# WUDL Federalism Disadvantage

[WUDL Federalism Disadvantage 1](#_Toc486709694)

[Notes and Explanation 1/2 2](#_Toc486709695)

[Notes and Explanation 2/2 3](#_Toc486709696)

[\*\*\* 1NC \*\*\* 4](#_Toc486709697)

[Federalism Disad - 1NC 1/3 5](#_Toc486709698)

[Federalsim Disad - 1NC 2/3 6](#_Toc486709699)

[Federalism Disad - 1NC 3/3 7](#_Toc486709700)

[\*\*\* Negative Extensions \*\*\* 8](#_Toc486709701)

[2NC Uniqueness Extension 9](#_Toc486709702)

[Uniqueness - Trump Policies 10](#_Toc486709703)

[Uniqueness - Federal Law (ESSA) 11](#_Toc486709704)

[Uniqueness - AT: Alt Causes (Immigration) 12](#_Toc486709705)

[Uniqueness - AT: Alt Causes (Police) 13](#_Toc486709706)

[Uniqueness - AT: Alt Causes (Family Law) 14](#_Toc486709707)

[Brink - Federal Control Will Overcome States 15](#_Toc486709708)

[2NC Link Extension 16](#_Toc486709709)

[Link - Federal Education Policy and Regulation 17](#_Toc486709710)

[Link - Federal Funding 18](#_Toc486709711)

[Link - Federal Incentives 19](#_Toc486709712)

[Link - School Choice Affs (Vouchers/Charters) 20](#_Toc486709713)

[Link - Transgendered Rights 21](#_Toc486709714)

[Link - AT: Not Pre-emption 22](#_Toc486709715)

[2NC Impact Extension 1/2 23](#_Toc486709716)

[2NC Impact Extension 2/2 24](#_Toc486709717)

[Impact - Democracy 25](#_Toc486709718)

[Impact - Democracy Impact Scenario: Civil War 26](#_Toc486709719)

[Impact - Democracy Impact Scenario: Democratic Peace Theory 27](#_Toc486709720)

[Impact - Liberty 28](#_Toc486709721)

[Impact - Minority Rights 29](#_Toc486709722)

[Impact - Turns Case 1/2 30](#_Toc486709723)

[Imapct - Turns Case 2/2 31](#_Toc486709724)

[AT: Federalism is Racist 32](#_Toc486709725)

[\*\*\* Affirmative Answers \*\*\* 33](#_Toc486709726)

[2AC - Federalism Disad 1/3 34](#_Toc486709727)

[2AC - Federalism Disad 2/3 35](#_Toc486709728)

[2AC - Federalism Disad 3/3 36](#_Toc486709729)

[AT: Uniqueness - Federalism is Dead 37](#_Toc486709730)

[AT: Uniqueness - Alt. Cause (Family Law) 38](#_Toc486709731)

[AT: Link - Cooperative Federalism 1/2 39](#_Toc486709732)

[AT: Link - Cooperative Federalism 2/2 40](#_Toc486709733)

[AT: Link - Federalism is Resilient 41](#_Toc486709734)

[AT: Impact - Trump Not End of World 42](#_Toc486709735)

[AT: Impact - Democratic Peace Theory 43](#_Toc486709736)

[Impact Turn - Federalism is Racist 1/3 44](#_Toc486709737)

[Impact Turn - Federalism is Racist 2/3 45](#_Toc486709738)

[Impact Turn - Federalism is Racist 3/3 46](#_Toc486709739)

# Notes and Explanation 1/2

**What is “federalism”**

 Federalism describes the balance of power between the federal government and the state governments. When the framers of the constitution established the federal government in 1789, they split power between the federal government in the states because they feared that tyrants (like King George) could abuse a strong central government. As a result, they assigned sovereignty (or absolute authority) to both state and federal governments and split responsibilities between them. Articles 1-4 of the constitution contain the federal government’s “enumerated powers” (specific grants of authority), while the 10th Amendment of the Bill of Rights (the “reserved powers clause”) gives all remaining power to the state governments. Therefore, when we talk about “federalism”, we are referring to how the state and federal governments share their sovereign responsibilities.

 Unfortunately, the constitution is not very specific about what powers the federal government actually has. The constitution uses vague terminology (like regulating “commerce”), and the Supreme Court has resolved a number of issues about dividing power between the federal government and the states. In studying federalism, academics have come up with a number of different theories to describe how they believe that federalism works. Understanding these theories in depth is not critical to understanding federalism, but it can help you visualize what each side of the debate will look like.

*Cooperative federalism theory* states the state and federal governments have specific responsibilities under the constitution, but there is also a gray area of shared power. Education is a good example of a gray area because the constitution never mentions education. Both teams can use cooperative federalism to support their argument, but more often, the affirmative team’s argument will represent this theory.

*Dual federalism theory* states that the federal and state governments each control specific policy areas without any overlap at all. This theory has been very influential recently in the Supreme Court. When the court makes decisions about federalism, it tends to ask whether a specific issue is truly a national issue or is more local. That question is a good way to think about dual federalism: is education a national problem or a purely local issue? The negative team’s argument represents this theory.

*Dynamic federalism theory* is a new theory of federalism. It argues that state and federal governments can act independently of each other because they were set up to act as separate governmental entities. In other words, as long as both state and federal governments stay within the boundaries of the constitution, they can do whatever they want. Dynamic federalism theory is the opposite of dual federalism. The affirmative team might use this theory to support their argument.

*Competitive federalism theory* is also a new theory of federalism that argues that federal power should decrease at all costs to deregulate the economy. The assumption behind this theory is that state regulation is better for the economy than federal regulation because it increases choice. If a company hates the regulation in one state, it can move to a different state. The aff and neg will both argue about how this works in practice.

# Notes and Explanation 2/2

**How to use this file and this disad:**

This disadvantage is best used in combination with the States Counterplan. As both files relate to state control of education, federalism is the most natural net benefit to the States Counterplan. Additionally, federalism is already a major debate that will be held in the context of the States Counterplan, so if you plan to read the counterplan, it makes sense to attach this disadvantage as well.

This file is a negative disadvantage based on the notion that state control of education is good for democracy. The argument, summarized in one sentence is this: Trump and Congress are returning control of education to the states, which is a good thing because it restores the balance of federalism and preserves the American democratic system, but by passing a large federal education policy, the affirmative reverses this shift back to state power.

There are three parts to this file: the 1NC, the negative extensions, and the affirmative answers. The 1NC will be read, obviously during the 1NC. While the 1NC is the recommended form of the argument, you are encouraged to swap out cards for other cards you like. The affirmative answers will be read during the 2AC, and while this file contains a 2AC block, you are again encouraged not to use the pre-prepared 2AC block so that you can tailor your answer more specifically to your own affirmative case. The 2AC block in the file is simply a generic suggestion. The same is true for the 2NC Uniqueness, Link, and Impact Extensions. Those pages are simply recommendations on how to approach each level of the argument. You should try to give a 2NC that responds directly to the 2AC’s arguments, not simply use pre-prepared extensions.

A quick note on the additional links and impacts in this file: depending on which affirmative you are debating against, different links or different impact scenarios may be more effective. For example, if the affirmative team has a racism advantage, you should consider reading the minority rights impact cards either in the 1NC or in the 2NC. This file is designed to be broad so that you have plenty of options available. Do not try to read the entire file during your speech - it’s way too long. Instead, pick and choose the cards most useful for each debate.

# \*\*\* 1NC \*\*\*

# Federalism Disad - 1NC 1/3

**A. Current federal education policy supports federalism**

**Sundquist 2017**, Christian B. Sundquist (Professor of Law and Director of Faculty Research and Scholarship at Albany Law School), Positive Education Federalism: The Promise of Equality After the Every Student Succeeds Act, 68 Mercer Law Review 351 (2017).

The well-documented failures of the NCLB and RTT to promote student achievement, much less equality in education, led Congress to pass the Every Student Succeeds Act in December of 2015 (ESSA).[6](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F6457230250) The bipartisan ESSA has been hailed by both liberal and conservative education reformers for not only superseding the much-reviled NCLB and RTT framework, but also for shifting control over certain aspects of public education policy to state and local actors. The new education act nonetheless largely leaves untouched the substantive framework of NCLB and RTT. The ESSA retains the core focus of the past education framework in its continued emphasis on promoting student achievement through consumer choice, accountability, high-stakes testing, and inter-school competition. If anything, the ESSA has broadened the market-based approach of federal education policy by shifting the responsibility for employing corporate measures of accountability to states (themselves serving as “laboratories of experimentation” subject to market demands).

**B. Federal action on education upsets the balance of federalism.**

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

Every state constitution, in contrast with the Federal Constitution, contains some guarantee of education.18 State courts split into two groups on how to give effect to these guarantees: (1) by evaluating education policy under Equal Protection by declaring education a fundamental right or by treating wealth as a suspect classification,19 or (2) by evaluating education policies under a framework of educational adequacy.20 In either case, these clauses establish substantive educational guarantees on the state level that do not exist at the federal level and provide the courts with a role in ensuring the fulfillment of these guarantees.21 These clauses also help to create a valuable political dynamic, which has inured to the benefit of children. As part of this political dynamic, courts define the contours of these affirmative guarantees, and the legislature fulfills its own constitutional duty by legislating between those boundaries.2 However, when the federal government legislates or regulates in a given field, it necessarily constrains the ability of states to legislate in that same field.23 In the field of education, the ability of courts to protect the rights of children is dependent on the ability of legislatures freely to react to courts. As such, anything that constrains state legislatures also constrains state courts and upsets this valuable political dynamic created by the interaction of state legislatures and state courts. An expansive federal role in educational policymaking is normatively undesirable when it threatens to interfere with this political dynamic. This dynamic receives scant attention in the literature described above. However, mindfulness of this dynamic is crucial to the proper placement of the educational policymaking and regulatory epicenter.

# Federalsim Disad - 1NC 2/3

**C. Preserving state power is key to a functioning democracy**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

If the new nationalists' descriptive work has highlighted an underappreciated form of state power, it has also painted a different picture of what constitutes a thriving national democracy. Here, too, the work runs *\*1023* against the grain of conventional legal analysis. The traditional nationalists' view of democratic ends is inflected by a sovereignty account as well, after all. It's concerned with the ability of the national government to regulate without interference and places a high premium on uniformity. It's a hierarchical account that assumes the principal should be able to control its agent and thus eschews the idea that power can be shared, partial, and contingent. It's a vision of national power that leads to the moniker “cooperative federalism” for a complex set of arrangements that generates numerous opportunities for uncooperative federalism.[111](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F111434026992) The traditional nationalist account often crowds out a role for the states and sometimes condemns them as enclaves used to retreat from national values. The picture put forward by the new nationalists is quite different. It's one in which the federal government can regulate without interference as a formal matter, but its success depends as much on politics as decrees as a functional one. Technically the federal government can preside over its own empire, but practically it relies heavily on the states and thus takes on all of the fractiousness and messiness associated with that reliance. As noted above,[112](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F112434026992) it's a form of decentralization in which state and local officials serve two masters, not one, and draw their power from a different power base than the center does.[113](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F113434026992)This fact makes resistance more likely and successful resistance more probable. The federal government may be at the helm, but the regulatory ship is guaranteed to be buffeted by political headwinds. The new nationalists' account thus suggests that the primary obstacle to uniformity isn't law; it's politics. When the national government fails to achieve uniformity, it's rarely because it lacks legal authority. Instead, the federal government lacks either the political capital or the political will to guarantee consistency. Or maybe because--contrary to the conventional traditional nationalist vision--national leaders believe that disuniformity has its role to play in a pluralist system like our own.[114](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F114434026992) Finally, the new nationalists don't depict states as separate and autonomous enclaves that facilitate a retreat from national norms. Instead, states and localities are at the center of the fight over what our national norms *\*1024* should be. As with a conventional traditional nationalist account, the federal government still holds the national supremacy trump card. But the federal government must be circumspect about playing it. If an issue matters for national values, that fight can be had, and it can be won. The states can be shoved aside or brought to heel or bribed. But the federal government must work to do so.

# Federalism Disad - 1NC 3/3

**D. Preserving the foundations of a strong American democracy is the only way to prevent Donald Trump from ending the world**

**Sachs 2017**, Jeffery D. Sachs (Professor @ Columbia University and Director for the Center of Sustainable Development), Trump and the Doomsday Clock, The Boston Globe (Feb. 12, 2017), https://www.bostonglobe.com/opinion/2017/02/12/trump-and-doomsday-clock/1NQ1aEAzxTePCTrQbSSkUN/story.html

The most chilling concern about Donald Trump is the worldwide fear that he puts our very survival at risk. This is not loose talk or partisanship. It was recently expressed by the most thoughtful experts who monitor the risks to our survival: The Science and Security Board of the Bulletin of the Atomic Scientists, who are the keepers of the Doomsday Clock. These experts have just told the world it is “Two and a half minutes to midnight,” where midnight signifies the end of civilization. This is the closest to doom since 1953, when both the United States and Russia first possessed thermonuclear weapons capable of destroying the world. Let’s not panic. Instead, let’s think, plan, and act. As President John F. Kennedy famously declared, “Our problems are manmade — therefore, they can be solved by man.” The problem of Donald Trump can be solved too, by the institutions of American democracy and the international rule of law. The Doomsday Clock was created 70 years ago, in the early days of the Cold War and the nuclear weapons race between the United States and the Soviet Union. For the first time in human history, mankind possessed the means of causing not only great carnage and suffering, but also the very destruction of humanity. The early generation of atomic scientists recognized the profound and unprecedented dangers of the new weapons and sought to warn the world. In the first edition of the clock, in 1947, they set the it to seven minutes before midnight, nuclear Armageddon. As the Cold War intensified, and atomic bombs gave way to vastly more powerful thermonuclear bombs, the minute hand moved five minutes closer to midnight. When JFK came into office he powerfully expressed the existential paradox of modernity. “For man holds in his mortal hands the power to abolish all forms of human poverty and all forms of human life.” We never came closer to the end than in the Cuban Missile Crisis in October 1962, when mistakes by both the United States and the Soviet Union led the world to the very brink of nuclear war. In 1963, brilliant diplomacy by Kennedy, supported by the moral leadership of Pope John XXIII and the bold statesmanship of Nikita Khrushchev, led to the signing of the Partial Nuclear Test Ban Treaty. Humanity was spared. The minute hand of the Doomsday Clock moved back to 12 minutes before midnight, a margin of safety. With America’s escalation of the Vietnam War under Lyndon Johnson, the minute hand began to move once again toward midnight, while Richard Nixon’s “detente” with the Soviet Union again reduced the tensions and put the minute hand back to 12 minutes before midnight. Then tensions escalated with Ronald Reagan’s new arms buildup, until Soviet President Mikhail Gorbachev launched the process of political and economic reform, perestroika, that culminated in the end of the Cold War and the end of the Soviet Union itself in 1991. Humanity had, it seemed, reached a moment of relative safety; the minute hand stood at 17 minutes before midnight that year. Yet if ever a historic opportunity for safety was squandered, this was it. Every US president since then — Bill Clinton, George W. Bush, and Barack Obama — has contributed to a decline of global safety, with the minute-hand moving from 17 minutes before midnight to just three minutes before midnight last year, even before Donald Trump became president. And after just a few days in office, Trump has contributed to another 30-second jump of the minute-hand toward midnight. What went wrong between 1991 and now? Two grave mistakes. The first was the failure to capitalize on the end of the Cold War by establishing a trustworthy relationship between the United States and Russia. While most Americans would blame Vladimir Putin for that, they should follow the Gospel advice of Jesus: “You hypocrite, first take the log out of your own eye, and then you will see clearly to take the speck out of your brother’s eye.” Instead of working with Russia after 1991, the United States unilaterally asserted its military power, expanding NATO toward Russia’s borders and invading several countries in the Middle East. The Cold War was revived, not ended. The second mistake was to turn a blind eye to the second existential threat: human-induced global warming. While the threat from nuclear weapons was easy enough to perceive (though also easy to forget day to day), the existential threat from human-induced climate change was far more difficult. To understand it requires at least a basic awareness of quantum physics, the Earth’s physical dynamics, and Earth’s climate and economic history. Our presidents and Congress have lacked that. They understand money from lobbyists — oil and gas companies — not quantum physics. There are dire risks of our continued burning of coal, oil, and gas. When these fossil fuels are burned, they emit carbon dioxide into the atmosphere. Carbon dioxide has the special quantum-mechanical property that it absorbs infrared radiation and thereby acts as a kind of atmospheric “greenhouse” for Earth, causing the planet to warm. This is of course clear to atmospheric chemists but not to most politicians. The science and Earth history also make clear that we are recklessly gambling with future survival. The ocean level could rise by 20 feet or more as a result of even slight further increases in temperature. Only a fool would say that since such an outcome is not completely certain, we should simply continue to burn fossil fuels at the maximum rate. After just a few days as president, Trump induced the atomic scientists to move the minute-hand another 30 seconds toward midnight. They explained their unprecedented move as follows: “The board’s decision to move the clock less than a full minute — something it has never before done — reflects a simple reality: As this statement is issued, Donald Trump has been the US president only a matter of days. Many of his Cabinet nominations are not yet confirmed by the Senate or installed in government, and he has had little time to take official action. Just the same, words matter, and President Trump has had plenty to say over the last year. Both his statements and his actions as president-elect have broken with historical precedent in unsettling ways.’’ They then cite Trump’s recklessness both toward nuclear weapons and climate change. On nuclear weapons, Trump has casually suggested that Japan and Korea should become nuclear powers; that a new nuclear-arms race is welcome; and that the use of nuclear weapons (e.g., in regard to ISIS) is not “off the table.” Yes, for every statement such as these, there are equal and opposite statements as well. There is, in short, casualness, inconsistency, and incoherence. On climate change, the inconsistencies are not the problem; denial is. Trump has completely turned his administration’s environmental policies over to the oil and gas industry. The State Department is now in the hands of ExxonMobil; the Environmental Protection Agency is in the hands of politicians like Scott Pruitt, long financed by the fossil-fuel industry. The word on Capitol Hill is simple: The mega-billionaire Koch brothers, who own the nation’s largest private fossil-fuel company, own Congress, or at least the Republican side. Trump is a bully whose bluster is designed to intimidate and wrong-foot a foe, and in Trump’s worldview, just about everybody is a foe. As he has famously explained, in an attitude inherited from his father, there are “killers” and there are “losers.” The bluster is designed to put Killer Trump ahead of the losers. The key to survival in the Trump era is to look past the bluster, face down the bullying, and prevent Trump’s poorly controlled emotions from guiding the policies of the United States on these life-and-death issues. Despite the bravado of the flood of executive orders, most of them are mere statements of intent, not legally binding instruments. The courts will have their say; and the regulatory agencies must follow rigorous procedures to change existing regulations, all of which are subject to court review and congressional supervision. This is not to say that bullies do not get their way; they can. But bullies only get their way when others back down.

# \*\*\* Negative Extensions \*\*\*

# 2NC Uniqueness Extension

**Extend out 1NC Sunquist evidence - the ESSA, a recent federal law has returned control of education to the states. Federalism is now in perfect balance.**

**And, DeVos is reforming education policy in favor of federalism**

**Rosen 2017**, Jeffery Rosen (law professor at George Washington University and president and CEO of the National Constitution Center in Philadelphia), Federalism for the Left and the Right, Wall Street Journal, May 19, 2017, https://www.wsj.com/articles/federalism-for-the-left-and-the-right-1495210904.

Or consider education, another area traditionally left to the states. Here the Trump administration has struck a blow for federalism by launching a review of Obama-era regulations and guidance for school districts. The executive order directs Education Secretary Betsy DeVos to modify or repeal measures that she considers to be federal overreach. “For too long, the government has imposed its will on state and local governments. The result has been education that spends more and achieves far, far, far less,” [Mr. Trump said](https://www.whitehouse.gov/the-press-office/2017/04/26/remarks-president-trump-signing-executive-order-federalism-education) in announcing the order. Trump critics such as former Gov. Jeb Bush of Florida have been pleased. As [he wrote in USA Today](https://www.usatoday.com/story/opinion/2017/01/17/devos-school-choice-education-florida-jeb-bush-column/96173842/), “The state laboratories of government should have ample chance to innovate with scores of new ideas and policies to spark economic growth and improve education to lift people out of poverty and lift up the middle class.” These moves away from federally imposed priorities also have won the support of liberals in recent years. During the Obama administration, California’s Gov. Brown, for example, was a strong critic of national testing standards, telling a group of technology leaders in 2013 that they were “just a form of national control.” A more controversial aspect of education policy is the recent debate over bathroom policies for transgender students. In this area, there is vigorous disagreement about how to read the federal civil-rights law. Neither Mr. Obama nor Mr. Trump has been able to get Congress to address the issue, and both tried to do so through executive action. The Supreme Court may ultimately decide whether federal law supports one side or the other. Meanwhile, assuming that Congress continues to ignore the issue, it will percolate at the local and state level, as it should.

**And, Recent federal overreach threatens education federalism, but Trump is trying to turn it around**

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

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

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

# Uniqueness - Trump Policies

**In April, Trump signed an executive order reducing the federal government’s role in schools**

**Miller 2017**, S.A. Miller (Washington Times Journalist), Trump to Pull Feds Out of K-12 Education, The Washington Times (April 26, 2017), http://www.washingtontimes.com/news/2017/apr/26/donald-trump-pull-feds-out-k-12-education/

President [Trump](http://www.washingtontimes.com/topics/trump/) signed an executive order Wednesday to start pulling the federal government out of K-12 education, following through on a campaign promise to return school control to state and local officials. The order, dubbed the “Education Federalism Executive Order,” will launch a 300-day review of Obama-era regulations and guidance for school districts and directs Education Secretary Betsy DeVos to modify or repeal measures she deems an overreach by the federal government. “For too long the government has imposed its will on state and local governments. The result has been education that spends more and achieves far, far, far less,” [Mr. Trump](http://www.washingtontimes.com/topics/trump/) said. “My administration has been working to reverse this federal power grab and give power back to families, cities [and] states — give power back to localities.” He said that previous administrations had increasingly forced schools to comply with “whims and dictates” from Washington, but his administration would break the trend. “We know local communities know it best and do it best,” said [Mr. Trump](http://www.washingtontimes.com/topics/trump/), who was joined by several Republican governors for the signing. “The time has come to empower teachers and parents to make the decisions that help their students achieve success.”

**Trump policies are causing a resurgence in state and local power**

**Rosen 2017**, Jeffery Rosen (law professor at George Washington University and president and CEO of the National Constitution Center in Philadelphia), Federalism for the Left and the Right, Wall Street Journal, May 19, 2017, https://www.wsj.com/articles/federalism-for-the-left-and-the-right-1495210904.

President Donald Trump has issued a series of controversial executive orders on immigration that are now tangled up in federal courts. Judges in Hawaii and Maryland have blocked the president’s ban on travelers from six mostly Muslim countries, and another judge in Seattle has blocked his executive order threatening to remove federal funding for “sanctuary cities” that refuse to cooperate with federal immigration agents. If this contest between branches of government sounds familiar, it should. President Barack Obama also tried to use executive orders to push through his own very different immigration policies, and he was similarly rebuffed by the courts. They held that he lacked the unilateral authority to shield millions of undocumented immigrants from deportation. There’s a lesson in the symmetry of these two examples, and figures from across the political and ideological spectrum are increasingly embracing it: Many of the issues that recent presidents have tried to decide at the national level through executive orders are best resolved at the state or local levels instead. In an era of fierce partisan divisions, all sides are beginning to see the virtues of our federal system in accommodating differences—and encouraging experimentation—on issues such as immigration, law enforcement and education. Federalism has long been a cause on the right, but now it’s just as likely to be a rallying cry on the left. Rep. Zoe Lofgren, the top Democrat on the House Judiciary’s immigration and border-security subcommittee, recently said: “The Constitution, specifically the Tenth Amendment, protects states’ rights, and it prohibits federal actions that commandeer state and local officials. When it comes to immigration, these principles seem to be overlooked.”

# Uniqueness - Federal Law (ESSA)

**Federalism is balanced now - states control education reform**

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

The current administration has vowed to leave education matters up to the states, continuing a movement started with the Every Student Succeeds Act (ESSA), which dramatically limited the federal government’s role in school accountability. While greater local control certainly has some benefits, it risks exacerbating the massive disparities in educational performance across states that already exists. In 2015, there was almost a 30 percentile point difference in 4th grade math proficiency rates between the top and bottom states, only some of which can be explained by state-level social and economic factors. The massive disparity in progress is perhaps even more disturbing. Between 2003 and 2015, student proficiency rates grew by over 40 percent in some states, while remaining flat or even declining in other states. The Department of Education (DoED) should take steps to highlight these disparities by identifying the lowest performing states and providing information on the status and progress of all states on a variety of educational metrics. The DoED might also provide modest funding and technical assistance to help demographically similar states work together to improve their public education systems. On the campaign trail, President Trump often called for giving more discretion over education policy to states and localities, critiquing Common Core and what he viewed as other instances of federal overreach. In her recent confirmation hearing, President Trump’s nominee for Education Secretary—Betsy DeVos—repeatedly argued for leaving education matters up to the states. And this desire for local control is not limited to the current administration. In 2015, Congress passed the Every Student Succeeds Act (ESSA) with strong bipartisan support. This legislation replaced the No Child Left Behind (NCLB) system of school accountability with a more narrowly tailored and flexible approach to school reform. Instead of requiring all schools to meet annual performance targets, ESSA requires states to focus on a small set of low-performing schools and gives them considerable latitude to design the interventions they deem appropriate.

# Uniqueness - AT: Alt Causes (Immigration)

**Immigration isn’t a federalism issue - it’s a plenary power of Congress**

**Chacon 2014**, Jennifer Chacon (Professor of Law at the University of California), Who is Responsible for US Immigration Policy? American Bar Association (Spring 2014), https://www.americanbar.org/publications/insights\_on\_law\_andsociety/14/spring-2014/who-is-responsible-for-u-s--immigration-policy-.html

Article I, Section 8, clause 4 of the Con­stitution entrusts the federal legislative branch with the power to “establish an uniform Rule of Naturalization.” This clear textual command for uniformity establishes that the federal government, specifically Congress, is responsible for crafting the laws that determine how and when noncitizens can become nat­uralized citizens of the United States. But control over naturalization does not necessarily require full control over immigration. And indeed, for the first century of the United States’ existence, many states enacted laws regulating and controlling immigration into their own borders. Various states passed laws aimed at preventing a variety of populations from entering the borders of their states, including individuals with criminal records, people reliant on public assistance, slaves, and free blacks. It was not until the late 19th centu­ry that Congress began to actively reg­ulate immigration, in particular, with measures designed to restrict Chinese immigration. By this time, the Supreme Court had begun to articulate clear limits on state immigration powers. In 1849, with the *Passenger Cases*, the Supreme Court struck down efforts by New York and Massachusetts to impose a head tax on incoming immigrants. Four justices concluded that such taxes usurped congressional power to regu­late commerce under Article I, Section 8, clause 3 of the Constitution. A unan­imous court applied the same rationale in 1876, striking down a New York state statute taxing immigrants on incoming vessels in *Henderson v. Mayor of New York*. A few years later, in 1884, with a decision in *the Head Money Cases*, the Court for the first time upheld a federal regulation of immigration, also on Com­merce Clause grounds. From that time on, the Court upheld federal immigration regula­tions against constitutional challenges, although the underlying rationale shift­ed. With the *Chinese Exclusion Case*in 1889, the Court began issuing a series of decisions in which it treated con­gressional power over the regulation of immigration as a virtually unreview­able, plenary power. The Court upheld congressional immigration laws and executive enforcement of those laws against a series of challenges, in spite of their patently discriminatory nature and lack of due process guarantees for non­citizens. The Court repeatedly suggest­ed that this federal power flowed from the federal government’s prerogative to control foreign affairs.

# Uniqueness - AT: Alt Causes (Police)

**The federal government does subsume state police power because it doesn’t have the money**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

If you look past the sources that are most legible to law professors--to practice rather than principle, convention rather than code--you will notice something important. Despite massive amounts of congressional legislation, states still play a central role in criminal law. State prosecutions have averaged around ninety-five percent of national criminal felony cases for over a century and held absolutely steady since the 1980s despite the wave of federal regulations washing across state shores.[57](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F57434026992)The reason for this is simple. The feds don't have the resources to investigate and prosecute the activities they have criminalized. Federal dependence on the states is so pronounced that *\*1014* three of the field's best scholars have classified criminal law as yet another example of cooperative federalism.[58](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F58434026992)

**Drug prosecutions prove states control police power**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

The marijuana fight showcases the muscular role the states play in criminal law enforcement even in the presence of pervasive federal regulation. The federal government has the power to pass regulations; it just doesn't have the resources to enforce them.[59](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F59434026992) The Constitution does not pose an obstacle to federal intervention or to the uniformity of federal drug policy;[60](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F60434026992) it's politics and resources constraints that matter most. Many academics have missed the fact that states retain their central role in criminal law enforcement even as the federal government extends its regulatory reach. That's because they assume that function follows form. Like good law professors, they look to formal instantiations of authority (like federal legislation) rather than informal evidence of power (like state prosecution statistics). They read the Supreme Court's decision in Gonzalez v. Raichrather than compare the budgets of state and federal prosecutors.

# Uniqueness - AT: Alt Causes (Family Law)

**Family law is still implemented mainly by the states**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

The lesson of criminal law and education law, however, holds true in family law as well. Despite the passage of numerous federal laws in this area, the bread-and-butter work of family law is still being carried out by states and localities. State courts and state agencies still do the bulk of work on domestic relations-- marriages, divorce, alimony, custody, child support, etc.--with federal courts staying almost entirely out of the domestic relations game.[95](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F95434026992) Many federal laws are, in fact, carried out by the states.[96](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F96434026992) Some federal policies depend on state courts to succeed.[97](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F97434026992) Others are implemented through cooperative federalism with state bureaucracies.[98](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F98434026992) As Anne Estin has observed, while many of these programs are “highly centralized,” they are nonetheless “implemented by the states.”[99](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F99434026992) As a result, writes Sylvia Law, while the federal *\*1021* government has the power to intervene “and often has done,” the states retain “primary responsibility for the regulation of families.”[100](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F100434026992) So, too, after canvassing the evidence of federal regulation of family law mustered by Jill Hasday in her new book,[101](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F101434026992) Joanna Grossman's illuminating review nonetheless concludes that “[d]espite . . . various forms of federal family law, it is still by and large true that family law and family status are controlled by the states.”[102](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F102434026992) Similarly, Kris Collins describes the “far messier, textured, interesting reality of the past and present regulation of family law,” one that defies “neat and tidy jurisdictional lines” between state and federal authority.[103](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F103434026992)

# Brink - Federal Control Will Overcome States

**States control education now - they’re the largest funding source, but federal control is increasing**

**Robinson 2016**, Gerard Robinson (Resident Fellow at the American Enterprise Institute), A Federal Role in Education: Encouragement as a Guiding Philosophy for the Advancement of Learning in America, 50 University of Richmond Law Review 919 (2016).

Education is the responsibility of state and local governments. Each state has an education clause in its constitution.[8](https://1.next.westlaw.com/Document/Iedf772acfe2511e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIedf772acfe2511e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=25&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F8443103723) Each state also maintains a funding formula to determine the costs for educating a student in elementary and secondary public schools, the appropriate taxing methods to generate revenue for it, and the percentage of funding coming from state, local, and federal government ***\*921*** sources.[9](https://1.next.westlaw.com/Document/Iedf772acfe2511e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIedf772acfe2511e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=25&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F9443103723) And, contrary to popular belief, the federal government is not the biggest investor in public education. According to The State Expenditure Report, state governments spent $344.6 billion on elementary and secondary education in 2014.[10](https://1.next.westlaw.com/Document/Iedf772acfe2511e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIedf772acfe2511e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=25&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F10443103723) Although Medicaid was the largest state expenditure at $445 billion, of which the federal government paid 58.2% of the costs, elementary and secondary education remains the largest recipient of general funds in the states (i.e., revenue generated by state taxes).[11](https://1.next.westlaw.com/Document/Iedf772acfe2511e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIedf772acfe2511e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=25&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F11443103723) When you disaggregate funding sources for education, a clear picture emerges about who funds America's schools: state funding accounts for 45.6%, local governments provide 45.3%, and the federal government provides 9.1%.[12](https://1.next.westlaw.com/Document/Iedf772acfe2511e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIedf772acfe2511e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=25&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F12443103723) Table 1 shows the sources of state expenditures for elementary and secondary education for the 2014 fiscal year. These data reveal that the federal government is not the biggest investor in elementary and secondary public schools. This is not to say the federal contribution is insignificant. In 2014, for example, the federal government contributed $37.2 billion to elementary and secondary education programs administered ***\*922*** through the U.S. Department of Education (“DOE”).[14](https://1.next.westlaw.com/Document/Iedf772acfe2511e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIedf772acfe2511e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=25&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F14443103723) The federal contribution has risen significantly over time. For instance, the federal government allocated $6.9 billion to education when the DOE gained cabinet status in 1980.[15](https://1.next.westlaw.com/Document/Iedf772acfe2511e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIedf772acfe2511e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=25&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F15443103723) The amount increased to $10.7 billion in 1990 and tripled to $38.9 billion in 2010.[16](https://1.next.westlaw.com/Document/Iedf772acfe2511e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DIedf772acfe2511e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=25&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F16443103723)

# 2NC Link Extension

**Extend our 1NC Lawson evidence - when the federal government regulates education, it pushes states out of the business of regulation in the same area, which destroys the balance of federalism.**

**And, the courts have ensured that federal education law can block state power**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

If you care about national power and national politics, in contrast, it's worth remembering that states retain this important role even as the courts have permitted Congress to regulate with close to a free hand. The courts haven't just left most cooperative federal regimes alone; they've also permitted *\*1026* the “federalization” of traditional areas of state concern, including crime, family law, and education.[118](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F118434026992) Nationalists have never begrudged efforts at decentralization provided that the national government gets to make the call about when to decentralize. And in almost every instance nowadays, the federal government gets to make that call.

**And, federalism is zero sum - where federal power increases, state power decreases**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

The new nationalists have thoroughly documented a quite different form of state power, one that rests on neither sovereignty nor autonomy. I call it the “power of the servant”[44](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F44434026992) to emphasize that it stems from what amounts, formally or informally, to a principal-agent relationship. I also use that term deliberately to provoke federalism's stalwarts in the hope that they will shake loose the foolish notion that the states cannot be powerful unless they are presiding over their own empires. As I note in Part IV, I don't intend the “power of the servant” to suggest that states lack any form of autonomy or discretion. Agents have long enjoyed some measure of autonomy and exercised some measure of discretion despite the presence of a principal, as fields ranging from corporate law to administrative law have made clear. That observation holds especially true where, as here, state agents serve two masters, not one.[45](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F45434026992) States are powerful in large part because they are supported by a separate power base and answer to a state polity, not just a federal one.[46](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F46434026992) But they are not wielding power as sovereigns, ruling separate and apart from the national government and able to regulate entirely as they see fit. Instead, they are embedded inside a larger, national regime in which they do not hold a regulatory trump card. It is by now a trope in many fields that the state and federal governments govern shoulder-to-shoulder in a tight regulatory space. When one moves, the other moves with it. This work suggests that the old debates in federalism--the sovereignty/autonomy debate in particular, where the aging boxing club members are still out in full force--are fast becoming beside the point. Both the sovereignty and autonomy account depend on open regulatory space for the states to govern freely, and there's not much of it left anymore. National regulations have washed across virtually all of the states' shorelines.

# Link - Federal Education Policy and Regulation

**Federal policy on education undermines competitive federalism**

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

So, Yes, Common Core does undermine “competitive federalism.” Indeed, in part, it was designed to do so. Federalism is not only distinction from and rivalry between the federal government and the states; it is also rivalry among the states and among local governments within the states. As economist Richard McKenzie writes, the Founders sought to disperse power “among many different and competing governments—at the federal, state, and local levels.” The insight of competitive federalism is that fifty-one state school boards are better than a single federal Executive-branch office. Fifteen-thousand local school boards are better than either fifty-one state school boards or a single federal office. As political scientist Thomas Dye puts it, “intergovernmental competition” was seen by the Founders as an “auxiliary precaution” against the “monopoly abuse of power by a single centralized government.” Competitive federalism encourages innovation, allows movement between jurisdictions that enhances liberty, and permits a better match between policies and voter preferences. Common Core’s national uniformity runs counter to competitive federalism.

**Federal lead on education destroys the fragile federalism balance**

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

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

# Link - Federal Funding

**Budget cuts, not increases are key to preserve federalism**

**Burke 2017**, Lindsey Burke (education policy fellow @ the Heritage Foundation), Trump ‘Skinny’ Budget Blueprint Puts Department of Education on a Diet, The Daily Signal (March 16, 2017), http://dailysignal.com/2017/03/16/trump-skinny-budget-blueprint-puts-department-of-education-on-a-diet/

[For the first time in decades](https://nces.ed.gov/pubs2012/2012001.pdf), an administration is significantly trimming the budget at the Department of Education. The Trump administration’s budget blueprint, or “skinny budget,” cuts $9 billion from the agency’s $68 billion budget, trimming spending at the department to $59 billion. That represents a 13 percent reduction in discretionary spending, demonstrating a commitment to restoring federalism in education. **Program Eliminations** The Trump administration’s skinny budget, released this morning, called for some long-overdue reductions in the federal education spending spree. The budget correctly zeroes in on the 21st Century Community Learning Centers Program (21st CCLC), which appropriates federal dollars to community learning centers that provide enrichment activities to children during non-school hours. This formula grant program sends federal funding to state education agencies, which in turn provide funds to districts and nonprofits that apply for aid to manage community learning centers. Not only is this not an appropriate activity for the federal government to undertake and fund, but there is no evidence that the program, which began in 1994, is effective. According to the Department of Education’s 21st CCLC “Program Performance Plans and Reports” for 2011 (the most recent report available), the program [largely failed to meet academic improvement targets](https://www2.ed.gov/programs/21stcclc/performance.html) established by program administrators. In 2016, taxpayers spent $1.2 billion on the program. The budget also eliminates the Supporting Effective Instruction state grants program (Title II A of the Every Student Succeeds Act), which provides roughly $2.4 billion in federal funding to teacher professional development programs. The Supporting Effective Instruction program is a formula grant funded program and had been previously known as the State Teacher Quality Grants program under No Child Left Behind. Supporting Effective Instruction grants are awarded via formula to state education agencies which then provided funds to districts for class size reduction, teacher professional development, and teacher recruitment efforts, among other uses. As with the 21st Century Community Learning Centers Program, the federal government is not the appropriate place to fund teacher professional development and related polices. Moreover, [evidence suggests there is little return on investment](http://www.hoover.org/sites/default/files/research/docs/finnsousa_whatliesahead_final_ch2.pdf) from teacher professional development programs or [class size reduction](https://www.haiti-now.org/wp-content/uploads/2013/01/2000-THE-EFFECTS-OF-CLASS-SIZE-ON-STUDENT.pdf) as a means of improving student academic achievement. The budget also trims $193 million from the TRIO and Gaining Early Awareness and Readiness for Undergraduate Program (GEAR UP) programs. The TRIO and GEAR UP programs are [intended to increase access to and completion of college for low-income students](http://congressionalresearch.com/RL31622/document.php?study=Trio+and+GEAR+UP+Programs+Status+and+Issues). Together more than $1.2 billion was appropriated for these programs—$900 million for TRIO and $322 million for GEAR UP—in 2016. The programs provide college counseling, mentoring, and tutoring services. [As we have noted in the past](http://www.heritage.org/education/report/reauthorizing-the-higher-education-act-toward-policies-increase-access-and-lower), these programs add to already high levels of higher education spending, and there is little evidence they have met their goals of increasing college readiness for disadvantaged students. As such, they should be eliminated and instead handled at the state and local level. Other reductions to higher education expenditures include the elimination of the Federal Supplemental Educational Opportunity Grant program (saving $732 million) and a $3.9 billion reduction in Pell carry-over funding, while leveling off discretionary spending for the grants. Several other categorical programs are also eliminated, paving the way for reductions in the bureaucratic compliance burden currently levied on states by the federal Department of Education. The budget correctly identifies the need to zero out funding for these various programs. It is not the appropriate role of the federal government to fund high school counseling programs, after school programs, teacher professional development, and the myriad other policies contained within these programs.

# Link - Federal Incentives

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

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

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

# Link - School Choice Affs (Vouchers/Charters)

**Federal involvement in school choice promotion comes with strings attached and guts state automony**

**Flanders and Curtis 2017**, Will Flanders (Wisconsin Institute for Law & Liberty education research director) and Jake Curtis (associate counsel at the Institute’s Center for Competitive Federalism), A Word of Caution to the Trump Administration on School Choice, National Review (January 6, 2017), http://www.nationalreview.com/article/443597/school-choice-block-grant-could-end-being-counterproductive

A block grant could end up increasing federal power over what should be a local matter. The proposed appointment of Betsy DeVos as education secretary has been rightly celebrated by advocates for school choice around the country. As head of the American Federation for Children, DeVos has been instrumental in the movement to give parents better educational opportunities for their children for decades. So how will the new administration set about expanding access to choice? One idea that has been floated by President-elect Trump is a $20 billion block grant to states to fund educational-choice programs. Such an infusion of federal funding could be exciting for the choice movement. States that have previously been unable to implement school-choice programs may be able to do so, and states with existing programs may find expansion easier. But a very important caveat comes with increased federal funding: It is likely to make the states beholden to the federal government in a sector that has traditionally been relatively free from federal involvement. While education-reform advocates may feel safe under Secretary DeVos and a president who seems to be amenable to school choice, there will inevitably come a time in the future when a less friendly administration takes the reins of power or, even worse, a time in the more immediate future when the current administration decides it’s not too crazy about this whole delegated-powers principle. When that happens, the strings may come.

# Link - Transgendered Rights

**Trans bathrooms is a matter of states’ rights - federal overreach destroys federalism**

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

Yesterday the Trump administration preserved federalism, respected the principle of local control over local schools, and corrected one of the Obama administration’s many lawless and radical executive actions. With a simple, two-page letter, the Departments of Education and Justice withdrew and rescinded two Obama-administration letters that purported to unilaterally redefine Title IX of the Education Amendments of 1972. The Obama administration had expanded Title IX’s explicit ban on sex discrimination in federally funded educational institutions to encompass “gender identity” discrimination and then imposed intrusive “guidance” on every federally funded school in the nation, on matters ranging from pronoun usage to eligibility for sports teams and access to showers, bathrooms, and sleeping quarters on overnight trips. Put plainly, the Obama administration used a letter to rewrite a statute and then applied that letter to every public school in the United States, from kindergarten through college. This is not how one makes law in our constitutional republic. New laws require new statutes, and presidents do not have the power to rewrite old laws at will. At the very least, the Administrative Procedure Act requires that new and substantive agency rules go through a notice-and-comment procedure that gives the public a voice in the regulatory rulemaking process. The Obama administration skipped each of these steps. Make no mistake, the actions of the Obama administration were both substantive and intrusive. While media often characterize the letter as merely providing “bathroom” guidance, it has affected broad areas of school life and conduct. In requiring schools to create a “supportive” environment for transgender students, it directed, for example, that girls could be forced to shower or change clothes next to anatomically intact males, sleep in the same room as males on overnight trips, and compete against males in sporting events. There was no medical diagnosis or treatment requirement before schools were obligated to treat boys as girls or girls as boys. Instead, the legal requirements locked in the instant the student or the student’s parents notified the school that the student’s “gender identity” differed from his or her biological sex. The implications for free speech and school curricula were profound, raising a host of questions. If a school tolerated other students “misgendering” a trans student through “improper” use of names or pronouns, was it creating a hostile learning environment? Would the school use the Obama administration’s guidance to attempt to override students’ free-speech rights to dissent from the decree? Did biology textbooks and other educational materials have to change to reflect the new definition of “gender” as an identity distinct from a person’s biological sex? Critically, this federal guidance specifically instructed schools to ignore parental input or parental concerns if parents dissented from the new orthodoxy. The letter was clear: Schools were to provide transgender children “equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns.” This meant that parents who had legitimate concerns about safety, fairness, or even biological reality were left without a voice, even as the policy directly impacted their children’s educational experience. Repealing the Obama administration’s letter leaves the difficult question of how to deal with gender-nonconforming students exactly where it belongs, with the states and local communities that traditionally control public education. Contrary to the claims of LGBT activists, preserving federalism does not leave transgender students to the mercy of bullies or bigots. As the Trump administration’s letter notes, “schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment.” Additionally, it reiterated its legal obligation to “hear all claims of discrimination.” The Trump administration’s proper decision to rescind the Obama administration’s letter should send a clear signal to social-justice activists — what one president gives, the next president can take away. When it comes to serious matters like expanding federal nondiscrimination law, new laws should come only through constitutional process. If you want to change the law, persuade Congress to pass a statute. In our republic, letters are no substitute for lawmaking. If states or local school boards want to recreate the Obama administration’s standards and apply them to their own schools, they are free to do so. If other states or school boards want to leave the difficult decisions to principals and teachers, who know the individuals and parents involved, they are free to do so as well. When it comes to the most delicate matters of student privacy and identity, one size most assuredly does not fit all.

# Link - AT: Not Pre-emption

**Fiat means the plan expressly pre-empts state education law, destroying the balance of federalism**

**Lewis 2008**, Amanda G. Lewis (Teaches the Advanced Seminar on State Attorneys General @ Columbia Law School), Federal Preemption of State and Local Laws: State and Local Efforts to Impose Sanctions on Employers of Unauthorized Aliens (2008), <http://www.law.columbia.edu/sites/default/files/microsites/career-services/Federal%20Preemption%20of%20State%20and%20Local%20Laws.pdf>.

Express preemption occurs when Congress includes within a statutory scheme a provision that explicitly directs state law shall be preempted.15 Where Congress has explicitly provided that federal law is exclusive, states cannot interfere with such federal exclusivity by prescribing additional or auxiliary regulations regardless of whether the regulations complement or further federal objectives.16 In express preemption cases, the Court typically applies standard methods of statutory construction, focusing on the plain meaning of the language at issue, the context of the provision, and the relevant legislative history.17

**Even if there is no express pre-emption, the plan is field pre-emption**

**Lewis 2008**, Amanda G. Lewis (Teaches the Advanced Seminar on State Attorneys General @ Columbia Law School), Federal Preemption of State and Local Laws: State and Local Efforts to Impose Sanctions on Employers of Unauthorized Aliens (2008), <http://www.law.columbia.edu/sites/default/files/microsites/career-services/Federal%20Preemption%20of%20State%20and%20Local%20Laws.pdf>.

Field preemption 26 occurs when Congress has occupied the field of a particular substantive area and thereby precluded any type of state regulation within the field. Congressional intent to preempt an entire field may be found where the scheme of federal regulation is “so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it”27 or where the act of Congress touches “a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.”28 In the case of field preemption, even state laws that do not frustrate any purpose of Congress or conflict in any way with a federal statutory provision are invalid because the states are considered to have no regulatory jurisdiction at all in the field.29

# 2NC Impact Extension 1/2

**Extend the 1NC Gerkin evidence - federalism is all about democracy. The constitution ensures that checks and balances keep any area of government from becoming too powerful. Branches of the federal government check each other, but the states check the federal government. Education is one of the last remaining areas of strong state control, and without any power, the states can’t serve as a democratic check on federal power.**

**And checks and balances are the only way to stop Donald Trump from enacting bad policies. Extend our 1NC Sachs evidence - if Trump could exercise unlimited power, he would end pollution regulations, use nuclear weapons, and bully our allies, all of which would end the world.**

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

**Rahdert 2007**, Mark C. Rahdert (Professor of Law, Temple University), ARTICLE: COMPARATIVE CONSTITUTIONAL ADVOCACY, 56 Am. U.L. Rev. 553 (February 2007).

Many of the world's leading constitutional systems have been in business long enough to develop significant and relatively mature law on constitutional questions that resonate with issues in the United States. There is, for example, a robust transnational jurisprudence on such issues as reproductive freedom, n52 freedom of speech, n53 [\*565] freedom of religion, n54 racial and ethnic equality, n55 language rights of minorities, n56 gender equality, n57 sexual orientation equality, n58 privacy, n59 constitutional limits on punishment, n60 the right to counsel for the indigent, n61 and the rights of the accused. n62 An international jurisprudence is also developing on such structural issues as separation of powers and the rulemaking authority of government agencies, n63 war and emergency executive powers, n64 and even (to a limited degree) federalism. n65 [\*566] Exploring the jurisprudence of other nations on these and other similar constitutional questions, one is struck by the similarity to U.S. constitutional law. This similarity has at least two sources: a commitment to common constitutional norms, and the need to apply them to comparable cultural, social, political, and economic developments. n66 While the various world constitutional systems reflect important differences in language, structure, and history, they are often committed to the same basic principles as the U.S. Constitution. This is especially true in the field of human rights n67 because the U.S. Constitution has served as a model for human rights guarantees around the world. n68 While more modern constitutions elsewhere have often expanded beyond the U.S. Constitution, including explicit guarantees that the U.S. Constitution lacks, n69 many have looked (often explicitly) to the U.S. Constitution for guidance when crafting their own Constitutions. n70 Because their constitutional [\*567] law embraces comparable basic human rights, it encounters similar constitutional questions. While reliance on the U.S. model for structural issues has been less direct, other democracies also share some common structural ground, particularly in the delineation of separate spheres for legislative, executive/administrative, and judicial functions. n71 Like the U.S. Constitution, many foreign constitutions delineate legislative and executive powers and functions, and their legal systems face instances of potential horizontal and vertical conflict among internal governmental structures. n72

# 2NC Impact Extension 2/2

**And promoting the spread of democracy abroad solves wars**

**Lynn-Jones 1998**, Sean Lynn-Jones (editor of the Harvard Internal Security Program’s quarterly journal), Why the United States Should Spread Democracy, March 1998, http://live.belfercenter.org/publication/2830/why\_the\_united\_states\_should\_spread\_democracy.html?breadcrumb=%2Fpublication%2F25468%2Fcan\_a\_us\_deal\_force\_iran\_to\_fess\_up\_to\_the\_military\_dimensions\_of\_its\_nuke\_program

Two types of explanations have been offered for the absence of wars between democracies. The first argues that shared norms prevent democracies from fighting one another. The second claims that institutional (or structural) constraints make it difficult or impossible for a democracy to wage war on another democracy. a. Normative Explanations The normative explanation of the democratic peace argues that norms that democracies share preclude wars between democracies. One version of this argument contends that liberal states do not fight other liberal states because to do so would be to violate the principles of liberalism. Liberal states only wage war when it advances the liberal ends of increased individual freedom. A liberal state cannot advance liberal ends by fighting another liberal state, because that state already upholds the principles of liberalism. In other words, democracies do not fight because liberal ideology provides no justification for wars between liberal democracies.[59](http://ksgnotes1.harvard.edu/BCSIA/Library.nsf/wwwdocsname/ISP_AmerDem#fn59) A second version of the normative explanation claims that democracies share a norm of peaceful conflict resolution. This norm applies between and within democratic states. Democracies resolve their domestic conflicts without violence, and they expect that other democracies will resolve inter-democratic international disputes peacefully.[60](http://ksgnotes1.harvard.edu/BCSIA/Library.nsf/wwwdocsname/ISP_AmerDem#fn60) b. Institutional/Structural Explanations Institutional/structural explanations for the democratic peace contend that democratic decision-making procedures and institutional constraints prevent democracies from waging war on one another. At the most general level, democratic leaders are constrained by the public, which is sometimes pacific and generally slow to mobilize for war. In most democracies, the legislative and executive branches check the war-making power of each other. These constraints may prevent democracies from launching wars. When two democracies confront one another internationally, they are not likely to rush into war. Their leaders will have more time to resolve disputes peacefully.[61](http://ksgnotes1.harvard.edu/BCSIA/Library.nsf/wwwdocsname/ISP_AmerDem#fn61) A different sort of institutional argument suggests that democratic processes and freedom of speech make democracies better at avoiding myths and misperceptions that cause wars.[62](http://ksgnotes1.harvard.edu/BCSIA/Library.nsf/wwwdocsname/ISP_AmerDem#fn62)

# Impact - Democracy

**State power is key to a functioning national democracy**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

Moreover, balanced against those regulatory costs are the benefits we accrue from structuring our national democracy in this fashion. We benefit when our Fourth Branch gains a powerful and useful source of dissent in the states-- agents that can provide both a bureaucratic and political reality check. We benefit from having the states serving as what Jessica Bulman-Pozen terms a “robust scaffolding” for political competition.[119](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F119434026992) We benefit from a system in which structure and rights serve as “interlocking gears,” moving the projects of debate and integration forward.[120](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F120434026992) We benefit from the democratic churn that states and localities provided, from the outlets for pluralism that a decentralized structure allows.[121](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F121434026992) Because we have a robust federal system, we aren't forced to debate issues on an impossibly large national scale but can instead begin those conversations in a myriad of sites, all with different political arrangements and different preconditions for compromise.[122](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F122434026992) We aren't fighting every fight on a national stage, with the winner taking all. Instead, we're rehearsing those battles on a smaller scale in an iterative fashion and in a myriad of political contexts. Our politics may take on greater complexity, but they aren't flattened by uniformity, either.

Better yet, we're not just having those fights in the airy and abstract realm of political speech, where ideologues and intellectual purity hold sway. We're having those fights through sites of governance, where pragmatists dominate, where accommodation is necessary, where everyone must “pull, haul, and *\*1027* trade,” to borrow Justice Souter's phrase.[123](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F123434026992) That picture of a national democracy loses some of the efficiency and neatness of a centralized system, but it gains quite a bit in return.

And here's a fact both camps should remember, one that gets missed by law professors who look to formal structures, legal guarantees, and constitutional doctrine to assess how federal-state relations work. What's happened in so many of these regulatory arenas is that the states and federal government have done what they do pretty well: work it out. Tussle and campaign and negotiate and compromise. Federal-state relationships are forged in the crucible of politics. And the result has been a robust system in which states continue to play a crucial role. But states do so as agents and partners in an interconnected regime rather than as emperors presiding over their own terrains.

That may not be the stuff of which traditional nationalist or federalist dreams are made. But it is a reasonable compromise, and a realistic one to boot. If you are focused on improving the democracy we have, it ought to supply ample common ground on which to build.

**Federalism is key to democracy**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

Given what I've said, it's probably not hard to guess at what I think the terms of the détente ought to be. Traditional nationalists need to start wondering whether they are the ones behind the times and recognize that states can further rather than undermine nationalist aims. They need to acknowledge the crucial role that states and localities can and should play in a thriving national democracy. They need to concede that disuniformity has a role to play in forging and maintaining a robust union and a well-functioning administrative state.

# Impact - Democracy Impact Scenario: Civil War

**If our democratic institutions collapse due to a breakdown in federalism, that will cause a second civil war**

**Ablow 2017**, Gail Ablow (Carnegie Visiting Media Fellow for Democracy), Federalism Explained, Moyers & Co., (March 24, 2017), http://billmoyers.com/story/federalism-explained/

The president, Congress and the Supreme Court often hog the spotlight, so it is easy to forget that the states were here first. In 1786, people were geographically distributed in populations that “at some level didn’t trust one another and might not like one another,” says Levinson. But at the Constitutional Convention of 1787, the goal was to form a “more perfect” union that would provide military security and a more open system of trade, while retaining the rights of states. “It was not the job of the federal constitution to create states or to give them power,” says Ernest Young, a law professor and federalism expert at Duke University. “It was trying to elbow out a little space for the federal government to exist too.” The result, he says, was a “rough balance” between the government and constituent states, and at each level “there is a huge range of divisions of power.” When either the states or the national government thinks the other is overstepping its authority, it turns to the judiciary, which serves as a referee. In the worst-case scenario, states threaten secession and it leads to civil war, as it did in 1861.

**A second civil war would be the end of this country as we know it**

**Peck 2012**, Michael Peck, How the U.S. Military Would Crush a Tea Party Rebellion, Forbes, https://www.forbes.com/sites/michaelpeck/2012/11/15/how-the-u-s-military-would-crush-a-tea-party-rebellion/#4419f9275bc2

Benson and Weber present a scenario that is somewhat artificial. For example, American law enforcement has become militarized after 9/11. Who needs to call in Army troops when your local police force has [armored vehicles](http://www.dailykos.com/story/2011/12/06/1042835/-Why-is-the-Federal-Government-Militarizing-our-Police-Departments), grenade launchers and automatic weapons? One has to wonder if a militia would be so formidable that the state National Guard couldn't handle it. But then the premise of Benson and Weber's scenario is that local authorities might not be able to trust local forces to fight rebels, or that local voters might punish politicians who try to do so.

The old gun lobby line that a pack of civilians with hunting rifles will stop a tyrannical federal government is silly. This isn't 1776, the U.S. military is a tad better equipped than King George's redcoats, and if the U.S. Army decides to crush an insurrection, it will do so. But it is also true that the nature of warfare is changing, as the [spread](http://www.defensenews.com/apps/pbcs.dll/article?AID=2012306150004) of high-tech weapons has the Pentagon worried that even weak states can field missiles that make sending in the Marines a bloody operation. If Hamas and Hezbollah can obtain anti-tank missiles, why not a Michigan militia or a Los Angeles street gang? If drug cartels deploy heavy weapons on the Mexico-U.S. border, then perhaps only the U.S. military has the firepower to stop them.

# Impact - Democracy Impact Scenario: Democratic Peace Theory

**Democracies do not fight each other - empirics prove**

**Gleditsch 2008**, Nils Petter Gleditsch (International Peace Research Institute), Encyclopedia of Violence, Peace, & Conflict (Second Edition), Chapter: Peace and Democracy, Pages: 1430-1437, (2008).

The Democratic Peace Phenomenon The relationship between international peace and democracy can be analyzed at three different levels. At the dyadic or pairwise level, a number of studies have found that democracies rarely, if ever fight out another. At the nation level, most analyses have concluded that democracies participate in war just as much as countries with other political systems. Whether this means that they are no more peaceful in their overall behavior is a more controversial point. At the system level, the question is whether a world with a higher share of democracies will also be more peaceful. Most of those who have addressed the systemic question have assumed that the answer can be inferred from findings at one of the other levels of analysis. To date, there is relatively little empirical analysis at the system level. Civil war is now the dominant form of armed conflict, so we finally ask whether there is a democratic peace at the intrastate level. Democracies Do Not Fight One Another Many Enlightenment philosophers saw democratic government as encouraging a more peaceful interaction between states. More than 200 years ago, Immanuel Kant described a pacific union created by liberal republics. At that time, there were few, if any, democracies in our sense of the word, and Kant's prescription for peace had little force as a description of the international system. But in the nineteenth century, democratic government took hold in an increasing number of countries. The observation that democracies do not fight one another was noted at least as early as the late 1930s, and a first statistical study was published in the mid-1960s. However, it was not until the 1980s that the empirical study took off, giving rise to an enormous and sometimes heated debate. Patterns of warfare after the Congress of Vienna in 1 SI 5 have been intensively studied using data from the Correlates of War Project. If the thresholds for 'democracy' and 'war' are not set too low, there are few if any clear cases of war between democracies during this period. Indeed, this regularity has been characterized by Jack Levy as being as close to a law as anything we have in international relations. Ignoring cases that result from quirks in the data (notably imprecise timing of regime changes), the three most problematic cases are the Spanish—American War in 1H98, World War I, and the British declaration of war on Finland in World War II. While Spain had an elected parliament, the monarchy retained considerable executive power and US decision makers did not perceive Spain as a democracy. Regarding World War I, some have argued that Germany was largely democratic in 1914 when war broke out against Britain, France, and other Western democracies. However, even more clearly than in the case of the King of Spain, the German Emperor had special prerogatives, particularly in foreign and defense policy. This is one reason why systematic data on democracy score Germany as less democratic than its main opponents in the West. Finally, in World War II, the Finnish dispute was with the Soviet Union, not with Western democracies. When Germany attacked the Soviet Union in 1941 and forced Stalin to change sides in the war, Finland found itself on the wrong side. Following pressure from Stalin, the United Kingdom declared war on Finland. Technically, Finland was at war for three years with the UK (and with several British Dominions, but not with the United States). However, there was no fighting between Finland and the Western democracies, who regarded Finland more as a victim than as an enemy. Overall, the empirical evidence points to a much lower probability of war between democracies than for other combinations of states. War is usually defined as organized military action with annual battle deaths exceeding 1000. The peace between democracies appears to hold up if the threshold on violence is considerably lower, for example, set at the 25 annual battle-deaths used as the threshold for the Uppsala/PRIO conflict data. However, a number of militarized disputes have occurred between democracies, that is, conflicts with threats of military action, force deployed, and even limited use of force. Many such disputes are conflicts over fishing rights (\*cod wars'), where the use of force is generally between fishing vessels on the one hand and military or coast guard vessels on the other, with no direct forceful confrontations between the representatives of the two states. Indeed, such incidents may be illustrative of the reluctance of democracies to use force against each other, even in the case of sharp disputes.

**Democracy is a critical impact filter - checks escalation for all wars**

**Hamburg 2010**, David A. Hamburg (President Emeritus at Carnegie Corporation), Recent advances in preventing mass violence.

Democracies thrive by finding ways to deal fairly with conflicts and resolve them below the threshold of mass violence. They develop ongoing mechanisms for settling disagreements. That is why, they are so important in preventing mass violence. This requires the growing spread of democracy and the application of democratic principles to intergroup and international conflicts. People who live in pluralistic democracies become accustomed to diverse needs and learn the art of working out compromises that are satisfactory to all groups. This does not mean democracy imposed by force, nor does it mean that a single, premature election will lead to peace and prosperity. But it does mean that patiently constructed democracies, based on fair processes of mutual accommodation, offer the best chance for nonviolent conflict resolution.

# Impact - Liberty

**Federalism preserves ordered liberty and minority rights**

**Rosen 2017**, Jeffery Rosen (law professor at George Washington University and president and CEO of the National Constitution Center in Philadelphia), Federalism for the Left and the Right, Wall Street Journal, May 19, 2017, https://www.wsj.com/articles/federalism-for-the-left-and-the-right-1495210904.

The framers of the Constitution would be pleased with this emerging consensus. By creating a national government with limited powers, they intended to allow the states and local governments to pursue a range of different policies on matters within what used to be called their “police powers”—that is, their authority to regulate behavior, maintain order and promote the public good within their own territory. The founders considered this arrangement the best way to protect liberty and diversity of opinion, as well as to defend political minorities from nationalist tyranny and concentrated power.

**Without our 10th amendment liberties, Americans are slaves to the federal government - death is preferable to such a total loss of liberty**

**Whitehead 2015**, John W. Whitehead (attorney and president of the Rutherford Institute), ‘Give Me Liberty or Give Me Death’: The Loss of Our Freedoms in the Wake of 9/11, Huffington Post (09/09/2015), http://www.huffingtonpost.com/john-w-whitehead/give-me-liberty-or-give-m\_2\_b\_8103262.html

As for the Tenth Amendment’s reminder that the people and the states retain every authority that is not otherwise mentioned in the Constitution, that assurance of a system of government in which power is divided among local, state and national entities has long since been rendered moot by the centralized Washington, DC, power elite.

If there is any sense to be made from this recitation of freedoms lost, it is simply this: our individual freedoms have been eviscerated so that the government’s powers could be expanded, while reducing us to a system of slavery disguised as a democracy.

What you must decide is whether you will simply comply or will you become a free person and resist? To quote Patrick Henry, “Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! — I know not what course others may take; but as for me, **give me liberty or give me death**!”

# Impact - Minority Rights

**Federalism solves racism by allowing minorities the opportunity to win majorities locally**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

My work, for instance, has looked to the benefits that federalism affords democracy's outliers--racial minorities and dissenters--by supplying them with a chance to turn the tables, wield the power of the majority, protect themselves rather than look to the courts for solace, and set the national agenda.[16](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F16434026992) On this view, rights and structure have served as “interlocking gears” moving our democratic projects forward.[17](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F17434026992) Jessica Bulman-Pozen has cast states as the “robust scaffolding” needed for national politics to flourish.[18](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F18434026992) Cristina Rodríguez has depicted state and local governments as sites for working out disagreements that are too difficult to rehearse on a national stage.[19](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F19434026992)This and other works show how states and localities serve an integrative role, pulling outsiders into the system[20](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F20434026992) and helping us manage cultural change and democratic conflict.[21](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F21434026992) But note that this is decidedly a nation-centered account. Our work does not depict states as separate and independent regulatory arenas that allow us to settle our disagreement by retreating to our comfortable red and blue enclaves. Instead, the new nationalists imagine states and localities as sites for working out conflict and waging the fight over national values and national politics.

**Federalism empowers minorities - it’s the only possible way for them to get political majority power**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

One of the most provocative and engaging pieces in the symposium came from the astute Sam Jordan, who asked whether I've paid enough attention to the democratic dimensions of federalism.[198](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F198434026992) As an elections scholar who accidentally wandered into the federalism arena, I was secretly delighted by the challenge. I take Jordan's worries about the democratic limits of federalism quite seriously. My account of federalism, for instance, would have been a non-starter before the Civil Rights movement, when the idea of empowering racial minorities through governance would have seemed like a sick joke given the vicious conditions that existed in the Jim Crow South. And Jordan is certainly right that we must always be attentive to the limits of federalism when democracy isn't working properly. Moreover, as someone who believes in the national supremacy trump card, I have an easier time answering questions about Ferguson than traditional federalism scholars, who typically resist federal encroachment on state and local powers. In my view, if local democracy has faltered, it is perfectly acceptable for the federal government to step in and help her get back on her feet. Nonetheless, I view Ferguson largely as an election law problem rather than a federalism problem. The problem of off-year election cycles and low turnout among poor people is commonplace in the field of election law, and it's worth remembering just how high African-American turnout rates have been in recent presidential election cycles nationwide. Moreover, even where democracy has broken down, as in Ferguson, it's worth asking the “as opposed to what?” question. Where there is what Jordan describes as a “mismatch between demographics and electoral outcomes,”[199](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F199434026992) is it better for racial minorities to enjoy a substantial population majority at a local level or to have that population constitute an electoral minority within some larger electorate? The first at least allows for the possibility of change. The latter, however, seems only to guarantee permanent submergence. Low turnout groups are always at risk in a democracy, but that risk seems all the greater when they constitute minorities in the electoral pool rather than (potential) majorities.

# Impact - Turns Case 1/2

**Federal control of education results in ineffective policymaking**

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

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

**Canada proves state control of education is better than federal control**

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

We know that national standards are not needed for success in international comparisons. Back in the 1970s, the United States and Canada were both in the middling, mediocre ranks internationally. Both countries are rather similar in culture and level of commercial and industrial development. The United States has continued to wallow in mediocrity, even as we centralize K-12 education. Yet Canada (which has more competitive federalism in education than the United States and has no Ministry of Education in its central government) has climbed into the ranks of advanced nations in academic performance. Why is this important? Because one of the pillars of the case for national curriculum-content standards is that they are necessary for individuals to succeed in a global marketplace and that all top-performing countries have them. The case of Canada refutes that.

# Imapct - Turns Case 2/2

**Federalism key to innovation and to prevent policy gridlock**

**Rosen 2017**, Jeffery Rosen (law professor at George Washington University and president and CEO of the National Constitution Center in Philadelphia), Federalism for the Left and the Right, Wall Street Journal, May 19, 2017, https://www.wsj.com/articles/federalism-for-the-left-and-the-right-1495210904.

It’s hard to know what form the new dispensation on federalism might take in the years ahead, especially if the Supreme Court returns more prerogatives to the states. But a preview of sorts can be seen in a recent online discussion sponsored by the National Constitution Center (which I direct). For the libertarian legal scholar Randy Barnett of Georgetown University, a principled return to federalism offers the possibility of “keeping social issues local” and avoiding “a war of all against all.” As [he observes,](https://constitutioncenter.org/interactive-constitution/articles/article-i/why-federalism-matters/section/8) “A rich diversity of preferred lifestyles can only be achieved at the local level.” Elevating such issues to the national level is a recipe for “more contentiousness, bitterness, and ‘gridlock.’ ” For her part, Heather Gerken of Yale Law School, the leading advocate of “progressive federalism,” argues that in contested areas ranging from health care to the environment, the states and federal government govern best when operating shoulder-to-shoulder. “Take a look at telecom, the AFDC [antipoverty program], Medicaid, drug enforcement, workplace safety, health care, immigration, even national security law,” [she writes](https://constitutioncenter.org/interactive-constitution/articles/article-i/beyond-sovereignty-beyond-autonomy-a-nationalists-view-of-federalisms-futur/section/8). “In these integrated regulatory regimes, the states and federal government have forged vibrant, interactive relationships that involve both cooperation and conflict.” A respect for federalism and state autonomy is perhaps the only way that all sides can peacefully coexist in today’s political environment. With dysfunction now reigning on Capitol Hill and federal courts increasingly ready to strike down the unilateral action of presidents, Americans will at least be able to take some comfort in local autonomy and control. In these polarized times, citizens who strongly disagree with each other may be able to unite around the goal of making federal power less intrusive and national politics less of a contest where the winner takes all.

# AT: Federalism is Racist

**The aff’s kritik of federalism as racist is outdated and based on decades-old examples - post-Reinquest federalism empowers minorities**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

Decentralization can even empower racial minorities and dissenters, the two groups whose fate is always invoked by traditional nationalists to justify centralization.[31](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F31434026992) This fear of the local is outdated, an adjective I take some pleasure in using given how often the traditional nationalists have rebuked their federalism brethren for failing to keep up with the times. I understand taking a firm nationalist position during the Civil Rights movement, when federalism was a code word for letting racists be racists. But it's a mistake to continue to equate “Our Federalism” with our father's federalism. Federalism has empowered racial minorities and dissenters in a fashion that rights alone could never achieve.[32](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F32434026992) Federalism thus compensates for the shortcomings of the First and Fourteenth Amendments.[33](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F33434026992) And where federalism fails, rights often succeed. That's why federalism and rights have served as “interlocking gears,” moving our grand democratic project forward.[34](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F34434026992) Claims to a right and demands for equality are offered in the realm of politics and then instantiated in the realm of governance. Debate leads to organizing, which leads to policymaking, which in turn provides a rallying point for still more debate and organizing and policymaking. When the process of change involves both rights and governance, social movements include pragmatic insiders, forging bargains from within, and principled outsiders, demanding more and better from without. The key point to emphasize, however, is that federalism--far from being the enemy of rights--supplies the policymaking gears that are all but essential for any rights-based movement to move forward.

The gears of change don't always move forward on the rights[35](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F35434026992) orthe structural side of the Constitution. But that brings me to the second respect in which “Our Federalism” is not our father's federalism. If you're worried about those places where structural sites serve as gears to push us backwards, it's useful to remember that the Rehnquist Court's federalism revolution has been a failure. Despite many skirmishes and some genuine defeats--Shelby County[36](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F36434026992) being the most gut-wrenching--the traditional nationalists are winning the war over constraints on federal power. The federal government can step in, one way or another, when the need arises.[37](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F37434026992) That means we can use *\*1007* decentralization to empower what I call our loyal opposition while checking our disloyal one.[38](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F38434026992)

[see the Impact - Minority Rights section for more cards on this argument]

# \*\*\* Affirmative Answers \*\*\*

# 2AC - Federalism Disad 1/3

**1. Education federalism is inevitable - the states will always control education but they need federal help too**

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

But the evidence suggests that not all states are doing fine. Indeed, there are massive disparities across states in terms of current student performance, and these differences are not merely a factor of the social and economic conditions in the state. All states have been actively engaged in efforts to turnaround failing schools, but the effectiveness of such efforts has varied dramatically across jurisdictions. Public education will (and should) always be driven predominantly by local actors—teachers, administrators, school board members, and state legislators. Even under NCLB, states and districts had a mostly unfettered ability to run schools as they saw fit. But with autonomy comes the potential for greater disparity, as more capable, focused, and well-resourced states pull even further ahead of those with less capacity, fewer resources, and greater political dysfunction.

**2. No link - federalism is co-operative and federal power doesn’t prevent state power**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

*\*1011* Before I lose federalism's stalwarts, let me hasten to add that none of this is to say--as a conventional traditional nationalist would have it-- that the states are either irrelevant or swamped by the tides of federal power. Just the opposite is true. Scholars like Richard Epstein, who insist that the states have lost too much authority over the last few decades,[47](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F47434026992) have overlooked the immense power states wield by virtue of being part of the federal system. It's odd that this vision of state power has been neglected by law professors for so long given that entire fields--administrative law, corporate law--worry incessantly about how much power the agent wields against the principal. Just think about how the welfare-to-work debate unfolded or how the Affordable Care Act has been implemented. Read just about anything written in environmental law these days. The states play a robust and crucial role in the regulatory process despite the ubiquity of national regulation. The states and federal government are regulating together, with the federal government often depending heavily on states to implement federal policy.[48](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F48434026992) Ours is thus a state of affairs that members of both camps failed to predict and that some continue to resist. Federalism's stalwarts have insisted that the states are losing power, but that's only because they refuse to recognize cooperative federalism as federalism at all.[49](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F49434026992) And the traditional nationalists miss how powerful state agents can be in a principal-agent relationship. Or maybe, as I've speculated elsewhere,[50](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F50434026992) both camps have just been using the wrong metaphor. If you think of states as autonomous islands in a sea of federal regulation, you will fear that federal tides will swamp the states and want to build a levee to hold them back. If you think the ocean is all that matters, you miss how much life exists beneath its waves. We should imagine states not as isolated islands, but as reefs. There may be federal water, water everywhere, but the states still thrive. That's because states are sites of power. Just as ancient wrecks and scuttled ships attract all manner of ocean life, sites of power quickly attract all manner of political life. Political power attracts political interests, and a political ecosystem springs up around them. Federal power flows through these reefs, to be sure, but states continue to nurture worlds of their own.

# 2AC - Federalism Disad 2/3

**3. Federalism is bad for democracy - it punts complex questions to red-and-blue states and entrenches bad policy**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

The characterization undergirding Gluck's second worry seems correct, but not the concern. As I've written elsewhere, a well-functioning national democracy should not punt hard democratic decisions to the states, where policy-making is easier simply because we've sorted ourselves so neatly into red and blue enclaves.[159](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F159434026992) It's all too easy for national elites--it's all too easy for us--to relegate tough questions to local decision-makers rather than forge a compromise at the national level. Just as it was once too easy to let states in the Jim Crow South resolve questions of racial equality for themselves, today it's too easy to let states navigate the hard questions raised by gun rights, gay rights, and abortion. Red and blue silos are not the products of a well-functioning democracy. For these reasons, I'm not worried about what one might call “second-order preemption.” Democracy means hashing things out. It's perfectly fine if, at the end of the day, we as a nation decide that the states can pursue different paths. A well-functioning national democracy doesn't require rigid uniformity; it requires us to deliberate about which departures from national policy are consistent with our norms and which are outside the bounds. Too often these days, we aren't deliberating; we're just punting. We can't even have a *\*1036* conversation about national norms in the first place, let alone make a collective decision about when and how they should matter. What Gluck casts as second-order preemption, then, is what I would characterize as a well-functioning national democracy.[160](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F160434026992) I should note, however, that none of this takes away from Gluck's core worry that the nationalists haven't yet offered a fully developed account of what nationalism is.

**4. Alternate causes result in federalism collapse**

1. **Trump is violating Federalism now with his immigration order**

**Will 2017**, George Frederick Will, Trump’s violations of federalism would make Obama jealous, Washington Post (May 10, 2017), https://www.washingtonpost.com/opinions/trumps-violations-of-federalism-would-make-obama-jealous/2017/05/10/7cf6b5d6-34dd-11e7-b4ee-434b6d506b37\_story.html?utm\_term=.501ab7c57fb7

Trump’s violations of federalism would make Obama jealous “But what good came of it at last?”

Quoth little Peterkin. “Why that I cannot tell,” said he, “But ’twas a famous victory.” — Robert Southey “The Battle of Blenheim” (1798) Southey, a pacifist, wrote his antiwar poem long after the 1704 battle for which the Duke of Marlborough was awarded Blenheim Palace, where his great-great-great-great-great-great-grandson Winston Churchill would be born. We, however, do not need to wait 94 years to doubt whether the Trump administration’s action against “sanctuary cities” is much ado about not much. Four months have sufficed to reveal ’twas a constitutionally dubious gesture. The executive order was perpetrated in a helter-skelter, harum-scarum, slapdash manner five days after the inauguration, before the administration was humming like a well-tuned Lamborghini. The order says that sanctuary cities have caused “immeasurable harm” to “the very fabric of our republic,” a thunderous judgment offered without evidence of the shredded fabric or even a definition of “sanctuary city.” The executive order is either a superfluous nullity or it is constitutional vandalism. It says cities “that fail to comply with applicable federal law” shall “not receive federal funds, except as mandated by law.”

1. **Session’s threats to crack down on pot kills federalism**

**Sullum 2017**, Jacob Sullum, IS THE WHITE HOUSE SERIOUS ABOUT CRACKING DOWN ON WEED? Newsweek (3/15/17), http://www.newsweek.com/white-house-serious-about-cracking-down-weed-567231

As the introduction to that bill explained, "The 10th Amendment assures that the people of the United States, and each sovereign State in the Union of States, have, and have always had, rights that the Federal Government may not usurp." But Sessions's support for federalism does not extend to marijuana policy. During his confirmation hearings, Sessions was [hazy](http://reason.com/blog/2017/01/11/sessions-wishy-washy-marijuana-comments) on his plans for marijuana enforcement. But he is an [old-fashioned drug warrior](http://reason.com/blog/2016/11/21/trumps-pick-for-attorney-general-is-a-dr) who complained about the Obama administration's prosecutorial restraint in states that have legalized marijuana, [saying](https://reason.com/archives/2016/11/23/is-trumps-pot-tolerance-fading), "The Department of Justice needs to be clear" that "marijuana is not the kind of thing that ought to be legalized." When the subject is marijuana, it seems, Sessions does not recognize any "limits to the reach of the Commerce Clause."

# 2AC - Federalism Disad 3/3

**5. No link - the affirmative plan is legally limited so that it can’t pre-empt state education policy generally**

**American Bar Association 2006**, The Basics of Preemption, http://apps.americanbar.org/abastore/products/books/abstracts/5010047samplechp\_abs.pdf

The search for congressional intent about preemption has long been said to begin “with the basic assumption that Congress did not intend to displace state law.”33 There has been a presumption that the “historic” state police powers are not preempted by the federal government34 unless it is “the clear and manifest purpose of Congress”35 to “supplant state law”36—that is, that express or implied preemption criteria have been satisfied for a particular federal statute or rule, and the statute or rule applies to the particular set of facts.37 The basis for the desire to avoid preemption is the preservation of the federalism bargain, under which exercise of federal supremacy “is not lightly to be presumed.”38 Courts should not unnecessarily disturb the “federal-state balance.”39 Courts were again reminded in 2005 not to “cavalierly” preempt the exercise of state powers.40 The presumption is stronger in some categories and weaker in others. If the subject matter was “traditionally regarded as properly within the scope of state superintendence,”41 or a matter of public health or safety,42 then the courts rely more heavily on the presumption that states will continue to have an important role. Advocates for preemption must show more than an “obscure grant of authority [in order] to regulate areas traditionally supervised by the states’ police power.”43

# AT: Uniqueness - Federalism is Dead

**Federalism is dead - power continues to concentrate and revivals are only cyclical**

**Rosen 2017**, Jeffery Rosen (law professor at George Washington University and president and CEO of the National Constitution Center in Philadelphia), Federalism for the Left and the Right, Wall Street Journal, May 19, 2017, https://www.wsj.com/articles/federalism-for-the-left-and-the-right-1495210904.

Today, as during the Progressive era and the long resistance of the South to national efforts to end segregation, the embrace of federalism and states’ rights can be opportunistic, even cynical. The current rediscovery of states’ rights on the left is driven, in some instances, by the election of Mr. Trump and the fact that Republicans now control both houses of Congress. The states are their last enclaves of resistance. For their part, conservatives often invoke the Constitution’s Tenth Amendment, which says that powers not given to the national government are “reserved to the States, or to the people,” but they haven’t been consistent defenders of federalism either. President Ronald Reagan issued an [executive order on federalism](http://www.presidency.ucsb.edu/ws/?pid=33607)in 1987, declaring that “in most areas of governmental concern, the States uniquely possess the constitutional authority, the resources, and the competence to discern the sentiments of the people and to govern accordingly.” But the size and reach of the federal government continued to grow during the Reagan era. As an advocacy group called the Tenth Amendment Center [concludes,](http://blog.tenthamendmentcenter.com/2013/12/reagans-executive-order-on-federalism-a-post-mortem/) “Disappointingly, Reagan the president wasn’t nearly as devoted to federalism and the Constitution as was Reagan the rhetorician.” All postwar presidents have tended to amass federal power rather than to devolve it. And opposition parties have always defended states’ rights as a way of protecting dissent and their own policy agendas. At the same time, the courts have increasingly repudiated attempts by presidents—from George W. Bush and Barack Obama to Donald Trump—to use executive orders to implement policies that they can’t persuade Congress to enact. Today’s effort to revive federalism acknowledges and builds on these institutional and political realities.

**The disad is just not true - state sovereignty ended in the 60’s yet states are still important actors**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

I don't want to overstate the case. Metzger is plainly right that the notion of sovereignty has vaulted states to their coveted spot on the governance hierarchy. It's therefore theoretically possible that as we leave the sovereignty account behind, states' power will decline and they will no longer be able to serve the myriad roles that the nationalists have identified. But the death of sovereignty was announced more than sixty years ago,[181](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F181434026992) and today states nonetheless wield power largely without the benefit of sovereignty (and with increasingly small opportunities for autonomous lawmaking). The form of power that states wield has changed, but it's not clear to me their power has diminished. Moreover, powerful, partisan-aligned interests will have every incentive to maintain the states' salience going forward as they compete in the national political arena.[182](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F182434026992) As long as these basic conditions hold--as long as states continue to make law and answer to different constituencies than the federal government's-- they should continue playing the productive role that the nationalists have identified. For that reason, I'm hesitant to stick with an account of state power that no longer gives us traction on the problems of the day.

# AT: Uniqueness - Alt. Cause (Family Law)

**Federal government has entirely subsumed family law**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

Family law is another example where “federalization” has involved more bark than bite.[79](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F79434026992) Justice Kennedy noted in United States v. Windsor that the “‘regulation of domestic relations' is ‘an area that has long been regarded as a virtually exclusive province of the States.”’[80](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F80434026992) There is even a judicially invented “domestic relations exception” prohibiting federal courts from exercising jurisdiction over divorce, alimony, and custody decrees.[81](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F81434026992) And yet federal law touches upon familial relations in many ways.[82](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F82434026992) Even setting aside judicial decisions striking down state family laws on constitutional grounds (mostly in the area of substantive due process), family status is regulated through federal tax law, federal pension law, federal benefits laws, and immigration law.[83](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F83434026992) Moreover, the federal government has passed legislation governing child support,[84](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F84434026992)family leave,[85](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F85434026992) child abuse,[86](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F86434026992) adoption,[87](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F87434026992) juvenile care,[88](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F88434026992) custody determinations,[89](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F89434026992) abortion,[90](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F90434026992) and maternal and child health,[91](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F91434026992) to name just a few examples.[92](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F92434026992) As a result, numerous scholars have debunked the myth of local exclusivity and written about federal intrusion into the domestic-relations sphere,[93](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F93434026992) with some even showing that federal involvement datesback more than a century.[94](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F94434026992) While some of this work takes a fairly broad-gauged approach to what constitutes “family law,” it confirms that Congress has its fingers in the domestic-relations pie.

# AT: Link - Cooperative Federalism 1/2

**No link - federal power increases in one area don’t shut off state power**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

It's also not the empirical debate I'm interested in having. As long as we have lumpy residential patterns, interest-group competition will ensure that federalism achieves its aims whether or not locally concentrated interests affiliate with the governance sites they are using to push their agendas. The debate I'm interested in having, then, is not whether state identity is tied up with those political fights, but what federal-state relations look like today. The vision of federal-state relations that undergirds the work of the new nationalists is one in which the states and federal government regulate cheek to jowl, sometimes leaning on one another and sometimes deliberately jostling each other. It's one in which the federal government can regulate where it sees fit and yet the states retain a vibrant and important role. It is one where the national government can and does regulate, and yet the states haven't been displaced--far from it. Function does not always follow form, and power does not always follow the exercise of jurisdiction. Even when the national government intervenes, it rarely displaces the states and regularly empowers them. As a result, the states play a vibrant and robust role in this regime not as separate or autonomous sovereigns, but as key parts of an integrated and interconnected regime.

**No link - regulatory overlap between the states and the federal government ensures continued state power**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

As to the first, the discussion above confirms the core insight of the political process schools: federal-state relations are profoundly shaped by political forces no matter what formal bounds the Constitution places on state and federal power. As a formal matter, the national government can regulate where it sees fit these days, and yet the states retain a powerful place in the American system. Federal power is more constrained by politics and practice than by Constitutions and codes.

The problem is that those interested in the political safeguards to protect state power have not been thinking about the most important form of state power. Indeed, as far as I am aware, all of the process federalists imagine politics safeguarding state autonomy, and all of process federalism's opponents have focused on the need to protect state sovereignty. Both accounts depend on the federal government and states regulating independently and presiding over their own empires. If the autonomy/sovereignty debate is becoming a sideshow, however, it makes little sense to fight these fights. If you recognize how state power functions in this day and age, it can't be that the purpose of the political safeguards is to help the states and federal government engage in the governance equivalent of parallel play. In a world where regulatory overlap is the rule, then, neither side in that debate has focused on the right question.[127](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F127434026992)

# AT: Link - Cooperative Federalism 2/2

**No link - federalism is dynamic and cooperative. When the federal government makes education new policy, states have plenty of tools to influence its final implementation**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

These broad points hold true in another traditional area of state concern: education. There has been a huge brouhaha over the “federalization”[63](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F63434026992) of *\*1015* education policy due in large part to No Child Left Behind (NCLB)[64](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F64434026992) and recent battles over the Common Core.[65](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F65434026992) But the mistake made by those who mourn the “federalization” of education policy was to think that function would follow form. Despite the expanded reach of federal education policy, the states remain the dominant force in primary and secondary education. That's because, notwithstanding the federal government's formal exercise of authority, it has run up against just the sort of administrative and political obstacles that would be instantly recognizable to the new nationalists. NCLB, for instance, unquestionably altered the administrative structures in which schools operated.[66](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F66434026992) But states quickly took advantage of the discretion afforded to them in this cooperative federal regime to duck federal constraints by setting testing standards so low they were guaranteed to meet them.[67](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F67434026992) In the wake of NCLB's passage, the federal government attempted to put teeth into the Act's regulations[68](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F68434026992) only to encounter pragmatic resources barriers *\*1016* (specifically a lack of state capacity)[69](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F69434026992) as well as massive state resistance.[70](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F70434026992) Because the federal government provides only limited funding[71](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F71434026992) and plays a circumscribed role in the education arena, it depended heavily on state and localities to carry out its policies. Unsurprisingly, then, state resistance and regulatory evasions eventually forced the Bush administration to give out so many waivers that it effectively gutted large swaths of NCLB.[72](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F72434026992)

**Even if the plan as passed would threaten federalism, states get to help implement it**

**Gerken 2015**, Heather H. Gerken (Professor of Law, Yale Law School), Federalism and Nationalism: Time for a Detante, 59 St. Louis University Law Journal 997 (2015)

There are other ways in which process federalism must adapt to the times. Process federalism has largely focused on the moment when legislation is passed. To the extent that the timeline was expanded, it's because sovereignty types looked to the court battle that followed the passage of legislation, or because the “soft” process federalism advocates looked to what courts could do ex ante to shape legislative fights.[135](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F135434026992) If you imagine federal-state relations as ongoing and iterative, not one-off battles, then it's clear that new process federalism's timeline must be extended. Just think, for instance, how much has occurred in the wake of the ACA's passage. A process account must focus not only on the moment a statute is passed, but what happens when it is administered--on what Jessica Bulman-Pozen and I have described as the “ex ante safeguards of federalism.”[136](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F136434026992)

So too, if you imagine federal-state relation taking place not just on the Hill or in a court, but in bureaucracies throughout the country, it's clear that the new process federalism's lens must be widened. Given the pronounced administrative features of federal-state relations these days, it's not surprising that some of the best work in the field of late has focused on the administrative dimensions of federalism.[137](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F137434026992) As Gillian Metzger astutely observes, administrative law's “nonconstitutional and generic character” makes it “particularly well suited for addressing the central challenge of contemporary *\*1032*federalism: ensuring the continued relevance of states as regulatory entities in contexts marked by concurrent federal-state authority and an extensive national administrative state.”[138](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F138434026992) While much of that work hews too closely to an autonomy account for my tastes, it has nonetheless begun to ask some of the key questions the new process federalism school must answer.[139](https://1.next.westlaw.com/Document/I1bae4590788f11e598dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad62aee0000015c3d6f6fd12475ffe1%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI1bae4590788f11e598dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=c726e99c11fcd90eebbe90078af9a66b&list=ANALYTICAL&rank=20&sessionScopeId=f9c5638a0ffa652eec389329752ebb67b2ed647ae829f14ef57b7c3cac8c0694&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F139434026992)

# AT: Link - Federalism is Resilient

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

**Young 2003** (Ernest, Professor of Law – University of Texas, Texas Law Review, May, Lexis)

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

# AT: Impact - Trump Not End of World

**Realistically, Trump isn’t going to singlehandedly cause extinction - anyone saying he will is playing divisive partisan politics**

**Sonnenblume 2017**, Kollibri Terre Sonnenblume, Not the End of the World: Trump (and the Presidency) in Perspective, Counterpunch (March 17, 2017), https://www.counterpunch.org/2017/03/17/not-the-end-of-the-world-trump-and-the-presidency-in-perspective/.

You can care about partisan politics or you can care about the world but you can’t care about both. Partisan politics is blinding, fear-based and divisive. The guy on your team is always the good guy, even when he’s bad, and in the US, under its racist, militarist, capitalist, ecocidal system, s/he’s always bad. S/he can’t be anything else. The dishonesty of living this way muddies a person’s perception, degrades their ability to think, and makes them an obedient cog in the machine of racism, militarism, capitalism and ecocide. It’s very ugly and it makes me very sad. So count me out of the obsessive anti-Trump trend. Sure, he’s nasty. But everyone in that system is. Obama was a war-mongering Uncle Tom and Hillary would have been worse. But count me in on the ongoing resistance against Patriarchy, a cause that’s been vital for millennia and isn’t about to quit now.

# AT: Impact - Democratic Peace Theory

**Democracy doesn’t solve war – non-democracies and democracies go to war all the time**

**Abanes 2008**, Menandro S Abanes (researcher at Ateneo de Naga University in Bicol, Philippines), Democracy and peace: an over-emphasized relationship, 8/29/08 http://www.monitor.upeace.org/archive.cfm?id\_article=540)

Perhaps the most fundamental question that begs to be asked of the democratic-peace concept is: does democracy stop war from happening? Obviously it does not. Democratic states have initiated and engaged in plenty of wars. Just count the number of modern wars that the US and United Kingdom (UK), two known champions of democracy, have been involved in. I remember two world wars, Korea, Vietnam, the Falklands, Iraq, Afghanistan, and many others. Thus, democracy does not stop wars, and it does not offer us a way out of the Hobbesian state of nature. Democracy and war. If democracy does not stop war, then does it go to war? I would say, yes! Even though democracies do not fight each other, “they fight and initiate wars about as often as non-democracies” (Mansfield and Snyder, 2005, p.49).

**Trade, not democracy, solves war – democratization causes conflict**

**Pazienza 2014,** Toni Ann Pazienza, Challenging Democratic Peace Theory – the Role of US-China Relationship, http://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=6294&context=etd)

Democratic peace theory claims that democratic states are less likely to go to war with other democracies, however, they are likely to go to war with nondemocracies. In all of the literature and data bases there is little if no discussion of the U.S.-China relationship. The United States is a democracy, and China is an autocratic state and they have never been to war with each other. DPT, as we saw, is limited because it cannot explain this relationship and downplays the influence of trade interdependence. I argued that in the absence of mutual democratic constraints, the peaceful relationship between China and the United States is primarily the result of economic interdependence. The near absolute isolation of China before the 1970s is clearly over and China seeks its place in the world as an equal with the United States. Participation has led Beijing to develop more expertise on issues such as arms control and moderating some of its practices for fear of jeopardizing its image. Clearly, China has reformed its economy from a command economy to a state development/laissez faire model. By adapting to capitalist practices, embracing international organizations and standards, China appears to have made a commitment to reform. The Office of the United States Trade Representative reported that in 2011, that United States goods and services traded with China totaled $539 billion, exports totaled $129 billion; and imports totaled $411 billions. Post World War II, the United States emerged as the preeminent trading partner, however, the United States Department of Commerce reported in 2011, that China sat at the number three position in all United States trade for total exports and imports. Strategic decisions made by both countries are greatly affected by their economic connection, particularly the United States. The close interconnectivity amongst the two nations means that they must take into account the other nation when making key strategy decisions. The connection also means that one nation could not launch a cyber-attack on the other, without damaging its own economy. The uncertain benefits of a democratic peace, and the strong possibility that a transition to democracy might cause instability also suggests that democratization may not eliminate security concerns about China. History demonstrates that the democratization process can *easily* turn violent and is often reversed.

# Impact Turn - Federalism is Racist 1/3

**Be careful -- decreased federal involvement DOES NOT mean increased state involvement. It means privatization, which creates an education gap between white and black students**

**Sundquist 2017**, Christian B. Sundquist (Professor of Law and Director of Faculty Research and Scholarship at Albany Law School), Positive Education Federalism: The Promise of Equality After the Every Student Succeeds Act, 68 Mercer Law Review 351 (2017).

And yet the crisis of America's system of public education is less a manifestation of under-incentivized schools, inadequate school choice, and poor teaching, than it is a reflection of unrelenting poverty and persistent racial discrimination. The modeling of education policy and law around the oft-criticized market assumptions of consumer choice, competition, and accountability have led to a deepening of the crisis confronting public schools. Since the adoption of market-based education legislation ***\*353*** such as NCLB and RTT in the last ten years, our public schools have been re-segregating at an accelerated rate and the achievement gaps between the rich and poor, and white and non-white have deepened.[7](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F7457230250) The market model of public education preserved through the new ESSA legislation does not provide answers to our current educational dilemma, but the model merely deflects the responsibility of providing an equitable public education from the public sphere of federal and state government to the private sphere. There are no easy answers to the public school crisis, and simply incorporating misplaced assumptions of competition, rational choice, and market accountability into public educational policy will not resolve the situation. We need to acknowledge that our school failures are not due to the absence of market incentives and processes in education, but are caused by systemic social inequalities--including poverty, racial discrimination and segregation, unequal school financing, and inadequate teacher compensation. On the heels of the recent passage of the ESSA, this Article examines the appropriate federal role in developing and enforcing public educational policy and law. “Our federalism”8 demands not only that there be an appropriate balance between state and federal power when evaluating the constitutional feasibility of new laws, but also that there remain a sufficient demarcation between the public and private spheres of regulation. This Article argues that the existing market-oriented statutory approach to public education, as embodied by the ESSA, fails to advance the values of education federalism by encouraging the penetration of private market forces into the traditionally public sphere of universal education.

**“Federalism” does not protect liberty, but instead allows states to continue being racist**

**Sundquist 2017**, Christian B. Sundquist (Professor of Law and Director of Faculty Research and Scholarship at Albany Law School), Positive Education Federalism: The Promise of Equality After the Every Student Succeeds Act, 68 Mercer Law Review 351 (2017).

Traditional models of federalism are typically regarded as being primarily procedural and structural in nature: given the federalist structure of our government, certain actions are simply within the sole province of states. Under this perspective, courts mechanically apply the federalism doctrine to cleanly demarcate the appropriate spaces of federal and state control. Negative models of federalism, however, also have a substantive dimension--whereby judicial decision-making and legislative policy are shaped by values in divining when it is appropriate for the federal government to respond to social inequality.[35](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F35457230250) The principal norm advanced by the Court under traditional conceptions of federalism is the “protection[] of liberty.”[36](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F36457230250) Our history ironically demonstrates, however, that negative conceptions of federalism informed by “liberty” have typically been wielded by the Court to limit the protection of constitutional rights while invalidating federal action.[37](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F37457230250) Indeed, the liberty cited by past proponents of negative federalism has often been of states to preserve systems of racial control.[38](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F38457230250)

# Impact Turn - Federalism is Racist 2/3

**We’ve seen this movie before - the last time we let the states handle education for themselves, we got Jim Crow and segregation - strong federal policy is key**

**Sundquist 2017**, Christian B. Sundquist (Professor of Law and Director of Faculty Research and Scholarship at Albany Law School), Positive Education Federalism: The Promise of Equality After the Every Student Succeeds Act, 68 Mercer Law Review 351 (2017).

While the federal government passed a series of acts that would eventually become the precedent for future grant-in-aid programs (such as ESEA, NCLB and RTT),[60](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F60457230250) education policy for much of our history was decentralized and regarded as a matter of local and state authority.[61](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F61457230250) ***\*363*** The decentralized nature of public education following the Civil War established the conditions necessary for former slave states to invoke federalism as a tool to maintain racial control. Under the banner of “‘states' rights,” Southern states advanced a dual conception of federalism as part of a broader effort to deny African-American (and other non-white) students access to quality education.[62](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F62457230250)The United States Supreme Court provided the official imprimatur for segregative education practices, rejecting equal protection challenges under the Fourteenth Amendment while citing the historical local control states enjoyed over education policy. The Court's infamous decision in Plessy v. Ferguson[63](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F63457230250) upheld the police powers of states to require racial segregation in the public sphere. In upholding Louisiana's law requiring the segregation of public conveyances, the Court cited with approval prior decisions upholding “the establishment of separate schools for white and colored children.”[64](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F64457230250) The Court viewed such de jure segregation as “valid exercise[s] of the legislative power”[65](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F65457230250) of states, while refusing to locate federal authority under the Fourteenth Amendment to ensure social equality: If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals ... [I]f one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.[66](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F66457230250)The Court's conceptualization of negative federalism through the lens of (white) individualism played a pivotal role in shaping education policy for the next fifty years. Three years after the Plessy decision, the Court ***\*364*** upheld a Georgia school board's policy barring African-American students from attending public high schools.[67](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F67457230250) The Court rejected the Fourteenth Amendment challenge largely on federalism grounds, holding the following:

[T]he education of the people in schools maintained by state taxation is a matter belonging to the respective States, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land.[68](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F68457230250)The failure of the local school board to provide a high school education to tax-paying African-American students, while maintaining a separate high school for white students, was not regarded as a sufficiently serious “disregard” of constitutional rights by the Court to justify departing from its traditional federalism policy of state deference on education matters.[69](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F69457230250)The Court again utilized a peculiar conception of dual federalism to reject constitutional challenges to state education policy in Gong Lum v. Rice.[70](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F70457230250) In Gong Lum, the petitioner challenged a Mississippi law requiring the segregation of “colored” and white students in public schools.[71](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F71457230250) The Court upheld the state law, citing the Cummings and Plessy decisions for clearly establishing “[t]he right and power of the state to regulate the method of providing for the education of its youth at public expense.”[72](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F72457230250) The Court concluded by holding that racial segregation of public schools is a “decision ... within the discretion of the state in regulating its public schools and does not conflict with the Fourteenth Amendment.”[73](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F73457230250)These pre-war cases demonstrate the minimal role played by the federal government, and its courts, in setting public education policy. States were allowed to exercise their “historic police powers” with respect to education with little to no federal influence or judicial oversight. As a result, many states embraced the “separate but equal” mythology as a method to preserve social and educational inequality for non-white children.[74](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F74457230250)

# Impact Turn - Federalism is Racist 3/3

**Federalism is a ruse used by politicians to normalize social, racial, and gender inequality**

**Sundquist 2017**, Christian B. Sundquist (Professor of Law and Director of Faculty Research and Scholarship at Albany Law School), Positive Education Federalism: The Promise of Equality After the Every Student Succeeds Act, 68 Mercer Law Review 351 (2017).

Our history of using negative federalism to constrain the federal role in public education has coincided with our enduring efforts to normalize social inequality. American society has long struggled with reconciling the dilemma borne from ascribing to liberal equality in the face of persistent and unrelenting social inequality. Previously, I have summarized the following: The call for universal rights by non-propertied social classes clashed with the strong bourgeoisie notions of capitalism and the free market that displaced the old order of monarchy and feudalism. The inherent inequality that stemmed from the private ownership of property led Adam Smith and other thinkers to believe that there had to be limits and exceptions to “universal equality” in order to protect the “natural” rights of propertied classes ... Early theories of “race” [and other notions of difference] ... filled the void left by feudal hierarchy in explaining class distinctions, and reconciled the unequal treatment of certain groups of people with liberalism's embrace of universal equality.[47](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F47457230250)***\*361*** The following variety of artifices have historically been used to rationalize this long-standing contradiction of American democracy:[48](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F48457230250) the development of biological race theory,[49](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F49457230250) the construction of gender,[50](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F50457230250) culture of poverty theories,[51](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F51457230250) and the normalization of poverty as caused by either a neutral market, cultural forces, or both.[52](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F52457230250) The equality dilemma of American democracy has consequently been rationalized on grounds of purported difference (cultural or biological), which allowed inequality to become viewed by many as a naturally occurring consequence of a market economy. Through this process of normalizing privilege, federal governmental action has typically been deemed unnecessary,[53](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F53457230250) ineffective,[54](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F54457230250) or improper[55](https://1.next.westlaw.com/Document/I8f6f76e3304611e798dc8b09b4f043e0/View/FullText.html?navigationPath=Search%2Fv3%2Fsearch%2Fresults%2Fnavigation%2Fi0ad6ad3f0000015c27e6b12cb362b861%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI8f6f76e3304611e798dc8b09b4f043e0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=16de3372f9a60bc05e1a29124ff8f506&list=ANALYTICAL&rank=7&sessionScopeId=7a7c27c276a3b5cfe4569df5e1bc46d8cee8ddab3d8c1385f980bb95624694d4&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29#co_footnote_F55457230250) to respond to issues of social inequality (including educational inequity).

**A federal guarantee of equal public education is the only way to resolve racial inequality**

**Sundquist 2017**, Christian B. Sundquist (Professor of Law and Director of Faculty Research and Scholarship at Albany Law School), Positive Education Federalism: The Promise of Equality After the Every Student Succeeds Act, 68 Mercer Law Review 351 (2017).

A positive conception of federalism is particularly justified when attempting to divine the appropriate federal role in public education. As discussed previously, the primary constitutional basis for federal involvement in public education is premised on the government's responsibility to take positive action to remedy racial and class inequalities.186 The Brown constitutional doctrine and the “War on Poverty” driven by the ESEA forged an understanding of education federalism rooted in positive social justice. It is particularly appropriate today that we restore this fundamental understanding of education federalism, given evidence of increasing racial disparities in public education and the noted failures of modern education federalism policy. The federal guarantee of equal public education is critically important to the functioning of our democracy. As a public good, education helps our society develop those “fundamental values necessary to the transmission of our democratic society.”187 The provision of an equitable public education, devoid of identity-based disparities, is critical to provide children with “the knowledge needed to understand and participate effectively in the democratic process and to cultivate among children respect for and the ability to interact with others as beings of inherently equal moral worth.”188 Indeed, both classic and contemporary constitutional scholars argue that equal public education should be regarded as “a fundamental duty, or positive fundamental right because education is a basic human need and a constituent part of all democratic rights.”189 The need, then, for a robust application of positive education federalism principles in this context cannot be stronger.