

**A Multilayered Jurisdictional Patchwork:
Immigration Federalism in the United States**

Monica W. Varsanyi
Department of Political Science, John Jay College
Doctoral Program in Geography
City University of New York

Paul G. Lewis
School of Politics and Global Studies
Arizona State University

Doris Marie Provine
Justice and Social Inquiry
School of Social Transformation
Arizona State University

Scott Decker
School of Criminology and Criminal Justice
Arizona State University

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Abstract

This paper focuses on the immigration-related demands currently being placed on local police in the United States, and the emergence of what we call a “multilayered jurisdictional patchwork” (MJP) of immigration enforcement. We report results from nationwide surveys of city police chiefs and county sheriffs and intensive fieldwork in three jurisdictions. The enforcement landscape we describe is complicated by the varying and overlapping responsibilities of sheriffs and city police, and by the tendency for sheriffs to maintain closer relationships with federal Immigration and Customs Enforcement (ICE) authorities. We conclude by reflecting on the implications of the MJP—for immigrants, for their communities, and for the evolving relationship between levels of government in the federal system.

Introduction

This paper focuses on the immigration-related demands currently being placed on local police. We describe these demands and the response of local agencies with reference to two national surveys, one of city police chiefs and one of county sheriffs, and three in-depth local case studies. We offer, in short, empirical evidence of a much broader phenomenon that some scholars have dubbed “immigration federalism” (Huntington 2008; Schuck 2007; Motomura 1999; Spiro 1997; Skerry 1995). Our findings suggest that immigration federalism, when viewed through the lens of local law enforcement, looks more like a patchwork of overlapping and potentially conflicting authority than a systematic approach to immigration enforcement.

The devolution of immigration policing powers was authorized by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) passed by Congress in 1996. Under §287(g) of the Immigration and Nationality Act (INA), state, county, and city law enforcement agencies have the opportunity to sign a Memorandum of Understanding (MOU), which allows them to partner with the federal government to enforce civil violations of federal immigration law, or in other words, to arrest unauthorized immigrants for “being illegal.” There were no 287(g) agreements signed prior to the 9/11 attacks, but in the years since the number of agreements has grown, with 71 municipal, county, and state agencies currently participating in the program (ICE ACCESS 2010).

The IIRIRA does not require that state and local law enforcement authorities enforce federal immigration laws. Rather, it simply invites them to do so, in keeping with the constitutional separation of federal and local policing powers. In this sense, the opportunity for sub-national jurisdictions to engage in immigration enforcement represents something of an exploitable resource for local and state authorities. The debate over how to engage with the federal effort is being conducted at multiple sub-national levels—in state legislatures, county boards of supervisors,

sheriffs' offices, city halls, and within individual police departments—with widely variable outcomes. Views differ considerably. Many large cities, for example, are opposed to enforcement partnerships, but they operate within a jurisdictional network that subordinates their policy-making powers to the state level. Sheriffs, who in many cases exercise considerable power over their entire county, add an additional layer of complexity for cities reluctant to become involved in immigration enforcement.

Because federal rules do not require coordination between the various and overlapping policy-making bodies, the issue of immigration enforcement has significant potential for cross-jurisdictional conflict and overlap. Our findings suggest that these conflicts tend to create significant levels of uncertainty among immigrant residents about what policy approach prevails. Overlapping enforcement authority also constrains some localities as they seek to balance enforcement options against their commitment to community policing. The uncertainty produced by conflict at multiple levels and the reluctance of many local governments and police executives to take positions ultimately leave substantial discretion in the hands of individual officers to stop, arrest, or inquire about immigration status. We dub this outcome a “multilayered jurisdictional patchwork” (MJP) of enforcement authority: an emerging, confusing, and often contradictory geography of immigration enforcement in the United States.

The trend toward devolution of central authority in immigration control is widespread and highly variable, a product of increasing levels of immigration and the limited capacity of national governments to control this flow (Guiraudon and Lahav 2000). In this sense, the trend toward shared responsibility is not surprising: federalism is a familiar solution to the problem of limited governing capacity. As Grodzins (1966) stated in the mid-1960s, “It is difficult to find any governmental activity that does not involve all three of the so-called levels of the federal system”

(32). Grodzins (1966) emphasized the necessity for intergovernmental cooperation to achieve broader goals (see also Broughton 1943; Elazar 1966). Immigration policy has not, until recently, followed the pattern of shared governance that Grodzins (1966) describes. Peter Spiro (2001) notes that “immigration policy [has been] a lagging indicator of general trends towards devolved governance” (73). This is changing as the federal government reconfigures long-standing policing relationships with local authorities, a reminder that there are few timeless truths where federalism is concerned.

In this paper, we contextualize our empirical findings in terms of the evolving literature on immigration federalism. Our findings are based on two original surveys of city police chiefs and county sheriffs nationwide and in-depth study of the issue of immigration enforcement in three communities: Mesa, Arizona; New Haven, Connecticut; and Raleigh, North Carolina. We conclude by reflecting on the implications of the MJP—for immigrants, for their communities, and for the evolving relationship between levels of government in the federal system. The emergence of immigration federalism, we suggest, raises serious concerns that may not be present in other areas of shared governance. Immigration enforcement devolved to the local level through cooperative agreements with federal authorities threatens to disrupt fragile trust, carefully nurtured over the years, between local law enforcement and immigrant communities.

Immigration Federalism and the Multilayered Jurisdictional Patchwork

Though a handful of scholars had previously addressed and explored the role of states and localities in immigration enforcement (Neuman 1995; Skerry 1995; Klebaner 1958), Hiroshi Motomura (1999) is credited with coining the term “immigration federalism” in a paper in which he asks, “What role should states and localities play in making and implementing law and policy

relating to immigration and immigrants?” (1361). That question has become even more relevant with recent changes in the landscape of local enforcement. Contemporary scholarship explores two relatively recent emerging dynamics: (1) the devolution of immigration authority from the federal government to subnational jurisdictions that was authorized in 1996 by IIRIRA and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA); and (2) the recent explosion of “grassroots” immigration policies and enforcement practices.ⁱ

The most vigorous debates and extensive discussions of immigration federalism have taken place in law reviews. Legal scholars have, on the whole, divided into two camps: those arguing for and those arguing against the constitutionality and desirability of immigration federalism (see e.g. *Harvard Law Review* 2005). An early proponent of immigration federalism was Peter Spiro (1994, 1997) who argued for what he called “steam valve federalism” in immigration policymaking. Reflecting on California’s Proposition 187 and the 1996 laws in Congress, and drawing a parallel to the passage of the Chinese Exclusion Acts in 1882 and 1888, Spiro (1997) argues in favor of state-level immigration policy activism. As he writes, devolution:

presages new possibilities for state-level modulation in immigrant policy that will more efficiently represent wide state-to-state variations in voter preferences and that may ultimately benefit aliens as a group. First, state level authority will allow those states harboring intense anti-alien sentiment to act on those sentiments at the state level, thus diminishing any interest on their part to seek national legislation to similarly restrictionist ends (1627-8).

Under steam valve federalism, “one state’s preferences, frustrated at home, are not visited on the rest of us by way of Washington” (ibid.).

Others have explored different facets of immigration federalism. Peter Schuck (2007) suggests that immigration policymaking at the state and local level will not necessarily be hostile to

immigrants. Still others view the devolution of immigration policing authority as a crucial “force multiplier” in the war on terror (Kobach 2005; Hethmon 2004), given that roughly 2,000 ICE agents were assigned to internal enforcement by 2009. From a slightly different angle, both Cristina Rodríguez (2008) and Clare Huntington (2008) argue for a more robust multilayered immigration regime. Rodríguez (2008) makes the case that despite *de jure* federal exclusivity in immigration policymaking and enforcement, we actually have a “de facto multi-sovereign regime.” She and Huntington both see “a structural need for federal, state, and local participation in immigration regulation” (ibid., 571) and immigrant integration.

Other legal scholars take a much more negative view of immigration federalism. Their principal concern is that devolution and the rise of grassroots immigration policy activism have opened the door to discrimination against noncitizens by local authorities (Pham 2004; Chishti 2002; Bosniak 1994; Motomura 1994; Olivas 1994, 2007). These scholars see in the devolution of federal enforcement authority an erosion of the traditional barrier against state and local discrimination on the basis of national origin that was imposed by the equal-protection clause of the 14th Amendment. Under immigration federalism, immigrants are much more at the mercy of the discriminatory powers of the local state. Thus, while much of the federalism literature refers to states in a positive way as “laboratories” for the development of social policy, Michael Wishnie (2001) notes their potential to be “laboratories of bigotry” under immigration federalism. Chishti (2002) and Pham (2004), among others, also express concern that the devolution of immigration policing will do serious harm to police-community relationships.

The social-science literature addressing issues of immigration federalism has been slower to develop. An early contribution was Peter Skerry’s 1995 article responding to the passage of California’s Proposition 187 in 1994 and the ensuing debates over the role of states in immigration

policymaking. Skerry traces the historical evolution of state involvement in immigration, primarily prior to the advent of plenary power in the 1880s, to counter arguments that immigration is necessarily the exclusive responsibility of the federal government. He notes that a history of lax enforcement by the federal government has placed economic burdens on states and localities.

In the years since, social scientists have contributed to an understanding of immigration federalism in three ways. First, following Skerry's lead, one of the major scholarly contributions has been to document ways in which states and localities have long been involved in immigration policymaking and enforcement. This involvement has been both *de jure* (Filindra and Tichenor forthcoming; McDonald 1999) and *de facto* (Wells 2004). Filindra and Tichenor (forthcoming), for example, argue that despite "myths of federal exclusivity," the states have played and continue to play an important role in the development of immigration policy, particularly by "implementing policy innovations and controls amidst inertia at the national level" (3). States have also pressed for collaboration with the federal government in the immigration policy realm. Miriam Wells (2004) takes a different tack, documenting the way in which "effective enforcement [of immigration laws] depends on local actors" (1315). She explores three aspects of this contemporary local dynamic: the openings that federal law provides for regional differences in the enforcement of immigration laws; the capacity within the system as a whole for local governments to adopt their own legislation, e.g. sanctuary ordinances in a number of U.S. cities; and the decentralization of federal immigration enforcement (now ICE, Immigration and Customs Enforcement), which provides regional directors with the leeway to develop their own arrangements with local governments.

Much of this literature has been principally concerned with simply documenting and describing the recent emergence of state and local immigration policies.ⁱⁱ Varsanyi (2010a) categorizes them as (1) policies enabled by the devolutionary powers of PRWORA and IIRIRA,

such as local immigration policing and enforcement (Coleman 2007; Waslin 2007; Thacher 2005); (2) grassroots policies, such as limited cooperation ordinances, employer sanctions legislation, Proposition 187, and the more contemporary “Illegal Immigration Relief Acts” passed by cities such as Hazleton, Pennsylvania (Varsanyi 2010b; Ridgley 2007); and (3) local policies, such as land use, housing, and nuisance ordinances, that are not at face-value about immigration, but in effect, act as “immigration policing through the backdoor” (Esbenshade 2007; Varsanyi 2007, 2008b).

Some of the more recent scholarship addresses root causes. For example, Ramakrishnan and Wong (2010) seek to understand why local ordinances related to unauthorized immigration are considered, passed, or rejected. They conclude that the partisanship of the local electorate is the most significant factor, with Republican counties (and by extension, cities) engaging with restrictionist policymaking at a much higher rate than Democratic areas. Ramakrishnan and Wong’s findings are echoed by Chavez and Provine (2009) who analyze the recent rise of state-level immigration and immigrant legislation. They find that conservative citizen ideology is the primary variable explaining the rise of restrictionist legislation, with demographic factors, such as the recent growth of the Hispanic population or crime rate, having no effect. Pro-immigrant laws, on the other hand, appear to be positively associated with the size of the Hispanic population. In contrast to these prior studies, Walker and Leitner (forthcoming) find that demographic factors are explanatory: their research demonstrates that cities adopting exclusionary policies are likely to have experienced a recent, rapid growth in the foreign born population. Similarly, Hopkins (2010) finds that the relative change in percentage of immigrants in a city is the most important predictor of local anti-immigrant ordinances, whereas the partisanship of voters in the area is not significant. Newton and Adams (2009) analyze state immigration legislation passed in 2006 and 2007 and determine that, despite the widespread belief that state immigration legislation is about “sending a message to

DC,” in fact states usually pass laws designed to cooperate with, not conflict with, existing federal policy. And they pass these laws in areas that have been traditionally reserved for the states.

Our analysis contributes to this evolving scholarly literature in three ways. First, our survey results and case study research provide much-needed empirical data on the devolution of immigration powers to the local level and the growing involvement of local police in immigration enforcement (see Lewis and Ramakrishnan 2007; Waslin 2007). Second, while the majority of the analytical literature on immigration federalism focuses on the relationship between the federal government and the states (Chavez and Provine 2009; Newton and Adams 2009; Filindra and Tichenor 2008), we highlight the central role that cities and counties are playing in this emerging landscape, with the states, in many cases, not playing a significant role at all. Finally, we shed light on an important phenomenon: the emergence of a multilayered jurisdictional patchwork (MJP), in which overlapping and neighboring jurisdictions can, and do, adopt conflicting policies and practices vis-à-vis their immigrant populations. We add to a small, but expanding, collection of studies exploring geographies of local immigration policymaking (Walker and Leitner forthcoming) and enforcement (Coleman 2007). Our analysis of the MJP, situated within the various literatures that bear on immigration enforcement and the broader issues of federalism, thus offers fresh insights into an emerging phenomenon with implications, not just for the evolution of American federalism, but for the constitution of community in American society.

Empirical Evidence of Immigration Federalism: Results of Two National Surveys

In this section we draw upon data from two surveys of local law enforcement executives to describe and explore this pattern of immigration federalism that has emerged in this era of formal devolution of immigration-enforcement authority. We surveyed police chiefs from large and

medium-sized cities in 2007–2008 and in 2009–2010 completed a similar survey of county sheriffs. The city survey was sent to 452 police chiefs in cities listed in the American Community Survey of 2005 as falling into the category of municipalities with 65,000 or more residents. These 452 essentially represented the universe of chiefs in cities of this size that have their own police departments.ⁱⁱⁱ After multiple rounds of contacts using Dillman’s (2007) tailored design method, we ultimately secured a 52.4 percent response rate (237 cities).^{iv}

For our sample of county sheriffs, considerations of cost and relevance meant we needed to narrow down our sample well below the roughly 3,000 counties in the United States. Because many counties have tiny populations and few immigrants, we chose to limit our contact to sheriffs in counties that met two criteria: (a) a foreign-born percentage of the population of at least 6 percent, as of the 2000 Census; and (b) at least 20,000 total residents. To this set we added seven additional counties that were slightly below the 6 percent threshold but that had at least 25,000 foreign-born residents as of 2000. Of the 449 counties thus selected (roughly the same number as of big-city chiefs), 252 provided usable responses, a response rate of 56.1 percent. We report some of the most salient findings below, comparing the responses of municipal and county law enforcement executives where possible.

Among local law enforcement officials, county sheriffs hold a unique position, as they are at once administrators (as head of a county agency) and politicians (since the vast majority of sheriffs—97 percent in our survey—are directly elected). The sheriffs’ electoral connection, which does not exist for city police chiefs, may make them more responsive to popular pressures regarding immigration enforcement, whether the sentiment is pro- or anti-enforcement in a particular county. The local immigrant population feels the effect of the sheriff’s policies both directly (through enforcement) and indirectly (through jail policies). Most county sheriffs have both responsibilities:

(1) ninety-one percent of our respondents say that they engage in patrols and investigations in unincorporated areas, and sometimes within incorporated cities; (2) eighty-three percent also run the county jail system. In our sample, 78 percent handle both functions.

County sheriffs are also more likely than city police chiefs to formally cooperate with federal immigration authorities. Part of the explanation lies in their supervision of jails. Many county jails routinely ask about immigration status at the time of booking. So it is not surprising that a significant percentage of the sheriffs in our sample say that their offices have memorandums of understanding (MOUs) with ICE that help them to manage unauthorized immigrants who have been incarcerated (36 percent). The corresponding percentage for municipal police departments is 3 percent. Sheriffs are also more likely than municipal police departments to provide for federal training of local law-enforcement personnel to cooperate in making investigations or arrests for civil immigration violations (15 percent). The comparable percentage of city police departments is 3 percent. Another sign of sheriffs' closer relationship with ICE is that 20 percent report that they have ICE officers embedded in one or more of their units, compared to 7 percent in the cities we surveyed.

The costs involved in housing unauthorized immigrants in detention also tend to bring sheriffs into cooperative relationships with federal immigration officials. These relationships sometimes cause controversy. Many counties (and state prison systems) complain that their expenses for detaining unauthorized immigrants amount to a major unfunded mandate from the federal government. But for other counties, the arrangement appears to be mutually beneficial. For counties with excess capacity in their jails, housing federal immigration detainees may provide a significant revenue stream. Among our responding sheriffs who operate jails, 60 percent said they receive at least some reimbursement from the federal government to defray the costs of detaining

unauthorized immigrants; for 21 percent, such reimbursements cover most or all of the county's costs. These factors help clarify why 41 percent of responding sheriffs deemed federal officials "influential" or "very influential" in shaping their offices' immigration-enforcement practices and policies, while only 21 percent said the same of their county governing board.^v

We found differences in the responses of sheriffs and city police chiefs on questions related to immigrant members of their communities. Whereas more than half of city police chiefs (52 percent) agree or strongly agree that "gaining the trust of unauthorized immigrants is a priority in my department," less than one-third of sheriffs (31 percent) agree with this statement.^{vi} Similarly, more city police chiefs agree that that "victimization of immigrants is considered a significant problem in my department" (30 percent) than do sheriffs (20 percent). Of course, contextual factors unrelated to the immigrant-friendliness of a department, such as the local crime rate or the socioeconomic status of local immigrants, may be responsible for some of these differences.

Our survey provided at least an indirect indication of differences in actual practices between sheriff deputies and city police officers. We asked both groups of executives: "Regardless of what officers [deputies] are instructed to do or are supposed to do, what typically happens when officers in your department encounter individuals who might be unauthorized immigrants in each of the following situations." We then listed several common situations where officers might encounter a possible unauthorized immigrant, ranging in severity from violent crime arrests to interviews of victims and witnesses. Table 1 shows the share of chiefs and sheriffs who said that their officers would typically attempt to check the person's immigration status, report the person to ICE, or both. For both types of departments, this percentage tends to vary in accordance with the severity of the offense or situation. But as Table 1 indicates, sheriffs were more likely to report an immigration

enforcement-oriented approach in each of these cases. The consistency of this finding across scenarios lends support to the idea that there are significant differences in the field.

Table 1: Percentage of Departments that Would Check Immigration Status and/or Report to ICE when Encountering Suspected Unauthorized Immigrants in Various Situations

Situation	Large-city police	County sheriffs
Arrested for a violent crime	87%	89%
Detained for parole violation or failure to appear in court	69%	80%
Arrested for domestic violence	64%	81%
Interviewed as possible victim of human trafficking	59%	59%
Arrested for a non-violent crime, with no prior record	51%	67%
Stopped for a traffic violation	21%	27%
Interviewed as crime victim, complainant, or witness	15%	20%

Note: Percentages are calculated as the share of respondents who answered “check immigration status” or “report to ICE” or “both” for each of these situations. The denominator includes “don’t know” responses, but excludes “not applicable” responses and refusals to answer. For sheriffs, we omit all agencies that are responsible for jail functions only and lack a patrols/investigations function.

How do officers determine what to do when they interact with a person whom they suspect may be an unauthorized immigrant? It is quite likely that individual officers on patrol are either forced to develop their own standard operating procedures on this question, or will tend to absorb an unofficial “norm” from their colleagues and superiors regarding how to act in such situations.

When we asked respondents whether their department or office has an official policy instructing officers what to do regarding immigration status, over half of the city chiefs (51 percent) and 44 percent of county sheriffs said they had no such policy. Others said that they didn't know if they had a policy (1 percent of chiefs, 5 percent of sheriffs) or that they had an unwritten policy (9 percent of chiefs, 18 percent of sheriffs). Indeed, only 39 percent of chiefs and 33 percent of sheriffs have written policies on this topic. Although such street-level discretion can sometimes have beneficial ramifications for public service (Maynard-Moody and Musheno 2003), it is worrisome when questions of rights and membership of community members may depend on which particular officer happens to arrive at the scene. Many of these officers will be untrained on this topic, as well; fifty-one percent of chiefs and 59 percent of sheriffs reported that their agency has not offered training for officers specifically related to incidents or calls involving unauthorized immigrants.

The differences described above have implications for unauthorized immigrants, who may be treated quite disparately, depending on whether they happen to encounter law enforcement within a municipality or in a neighboring unincorporated area. The confusion is particularly acute for newly arrived immigrants, who are unlikely to understand the nuances of the multi-jurisdictional character of U.S. law enforcement. Unpleasant experiences or anxieties relating to police forces in one jurisdiction may affect their relationship or perception of local police in another jurisdiction, regardless of its policies. In that sense, fear of one particular police force acts as a sort of contagion affecting other communities in the area as well, as the case studies below illustrate. The county sheriff's authority to check the immigration status of all suspects transferred to their jail facility also can become the fulcrum for a heightened sense of threat among unauthorized immigrants throughout the county.

Case Studies

The case studies that follow further illustrate the variations in law enforcement approaches to immigration enforcement, even within particular cities and metropolitan areas. Based on the initial chief's survey and methodological and theoretical considerations, we created a fourfold typology of communities. The typology groups cities in terms of their responses to questions about their immigration enforcement policies. We then selected relatively typical instances of each of the four categories as candidates for case study research. What follows are brief analyses of three of these case studies that clearly illustrate the MJP—and its troubling contradictions, particularly for immigrant communities.

Mesa, Arizona

Mesa is a city of more than 463,000 people within the Phoenix metropolitan area. Along with Phoenix and more than twenty other smaller nearby cities, Mesa lies within sprawling Maricopa County, one of the nation's most populous counties. Mesa's demographics distinguish it from some of its neighbors. Twenty-six percent of the population was Latino and 15 percent were foreign born at the time of the 2007 American Community Survey. Latinos, despite their numbers, historically have not had much political power in Mesa. Since its founding by Mormon pioneers in 1878, members of this religion have exerted influence disproportionate to their numbers, while the opposite has been true of Latino residents (Turner and Ellis 2009). The diversity of the population has nevertheless, at least in recent years, encouraged city leaders to define a measured approach to immigration enforcement. Under the leadership of Chief George Gascón, who served as chief from 2006 to 2009, the police department dramatically increased its investment in community policing.

Crime rates fell significantly among all population groups (Gascón 2007). Part of this effort involved the creation and implementation of a written policy determining when officers might inquire about immigration status and when to report suspected unauthorized immigrants to federal authorities. At about the same time, the city applied for a 287(g) agreement to manage its incarcerated population.

The city's interest in maintaining a workable balance between immigration enforcement and community policing enjoyed the support of city officials as well as the two local fraternal police organizations. This was opposed, however, by Maricopa County Sheriff Joseph Arpaio. An indication of the depth of this conflict was an October 2008 midnight raid of the Mesa City Hall and library by sheriff deputies searching for unauthorized custodial personnel employed by a contractor of the city government. With no prior notice of the raid to Mesa authorities, the deputies arrived at a city park to don riot gear and then entered city buildings, creating a potential for a lethal misunderstanding between police agencies. The sheriff was acting under federal authority. Back in February 2007 the county had signed a 287(g) agreement that included power to detain and arrest suspected unauthorized immigrants; one hundred and sixty deputies had been trained by federal authorities to exercise these powers.

City officials were outraged at Sheriff Arpaio's action. Probably due to this political heat, the sheriff said that he would announce any future raids beforehand. Nevertheless, for residents who lack legal status or who have friends or family members with status issues, the situation remains perilous. Residents continue to complain of racial profiling and pretextual arrests by the sheriff and some other police agencies in the area.

Formal complaints and litigation over Sheriff Arpaio's policies and practices may have been the factors that provoked the Department of Homeland Security to limit the sheriff's immigration-

related authority to jail identification. Locally, there has also been criticism of the prioritizing of immigration enforcement over other duties, and the costs of civil lawsuits filed by prisoners suffering injuries (Goldwater Institute 2009). The sheriff, who has been elected five times by wide margins, nevertheless remains defiant, claiming inherent authority to make arrests based on illegal status. Arizona's controversial new legislation, Senate Bill 1070, signed into law by Governor Jan Brewer in April 2010, seeks to make this authority explicit and would require all police agencies in the state to prioritize immigration enforcement, allowing Arizona citizens to sue local police agencies if they fail to do so. SB1070 has been challenged in court, most prominently by the Department of Justice, and it is yet to be seen whether the bill (or portions thereof) will come into force.

The situation in Mesa thus aptly illustrates how federal devolution creates a multi-jurisdictional patchwork of immigration-enforcement authority. In this case, the conflict is between levels, with the county asserting its jurisdiction to patrol the entire county as it sees fit, regardless of the policies or wishes of cities within the county. In most areas of the nation, such conflicts are avoided through comity, a principal of reciprocity by which one jurisdiction extends certain courtesies to others by recognizing their laws and decisions. Federal devolution does not take into account the possibility that comity will be ignored and that policing agencies will come into conflict over enforcement policy.

The federal government's undifferentiated approach to devolution means that Mesa residents are unable, as a practical matter, to implement their own approach to community safety. It is not clear whether *any* political authority can control a sheriff's immigration-enforcement decisions. As popularly elected officials, sheriffs act relatively independent of their county governing board. Nor can the federal government be sure how its enforcement authority is being

exercised under current policy. A recent study by the Migration Policy Institute questions the ability of Immigration and Customs Enforcement (ICE) to ensure that its stated priority of targeting serious criminal offenses will be honored at the local level (Rodríguez et al. 2010).

New Haven, Connecticut

New Haven is a city of 124,000 people (21.4 percent Latino and 11.6 percent foreign born) in southern Connecticut and is perhaps best known as home to Yale University. Over the last several years, New Haven has developed a reputation as one of the most innovative cities in the United States when it comes to immigrant integration strategies. The city's police department has a General Order that prevents police officers from inquiring about a person's immigration status or acting upon a National Crime Information Center (NCIC) "hit" for immigration violations, except when investigating criminal activity. Moreover, the city was the nation's first to adopt a municipal identification card, which can be obtained by any city resident regardless of immigration (or other) status and is accepted by the police force, many local businesses, and city government as valid identification.

Both initiatives emerged out of the efforts of a diverse coalition of interests. Two local grassroots organizations, Unidad Latina en Acción (ULA) and JUNTA for Progressive Action, Inc. (JUNTA), joined with representatives of the New Haven police department, city government, Yale law-school faculty, members and leaders of the congregation of Saint Rose de Lima Catholic Church, and other community members to work out an immigrant friendly approach to local policing. They acted out of growing awareness that immigrants in the community were being victimized, in large part because they did not have valid forms of identification. A state law prevented noncitizens from obtaining drivers' licenses.

The situation facing undocumented immigrants in New Haven at that time echoes stories in communities throughout the United States. Without valid identification, these immigrants could not open bank accounts and thus kept their money at home or on their person in cash. As they walked home from work on payday, they were being robbed and assaulted by criminals who saw them as “walking ATMs.” At that time distrust of the New Haven police in the immigrant community meant that such crimes often went unreported. The situation provoked ULA and JUNTA to commission a report, “A City to Model,” for Mayor John DeStefano and City Hall to consider. The report presented six proposals to foster immigrant integration and public safety. What emerged was the General Order, adopted by the New Haven police department in December 2006, and a policy of providing municipal identification cards, which was approved by the New Haven Board of Aldermen in the summer of 2007.

Conflicts inherent to a multilayered jurisdictional patchwork are nevertheless manifest in New Haven. While there are no counties—and by extension, no sheriffs—in Connecticut, and no discernible tension between the city and state, there have been tensions between the federal government and the City of New Haven. Within thirty-six hours of the passage of the municipal ID legislation, ICE conducted an immigration raid in the city—the first ever, not only in New Haven, but in Connecticut. ICE agents banged on individuals’ doors, yelling “Police!” thus exploiting the carefully fostered trust between New Haven city police and immigrant communities. Thirty-two people were arrested. Most observers are convinced that the raid was in direct retaliation against the city’s newly adopted municipal ID card. A federal lawsuit, claiming that ICE agents violated the constitutional rights of those arrested, is currently pending.

The city government has also found itself at odds with the neighboring municipality of East Haven, with which it shares a border. In stark contrast to New Haven’s policy, the East Haven

police force, in accordance with the wishes of the mayor, has pursued a “tough on immigrants” stance. Its officers regularly call ICE when they are holding a suspected undocumented immigrant. Many Latino residents of New Haven have complained that East Haven police regularly park their patrol cars on the border of the two cities and pull Latinos over on pretextual grounds. A third source of conflict is internal. Some members of the New Haven police force are opposed to the General Order, believing that it violates federal law. After the ICE raids, for example, one officer stopped an individual whose name came up on an NCIC search. According to the General Order, New Haven police officers are not permitted to respond to NCIC hits, but the officer disregarded departmental policy and called ICE, who came and arrested the individual in question.

New Haven, in short, is constrained in its policing policies by pressure from federal authorities, from a neighboring jurisdiction, and from within the ranks of its own police force. The devolution of federal authority in the contemporary period of immigration federalism has created a legal resource to be exploited by persons favoring more extensive local partnerships to enforce immigration laws. The potential for conflict is evident in communities like New Haven that prioritize community trust and other community-policing goals over immigration enforcement. The MJP created by devolution of federal authority to the local level thus limits local political authority without clarifying the role of the federal government.

Raleigh, North Carolina

Raleigh, with a population of 284,507, is located in Wake County, North Carolina. The Hispanic population has grown dramatically over the past two decades, largely in response to the demand for labor in the construction and agricultural sectors of the Wake County economy. Hispanics now comprise about 9.3 percent of the population. Neither the City of Raleigh nor its

police department have a policy concerning immigration enforcement, but the Wake County Sheriff's Department does, having entered into a 287(g) agreement in 2008 in order to provide more authority for the identification (and potential deportation by ICE) of undocumented immigrants.

The combination of no policies at the city level and a 287(g) agreement for jail identification at the county level permits wide individual officer discretion in how to respond to suspected undocumented immigrants. Any police officer in the county can arrest and bring in suspects, knowing that arrestees will have their citizenship checked. The 287(g) agreement is thus a resource for any officer who desires to use arrest authority to the maximum to deport undocumented residents. Yet the sheriff can correctly claim that his officers do not make most of the arrests, and therefore the department is not wholly responsible for checking on the possibility of pretextual arrests or racial profiling. Both city and county police agencies thus achieve "dual deniability" regarding enforcement policy (see also Coleman, this issue).

Latino residents do not necessarily distinguish between enforcement agencies, nor does it necessarily matter in terms of one's likelihood of deportation. The situation has led many in the Hispanic community to become fearful of all law enforcement and government officials. A representative from the sheriff's office argued that there is no discriminatory intent involved. Establishing the identity of all persons brought into custody is an important custodial function performed by those who have responsibility for running local jails, but North Carolina has made this more difficult for unauthorized residents. The state does not permit undocumented immigrants to receive driver's licenses, for example.^{vii}

Community groups claim that Raleigh's policing practices, particularly the sheriff's 287(g) MOU, have led immigrants to forego driving to their jobs, school, churches, or community activities because they are mistrustful of law enforcement. They claim that immigrants have

become less willing to serve as witnesses or report instances of victimization because of the possibility of deportation. These groups see a sharp decline in the area's initial support for immigrants as low-cost labor in rapidly expanding enterprises. Recent efforts by community groups to reach out to law enforcement and to increase communication have not been successful. While the sheriff claims that officers are not racially profiling and that victims can freely come forth without the fear of deportation, undocumented immigrants remain fearful. A MJP has developed in Raleigh because of the mixed message that the 287(g) agreement creates in a locality that was once more welcoming toward immigrants, regardless of their legal status.

Conclusion: Immigration Federalism and the Contradictions of Devolution

Devolution of governmental authority, whatever its specific focus, creates opportunities for more variation in local policy regimes than would ordinarily be the case under nationalized policy. Such variation is often celebrated as a way to better reflect the needs and preferences of local residents than a one-size-fits-all national policy, or as a way to experiment with new and different ways of carrying out public services. Those who argue for devolution of immigration-enforcement authority stress these qualities, suggesting that devolution should also be seen as a "steam valve," reducing pressure on the central government in a hotly contested policy area by allowing each locality to define its own approach to enforcement (Spiro 1997). Such variation is certainly apparent in our surveys, where we find some localities embracing proactive detection and removal of unauthorized immigrants, while others espouse a "limited cooperation" or "don't ask, don't tell" approach to immigration status. Many others choose no policy at all, effectively leaving the decision of how to proceed to local police executives or even to individual officers.

The implications for local governments are more significant than such a laissez-faire approach might suggest. The issue in this case is not so much a case of varying local “tastes” for a “public service,” as in the public choice model of metropolitan political economy (Ostrom, Bish, and Ostrom 1988). Rather, variation in approaches to unauthorized immigration reflects differences in judgments about whether some classes of residents should be treated differently based upon national origin and legal status.

Nor can immigration enforcement be easily grouped with policy domains like education or employment training. In these areas sub-national variation in policy, undertaken in the service of national goals, may be less problematic. Immigration policy, however, is an example of what Manning (1977) and others call intermestic policy, as it stands at the juncture of foreign and domestic policy. The implications of enforcement can be drastic at an individual level and significant at a community level, raising fundamental issues about who belongs in the community and who can remain (Provine et al., forthcoming). At the same time, enforcement decisions can have international ramifications. This is also a complex area of law, one in which the expertise required to enforce standards is not easily acquired. The standards themselves are not even entirely clear to legal scholars, who remain sharply divided over whether local police can legitimately enforce civil immigration violations (Rodríguez et al. 2007; Kobach 2005; Wishnie 2004).

Nor does immigration federalism fit the usual model of “cooperative federalism.” Immigration federalism tends to bypass the traditional role of the state government in policy implementation in favor of local governments, who are in other situations thought of as “creatures of the state.” Even at the local level, coordination among neighboring jurisdictions is lacking. Cities appear to act in isolation as they decide (or decide not to decide) whether and how to participate in enforcement relatively independently of what other localities or counties in the region

may be doing. The decisions localities make appear to be more influenced by local political dynamics than by any objective “need” for enforcement (Ramakrishnan and Wong 2008). Nor is there an effort to achieve any professional consensus among law-enforcement leaders in a particular metropolitan area regarding best practices.

The human implications of the current trend toward more formal local engagement in immigration enforcement are significant. Approximately 4 percent of the United States population lacks legal status. Many of these individuals are members of families that also contain legal residents. Immigrant neighborhoods also tend to contain a mix of legal statuses. Enforcement efforts that target unauthorized immigrants also draw U.S. citizens and legal permanent residents into intrusive contacts with the police. The enforcement effort may also be perceived as racist or haphazard (Waslin 2007) because there is significant discretion at the individual level, and because police departments may operate in overlapping jurisdictions. A recent report by the Pew Hispanic Center (2007) noted that over half of all Latinos in the United States fear that they, or someone close to them, may be deported. The MJP means that no local government is in a position to allay that fear. Nor, under current devolutionary policy, can the federal government ensure that enforcement will protect the civil rights and liberties of American citizens and legal residents.

The federal government has remained largely silent regarding alleged abuses by local law enforcement when it has partnered with federal authorities to deport residents. At the same time it has sometimes responded aggressively to local policies of non-enforcement, as in the New Haven case described here. This combination of devolution of immigration enforcement to the local level, in combination with the federal government's own lack of consistent policy, has created a kind of non-policy policy in which there is no safe place for immigrants who lack secure legal status. The federal government has thus extended its reach, even as it has reduced its oversight.

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ⁱ The number of immigrant- and immigration-related bills introduced in state legislatures has increased each year since the Immigrant Policy Project of the National Conference of State Legislatures started collecting statistics in 2005, with approximately 1500 bills and resolutions considered in 2009 (NCSL 2009). Some cities have also been active in drafting and adopting legislation. State and local laws include requirements that landlords check legal status before renting, rules that prohibit public funding of day labor centers, that create state-level employment verification schemes, that criminalize human smuggling, and that require public officials to check legal status in the course of routine activities (Esbenshade 2007; Varsanyi 2010).

ⁱⁱ State and local *immigration* policies—policies that enable discrimination on the basis of alienage—should be distinguished from state and local *immigrant integration* policies and practices, as documented by Mitnik et al. 2008; Alexander 2007; Lewis and Ramakrishnan 2007; Ramakrishnan and Lewis 2005.

ⁱⁱⁱ We began with the universe of 492 municipalities in this size category, but in looking up contact information for the police chiefs, found 40 cities that lacked their own police departments, generally due to contracting relationships. These 40 were omitted.

^{iv} These cities appear to be a good representation of the overall universe, as responding cities did not differ significantly from nonresponders in population size, percentage foreign-born, or location in a border state. Only geographic region was somewhat nonrepresentative, as chiefs from the Northeast census region were significantly less likely to respond than their counterparts in the West, Midwest, or South. For more discussion of the city police chief survey, see Decker et al. (2009).

^v Sheriffs were asked to rate the influence of thirteen groups in formulating their office’s practices and procedures regarding immigrants and immigration enforcement, on a scale from 1 to 5 where 1 was “not at all influential” and 5 was “very influential.” The percentages in the text refer to the share of sheriffs assigning a score of 4 or 5. Sheriffs answering “don’t know” were omitted from these calculations. We did not ask a comparable question of the city police chiefs.

^{vi} Results for sheriffs are essentially the same (30 percent) if we focus only on the 91 percent of sheriff’s offices with patrol responsibilities. In the tabulations in this paragraph, we omit respondents who answered “don’t know” or “not applicable,” or who refused to answer the question.

^{vii} Other state and local policies reinforce the idea that unauthorized immigrants are not desired in the community. State law requires these immigrants to pay out-of-state tuition at community colleges. The state has also increased employment verification requirements and instituted crackdowns on companies that hire unauthorized immigrants.