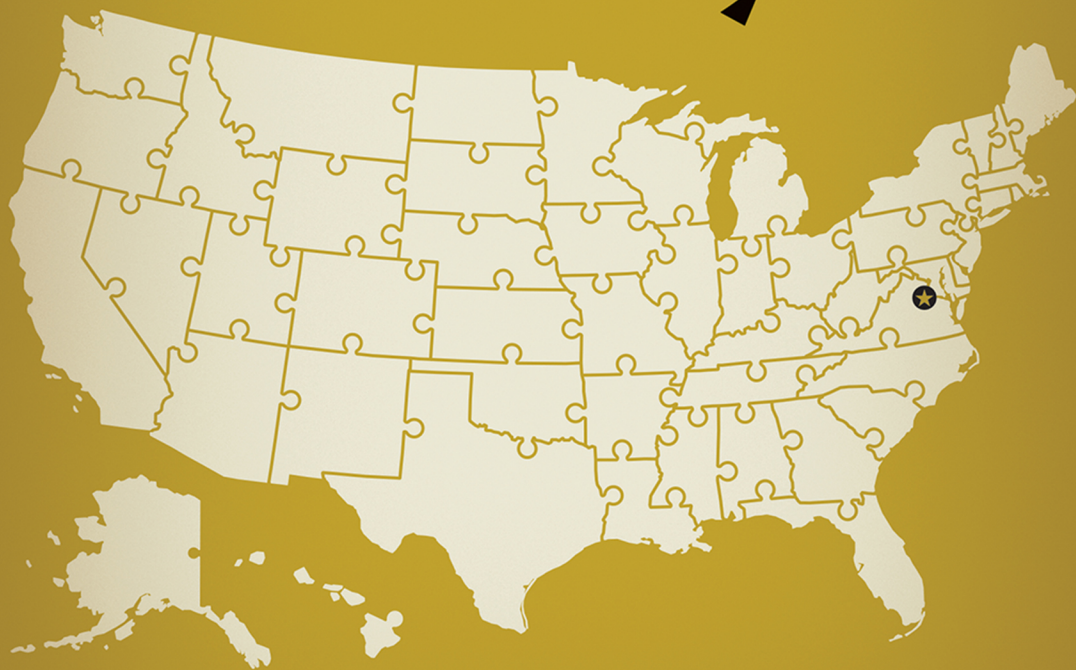


Perspectives on Political and Economic Governance

# American Federalism Today



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MICHAEL J. BOSKIN

## Governor Jerry Brown

Introduced by Michael J. Boskin

**MICHAEL J. BOSKIN:** Welcome, Governor Brown. Thank you so much for joining us. We've been debating on and off all day long with various aspects of fiscal federalism, the roles of states and localities and the federal government, how they vary for different types of responsibilities and resources, how they've changed over time, how COVID created some additional fissures, etc. So we'd like to get your perspective on that. I think everybody here knows you or knows of you. Not everybody here's a Californian, but Governor Brown has the unique distinction of having served four terms as governor. A pair of two terms. And he also was mayor of Oakland, and also California attorney general.

So, the governor's had a long history of public service and has helped govern California through lots of ups and downs and contention and political realignment and things of that sort. So I thought we might kick things off with a couple of questions, let you ruminate on them.

**GOV. JERRY BROWN:** I'm looking forward to this. It is important. And it is also timely that we discuss and hopefully elucidate our unusual system of government.

**BOSKIN:** Thank you so much, Governor. I'm going to start with a couple of questions and then we'll throw it open for general discussion. But you have many unique perspectives, but during your time in office, what did you see as the biggest opportunities for strengthening, realigning, improving the relationship among different levels of government, perhaps particularly between the state and localities, but also with respect to the federal government?

**BROWN:** Well, that's a broad question. And we've been here before—in 1982—under the Reagan administration, when the president proposed to swap welfare and Medicaid and change the respective responsibilities of the states and the federal government. As it turned out, little of that “swap” actually happened. The forces of the status quo were too strong. Anytime you try to move government structures out of their habituated slot, you encounter enormous resistance.

Unquestionably, it would be very good if we had a clear delineation of federal and state functions. Unfortunately, these functions are intricately entangled, and I don't know that you can untangle them any better than we have, except in the face of a crisis or a very strong president coming into office with that as a major promise. Yes, it is theoretically possible to restructure our federal system, but in practice we're not going to tear up the evolved complex relationships of the federal and the state governments and, analogously, not those of the states and their local governments. I could compare our income tax system to our system of federalism. It's completely crazy, mind-numbingly complex, and not understood by 99 percent of the people. And yet, that's the tax system we have. You can tinker with it, but not modify it in any fundamental way. Same with our system of federalism.

The problem at a very basic level is that the members of Congress want to advance their goals—conservative or liberal—and they do so by passing laws or tax measures with regulatory hooks that compel behavioral change in states and localities. So federal officials, carrying out the mandates of Congress, meddle in state and local affairs. It is very hard to stop that meddling, because if there's local crime or big problems with homelessness or housing, the environment, or toxic waste dumps, then the Congress wants to jump in. The federal agencies are there, and they are there to take regulatory and enforcement actions. And so I think the real task is not so much trying to change the federal structure, however theoretically good that sounds, but rather to bring some common sense and clarity to the functioning of our government.

**BOSKIN:** That's great. We've emphasized clarity a little bit here and stability, for sure. Looking back at your time in office, and perhaps more importantly as an observer of what's going on since you left office, where it appears relations among different levels of government are becoming more frayed, we've become more polarized politically, obviously, but every time a Democrat's in the White House, Republican attorneys general are suing them on everything;

and when Republicans are in the White House, we have Democrats suing them on everything. So do you see any opportunities to take advantage of improving that in a way that makes it easier to operate, and reduces the cost and the instability of these kinds of actions and activities, where we have states and the federal government arguing about who has the right to deal with the border, who has the right to do this or anything else? Are there some areas you would single out as perhaps more ripe than others as a way to proceed in improving federalism?

**BROWN:** We do make progress. There are cases where the federal government overreached and then pulled back. For example, Congress passed the No Child Left Behind Act and then Senator Lamar Alexander, the chairman of the Senate Education Committee, won passage of legislation that modified No Child Left Behind by reducing its complex and overly intrusive mandates—rightfully so. Congress didn’t get that far, but they made some progress. President Obama then came along with Race to the Top, and that was another coercive federal intervention. I was the only governor, and California was the only state, that refused to participate in Race to the Top. I didn’t participate because I thought the program interfered with the work of locally elected school boards. I might just say on that score, it’s very hard to exercise restraint when you have superior power, as the federal government clearly does.

We also saw overreach in the Obama administration’s interpretations of Title IX, when federal administrators issued detailed mandates to hundreds of colleges across the country, ordering them in effect to adopt specific codes of student conduct. Here in California, I went in a different direction. When the state legislature passed a bill to codify the federal Title IX regulations—which Trump had rescinded—I vetoed the bill and created a committee consisting of a former Supreme Court justice and two outstanding academic leaders to find a better solution. They crafted an outstanding report with solid but voluntary and flexible guidelines. This approach embodied the principles of federalism in that key decisions were left to individual colleges, not centralized in state mandates. A few years later, the legislature passed a bill on a party-line vote, similar to the one I vetoed. Governor Newsom signed it into law—again demonstrating the power not of federalism but of standardization and distant state authority.

I also supported and signed into law the Local Control Funding Formula. This measure eliminated dozens of state categorical educational programs

and returned substantial authority to local school boards, while providing extra funding for low-income schools. Though recent research shows positive results, there are still persistent legislative efforts to reestablish state mandates on how local schools should operate and structure their budgets.

Even when you shift power to local authorities, the political pressure to restore centralized authority never ceases. I'm the chair of the Oakland Military Institute College Preparatory Academy, a charter school that I started in 2001. So I experience very directly the efforts by the legislature to curtail the flexibility and innovative capacity of charter schools. It is a problem that shows no signs of going away.

Legislators—both conservative and liberal—increasingly see the world in polarized terms. This makes for unstable governing, as basic rules shift depending on which party or ideology is in charge. As California attorney general, I sued the federal government under the Clean Air Act to exercise its waiver provisions allowing the State of California to establish its own vehicle emission standards. With Bush in the White House, I lost. But when Obama came into office, we prevailed. And, of course, when Trump came in, things went the other way, only to be reversed when Biden was elected. The only answer is for more centrist politicians of both parties to realize the country is in a crisis and find ways to work together. If we constantly jack up everybody on the Right and on the Left and then they mutually jack each other up, the country is really going to weaken itself, as I think it is doing.

So the only hope is for people who hold different ideological positions to accept that not everything is an absolute value, and therefore they can compromise and find common pathways to settle these very emotional arguments. I've never seen such emotion and belief in so many different areas as I do today. I think we have to just de-escalate the "beliefs" and the emotions and find a greater American calling. Whatever you believe or don't believe, there's always a middle position available. Maybe as things get really bad, we'll get more politicians who will want to rise above the partisanship and find common ground. I do think as things get worse, reasonable people rise to the occasion. In the end, it depends on the capacity of leaders, their ability to communicate with the people, and their maturity to realize we're in profoundly deep trouble in America.

**BOSKIN:** Well, I think many of us would agree with that. When I look back, as I mentioned in the beginning, at your pair of two terms in office, they included some situations that were either not so common in other states or a



more extreme situation in California. I remember when George Shultz and I first came to see you in the '70s to talk about the budget. We had a big budget surplus in California then. In your second time around, you inherited a very large budget deficit. In addition, California's become a one-party state. Now, there are red and blue one-party states, but that doesn't promote the compromise you're talking about or the competition you're talking about too much.

And of course, we have the initiative process, which is taken to its logical or its extreme conclusion in California relative to a variety of other places, that complicates governance and makes a lot of the budget, especially, very inflexible. So I'm wondering how any of those things strike you as being important in thinking about ways forward, either in California, in its relationship to local governments, or more generally, and how overwhelming dealing with the budget deficit, for example, was, relative to your ability to get other things accomplished.

**BROWN:** Well, just on the budget, when I took over from Arnold Schwarzenegger, I inherited a \$27 billion deficit. So I cut several billion dollars and got a tax increase by way of a successful ballot measure, and lo and behold, the deficits turned into massive surpluses. Now, I have to recognize, and I'm sure most of you people do, that a lot of that was the very fast-growing economy, probably the beginnings of inflation. In California, we have very high income tax rates that bring in huge amounts of money when capital gains grow, but the money disappears when the stock market declines and capital gains go down in a recession. This has happened with almost every governor.

I was lucky in my last two terms as governor, we never had a recession. That was unusual. From the time of Governor Earl Warren, every governor except George Deukmejian experienced a recession during their time in office. And when that happens, you have a big deficit. But after the deficit, and especially if you raise taxes, then as the economy comes back, you get more money and then you invest in a lot more programs; then you get a recession and you have to cut back. So it's a roller coaster.

We need a more stable tax system. But the problem is that when we pursue more stable and less volatile revenue sources—like taxing property or services so that money comes in good times and bad—that doesn't feel very fair. Inevitably, when we flatten out the tax we are giving more money to higher-income people, while then increasing broad-based taxes will be quite burdensome to those with less income. And in California, that's not going to be acceptable. So we muddle along.

Another feature in California governance is the use of ballot measures to change state laws, including the constitution itself. If you can spend enough money, you can put almost any initiative on the ballot. For example, Uber and its allies spent \$200 million on a ballot measure campaign and were able to repeal a labor law they didn't like. Now, many times ballot measure proponents are unsuccessful, but as long as there's an ability to hire signature gatherers—which there always will be—we will have endless initiative and referendum campaigns to change the law in California.

So I don't know what we can do with the initiative, because anybody who says they are going to curtail the people's right to vote on a ballot measure will fail. Voters are unlikely to vote for a measure that would take away their own power. So the initiative is not going away, and it is not going to be radically changed.

Now, one party in charge for too long, that's another problem. It's a problem because when you have one party, you'll have activist groups that relentlessly push the direction of the ideology of that particular party. Now, the governor can counteract this with the veto, but the governor himself or herself depends on some of the same interest groups. So it does take very creative governing to overcome the pressures when one party dominates government. Resisting the pressure is possible—I've vetoed a lot of bills. If I were governor now, I'd be vetoing a lot more. But there it is.

There's no magic formula for improving our federal system of governing. It's a matter of taking what you have, where you are, and following the least-damaging alternative. I think what's needed is some caution, some humility, and reaching across the political divide. The trouble isn't California. Discontent and dysfunction are more general. We see it in many parts of the country and even in many countries of the world. So that's where we are.

**BOSKIN:** Okay, let me throw it open to other people for questions. Who'd like to add anything?

**THAD KOUSSER:** Governor Brown, you came into office [talking] about the wall of debt, right? You have this poster behind you of the wall of debt, not just deficit, but also the bonds. And by the time you left, as you said, it was retired, but it's opened back up again. So what are the prospects? A lot of this conversation in the last hour has been about debt at the national level, debt at the state level. Is this just built into the nature of politicians? Is it because states have limited resources and are always going to need to

borrow some during a recession? Or is it something about the federal-state relationship where a state feels like the federal government will bail them out if it's too bad?

**BROWN:** The state of California by constitutional provision doesn't "borrow," but it has a number of budgetary devices, which you would call "gimmicks," that allow it to get through periods of budget deficit by temporarily taking funds from state special funds, deferring payments, and using funds belonging to local governments. That happened in the Depression and under Arnold Schwarzenegger and in various forms under several other governors. So, in the face of fluctuating state revenues, why does state spending keep growing faster than the economy as a whole? To my mind, the fundamental driver of state spending is that we're in a society with great need and tremendous inequality, with millions of people that are in very disadvantaged situations. So, that calls out to people who want to remedy that—hence the desire for programs and plans, all of which cost money. So if you look around at those who are the most well-off and the people who are in the middle, that's one thing. But if you look at people in the lower 10 percent or 20 percent of the income scale, you find lacking what the average American takes for granted and expects out of life, and that provides a plausible reason for the state, for example, to create a medical program, a school program, or an income subsidy or some type of welfare program.

From a moral point of view, from just a sense of being human, these programs look good. They feel right. The problem is there's no limit to the demand or even the need, but there is a limit to spending, because there's a limit to what the people are willing to provide by way of taxes. In California, unlike the federal government, the state is required to balance the budget every year. It can't go too far into debt unless it is through bonds, and bonds require voter approval and can be voted down. From the way I see the world, I want the state to help people who are struggling, but I don't want fiscal instability. That makes me dubious of state programs if they appear to be expanding too quickly or growing beyond an appropriate size. Of course, what is an appropriate size is a political as well as a fiscal judgment.

That gets us back to federalism. There's a concept in the Catholic Church called "subsidiarity," which I learned about early in life and then came to apply it when I became governor. It holds that those closest to the problems are best positioned to address them. That means giving local authorities the power and money to get things done—and that's what we did. I find that at the local



level, that's where people know one another in a more direct way and can exhibit a little more common sense.

So that's one thing, getting the cities and the counties more authority, but in reality, they are still very dependent on state government. And there will always be pressure from advocates for more and more intervention from the state and federal government if they can't get what they want from the local authorities. I would like to think there's some legal structures that could strengthen federalism, but at the end of the day, I see the trajectory as more standardization and more power flowing to higher levels of government and therefore more centralization of decisions.

**JOSHUA RAUH:** Governor Brown, toward the end of your time in office, you took an attempt at trying to address some of the unfunded pension liability issues, which I think is one of the more destabilizing forces on public finances in California, the unfunded pension liabilities of CalPERS [California Public Employees' Retirement System] and CalSTRS [California State Teachers' Retirement System] and so on. And since then, things got a little better for a time, but now this seems to be getting worse again. Can you provide us with any hope for addressing that issue?

**BROWN:** Well, I'm not in the hope business, but I can tell you that both California pension systems are funded at about 70 percent, which, barring major catastrophes, will enable them to pay their obligations for a long time. Despite strong opposition, I was able to get substantial pension reforms enacted in my third term as governor. This probably couldn't be done today. It was only successful because we had a real crisis and a huge budget deficit. The result was legislation cutting back public pensions over time—you can't adversely affect the benefits of existing pension holders. And these reforms were much more significant than the critics claimed.

But I didn't stop with these reforms. I joined in a lawsuit challenging the principle of vested rights enshrined in the so-called California rule. I asked the California Supreme Court to find a way to make the rule more flexible, allowing the state to modify pension benefits for those who hadn't yet actually earned them. For example, if employees worked for five years and are going to work another twenty, pension benefits could be modified downward before they start their sixth year. Under the current system, benefits can only be ratcheted upward, never reduced. Benefits can never be changed from the moment you're hired, except to be increased. Unfortunately, the justices

refused to reexamine the California rule. They did get rid of certain kinds of pension spiking and gimmicks, but they didn't bite into the big bullet.

That said, I think the next time we have another crisis, the pressure will mount and I think people will be more inclined to tackle the question of vested rights. Yes, there are basic vested rights, but there should be some limits. It should be possible, when there is severe fiscal strain or when governments can't meet their obligations, to modify those benefits that have not actually yet been earned. And when things get a little worse—hopefully not too much worse—I would predict that cases will come before the court, particularly from local governments, because they're going to be hurt far more than the state government. State government only devotes about 20 percent of its funds for salaries and benefits. The bulk of state spending goes to counties, cities, special districts, and school districts, which spend 80 percent of their funds on employees. So local governments are going to feel a much greater pension burden than the state.

Even though all of this may leave you with an ironic view of the governing process, you should know that reform and recovery are always possible. The fact is, our federal system of governance has worked for a very long time—in good times and bad. And yes, things generally have to get worse before political reform becomes plausible. That's just the way it is. Habits die hard, and the government, like each one of us, has habits that don't give way without a counteracting force. Hopefully, the force that brings change won't also cause breakdown.

**BOSKIN:** You tried to be innovative in a variety of situations, variety of areas, in the relations with local governments. I know you wanted to change school funding formulas that would get more resources to school districts with a lot of disadvantaged students. How much resistance did you have to that? How do you think that's gone?

**BROWN:** Well, we enacted the Local Control Funding Formula and eliminated a host of categorical programs, which created a plethora of rules, specialized funding streams, and endless audits—all a nightmare for local schools. But the pressures to control from afar are still pervasive. Schools are still spending way too much time on compliance and dealing with prescriptive outside interventions, rules, and reports.

At its core, education and learning are about the knowledge, the skills, and the inspiration of the teacher interacting in a human way with students. And

that central reality is too often crowded out by incredibly complex compliance measures—“do this, don’t do that”—to make sure that no student is disadvantaged. But when you add up all of the rules, you find a bloated education code between ten and thirteen volumes, depending how big the print is and how many annotations are included. That’s thousands and thousands of prescriptions requiring huge amounts of time and money devoted to lawyering and administering, not teaching and learning.

Contemporary education is very much a game of complexity. We really need simplification.

**BOSKIN:** Governor, thank you, it’s been very illuminating.

**BROWN:** Thank you.

**BOSKIN:** I think we got a lot of ideas from our three governors and a lot of understanding of some practical realities they confront, which we probably oversimplify with our political economy models. And that’s become a much more common thing now in academic research, to have political economy built into models, and that’s a step forward.