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FEATURES

A More Democratic Federalism?

How our government could be more effective and trusted, not just ambitious.

BY XAVIER DE SOUZA BRIGGS JOEL ROGERS FROM FALL, NO. 62 - 31 MIN READ

TAGGED FEDERAL GOVERNMENT FEDERALISM GOVERNMENT



We propose to improve, without rewriting the Constitution, American “federalism”— shorthand for the rules and expectations governing relations between our federal government and its citizens and other domestic governments and

entities (states, cities, government enterprises, etc.). We'd like our federalism to be more visibly centered in basic fairness and respect toward all citizens as both as individuals and numerical majorities, but also be better equipped at getting the "people's business" done. The proposal is about how to do both things.

Our proposal has three interconnected parts: an updated government "contract" with citizens clarifying the minimum substantive freedoms and supports they can expect from the federal government, no matter who they are or where they happen to live; a shift in presumptions on preemption—in which a legally superordinate power overrides the law of an subordinate one—to encourage greater use of minimum requirements and less use of limits on efforts to exceed them, consistent with these requirements' core purposes; and a concerted effort by the national government to support state and local governments' use of these new powers to improve productive democracy.

Our suggestion for a more democratic federalism is a kind of "North Star" proposal. We don't expect its full implementation anytime soon, and assume the current Supreme Court will go to considerable lengths to slow its progress. That said, we do think it a useful guide in navigating the present, and that the journey toward it can start immediately. We make some suggestions on that at the end.

But first, some clarifying background on why we're offering this proposal now.

Nobody knows what the Biden-Harris Administration will finally get through this session of a poisonously partisan Congress, especially with the Senate's reactionary filibuster rules, or what that will mean for next year's national elections and the Administration in its second two years.

We're big supporters of the broad direction and sheer ambition of the Administration's domestic agenda, and its confidence that this country can heal itself and again make progress as a more democratic nation. Beyond repairing the damage done by COVID, it seeks to topple three giant barriers to that progress and to our shared wellbeing as Americans. First, our 400-year-long history of racism and exclusion, including an economy that slavery and the dispossession of Native peoples helped build in formative and lasting ways. Second, the many inequalities and toxic distortions of our public life that followed our nearly half-century infatuation with the corporate dogmas—deregulation, privatization, public austerity—of "neoliberalism." And third, the vast

environmental and social damage done by our extractive polluting economy long powered by fossil fuels.

Given how deeply embedded these barriers are in our economy and society, seriously weakening any one of them would be a big and hard task. Trying to power through all of them at once, as Biden-Harris propose to do, is a monumentally difficult one. Doing so would amount to a Third Reconstruction in this nation's history, equivalent in scope and promise to the short-lived "new birth of freedom" Reconstruction after the Civil War and the de facto Second Reconstruction of the New Deal, as well as Roosevelt's "four freedoms" and "new bill of rights" speeches, and the immediate postwar years, which instituted the mixed-economy Keynesian welfare state and at least a weak version of social democratic politics that the right has always hated and neoliberalism successfully weakened.

But while we've heard a great deal from Biden-Harris and other national leaders about the goals, returns, and costs of this Third Reconstruction, and the many ways it can be undone before it has a chance to prove itself, we haven't yet heard much about how it will fit within the structure of how our government actually operates, or what if anything the Administration has in mind for changing that.

In virtually every area with some declared national policy and funding commitment, there is useful bipartisan innovation going on somewhere

That structure, as every school child learns, doesn't only feature a separation of powers at nearly all levels of government (executive, judicial, legislative), but a division of powers among those levels, canonized in the Constitution's Tenth Amendment (the last item in the Bill of Rights incorporated before ratification), which asserts that powers not expressly delegated to the national government "are reserved to the States respectively or the people." But it's not just that the United States is a federated state, not a unitary one, with the national government assigned only limited powers and all others reserved elsewhere. It's also an incredibly fragmented government. It works through an elaborate, often obscure, endlessly politicized division of power, responsibility, and resources not only between the feds and states but among a nearly

fantastic number of local governments and other public entities: more than 3,000 counties; over 19,000 incorporated cities, towns, and villages; some 574 federally recognized and semi-sovereign Native nations; more than 18,000 government enterprises like air and seaport authorities; as well as more than 50,000 special purpose districts for diverse entities or functions, from hospitals and libraries to sewage treatment and mosquito abatement. Each of these units competes with others for influence, but commonly relies on them for resources. Fully a third of state revenue, for example, comes from transfers from the federal government; and more than a third of local government revenues come from the state or the feds.

If your mind is already numbing, here's the key takeaway: This, for good or ill, is how public power is actually exercised in this country. It is *not* principally exercised by the national government. Our national government is obviously indispensable to making this a functioning and sometimes more perfect union and does many important things uniquely. It can issue national standards on behavior, solve problems exceeding solution by a single state, send troops to war and make treaties, offer an age-restricted national health insurance and other forms of social insurance, print and discharge money, and restrict and guide how that money is spent. But its operational power and its ability to determine outcomes in our lives are both limited, especially when compared to all these other units.

The rules of this multi-dimensional game of influence and resources that flow among thousands of units of public power are what we're calling "federalism." It may be worth emphasizing that, though obvious, this doesn't only include hoary principles and conventions of constitutional design and doctrine but also many extra-legal norms and power relations. Federalism is America's oldest argument and also an endless one because it's inevitably an argument about politics and power—about what we expect of the varied public institutions we pay for, and who gets to decide that—and that's something about which people will always have strong and conflicting views.

It's been a long time since we've had a substantive national discussion about improving the rules of federalism. It's been over 50 years since Richard Nixon announced his "new federalism" of block-granting money to states and municipalities, a counter to Lyndon Johnson's more prescriptive Great Society program. It's been almost 40 years since Ronald Reagan took a wrecking ball to federal aid to cities while announcing the supposed intrusiveness, waste, fraud, and abuse of government as our democracy's

great problem. Since then, we have seen many constructive efforts to “reinvent” government to improve its performance, and many debates about federalism relegated largely to academic circles and good-government watchdog groups. But in terms of a clear normative direction and theory of governing, where Reagan left off is basically where public discussion of federalism ended. Our leaders today, even those with great ambitions for the positive role of government at all levels, are still playing on a stage that Nixon and Reagan built.

It’s time to re-open this discussion, in a visible and popular way. Not just because of the passage of time and the fact that our country today and its challenges look quite different from 50 years ago, but because large majorities of the American people—and yes, we know they’re bitterly divided on multiple political fault lines, not just partisanship—want something very different than what they’ve been getting from government.

Continued silence by Biden-Harris on our status quo federalism would be both a mistake and unforced error. It would be a mistake because, no matter how competent the national government, it cannot achieve its goals without the working cooperation of that vast network of non-national government units inventoried above. The current Administration is not increasing checks to households and disbursement to localities and states; it’s calling for a change in the direction on all sorts of policies deeply inscribed in everyday life. Does anyone seriously imagine that will happen without the cooperation of thousands of non-federal units of government? Federalism’s current rules virtually guarantee rancor and dysfunction in their relationship with national government and easy gaming by those who wish the Administration only failure. These realities will frustrate progress on Biden-Harris’s ambitions, as we’ve seen already in many areas of great popular concern, from access to the ballot box to growing environmental threats, from public health and health-care costs to dangerous environmental threats, as well as housing affordability and more.

Continued silence would be an unforced error because our sprawling network of governments, and especially the everyday citizens each of its units governs, is a great potential ally in the Administration’s task. Along with local knowledge and vast capacity for implementation, that network is a deep source of ideas the feds have only begun to hear from, authority they don’t need to impose from on high, and citizen contribution they’ve barely tapped to help govern. The long play in this Administration’s Third

Reconstruction is the same as the short one—get the people on your side. And that means the rules of our federalism have to make sense to them and deliver for them too.

What are the tools we have to work with? And what might those new rules be?

Tools for a More Democratic Federalism

Let's say you want a more democratic government of, by, and for the people, treated as equals, and don't want to waste your money. That would likely mean you wanted a government that did its best to provide equal opportunity and protection to all, but also increased shared prosperity and learned how to do both things better over time. And let's say you're living under a federated state with a national government of formally limited powers, with effectively plenary ones held by a bunch of states. Doesn't that defeat your project before it starts?

Not at all. We're untroubled by alleged constitutional limits on the stronger democratic state we'd like to see here. The Constitution's Preamble claims the aim of the document is to promote the general welfare and secure the blessings of liberty and justice for all. That should tell you something! But if particulars are needed: In a society as interconnected as ours, even the limited power of regulating interstate commerce gives the feds the ability to say something about the terms of equal protection and opportunity anywhere in this society; the Fourteenth Amendment requires the states to follow what it says; and the Sixteenth gives the feds freedom in financing that through taxes.

Nor are we troubled that such a state would come to dominate its public like Leviathan. Popular elections and majority rule are familiar institutions to check that. The democracy-enhancing sorts of investments made by our more affirmatively democratic state will make that check even stronger. Nor are we concerned that bullying legislative majorities within that state will oppress population minorities. Reasons for the obverse worry, of a resentful minority clinging to power at any cost, are more telling, especially in our Senate, where those representing only 17 percent of the population can pass any legislation and, under our crippling filibuster rules (nowhere in the Constitution), those representing only 12 percent can block it.

What troubles us more is the abuse by some governments of the legal supremacy they have over others. Under the “supremacy clause” of Article VI of the Constitution, an otherwise constitutional federal law is supreme over contrary state law; and under the (awful) 1907 Supreme Court decision in *Hunter v. Pittsburgh* states were assigned functionally equivalent powers over local governments. In these circumstances, the feds or states can “preempt” the contrary lower-level government law.

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But this preemption typically takes two very different forms. It either imposes a new floor of required behavior on the lower government—we’ll call this “floor preemption”—or it imposes a new maximum on permitted behavior in the area—a kind of ceiling, so we’ll call this “ceiling preemption.” Federal minimum wage law is an example of floor preemption. States can, and most have, gone above the \$7.25 per hour federal minimum. Much business regulation—for example, on toxic emissions or predatory lending—is ceiling preemption, meaning that a lower-level government cannot impose a more demanding law than the higher-level one already has. The usual argument for ceiling preemption in business regulation is business’s need for consistency in market rules. And there’s certainly something valid in that argument. But ceiling preemption is now used for all sorts of rules well beyond ordinary business transactions, and often in overtly partisan ways—for example, by reactionary state legislatures to thwart the policy goals of progressive cities and towns.

Democratic federalism favors more floor preemption and less ceiling preemption. Why? Because we want to maximize the most general possible provision of opportunity and protection, but also encourage civic engagement and government learning. States trying something different, and possibly better than the feds, or local government trying something different and possibly better than the state government, should be encouraged, not beaten down. We need more “laboratories of democracy” in states and cities, not fewer.

Encouraging more floor than ceiling preemption does not require a change in constitutional law, merely statutory or regulative. But it does probably require a shift in legislative culture and convention. The easiest way to do this is to shift the rebuttal presumption on as much legislation or regulation as possible from ceilings to floors only. Of course, floors-only may be inappropriate in some circumstances and should be defeated through debate. But shifting the presumption would get that debate started in the first place. And, of course, legislatures would need to be clearer on the value aim of what they're legislating, so that debate can be focused and minimums not exceeded for ulterior aims.

These are all the tools we need to get started.

Three Big Changes Since the Last Real Debate

In the 50 years since our last national discussion about federalism, at least three big things have happened that should bear on its more democratic shape.

First, as family roles have changed, our population has become more racially and ethnically diverse, and the nature of our economy has heightened economic inequality and insecurity, it's become clear that most people (across party lines) want more help from government. They want help getting higher wages and better jobs and the education and training to prosper in these jobs. They want better access to quality health care, childcare, eldercare, and housing; wider transportation options; clean air and water; and yes, a climate their kids are going to be able to survive in. They want other things too: some measure of retirement security for themselves, public safety, as well as more inviting public spaces to spend time with their families and friends. What's more, they're willing to pay taxes in order to get these things, if they have confidence that their government isn't terribly incompetent and corrupt or run by people who have contempt for them. They want results and some respect. Go figure.

These are not out-of-this-world-crazy desires. They're fairly basic. To wit: Most rich democratic countries provide all these things to their people. In the community of nations, Americans have long been an outlier in not expecting as much help from government. But things seem to have gotten sufficiently rough, in America's needlessly mean form of capitalism, for enough of our population, that overwhelming shares of our population now expect that help. As evident from a large body of public opinion research, we've joined the rest of the developed world on that score.

Second among seismic shifts, we've urbanized more. We're not all living in big cities, but the overwhelming majority of us (nearly 90 percent now) live in metropolitan regions, aka urban areas that are interdependent with rural ones for food, water, and other natural resources, as well as for other needs. The largest 100 metro areas, on only 12 percent of the nation's land surface area, are now home to 67 percent of our population and produce 83 percent of the value in our economy.

Third, public trust and confidence in government competence has dramatically declined. Often, to be sure, this dissatisfaction might be thought to be the natural (and, by some, desired) consequence of concerted political effort, over 40 years, to starve, deride, and hobble the government, while also strengthening the dominance of organized private money over organized people in its elections and daily operations. But real questions about government competence remain, especially with rising and more varied citizen demands on it. Government effectiveness has become a progressive project in the broad sense—what the public understands to be critical to our making progress as a nation. Governments at all levels need to improve capacity and performance, and more of the experimentation, evaluation, and diffusion of successful innovation that that requires.

Our more democratic federalism would recognize these major developments of the past half-century and incorporate their address in its own rules.

It would incorporate the first fact—shifting public expectations—with a new and more robust national citizen contract establishing a national “floor” for acceptable standards of service. This floor must be hard, genuinely protective, and fair, with no state permitted to go below it and every state obligated, within their tax capacity (ability to pay), to contribute a population-weighted contribution to its costs—with any difference among poorer states made up by the nation. That's fiscal federalism, underpinning a social contract with the nation's people.

It would incorporate the second fact—that we are a mostly urbanized nation, with urban and rural communities depending on each other but facing distinct needs—by strongly discouraging states from unjustified ceiling preemption of their municipalities, for example, by limiting their ability to make voting easier or use their procurement powers to promote community development and narrow the racial wealth gap.

It would incorporate the third fact—the need for more effective, not just more generous, government—by deliberately cultivating and supporting a public culture of experimentation, learning, and performance improvement, and greater cooperation across jurisdictions, driven down to local communities. Constructive innovation above the national floor by states or local governments (or both) would also be explicitly encouraged in this floors-not-ceilings universe. There are several ways to do this: by needed regulatory relief, financial incentives or flexibility, greater transparency, and technical assistance—all conditioned on good evidence of promise, evaluation of results, and wide publicity of both.

The sum is a story that any grade schooler could understand. A fully and fairly funded national citizen contract, with no cheating. A default assumption of floors, not ceiling preemption, by feds to states and states to their municipalities. Generous promotion of promising good ideas and collaboration where desired, always valuing good outcomes over orthodoxy, with wide sharing and replication of positive results.

New National Citizen Contract

In all sorts of ways, a much more generous and federally guaranteed contract between the nation and its citizens is much of what the Biden-Harris Administration is about. To take the American Families Plan as just one example, providing a federal guarantee of paid family and medical leave, additional income per-child, low-cost access to quality childcare options outside the home, and two years of universal pre-K, as well as two years of post-secondary education would—if enacted into law—effectively rewrite America’s social contract with families. Comparably sweeping pro-working families and pro-democracy reforms are being proposed for health-care access and drug prices, voting rights and campaign finance, housing, transportation, broadband, water quality, and clean energy, as well as industrial and farm policy.

Of course, Biden is unlikely to get all of this, given bitter partisan divides in Congress. Something like the overwhelmingly bipartisan United States Innovation and Competition Act (formerly “The Endless Frontier Act”), fueled more by hostility to China than affection for science-based or industrial policy, remains an exception. But there is much that is already raising the standards on legitimate, popular expectations of government, despite being a limited bipartisan infrastructure package. And there has already been softening of partisan opposition to supporting childcare, raising the long-stuck federal minimum wage, funding expanded R&D and industrial policy, expanding

the Earned Income Tax Credit, bargaining harder with pharma on runaway drug prices, reversing mass incarceration, and even supporting energy alternatives to fossil fuels. It's messy and inadequate, but it's moving in the right direction. Of course, Republicans remain steadfastly against meaningful federal guarantees of the key term in any contract a democratic government might have with its citizens: their right to vote in choosing it, and in "clean" elections less driven by private wealth. But Biden knows that and is calling at least the first fact out.

The important point for the country, not only for Biden-Harris, is to show ordinary Americans some respect as members of a democratic society and some positive results for them from their government. Calling our goals for the country a "contract" the government is making with its citizens immediately invites popular, not just elite, inspection of the term. Something that used government to set new, government-supported minimums on jobs, health, child, and elder care quality, and effectively guaranteed a quality education for all, while raising wages and lowering drug costs, would surely be a start.

But, of course, calling out standards and ensuring access is one thing, a very important thing. Yet quality access is the key here, as is implementation of that contract. That's where the feds really need some help from our many other government authorities.

Floors not Ceilings in Preemption of Feds to States, and States to Cities

The second element in our more democratic federalism is encouraging, everywhere, a rebuttable presumption of floor, not ceiling, preemption. The national contract would already do that for very large swaths of policy. There are more to be added. But the toughest barrier here is in the states themselves, with their increasingly abusive ceiling preemption for localities.

As a matter of partisan politics, things look even worse for the Democrats in the states, where Democrats lost ground in 2020, than they do with their razor-thin margins in Congress. They now hold just under 45 percent of all state legislative seats; their share of the 98 partisan chambers has dropped to 37. There are only 23 Democratic governors, and they have only 13 trifectas (governor plus control of both chambers) while the GOP has 19. Many of the Republican-controlled state legislatures are even more extremist. The surge of newly proposed voter restrictions, recently endorsed by our new 6-3

conservative dominated Court in *Brnovich v. DNC* (2011), operating in what the dissenting judges rightly called a “law-free zone,” is but one indicator of that.

But that’s all the more reason to work with state governments, or around them, on what voters actually care about—not voter fraud, an invasion at the border, or other fabricated boogymen, but things that matter for everyday life. Don’t submit to orthodoxy. Look for constructive suggestions even from opponents in the states, and if none are forthcoming, call that out, too.

It’s not all hopeless. Eventually Republican governors will, like their Democratic colleagues, want their piece of the action. The number of states still rejecting the generous Obama-era Medicaid deal is now down to only 12. The hidden-in-plain-view implication of that is that we have come a long way to health care as a right and not a privilege nationwide. The feds should finish the job, mandating expanded Medicaid, to address those 12, and deal with equitable federal cost sharing with all states as part of the national compact. This is consistent with a ratcheting-up in health coverage under both Republicans and Democrats (recall that mandated COBRA coverage and emergency care for the uninsured came under Reagan). Oregon’s community care organizations, which took flight with an Obama Administration Medicaid-related waiver through Obamacare, is already building on the federally determined floor, covering more than a million residents of that state with better care and at lower cost.

But that opportunity isn’t limited to health care. In virtually every area with some declared national policy and funding commitment, many states—including some Republican-dominated ones—are innovating policy and program in constructive ways or working better together. There are dozens of such examples of promising state practice that might be scaled and extended. Greater efficiency in water usage, energy usage; better transportation planning; better run schools; even better public safety and emergency response.

The same should be asked of states in dealing with their municipalities, which are the home of more constructive innovation than the states. Ever since *Hunter v. Pittsburgh*, American municipalities have been declared to have no innate sovereign power but only those powers granted to them by their respective states. Many states make at least some such grant of power, typically contained in a “home rule” provision in the state

constitution. It has been nearly 70 years since we've had anything like a clear and common understanding of those powers.

We're overdue for a clarification of what such home rule should mean in this century. With help from the Local Solution Supports Center, the National League of Cities (NLC) has recently suggested some basic principles to guide that discussion, aiming to rebalance mutual obligations of these two levels of government. Specifically, NLC would require states to provide strong reasons for any limits they impose on (1) municipal capacity to govern, within their territorial jurisdiction, on the full range of subjects and with the same powers as the state; (2) local fiscal authority and capacity (while also barring unreasonable unfunded mandates); (3) municipal ability to regulate above state minimums in various areas, consistent with the underlying purpose of those minimums (echoing what we've argued here in discouraging ceiling preemption); and (4) municipal democratic expression and management of local elections and the process of governing.

Most state legislatures, especially the Republican-dominated ones responsible for most of the recent abuse of state preemption powers, will resist taking on NLC's modest and constructive proposal. But for the Third Reconstruction to work, governments in the regions with the populations, wealth, and interest in making it work need to be welcomed as partners. So we'd suggest the Biden-Harris Administration, as well as Congress, do whatever it can to welcome them. And, it should be emphasized, while often treated as a partisan tool, the idea of "home rule" or "local control" is as American as apple pie. Increasing it consistently polls positive with even greater super-majorities of Republicans than Democrats.

Sustaining a Culture of Discovery and Cooperation

We can expect a wave of suggestions for constructive innovation or closer cooperation if ceiling preemption diminishes, especially from municipalities and metros. But it's been so long since they, or civic groups and ordinary citizens, were actually invited by their governments to do something for the public good, some assists and quality assurance measures are needed.

In the early stage of this, within national government itself, we hope that Biden has learned from the Obama experience, particularly with the Recovery Act, that there is no substitute for the clearest possible guidance from the federal government, and all

manner of substantive and practical expert technical assistance from it. The new Administration also needs to recognize the need for much greater local government capacity to develop smart and equitable plans, assess challenges and risks, and figure out what's currently lacking but needed to execute those plans. The number of towns, cities or metros with these basic governing chops is small. But that capacity needs to become a standard expectation of all local governments.

What would it take to build such capacity? A lot of education and training, plus well-supported communities of practice that advance entire fields, such as climate-resilient infrastructure and affordable and universal broadband. We could also use an accessible, searchable digital national library of useful and ongoing state or local innovations, everywhere in the country (and there are prototypes to build on).

But then we'll also need a concerted effort at education in active citizenship—citizen academies, both online and in person, that would include everything from understanding the flows of funds and authority across levels of government to the constraints now placed on invention to project management measuring outcomes, and more—basically, all the practical things to make a difference in our lives that most people were never taught in school, if they had access to civics education at all.

Imagine, then, tens of thousands more Americans, of varying ages, some already employed in government but mostly not, familiar with all three of these crucial points: What's needed, what's happening, and how to do more with common standards of competence? That would change the quality of civic life in America. And while we can imagine endless fights over curriculum and choice of projects highlighted in the library, as well as blood feuds of the sort we're current seeing around national priorities, we don't see unshakeable partisan capacity to run against citizens who know what's happening and want to do more of the best of it. But those who share this practical vision can learn much from multiracial grassroots organizing campaigns, like Minnesota's, to out the relentless and racialized fear-mongering and remind a big tent of voters that we are #GreaterThanFear.

Six Things We Can Do Now

We think these changes in our federalism will enliven and improve our politics, but again it must be recognized that, even if accepted, they will take some time to

implement. But there are actions that supportive national leadership can take right now to get that process started.

Here are six. All of them would seek to advance three goals essential to a more democratic federalism: (a) drive national standards where they are uneven and inequitable; (b) provide greater flexibility in the use of federal funds to enable innovation; and (c) couple both with active cross-site learning and technical support, for more equitable and effective delivery by federal grantees.

First, the Administration should work with Congress to embed the basic principles of democratic federalism into key elements of the recovery bills (packages). For much of what we care about as a nation, *fiscal federalism* is the essence of a federal system, so the biggest national investment plan in living memory should aim high in its principles. In each area of appropriation, Congress should ensure that serious planning has been done on how it will be spent, and demand substantive accountability on reporting outcomes achieved, not check-the-box process compliance, while also not over-prescribing how every region of the country invests to meet its needs.

Second, the Administration should implement and enhance federal spending differently. The White House Office of Management and Budget needs to do more to direct and support the way federal policy gets implemented. The first 100 days of the new Administration indicated that OMB is seeking out tools and thinking hard about capacity-building and effectiveness, in addition to how best to embed meaningful equity assessments, into the core functions of government. Now, OMB should underscore the importance of technical assistance and investing in the planning capacity of state, local, territorial, and tribal awardees. Our system of public finance, with its heavy reliance on property and sales taxes at the local level, starves that kind of adaptive capacity in the struggling, disinvested communities that need it most—places left further and further behind in a changing economy. It's time to address that directly and boldly, with explicit encouragement for subnational governments that receive federal money (in our view, the Administration's silence on this in the "interim final" program rule issued for American Rescue Plan's fiscal recovery spending was a missed opportunity, although fixable).

Third, in the annual budget process, the White House should charge agencies with linking their top performance goals and program budget requests not just to the

Administration’s overarching goals, but to pursuing them in ways that promote state and local governments’ flexibility, accountability, and transparency in doing so. Each year, generally in the spring, OMB provides federal agencies with budget guidance. OMB issues both technical and more policy-oriented instructions to guide the preparation of each agency’s subsequent budget request for the next fiscal year. That agency prep is a labor-intensive undertaking, over the summer and fall, so that the President’s budget can be ready to transmit to Congress soon after the State of the Union address the following calendar year. Budget guidance represents an enormous opportunity to pose strategic questions and steer agency proposals in significant ways. The Biden Administration should use the preparation of its first full-cycle budget to get federal agencies to identify their top targets, in the way of program changes.

Fourth, OMB can and must also apply the principles of democratic federalism to federal rulemaking, not just spending. We are on the eve of a large volume of rulemaking actions, coordinated by OMB’s Office of Information and Regulatory Affairs (famously obscure, it was created under Carter and empowered as a reformer’s tool by Reagan). Note that we do not mean lots of new rules necessarily. There will surely be some, as part of the new Administration’s ambitious policy reform agenda. But changing the existing rules, or in some cases offering an improved version of rules shelved by the previous Administration, is at least as important. It’s an era of regulatory reset. While many regulations concern industry—in areas such as environmental pollution or product safety—some impose or shift obligations on state, local, and tribal governments too. It’s time to make sure *regulatory* federalism is consistent with principles that suit our federal system today.

Fifth, it’s time to modernize government accounting. The Securities and Exchange Commission, an independent regulatory agency that has authority over the Government Accounting and Standards Board to which all government entities annually report their financial situation, should begin an expedited review and reform of our woefully outdated public accounting standards, which now lag most of the developed world and mislead the public. With all the money coming their way, it’s more than reasonable to require states and cities to declare their true net positions, their goals, and how they propose to finance them—and clearly. Unlike the United States, most other rich nations distinguish capital from operating budgets in public spending and use accrual accounting, with stronger public transparency standards and fuller discussion of spending rationales in their reporting. It’s past time that our states joined them.

Sixth and finally, Congress should apply principles of democratic federalism as a “lens” to inform upcoming re/authorizations of federal programs. Congress authorizes and reauthorizes agencies and their programs over time, often for three- to six-year periods, but sometimes for longer. Authorizing legislation is the primary mechanism by which Congress sets the big rules for federal programs: What activities should be allowed and funded, by what actors, on the basis of what kind of selection (competitive, block grant formula, other), with what program integrity “guard rails” and expected outcomes? The 117th Congress has numerous opportunities to drive principles for better federalism into the agencies’ many important functions, including small business assistance to infrastructure planning and development, community health, disaster preparedness and hazard mitigation, R&D and innovation-driven economic growth, and workforce development, to name a few.

Public support for a more socially inclusive, less corporate-dominated, and more environment-friendly economic recovery—what President Biden calls “building back better” and congressional leaders describe in their own ways—presents a rare window of opportunity to give federalism, including the critical elements of program and regulatory federalism, an overdue reset in a more democratic direction. In both branches, staff can get to work in the weeks and months ahead.

Ours is not a call for some far-off grand design or constitutional debate, but a process of *ratcheting up* to a better way of doing the public’s business. It can start almost anywhere, one firm step at time. But that’s how any journey starts. At journey’s end is a more focused, fair, competent, learning, inviting, and productive democratic government, at all levels, of the sort most Americans, regardless of party, want and the country so clearly needs.

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