospitality of federal courts to peculiarly federal claims.”[4](http://federalpracticemanual.org/chapter2/section9#footnote4_9ewzfrl) Under this framework, federal courts have exclusive jurisdiction over admiralty, bankruptcy, patent, trademark, and copyright claims because the relevant jurisdictional statutes expressly provide so.[5](http://federalpracticemanual.org/chapter2/section9#footnote5_spyhzay) In other areas, such as antitrust, the federal statutes do not make federal court jurisdiction exclusive, but courts found an implied exclusivity.[6](http://federalpracticemanual.org/chapter2/section9#footnote6_z9le4p1) State courts may exercise jurisdiction over claims brought under [42 U.S.C. § 1983](http://www.jureeka.net/Jureeka/US.aspx?doc=U.S.C.&vol=42&sec=1983&sec2=undefined&sec3=undefined&sec4=undefined&bUrl=http://federalpracticemanual.org/node/17/edit).[7](http://federalpracticemanual.org/chapter2/section9#footnote7_jyuwurs) Although the Court has not expressly addressed state court jurisdiction over the other Reconstruction-era civil rights actions, it reviewed a [42 U.S.C. § 1982](http://www.jureeka.net/Jureeka/US.aspx?doc=U.S.C.&vol=42&sec=1982&sec2=undefined&sec3=undefined&sec4=undefined&bUrl=http://federalpracticemanual.org/node/17/edit) action arising in the state courts without any apparent doubt about the permissibility of state courts to entertain such actions.[8](http://federalpracticemanual.org/chapter2/section9#footnote8_wbrtfej)Moreover, state courts addressing issues involving [42 U.S.C. §§ 1981](http://www.jureeka.net/Jureeka/US.aspx?doc=U.S.C.&vol=42&sec=1981&sec2=undefined&sec3=undefined&sec4=undefined&bUrl=http://federalpracticemanual.org/node/17/edit) and [42 U.S.C. § 1982](http://www.jureeka.net/Jureeka/US.aspx?doc=U.S.C.&vol=42&sec=1982&sec2=undefined&sec3=undefined&sec4=undefined&bUrl=http://federalpracticemanual.org/node/17/edit), both having their origins in Section 1 of the Civil Rights Act of 1866 and its 1870 reenactment, concluded that they were allowed to entertain such actions.[9](http://federalpracticemanual.org/chapter2/section9#footnote9_lwu6cic) A state court may decline to entertain a federal claim if it adhere to a neutral rule of judicial administration. That rule must not violate the Supremacy Clause by treating the federal claim less favorably than a parallel state claim.  In Howlett v. Rose the Court was asked to decide whether common-law sovereign immunity was available to a state school board to preclude a claim under [42 U.S.C. § 1983](http://www.jureeka.net/Jureeka/US.aspx?doc=U.S.C.&vol=42&sec=1983&sec2=undefined&sec3=undefined&sec4=undefined&bUrl=http://federalpracticemanual.org/node/17/edit) even though such a defense would be unavailable in federal court.[10](http://federalpracticemanual.org/chapter2/section9#footnote10_2j2pidu) The state court had dismissed the lawsuit on grounds that the school board, as an arm of the state, had not waived its sovereign immunity in Section 1983 cases. The Howlett Court stated that state common-law immunity was eliminated by acts of Congress in which Congress expressly made the states liable.[11](http://federalpracticemanual.org/chapter2/section9#footnote11_bskkh67) The Court held that the state court’s refusal to entertain a Section 1983 claim against the school district, when state courts entertained similar state-law actions against state defendants, violated the Supremacy Clause.[12](http://federalpracticemanual.org/chapter2/section9#footnote12_3nooo80) More recently, the Supreme Court struck down a New York statute that divested its state courts from entertaining Section 1983 or state law claims for damages by prisoners against state correctional employees.[13](http://federalpracticemanual.org/chapter2/section9#footnote13_ubi8y53) The state legislature determined that these kinds of lawsuits were frequently frivolous and channeled them into the state court of claims, which offered more limited remedies and more stringent procedural requirements.  The Supreme Court held that the state law violated the Supremacy Clause because it reflected a policy contrary to Congress' view that state actors are liable for money damages when they violate federal constitutional rights under color of state law.[14](http://federalpracticemanual.org/chapter2/section9#footnote14_1c6rmw8) The Court further determined that merely because the state treated Section 1983 and parallel state law claims equally did not mean that the law was a neutral rule of judicial administration and therefore a valid excuse for barring the federal claim from being heard in state court: "[a]lthough the absence of discrimination is necessary to our finding a state law neutral, it is not sufficient. A jurisdictional rule cannot be used as a device to undermine federal law, no matter how evenhanded it may appear."[15](http://federalpracticemanual.org/chapter2/section9#footnote15_w1rxi49)

#### States get jurisdiction in CJS.

Richman 2k Daniel C. “The Changing Boundaries Between Federal and Local Law Enforcement.” National Criminal Justice Reference Service, 2000, www.ncjrs.gov/criminal\_justice2000/vol\_2/02d2.pdf. Professor at Fordham University School of Law. //nhs-VA

The principal constraint on the Federal enforcement bureaucracy is its size. To be sure, this bureaucracy has grown significantly over time, with enforcement agencies created or subdivided to address new legislative concerns. With the passage of the Mann Act, for example, came the appointment of the Commissioner for the Suppression of the White Slave Trade, with a large staff (Cummings and McFarland 1937, 381–382). To enforce Prohibition, Congress established the Bureau of Prohibition, initially staffed by 1,550 agents (Potter 1998, 13). An ever-increasing number of assignments spurred the growth of what soon became known as the Federal Bureau of Investigation (FBI), from a handful of agents in 1908 to a force of 10,389 by 1996 (Reaves 1998). Federal gun-control initiatives helped spark the creation, in 1972, of the Bureau of Alcohol, Tobacco and Firearms (ATF), carved out from the Internal Revenue Service. And Federal efforts to stem narcotics trafficking and use led to the creation, first, of a Treasury Department Bureau of Narcotics in 1930, and, ultimately, the DOJ’s Drug Enforcement Administration, which had nearly 3,000 agents by 1996. For all this growth, however, the Federal enforcement apparatus is still quite small, both when compared with the network of State and local agencies and when compared with the number of crimes committed that potentially could be charged federally. This resource disparity ought not to be viewed as some species of unfunded mandate. Rather, it reflects Congress’ belief that, whatever the potential scope of enforcement activity authorized by its substantive lawmaking, primary responsibility for fighting crime still remains with the States. It also appears to reflect Congress’ belief that the precise boundaries of Federal and State responsibility should be set, not through substantive Federal legislation, but through explicit or tacit negotiation among enforcement agencies. This is not to say that Congress’ role in this negotiation process is limited to setting it in motion by creating a gap between Federal jurisdiction and Federal resources. Bound to State officials by common constituencies, and often by political party (Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 [1985]; Kramer 1994, 1485), Federal legislators can do much to promote coordination between Federal enforcers and their State and local counterparts. Sometimes legislators will intervene directly to prevent Federal enforcers from intruding into territory that State authorities have staked out. The Lindbergh abduction may have galvanized Congress into passing Federal kidnaping legislation, but when Federal agents from J. Edgar Hoover’s Bureau of Investigation appeared to be unduly injecting themselves into the inquiry, both New Jersey senators complained to the Attorney General. Federal activity in the case virtually ceased soon thereafter (Potter 1998, 114–115). This pattern has continued. Even as they have assiduously expanded Federal enforcement authority in the past half-century, legislators have frequently used budget and oversight hearings to prod Federal agencies into cooperating with local authorities (Wilson 1978, 196–197; Kramer 1994, 1545; Hsu 1999). Legislators can influence the negotiation of Federal-State boundaries not just through direct intervention but by exercising substantial control over who the Federal negotiators will be. Here is where the decentralized nature of authority in DOJ plays a critical role. The huge majority of Federal prosecutions are brought not by the Department’s litigating units in Washington but by the 94 U.S. Attorney’s Offices scattered around the country. These offices (to varying degrees) have considerable independence from Washington, an independence that Congress has done much to protect in recent years (Richman 1999, 806–810). Although, as a formal matter, the U.S. Attorneys are appointed by the President and are subordinate to the Attorney General, one or more members of the congressional delegation representing each district generally play a substantial role in the selection process (Eisenstein 1978, 35–53; Bell and Meador 1993, 247). Appointees, usually drawn from the local power structure, will likely be quite responsive to local concerns and to the interests of local enforcement authorities (Richman 1999, 785). Although U.S. Attorneys do not have hierarchical control over the Federal agencies that usually initiate criminal investigations, they do have gatekeeping power. Their control over access to Federal court— and to certain investigative measures like wiretaps and grand jury subpoena— gives them a powerful voice in the setting of Federal enforcement priorities. For all these institutional arrangements, however, perhaps the main reason why Federal enforcers either stay out of the core State enforcement areas like violent crime or venture into them only with the acquiescence or approval of State authorities is that they generally will lack the informational resources to pursue offenses in these areas without State assistance. When going after organized criminal groups, like Mafia families or drug-trafficking networks, Federal enforcers can develop their own informants and work their way up (Wilson 1978, 61–88). Federal agents can similarly develop information sources in certain areas of special Federal concern, like the securities markets, diplomatic communities, or Federal contracting communities. These will also be areas in which citizens will be prone to bring their complaints to Federal authorities. When agents seek to investigate “more episodic criminal activity,” however, like murders, rapes, and street robberies, they generally must rely on help from local police departments, “the only entities whose tentacles reach every street corner” (Richman 1999, 786). Federal carjacking legislation may offend some traditional notions of the Federal-State boundary, but the FBI, which formed a special carjacking unit in 1992 (New York Times 1992), probably will not pursue a particular carjacker, or target carjacking generally, without help from the cops who know the local bad guys and the community. Even somewhat more organized targets like street gangs are generally too loose-knit to be taken down by the Bureau without extensive local cooperation (Mydens 1992). What, then, does this “negotiated” boundary, which cannot be found in statute books, look like? In some respects, it still reflects the traditional notions of Federal jurisdiction that Congress often seems to ignore in its substantive lawmaking. Federal enforcers still take primary responsibility for Federal program fraud, egregious Federal regulatory violations, counterfeiting, international drug smuggling, national security offenses, and other such crimes. Informants and complainants know to go to Federal agencies first in these cases, and Federal agencies know that they may be held politically responsible for failing to pursue such matters vigorously. Beyond this sphere, in the areas traditionally policed by the States, the line between what goes federally and what is left “stateside” will generally be a function of several factors.

### AT: Citizens Overturn

### AT: I-Law Pre-emption

### AT: Legal Splits

### AT: Legislative Backlash

### AT: Preemption