



Why Today's Policy Action is Mostly at the State Level

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In a 2011 phone call with a radio host impersonating David Koch, Wisconsin Governor Scott Walker explained that he was part of a national movement of conservative governors who “got elected to do something big” across their states. Years later, Democratic governors are pushing similarly coordinated efforts to counter the Trump presidency backed by a GOP Congress. Despite such visible tendencies, conventional wisdom still presumes that states are too constrained to shape nationwide policy directions, and recent academic studies continue to adhere to a minimalist view that it does not matter much whether Democrats or Republicans control state governments.

Concerned that social scientists might be missing something, I reexamined state policy changes in a different way – and I find that the minimalist view has become outdated. Recent decades have seen partisan gridlock in Congress and fewer major national policy initiatives, and the state level has recently picked up some of the slack. Now, much more than previously, whether their state is controlled by Democrats or Republicans greatly affects laws and people’s lives.

Enactments have polarized in the states, especially since the 2000s – but not in all policy areas. Although Democratic- and Republican-dominated states have passed increasingly different laws on issues like abortion, health care, labor unions, and taxes, state-level criminal justice and education policies remain similar.

From Minimalist to Active State Governments

There are good reasons to support the conventional minimalist view about state level policymaking. State legislators and governors have fewer staff to help them write new measures. And much more than the national government, state governments have to worry about businesses and residents threatening to exit their jurisdictions for greener pastures. Perhaps most important, over many decades, Congress, the President, and the Supreme Court regularly stepped in to promulgate major national policies that overrode state laws. National laws like the Civil Rights Act of 1964 and the Clean Air Act of 1970 made life across the states much more similar.

But American politics has been transformed since the 1960s and 1970s. At the national level, gridlock has deepened as partisanship in Congress grew increasingly extreme and presidents became less likely to share partisan ties with congressional majorities. The Supreme Court became more conservative and, in some areas, less willing to overturn state laws. Recent Supreme Court cases such as *NFIB v. Sibelius* about health reform and *Shelby County v. Holder* about voting rights actually provide *more* leeway for the states to pursue diverge policies.

At the state level, however, government action has increased. Well-financed conservative organizations, like the American Legislative Exchange Council and Americans for Prosperity spread free-market oriented ideas and model legislation across the states. National interest groups like the National Rifle Association and Planned Parenthood mobilize activists to hold state politicians accountable. Unlike in their work at the national level, such advocacy groups can pick and choose the most advantageous states from which to push their preferred policies, aiming to start the inter-state spread of new laws from the most friendly state capitals.

Differences among Issues

Prior studies may have misunderstood state-level policy activity and polarization for two reasons I have tried to correct. Although it is difficult and time consuming to collect state data, I made an effort to expand upon

earlier studies with information on 35 additional state policies. And instead of combining all policies along a single “left-right” spectrum, I have analyzed different policy areas separately.

Investigating distinct policy areas like abortion, gay rights, and environmental regulation is important for understanding what is going on in the states. Prior research like that of Vesla Weaver has shown that Democrats as well as Republicans pursued “tough on crime” laws that have swelled prison populations. And my research confirms Weaver’s finding for states as well. Whether controlled by Democrats or Republicans, states cracked down on crime and expanded prison populations. Indeed, mass incarceration, the dramatic and internationally extreme number of disproportionately minority Americans under correctional control, is mostly a state level phenomenon (over 93 percent of prisoners sit in state prisons or local jails).

By contrast, Democratic- and Republican-run states have passed increasingly divergent health care policies. During the 1990s and 2000s, blue states expanded the generosity of their State Children’s Health Improvement Programs. And since 2014 many Republican controlled states have refused federal funds to expand their Medicaid programs. These policy differences have major life consequences. Health policy scholars estimate that state refusals to expand Medicaid have led to as many as 17,104 preventable deaths each year.

Shifting Trends

When we take a new look at state policy change with expanded data and attention to different policies and recent shifts, the minimalist view looks outdated, and Democratic- versus Republican-controlled states are increasingly taking different directions on decisions about abortion regulation, environmental rules, gun rights, immigration, union rights, supports for gays, taxes, social welfare, and voting rights. Concerted efforts by ultra-conservative groups have been successful in shaping policies passed by Republican state governments, even when voters do not necessarily want them. Meanwhile, blue states have made major policy changes, often to replace or bolster stagnant national initiatives.

Of course, current trends may not persist. The current Trump Administration and Republican Congress are trying to undo liberal state policies in areas like immigration and marijuana, and the Congressional Republican tax legislation passed in late 2017 aims to constrain resources deployed by liberal states. Yet if the 2018 elections usher in Democrats, we may see either new rounds of state-level initiatives to overcome gridlock or another phase of activist, liberal legislation from Washington DC. The point is that scholars and activists alike must keep an eye on the states, because in contemporary U.S. government, they are often where the action is.

Read more in Jake Grumbach, "From Backwaters to Major Policymakers: Policy Polarization in the States, 1970-2014," conditionally accepted at *Perspectives on Politics* (2018).