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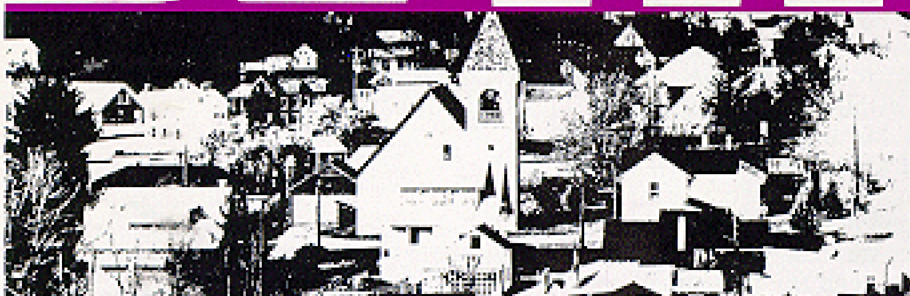
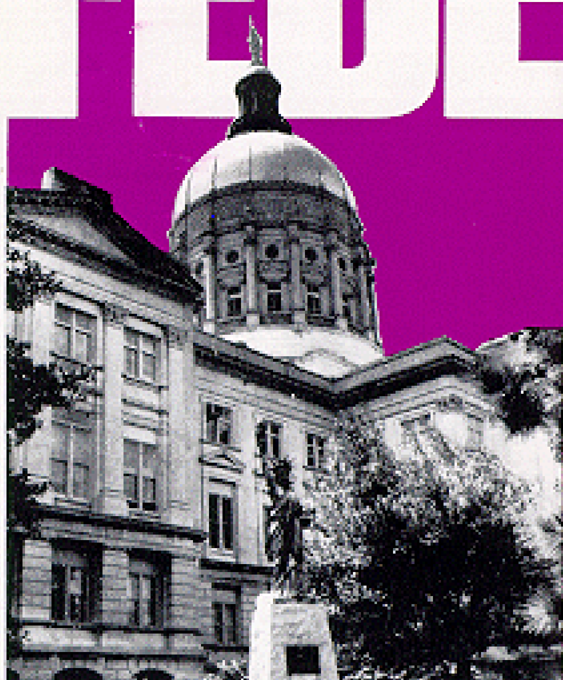
DE FACTO NEW FEDERALISM IN 1983





ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

View From The Commission

Dear Reader:

In 1980, the Reagan Administration's emphasis on federalism was a dominant theme. Three years later, federalism was less in the spotlight, but the era for autonomous state and local government was, and remains, an actuality nonetheless.

The new federalism in 1983 maintained the necessary ties between the federal government and state and local governments. These ties precluded the expected severity of the federalism "swap" and dispelled anxieties of radical shifts in responsibilities. Instead, there has been a tough, challenging test for local and state governments.

Faced with decreasing federal aid, state and localities in 1983 devised innovative ways to raise revenue and to form new allegiances to serve their respective communities. Officials have spent a year sorting out individual needs and making long-range plans for growth and development that will depend largely on their self-reliance.

Many states had to cut programs, raise taxes and fees or they had to explore and implement ways to produce productivity without increasing the taxpayers' burden. The tasks demand careful and determined decision-making. The resources and cooperation of every official must be brought into the policymaking arena to reap the benefits of self-reliance. The challenge will grow as the new federalism takes a stronger hold.

For many of us who work in state and local government, the new federalism has indeed sparked a new awareness of our capacity and our ability to meet the needs of our citizenry. We can, in fact, strike a balance between federal and state authority.

State and local elected officials are taking the lead in many areas such as education and economic development and their initiative is evidenced in this issue of **Intergovernmental Perspective.**

The three major articles in this issue present developments in federalism over the past year from three different points of view: the fiscal picture; state and local trends and activities; and Washington's influence on the federal system. The order of appearance of the three articles is no accident. Without a doubt, dollars dominated 1983 directions for federalism. Secondly, state and local governments emerged as stronger partners in our intergovernmental system. The federal role was influential, but largely overshadowed by other events and issues.

Gil Barrett

Gilbert Barrett
Chairman
Dougherty, Georgia County Commission

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De Facto New Federalism

by S. Kenneth Howard

Following as it did on the heels of the year that perhaps generated more debate and discussion about federalism than any since our founding, it is not surprising that 1983 appeared inert in changing how our federalism works. Indeed, President Reagan's proposals for his version of new federalism barely saw the legislative light of day during 1983. This inaction, and a diminution in the standing of federalism as an issue on the national political agenda, misled some observers into concluding that a new federalism is dead. To be sure, certain proposals are probably lifeless, but the basic underlying trends that are altering American federalism are still very much alive. In short, 1983 was a year of *de facto* new federalism.

A broad impetus toward decentralization has been perceived by many observers. Vermont Governor Richard Snelling contends that "Federalism is not dead" because of a "fundamental yearning for 'doing your own thing,' though within the bounds of overriding morality and national purpose, which gave life to federalism 200 years ago and will again give it life today."

John Naisbitt considers the shift from centralization to decentralization one of his ten "megatrends" and he writes that "Federalism and a new version of states' rights are reemerging in the daily newspaper." Columnist David Broder notes that "More and more of the critical decisions in our domestic government are being made in state capitols." On all sides we find state and local leaders emerging as a new class of governmental entrepreneurs, taking the lead in spurring economic development, in containing health care costs, in rebuilding public facilities and in improving education.

Abetting these broad movements is one specific force that is encouraging decentralization: fiscal stringency in the federal budget. Since the Great Depression, attention for addressing the nation's domestic ills increasingly focused on Washington. Now, few new domestic initiatives emanate from the national government as demographic factors, defense buildups, deficits and a recession all combine to reduce resources available for new or expanded domestic activities. Federal aid remained about static in 1983 when inflation is taken into account. Federal aid continued to decline as a percentage of state and local budgets and in relation to total federal spending. It fell to state and local governments to raise taxes, to cut services or to do both so that revenues would match expenditures. As ACIR Assistant Director John Shannon has noted, the national government could no longer "be counted on to bail states out of the recessionary tides."

The deficit, and efforts to reduce it, are generating significant changes. The 1983 deficit of $195 billion exceeds by $24 billion *all state tax collections combined* for that same year. Having never been in this exact situation before, we cannot be sure as a nation what qualitative changes a quantitatively growing deficit may generate.

With mounting deficits have come a host of proposals for reducing federal expenditures. Cost-saving measures were proposed by the Grace Commission last year, and the Administration and Congress will continue to grapple with these and other recommendations to cut federal spending.

At the same time, the deficit has spurred a host of revenue raising proposals, ranging from simple tax hikes, repealing or modifying indexation and closing "loopholes" to sweeping tax reforms or new federal taxes. The challenge lies in reconciling the national government's need for lower deficits with the necessity that all partners be strong to have a viable federalism. Almost every proposed change in the federal revenue system would affect, in varying degrees, the abilities of states and localities to raise revenues and finance public services. State and local governments are shouldering increased responsibilities and their concerns for revenue adequacy, tax fairness and fiscal flexibility should not be ignored in deliberations over the deficit.

But the changes in 1983 were not all toward decentralization, especially on the judicial front. One major Supreme Court decision in the taxation field certainly came down on the side of the states. Other deci-

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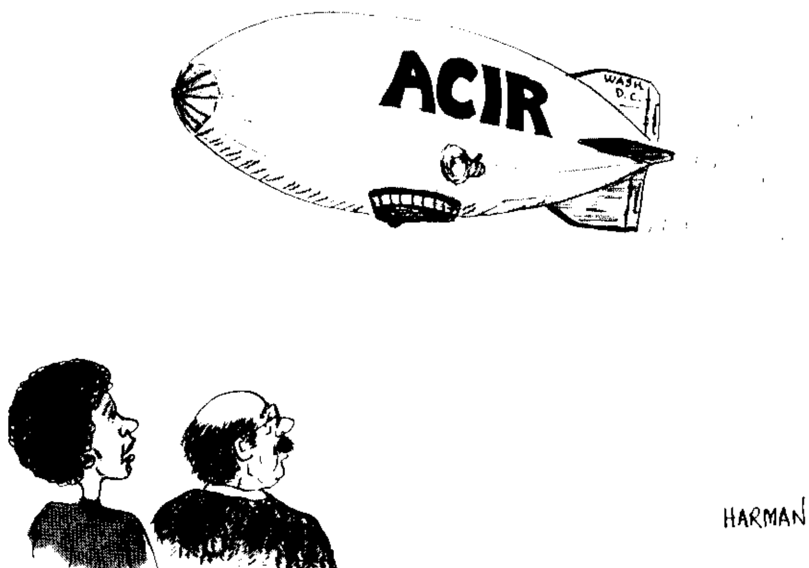


"THERE GOES ACIR WATCHING OVER THE LATEST CHANGES IN FEDERALISM."

Dealing With Deficits—Striking a New Fiscal Balance?

by John Shannon

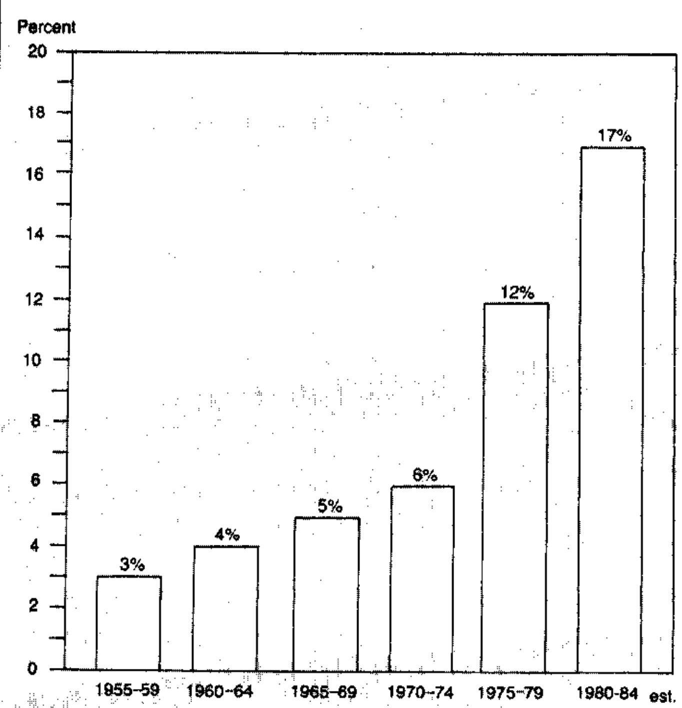
1983 will stand out as the year of strong economic recovery marred only by a growing fear that massive federal budget deficits might cause another severe recession in the near future. The massiveness of the 1983 federal budget deficit ($195 billion) is illustrated by a stunning intergovernmental comparison—it was approximately $24 billion *greater* than the 1983 tax collections of all 50 state governments combined (see chart 1).

The menacing character of this budget deficit is clearly acknowledged in President Reagan's most recent budget message:

> All signs point to continued economic growth, vigorous investment and rising productivity without inflation—all but one, only the threat of indefinitely prolonged high budget deficits threatens the continuation of sustained non-inflationary growth and prosperity. It raises the specter of sharply higher interest rates, choked-off investment, renewed recession and rising unemployment.

In this article we seek to answer this question: Is it reasonable to assume that federal policymakers will soon make a substantial reduction in the budget deficit? This question is raised because there exists a widespread and deeply pessimistic belief that Washington is so paralyzed by special interest politics and partisan conflicts that only a searing economic crisis or the imposition of a drastic remedy—a constitutional balanced budget amendment—can inject sorely needed fiscal discipline into national government affairs.

Chart 1
Federal Budget Deficit As A Percent of Total Federal Expenditures



Source: U.S. Office of Management and Budget, ***The Federal Budget for 1984,*** Table 24, and ACIR staff computations.

THE QUICK ANSWER

The quick answer to our central question is *yes*; it is reasonable to assume that even in the absence of a crisis Washington policymakers will soon make the hard budget choices—expenditure cutbacks and tax increases—needed to reduce budget deficits substantially. Why? Because federal policymakers have lost, one by one, the five political heat shields that for decades have enabled them to travel safely at a far greater expenditure speed than that maintained by their counterparts at the state and local levels (see chart 2).

Federal reentry into the zone of hard budgetary choices is likely to be quite painful for federal policymakers and somewhat painful for state and local officials, but quite beneficial to the nation in general and to our federal system in particular.

THE LONGER EXPLANATION

Before making the case that the natural workings of our political system are likely to force a considerable reduction in federal budget deficits in the near future, it is necessary to introduce two startling historical facts:

1. Over the last 50 years, federal expenditures rose in every decade at a faster clip than did the economy—rising from 2.5% of GNP in 1929 to 25% of GNP by 1983. Despite this 900% real growth, not one president was ever defeated because he raised taxes or ran up large budget deficits.

2. During this same period, state and local expenditures from own sources rose far more modestly—from 7.5% of GNP in 1929 to 10.4% by 1983. Despite this relatively slow expenditure growth, the road to stronger state and local revenue systems was paved with the political bones of state and local policymakers.

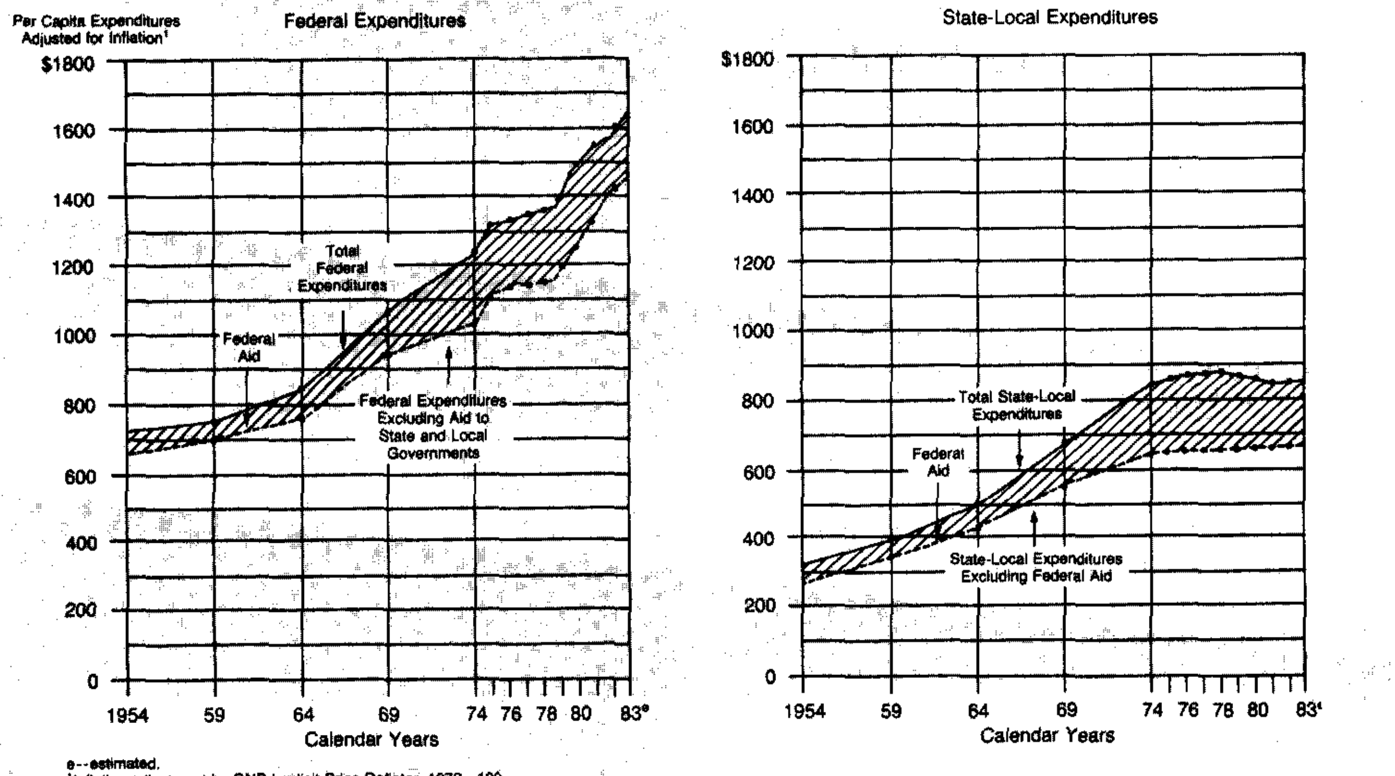
Why could federal officials fly so much faster and more safely through the public expenditure skies than could state and local officials? The answer: throughout the last five decades federal officials were protected by a variety of political heat shields—unique protective devices not available to elected state and local officials.

The Crises and Charisma Shield, 1929-1953

The first and most massive political heat shield was forged by a series of crises (the Great Depression, World War II, and the Korean War) and the emergence of a charismatic leader, Franklin Roosevelt. This combination of crises and charismatic leadership mustered strong public support for creating a powerful revenue system—so powerful that it revolutionized American public finance. At the beginning of this era of crises

Chart 2

After The Tax Revolt—Federal And State-Local Spenders Go Their Separate Ways



e—estimated.
[1]Inflation adjustment by GNP Implicit Price Deflator, 1972=100.
Source: ACIR computations based on U.S. Department of Commerce National Income and Product Accounts.

(1929) the national government was the small boy on the intergovernmental block; by the end of this period (1954) it towered over the states and localities.

Table 1
EXPENDITURES FROM OWN FUNDS
(% of GNP)

Year	Federal	State & Local
1929	2.5%	7.3%
1954	19.0	7.5

Source: ACIR staff computations.

The Domestic Transfer Shield

As the Korean War ended federal officials possessed two unique fiscal advantages—a powerful income tax and the ability to shift vast sums from defense to domestic programs. This great change in expenditure priorities at no political risk provided federal officials with a fiscal advantage possessed by no governor or mayor. The magnitude of this transfer toward the domestic sector of the federal budget is illustrated in the table below.

Table 2
FEDERAL EXPENDITURES
(% of GNP)

Calendar Year	*Defense*	*Domestic*	*Interest*
1954	11.2%	6.5%	1.3%
1959	9.3	8.0	1.3
1964	7.7	9.6	1.3
1969	8.1	10.5	1.3
1974	5.4	14.1	1.4
1979	4.6	14.7	1.8
1983 est.	6.1	16.1	2.9

Source: ACIR staff computations.

The Russian invasion of Afghanistan in 1978 ended these transfers during the latter part of the Carter Administration. The Reagan Administration has accelerated the defense buildup. As a result, federal policymakers are now pulling resources away from domestic programs to help finance the Pentagon's growing requirements. Federal aid to state and local governments proved to be among the most vulnerable of domestic programs, and federal aid's decline after 1978 is illustrated in chart 3.

The Income Tax Shield

As noted earlier, the end of the Korean War also provided the federal government with yet another unique fiscal advantage—an extraordinarily productive income tax. This tax system was so productive that it simultaneously sustained six major tax cuts and a steadily expanding federal domestic sector between 1955-1979. It is no wonder that state and local officials demanded that the federal government share part of the revenue from this highly productive tax source.

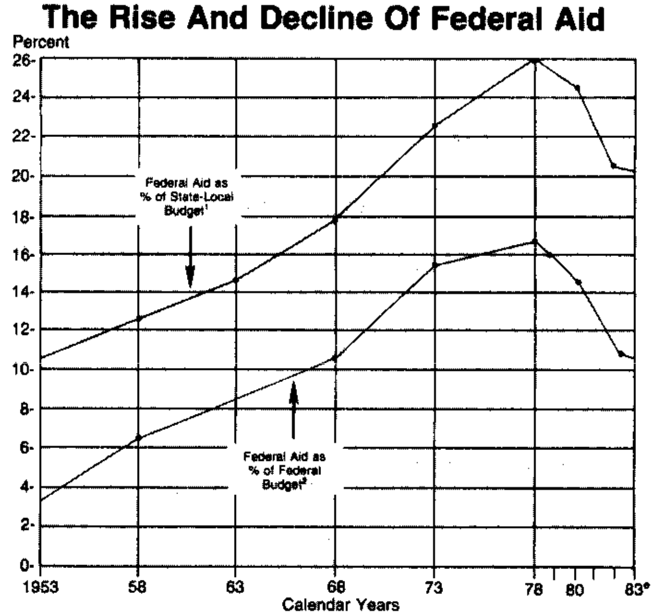
There is now evidence of growing public discontent with the federal income tax—an aversion documented by responses in ACIR's 1983 public opinion poll. Every year since 1979 the federal income tax has received more "votes" than any other major tax when respondents are asked "Which do you think is the worst tax—that is, the least fair?"

The ACIR survey results indicated that the federal income tax is unpopular because many taxpayers perceive that it has too many loopholes and that these loopholes are used by the rich to unfairly reduce their tax liability. Although these abuses may not actually be widespread, the perception exists and it is strengthened by the complexity of the federal income tax.

Public hostility toward the income tax is also caused by the fact that persons earning the same income can be treated very differently under the federal tax code. For example, is it fair that those who save their money and pay their bills on time pay more federal income tax than those who borrow heavily?

Public aversion to the income tax was further deepened as prosperity and, more recently, inflation pushed millions of middle-class taxpayers into tax brackets that until recently had been the province of only the truly wealthy. Indexation of the income tax, scheduled to start in 1985, will put an end to the bracket creep caused by inflation. By the same token it

Chart 3
The Rise And Decline Of Federal Aid



e—estimated.
[1]Federal aid as a percentage of state-local expenditures after transfers.
[2]Federal aid as a percentage of federal expenditures from own funds.
Source: ACIR staff compilation based on **Survey of Current Business** reports.

1983 CHANGES IN STATE INDEXATION POLICIES

Indexing personal income taxes was a policy spawned during the "Tax Revolt Era." During the late 1970s, public pressure created national momentum for cutting taxes and reforming tax systems. Indexation filled both demands and became a popular state experiment, especially during this period of extraordinarily high inflation rates.

Since 1978, seven states have indexed their personal income taxes, while three states have approved indexing in the near future. Of these ten states, half took action last year to curb revenue losses due to annual adjustments in the income tax base.

Three western states led the way—Arizona, Colorado, and California. Each adopted indexation during their 1978 legislative sessions. The following year, five state legislatures passed indexing measures with various implementation dates. In Montana, the measure was vetoed by the governor but it passed by voter initiative the following year. Indexing measures proved popular as evidenced by the number of states that adopted stronger indexing provisions as their experience and confidence with the experiment grew.

The worst recession in decades hit many states in 1982 and 1983. States responded to this fiscal crisis with numerous budget cuts and with the largest tax increases since 1971. Last year, 38 states elected to raise taxes. To help alleviate the recession-induced revenue shortfall, some indexing cutbacks were swept into major state tax packages. All of these alterations were temporary measures. Those states making changes in indexation include:

- Colorado and Wisconsin, where lawmakers elected to suspend indexing for three tax years in addition to raising other tax rates to help balance the budget. Colorado's budget problems lagged those of her sister states, but when revenue shortfalls occurred, legislators increased sales, motor fuels, and cigarette taxes in addition to suspending indexing and gradually phasing-in new corporate income tax rates. Wisconsin took similar steps for deficit reduction and placed a 10 percent surtax on personal and corporate income taxes, increased the motor fuels tax, made previous temporary sales and cigarette tax hikes permanent, and suspended indexing.

- Oregon and South Carolina officials decided to postpone implementing indexing which was scheduled to begin in 1983, the second such postponement for each state. In Oregon's case, the recession hit the state's timber industry early, and consequently budget balancing actions were necessary in 1981. Indexing was rescheduled to begin in 1983. But budget problems still plagued the state and implementation was moved forward another two years to 1985. Revenue shortfalls were less severe in South Carolina, but indexation was postponed in 1982 and again in 1983, and has been rescheduled for the 1984 tax year.

- An unusual situation developed in Maine. In November 1982, voters approved an initiative to index the income tax retroactively for tax years 1981 and 1982. When the legislators convened the next January, they quickly passed a retroactive tax increase for those years exactly offsetting the tax loss attributed to indexing because the state did not have sufficient funds. Indexation in Maine will begin in the 1983 tax year.

- Two other states—Arizona and Minnesota—discussed curbing indexation due to serious revenue problems, but no measure was adopted. As a precaution, Minnesota did implement a new policy that would allow automatic suspension of indexing if a budget deficit were forecast for the end of the biennial budget period.

- Of the remaining states with indexing laws, California did not attempt to make any changes despite a $1 billion revenue shortfall in the FY83 budget. This inaction could be attributed partially to the newly elected governor's "no tax increase" platform and to the fairly recent initiative adoption of full indexation. Iowa has a conditional indexing plan where indexation will begin only if the ending general fund balance is $60 million or more, a level not reached in 1983. Budget conditions in Montana were relatively good enabling indexing laws to remain intact.

Future national economic conditions may dictate whether or not indexation will be fully restored in the states that had to delay or alter implementation. Meantime, the debate over indexation has shifted from state capitals to Washington.

Federal personal income taxes were indexed as part of the 1981 *Economic and Recovery Tax Act* (ERTA), but the implementation date was slated for January 1985. Now that federal indexing is only months away, postponing or eliminating indexing has been proposed as one way to increase federal revenues and reduce deficits. The Congressional Budget Office estimates that postponing indexation will generate an additional $90 billion by 1989.

President Reagan has firmly endorsed indexation and he restated that support in his January State of the Union Address. Signals from Capitol Hill are mixed, with many on both sides of the aisle preferring to wait on major tax changes. The fate of indexing will probably not be determined decisively until later this year.

In 1976, the Advisory Commission on Intergovernmental Relations strongly recommended indexing both federal and state income taxes to promote political accountability, tax equity, and fiscal discipline in government spending.

—Karen Benker

"The critical message for our federal system is this—despite all the gloomy talk, the national government is not in the same position as a corporation on the eve of Chapter 11 bankruptcy proceedings."

will deprive federal spenders of an estimated $90 billion in revenue that would otherwise have been collected between 1985 and 1989.

The Social Security Shield

The enormous popularity of the social security system provided the federal government with its fourth fiscal heat shield. With virtually no political risk, Congress repeatedly raised social security tax rates during the 1960s and 1970s to finance broadened program coverage. These repeated social security tax hikes met with little public opposition because most of the public viewed them as higher insurance premiums needed to pay for better protection.

Easy votes in the Congress to raise social security tax rates are a thing of the past. In fact, the 1983 tax hike was justified on the grounds that it was needed to "save" the system, not to expand it. This same 1983 legislation actually trimmed some of the social security benefits—an action that would have been considered unthinkable a few years earlier. This action also lends support to the view that, given the right leadership and political conditions, national leaders can rise to the occasion and make tough decisions even in such politically sacrosanct areas as social security benefits.

The Budget Deficit Shield

For years, growing federal budget deficits attracted remarkably little attention and political leaders justified the occasional large deficit incurred during a recession as necessary to stimulate economic recovery. Public acceptance of deficit financing provided federal officials with their fifth unique fiscal advantage—they could cover their revenue shortfalls by borrowing, thereby avoiding the political pain associated with tax hikes or expenditure cutbacks. In 23 of the last 24 years, the national government has spent more than it collected—these deficits total about $1.0 trillion. Moreover, as illustrated in Chart 1, the budget deficit problem has been growing geometrically worse over the last two decades.

Quantitative differences can have qualitative effects. The enormous size of the federal deficit has now become the nation's number one economic worry. As a result, federal policymakers are about to lose their fifth and last political heat shield.

Although there is now widespread agreement that the federal government has a serious fiscal ailment that must be treated, there is far less agreement on its cause and cure. The physicians located at the right end of the policy spectrum blame the ailment on the runaway costs of domestic social programs and prescribe a sharp cutback in that sector of the budget. The physicians at the other end of the spectrum point to rapidly rising defense spending and to recent tax cuts as two primary causes; their prescription—slow down the defense buildup and raise taxes.

Those who occupy the central portions of the policy spectrum are likely to make the final diagnosis. Their prescription for budget deficit reduction will probably draw from all sides—slow down the defense buildup, cut domestic spending and raise taxes.

The Congress has an added incentive for demonstrating to the nation that it can deal quickly and effectively with the deficit problems—the state shotgun behind the congressional door. Thirty-two of the required 34 states have made application to the Congress for a limited constitutional convention to draft a balanced federal budget amendment. Strong efforts are currently being made in several states to push the balanced budget amendment over the top.

SUMMARY

The critical message for our federal system is this—despite all the gloomy talk, the national government is not in the same position as a corporation on the eve of Chapter 11 bankruptcy proceedings. Rather, it is a government that, for the first time in 50 years, can no longer count on a variety of political heat shields to protect its leaders if they decide to travel along the public expenditure corridor at a speed faster than that of the economy. One by one, their protective devices have either disintegrated or lost much of their shielding power. Accordingly, for the first time in 50 years, federal political leaders will soon be forced to make the same hard budgetary and political choices that state and local elected officials are constantly required to make.

To put the issue in broader perspective, the progressive loss of special fiscal privilege by federal officials may generate a new equilibrium within our federal system—a new fiscal balance that could drastically slow down, if not check, the centralization of domestic power in Washington.

John Shannon is ACIR's Assistant Director for Taxation and Finance.

States and Localities in 1983: Recession, Reform, Renewal

by Jane F. Roberts

State and local government entered 1983 in the worst fiscal shape in at least a decade. Records were set for spending cuts, tax increases and deferrals. By year's end, however, the fiscal standing of many states had improved as the effects of their austerity measures and the recovery began to take hold.

Institutionally, however, states entered the decade of the 1980s in perhaps the best shape in recent memory. As a forthcoming ACIR study shows, most states have been involved in a "quiet revolution" during the past 20 years and are now more competent, vigorous and assertive governments.[1] Ironically, some of the reforms states instituted have increased their vulnerability to economic cycles. They took to heart the recommendation of reformers and most adopted income taxes, revenues from which increase during times of economic growth but also decline during less prosperous times.

This article begins with a discussion of state and local fiscal adjustments and the anticipated effects of recovery on their treasuries. Despite their understandable preoccupation with budget balancing during the year, state and local governments placed a renewed emphasis on their traditional programs and responsibilities, took the lead in entrepreneurial activities, managed large intergovernmental programs, and showed progress in building stronger state-local partnerships. Taken together, these developments provide hopeful signs that state and local governments are responding to the challenges posed by decentralized decisionmaking.

THE STATE AND LOCAL FISCAL CONDITION

State and local governments are experiencing distress. In addition to structural changes in the national economy, several other factors have affected their fiscal posture: the taxpayer revolt, the recession, and a reduction in federal aid.

The states' mandate, either by law or tradition, to balance their budgets has been met by combining cutbacks with new revenue-raising measures. In 1982, 42 states used at least one type of budget-balancing measures, and that number increased to 47 in 1983. Thirty-nine states increased taxes by almost $8 billion, representing the greatest increase ever in current dollars, and the second largest increase in inflation-adjusted dollars in more than a decade.[2] More than three-quarters of the states also cut their budgets after they had been adopted. According to the National Conference of State Legislatures (NCSL), 11 states had deficits and 15 had balances of 1% or less of general fund spending by July, the beginning of FY 1984 for most states. Only seven states had budget balances of 5% or more— the level most analysts consider a prudent minimum.[3]

State personnel practices also have been dramatically affected by the fiscal environment, with 22 states limiting pay adjustments to 5% or less, and 19 states granting no increase whatsoever. Additionally, 23 states cut their workforces last year, led by New Hampshire with

[1] **The States Transformed: Expanded Roles, New Capabilities,** ACIR, Washington, D.C., forthcoming.

[2] Information released at the National Conference of State Legislatures' State-Federal Assembly, Washington, D.C., December 14, 1983.

[3] National Conference of State Legislatures. "State Budget Actions in 1983," Denver, September 1983.

"The fiscal outlook for many states does appear to be improving, however, as the national economic recovery begins to take hold.

a 13% reduction. At least 17 states also imposed a hiring freeze. Two states—Delaware and Nevada—tied pay increases to the health of their economies.

The fiscal outlook for many states does appear to be improving, however, as the national economic recovery begins to take hold. Morgan Guaranty Trust Company, for example, projects that in 1983 total revenues will exceed total expenditures by $15 billion among all state and local units, and an even greater difference is projected for 1984. The apparent turnaround is attributed to three factors: spending cuts, a slight increase in federal aid, and an expanding revenue base due to national economic recovery.[4]

At least two states—California and Minnesota—experienced a dramatic fiscal turnaround during the year. California began the year with a $1.5 billion deficit and a stack of IOUs to its employees and some of its suppliers. By contrast, a modest surplus is anticipated by the end of the state's current fiscal year, with substantial growth to $2 billion expected by 1984-85. In response, Governor George Deukmejian has proposed creating a $1 billion "rainy day fund" for future fiscal emergencies and to increase education funding. In Minnesota, where four tax increases were adopted during an 18-month period, analysts expect a $250 million reserve to grow to $600 million. Governor Rudy Perpich, however, is not expected to call for any major tax reductions. As one state spokesman recently noted: "We're being cautious. Projections are one thing, but they aren't money."[5]

Not all states are reaping the benefits of economic recovery, however. For example, West Virginia has the highest unemployment rate in the country and continues to face very serious problems. Louisiana has spent most of its large energy-based surplus and is now using non-recurring revenues to balance its budget. And the National Association of State Budget Officers (NASBO) cautions that some eastern and southern states expect an even greater combined deficit than they forecasted six months ago.

Although every state will not benefit to the same extent, the generally healthier outlook nationally will help stabilize state and local budgets and credit ratings, and help reduce the need to find alternative funding mechanisms for state and local debt. In what may become the motto of public officials in the 1980s, a Michigan state senator offered these words of advice to legislative fiscal leaders early this year: "Economies are cyclical. Money should be saved during . . . good years to take up slack in the bad."[6]

[4] "Morgan Guaranty Survey," Morgan Guaranty Trust Company, New York, October 1983.

[5] **The Washington Post,** November 25, 1983.

The Local Condition

In November, the Joint Economic Committee (JEC) released its 1983 study of city fiscal conditions. One of the most striking—and serious—findings was that for the first time there was a large increase in both the number and proportion of medium-sized cities with operating deficits. Previously, the largest proportion of these deficits had been limited to big cities. By contrast, big city distress appears to have stabilized and even ameliorated slightly, according to the survey. In other areas the JEC found that:

- city workforces declined in 1982 but are expected to stabilize in 1983;
- the increase in city expenditures exceeded the rate of inflation as well as the average increase in current revenues;
- the use of borrowing has slowed, reflecting a continued dampening in capital spending;
- cities are becoming more dependent on own-source revenues as intergovernmental aids continue to decline, even though state aid is expected to rise somewhat; and
- changes in local revenue systems have been mixed, with some shifts occurring from business and property taxes to income and consumption taxes.

The study concludes:

> The major fiscal chore at the city level is akin to that at the federal level: in most quarters, expenditures appear to have been held down or cutback as much as practicable. Now, the question becomes one of fashioning productive, equitable, and efficient revenue systems for financing them.[7]

In December the National League of Cities (NLC) released its fiscal survey of 107 cities which found that local officials are more concerned about tax and spending limits and high interest rates than about federal

[6] Statement made at National Conference of State Legislatures' seminar for fiscal chairmen, Denver, January 1984.

[7] Joint Economic Committee, **Trends in the Fiscal Condition of Cities: 1981-1983,** Washington, D.C., November 1983.

"Not all states are reaping the benefits of economic recovery, however."

aid increases. According to NLC Executive Director Alan Beals, this response constitutes a striking aspect of the survey and a marked change in local attitudes:

> Rather than looking for new grants from the state or federal government, city officials would rather have the authority and flexibility to do things on their own. Rather than more money, they want the existing aid programs to be stabilized. Rather than bailouts, they would rather have a sound and healthy national economy.[8]

Respondents cited three factors that continue to place stress on city budgets: demand for public services, demands for salary increases, and inadequate local tax bases. When asked about the most serious issues confronting their cities, the officials clearly identified six problem areas: high interest rates, unemployment, steep energy costs, inadequate local revenue sources, an inadequate job base, and inadequate housing for low-to-moderate income residents.[9]

Outlook

Although the strength and duration of the national economic recovery clearly will have an impact on state and local budgets there is another important cloud on their fiscal horizons: a revival of the taxpayer revolt. The signals in 1983 were mixed: Ohio voters overwhelmingly rejected an attempt to repeal massive tax hikes, but voters in Michigan began to show signs of rebellion and have thus far recalled two state legislators who supported increased taxes. Voters in Anchorage, Alaska also approved a highly restrictive tax lid that forced an immediate cut of $25 million from the city's $190 million budget.

The large number of 1983 tax increases and the possibility of surpluses in at least some states may help set the stage for another tax revolt. California, Florida, Michigan, Oregon and perhaps Massachusetts will have 1984 ballot proposals to cap or rollback tax levels. Petition drives for similar measures are underway in several other states. Energy-rich states such as Louisiana, Oklahoma and Texas—where gas and oil revenues are down—also may become trouble spots.

A degree of optimism, though, has been expressed that a new wave of taxpayer protests will not sweep the country. Steven Gold, director of NCSL's intergovernmental finance project, offered this assessment: "If the (Ohio) measures had passed, tax protests in other states would have received a big shot in the arm. But since they failed, the odds are lower (that) other tax revolt measures will pass."[10]

STATES AND LOCALITIES RESPOND

Charles Kurfess, former speaker and minority leader of the Ohio House of Representatives, offered the following observation at an ACIR hearing last fall:

> Now that the states have tooled themselves up rather adequately, we must ask ourselves: for what purpose, for what role? . . . What we need now more than ever is a generation of public officials dedicated not just to making their governmental entity or institutions more effective and more competitive, but to making the entire federal system more efficient and more effective in serving their constituents at every level of government.[11]

The "new generation" that Mr. Kurfess described showed stronger signs of life this past year, as state and local officials responded to their service and program responsibilities in traditional as well as non-traditional ways.

In the health care field, for example, evidence is mounting that states are taking the lead in trying to stem spiraling health care costs. According to Carl Schramm, director of the Johns Hopkins Center for Hospitals and Management, state actions to cope with escalating costs "have been more important than any steps taken by the federal government."[12] Data from the six states that have attempted to regulate health care costs, Connecticut, Maryland, Massachusetts, New Jersey, New York and Washington, reveal substantially lower rates of cost increases than in other states.

Three more states approved laws regulating health care costs in 1983—Maine, West Virginia and Wisconsin. The Wisconsin program, for example, is both regulatory and designed to spur competition. Already the Wisconsin approach has shown signs of success. State Senator Paul Offner observed:

> This past year, 15% of our state employees were in health maintenance organizations (HMOs); 65% have signed up for next year. Six months ago we budgeted a 17% annual increase for state employee health benefits; today it looks as if the actual increase will be half that amount . . . The medicaid HMO plan will eventually save as much as $10-12 million a year.[13]

Significant developments in three other areas—education, public physical infrastructure, and economic development—also provide examples of the diversity and wealth of approaches employed by states and localities during the year.

States at Center of Education Debate

After years of being eclipsed by a host of other issues, education moved close to the top of the nation's domestic agenda in 1983. The states now provide over half of the total spending for elementary and secondary

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[8] Press conference, Washington, D.C., December 28, 1983.

[9] "City Fiscal Conditions and Outlook for Fiscal 1984," National League of Cities, Washington, D.C., December 1983.

[10] Comment made at National Conference of State Legislatures' State-Federal Assembly, Washington, D.C., December 15, 1983.

[11] Comments made at ACIR hearing, Washington, D.C., September 22, 1983.

[12] **Governors' Bulletin,** National Governors' Association, Washington, D.C., December 23, 1983.

[13] **Governors Bulletin,** National Governors' Association, Washington, D.C., December 23, 1983.

1983 Initiatives to Target State Economic Development Aid

Two recessions in five years, structural economic shifts, and interstate and international competition have all helped push economic development to the fore among state priorities. By 1983, every state had some type of economic development office with the same goals: jobs, jobs, jobs.

States employ a mix of approaches to economic development. Initially they concentrated almost exclusively on bringing new industries into a state—called "smokestack chasing." More recently states have added "high tech chasing" to their agendas in their search for high growth, "clean" industries. Industrial recruitment remains a primary focus of state development agencies, but many are also extending or instituting incentives to keep or expand businesses they already have. Further, the majority of states are pursuing international trade opportunities and foreign investment as ways to improve their economies as an alternative to "beggar their neighbor" strategies.

Although all states have active economic development programs, very few target assistance to distressed communities, people, or businesses. In the course of a four-year study, **The States and Distressed Communities,** the Advisory Commission on Intergovernmental Relations found that targeting economic development funds, long a controversial national issue, is also controversial at the state level. Nonetheless, a number of states have pioneered in channelling aid to where it is most needed. Below are several examples of 1983 initiatives to target economic development programs to distressed places, people or businesses.

Pennsylvania. Nearly all of Pennsylvania's grant and loan programs for commercial and industrial development are now targeted on the basis of need.[1] The state embarked on comprehensive planning to allocate public resources in 1979 with its "Choices for Pennsylvania" effort. The most recent initiative to target economic development resources is the Commonwealth's Enterprise Development Area Program, begun in 1983. This effort involves directing the resources of over 35 grants, loans and technical assistance programs to 27 distressed areas in 24 communities. The Enterprise Development Area Program is being coordinated by a cabinet level task force under the direction of the Governor's Economic Development Committee.

Pennsylvania is not alone in targeting assistance for industrial and commercial development. According to the ACIR survey, 22 states in 1983 had targeted a total of 37 financial aid programs for these purposes. The number of states that direct this type of assistance doubled in the last four years, reflecting a heightened awareness of the problems businesses face in distressed areas and of the impact focused state policy can provide.

Delaware. In 1983, Delaware launched the first state-wide test of a voucher program for job training. It is called the Dislocated Worker Program and is aimed at long-term unemployed workers who have little prospect of returning to their former jobs. These workers are offered cash subsidies to enable them to secure training in "demand occupations." The 1983 pilot had impressive results—of those who participated and completed the training of their choice, 80% were placed in related jobs. The average training cost per participant was $1,000. Based on last year's results, Delaware Governor Pierre Dupont endorsed an expanded program to be partially funded by an increased tax on employers through the unemployment compensation system.

Delaware is one of only nine states in the nation that currently have customized targeted job training programs, although the number of states with such programs has doubled over the past four years. Delaware's expanded voucher system for training, if approved by legislature, is particularly strategic. The State's unemployment rate, currently under 8%, is below the national average, but State officials anticipate increased worker dislocation due to international competition and want to be prepared to face expected changes in the workforce.

Massachusetts. Massachusetts is well-known for targeting a variety of assistance programs to "high need" groups and places. In 1983, the State added to its arsenal of economic development tools by mandating that the State's 250 local housing authorities set aside at least 5% of large construction and design contracts for State-certified minority- and women-owned businesses. In the first year of implementation, $1.3 million was allocated to minority and female owners of construction firms. The Massachusetts program operates as a condition of state financial aid.

The Commonwealth is reaching beyond set-asides in purely state-administered procurement and construction activities and into programs that are assisted, but not run, by the State itself. Massachusetts certifies eligible minority- and women-owned contractors, and updates, maintains, circulates a list of these contractors.

A total of 26 states have programs providing some type of minority business assistance, according to the ACIR survey. Most of these programs are geared toward providing technical assistance, education and training, and loan packaging assistance.

[1] "Commonwealth of Pennsylvania Initiatives to Aid Distressed Communities," prepared for the ACIR, December 1983.

MAJOR STATE TAX

Alabama	Increased oil and gas tax from 8% to 10%.
Alaska	Increased alcohol excise tax rates.
Arizona	Temporarily raised sales tax from 4% to 5%. Increased business transaction taxes 25%.
Arkansas	Increased sales tax from 3% to 4%. Increased cigarette tax from 17.75¢ to 21¢ per pack. Raised coal severance tax from 2¢ to 10¢ per ton. Increased alcohol excise tax.
California	Adopted a trigger sales tax that may increase the rate from 4.75% to 5.75%.
Colorado	Temporarily suspended income tax indexing and the low income tax credit. Temporarily increased sales tax from 3% to 3.5%. Increased gasoline excise tax from 9¢ to 12¢ per gallon. Temporarily suspended corporate income tax rates. Temporarily increased cigarette tax from 10¢ to 15¢ per pack.
Connecticut	Instituted a tax on interest income. Raised corporate profits tax from 10% to 11.5%. Increased business services tax from 3.5% to 7.5%. Instituted a real estate transaction tax. Placed a 10% surcharge on inheritance taxes. Increased alcohol excise tax. Increased motor fuel tax from 11¢ to 14¢ per gallon.
Florida	Decreased motor fuel excise tax from 8¢ to 4¢ per gallon but added 5% sales tax. Adopted unitary method of taxation. Increased alcohol beverage excise tax.
Idaho	Temporarily raised sales tax from 3% to 4.5%. Raised corporate income tax from 6.7% to 7.7%. Increased motor fuel tax from 12.5¢ to 14.5¢ per gallon.
Illinois	Temporarily increased personal income tax from 2.5% to 3.0%. Temporarily increased corporate income tax from 4.0% to 4.8%. Increased sales tax from 4% to 5%. Exempted sales tax on food and drugs. Raised gasoline tax from 7.5¢ to 11¢ per gallon.
Iowa	Increased sales tax from 3% to 4%. Made 18¢ per pack cigarette tax permanent.
Kansas	Limited federal tax deductions on personal income tax. Instituted severance tax on oil, gas, coal, and salt. Raised cigarette tax from 11¢ to 16¢ per pack. Increased alcohol tax. Increased gasoline tax from 8¢ to 11¢.
Louisiana	Decreased the individual income tax personal exemption from $6,000 to $4,500 for single taxpayers and from $12,000 to $9,000 for married taxpayers.
Maine	Retroactively raised personal income tax to nullify retroactive indexing. Raised motor fuel excise tax from 9¢ to 14¢ per gallon. Adopted unitary tax method. Changed corporate income tax rates and brackets. Raised cigarette tax from 16¢ to 20¢ per pack.
Massachusetts	Established minimum tax on motor fuels of 11¢ per gallon. Raised cigarette tax from 21¢ to 26¢ per pack.
Michigan	Temporarily increased personal income tax from 4.6% to 6.35%.
Minnesota	Made 6% sales tax permanent. Raised motor vehicle excise tax. Extended 10% personal income tax surcharge. Raised motor fuel tax from 13¢ to 17¢ per gallon. Changed mixed drink tax.
Mississippi	Increased sales tax from 5% to 6%. Increased general wholesale sales tax.
Montana	Increased motor fuel tax from 9¢ to 15¢ per gallon. Increased cigarette tax from 12¢ to 16¢ per pack.
Nebraska	Adjusted personal income tax rates from 18% to 20% of federal tax liability. Raised corporate income tax rates. Temporarily raised sales tax from 3.5% to 4%. Exempted food from the sales tax. Adjusted personal income tax credit for food. Made 18¢ per pack cigarette tax increase permanent.
Nevada	Instituted state property tax. Raised tobacco taxes. Increased insurance premium tax from 2% to 3%. Increased alcohol excise tax. Instituted statewide room tax of 1%. Instituted wholesale tax on soft drinks of 5%.

CHANGES IN 1983

New Hampshire Temporarily increased business profits tax surtax from 13.5% to 19.5%. Temporarily increased real estate transfer tax. Changed base and rate or utility franchise tax. Raised excise tax on beer. Made 14¢ per gallon motor fuels tax perm: nent.

New Mexico Increased corporate income tax 20%. Increased personal income tax 30%. Increased sales tax from 3.5% to 3.75%. Changed alcohol excise tax. Raised insurance premium tax from 2.5% to 3%. Raised oil and gas emergency privilege tax.

New York Instituted capital gains tax on real estate sales. Increased realty transfer tax. Instituted 2.5% oil gross receipts tax and eliminated unitary taxation for oil companies. Instituted tax on out-of-state phone calls. Increased cigarette tax from 15¢ to 21¢ per pack. Raised alcohol excise tax.

North Carolina Raised sales tax limit on purchase of motor vehicles.

North Dakota Raised sales tax from 3% to 4%. Raised personal income tax 40% and repealed energy credit. Raised corporate income tax 50%. Increased cigarette tax from 12¢ to 18¢ per pack. Increased alcohol beverage sales tax. Raised motor fuel tax from 8¢ to 13¢ per gallon. Increased coal conversion facilities privilege tax.

Ohio Raised personal income tax 90%. Liberalized several personal income tax credits. Raised corporate and bank franchise taxes. Increased public utilities tax.

Oklahoma Removed gasohol exemption. Conformed to ACRS, but provided for increases in corporate income tax to offset losses.

Oregon Continued income tax surcharge and substituted personal credit for exemption. Continued temporary 19¢ per pack cigarette tax increase. Raised motor fuel excise tax.

Pennsylvania Raised personal income tax 11%. Increased motor fuel excise tax from 11¢ to 12¢ per gallon. Increased oil franchise tax from 3.5% to 5%. Eliminated sales tax exemption for cigarettes.

Rhode Island Temporarily increased personal income tax from 21.9% to 26% of federal tax liability. Temporarily increased corporate income tax from 8% to 9%. Raised alcohol excise tax. Raised motor fuel tax from 10% to 11% of average wholesale price.

South Carolina Delayed personal income tax. Increased alcohol excise tax.

Tennessee Made 4.5% sales tax permanent.

Utah Temporarily increased sales tax from 4% to 4.625%. Increased alcohol excise tax. Raised corporate franchise tax and conformed to ACRS.

Vermont Raised personal income tax from 24% to 26% of federal tax liability. Increased motor fuel tax from 8¢ to 11¢ per gallon. Increased cigarette tax from 12¢ to 17¢ per pack.

Washington Increased sales tax from 5.4% to 6.5%. Raised various Business and Occupation taxes. Raised all other General Fund taxes 7% except alcohol 14% and cigarette 15%. Reenacted timber tax. Increased motor fuel excise tax 15%.

West Virginia Increased personal income tax rates. Temporarily imposed surtax on personal income tax. Enacted a 5% wholesale tax on motor fuels.

Wisconsin Placed 10% surtax on personal income tax. Made 5% sales tax permanent. Made 25¢ cigarette tax permanent. Extended 10% surtax on corporate income tax. Suspended personal income tax indexing. Increased motor fuels tax from 13¢ to 15¢ per gallon.

Source: ACIR staff compilations based on the National Conference of State Legislature, Legislative Finance Paper, **State Budget Actions in 1983,** September 1983, Denver, CO.

schools. Their role in shaping education policy and in equalizing educational opportunity is, and will continue to be, crucial. In just the past two years, 130 task forces in 48 states have assumed an active lead in examining education trends and proposing major policy shifts.

During 1983, education was high on every state's agenda and deliberations led to changes in some:

- California adopted a reform plan that includes tighter high school graduation requirements, more stringent sanctions against undisciplined students, and monetary rewards for master teachers. The plan also denies lifetime teaching credentials to new teachers, instead requiring them to renew their certificates every five years. State aid was increased by $800 million.
- In Illinois, Governor James Thompson signed legislation to increase high school graduation requirements and to encourage gifted-students programs. He created a master teacher program advisory committee to identify outstanding teachers in the state.
- In Pennsylvania, a new school aid formula was approved and aid was increased more than 10%.

Perhaps some of the most significant initiatives and results in education reform occurred in the Southern states. Nearly every state launched—or is about to do so—a major effort to improve its educational system. During a special session, the Florida legislature approved over $230 million in new taxes to finance a merit pay plan for teachers, additional math and science programs, longer school days, and tougher graduation requirements.

In Tennessee, Governor Lamar Alexander proposed the broadest package of education reform legislation in the country. Although unsuccessful this first year, the Governor's proposals will be re-introduced in some form during the 1984 legislative session. And a Virginia task force recommended a master teacher plan that Governor Charles Robb will incorporate into his education proposals.

In Arkansas, where the state courts struck down the school finance system, Governor Bill Clinton named a special commission not only to respond to the court's ruling but to recommend a comprehensive package of reforms for that State's educational system. In November, the Arkansas legislature approved a series of changes based on the commission's recommendations, that among other items include mandatory competency tests for teachers, high school entrance exams, scholarships for students who attend Arkansas colleges, and a tax increase to underwrite the $154 million required to fund the mandated improvements. To help meet the new requirements, nearly 2,700 classrooms must be built and over 3,700 teachers hired during the next three years. And in Mississippi, where a sweeping overhaul of the education system was approved in late 1982, nearly half of last year's budget increase of $170 million will be dedicated to education.

South Carolina Governor Richard Riley recommended a one-cent increase in his State's sales tax to finance a general salary increase for teachers and a merit pay system. The program parallels education reform efforts launched in Arkansas and Mississippi, and would (1) provide remedial instruction for 200,000 students who do not meet basic skill standards, (2) begin mandatory kindergarten classes, (3) award incentive grants to schools showing improvement, (4) require college preparatory classes at all high schools, and (5) offer special programs for talented and gifted students. The proposal lost by only three votes in this first attempt at passage, and will be a major part of the Governor's 1984 legislative program.

Not surprisingly, as a state budget issue during 1983, school finance was eclipsed only by tax increases. Nonetheless, the number of states approving significant boosts in school aid were relatively few in number. Although education is the largest item in the vast majority of state budgets and it benefited from higher tax revenues, most additional tax revenues were channeled to other purposes.

Public support for further school spending increases will probably depend on tieing those expenditures to improvements in the quality of education. According to Robert Teeter, a leading national pollster, "I think there is a clear majority in the country . . . 70-75 percent, who are willing to pay higher taxes if they think they're going to get better quality education for it." In a similar vein, pollster Peter Hart reported that his surveys of attitudes reveal public concern in four areas of education spending: "First and foremost, more emphasis on basics; second, more practical instruction; third, more vocational instruction; and fourth, raise academic standards."[14]

"Bricks and Mortar"

The "infrastructure crisis," popularized by **America in Ruins** in 1981, continued to receive a great deal of intergovernmental attention in 1983. Concerns for the nation's public physical stock rest on three issues: an aggregate decline in new investment; deferred, or otherwise inadequate, maintenance of existing capital stock; and arguments that a crumbling physical infrastructure will hurt the national economy—especially in older urbanized areas. Although burdened with continuing fiscal constraints, state and local governments did demonstrate their growing concern and willingness to grapple with this thorny, and potentially expensive, problem of rebuilding public facilities.

At the same time, no hard estimates of the extent or cost of the physical infrastructure problem are available, although it is thought to be a far greater problem in central cities than in suburban areas. In April, the National League of Cities and the U.S. Conference of Mayors (NLC/USCM) released a survey of over 800 city officials that offered a glimmer of hope, concluding that while the public physical infrastructure problem is serious, it nevertheless is "manageable." The report observed:

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[14] Teeter and Hart remarks reported in **State Legislatures**, NCSL, Denver, CO, October 1983.

This survey shows that, overall, the cost of meeting high priority public facility needs in the nation's cities is relatively modest. This is a critical finding. The survey did not attempt to produce a total cost estimate—a "bottom line"— for all infrastructure needs in America's cities. Such estimates produced by others have run into the trillions of dollars. These are daunting figures, almost paralyzing in their immensity. But this survey shows that a steady but manageable investment over a number of years could and would enable communities to start work on the capital assets ranked as highest priorities by the respondents.

There is no short-term, inexpensive, or easy solution to America's urban infrastructure problem. But there can be a solution, and it can be managed.[15]

As evidence of "manageability," the survey identified the wide use of city capital budgets to set priorities and respondent estimates of the cost of work needed in each priority area. A total of 67% of the respondents indicated a cost of $5 million or less for each of the three highest-priority categories of work.

Although priorities for capital expenditures varied sharply from city-to-city, "streets and roads" was the most frequently chosen category of 19 specified types of urban physical infrastructure. The next four choices were (in order) stormwater collection, wastewater treatment, sewage collection, and public buildings. A total of 61% of the respondents stated that work on their highest-priority projects could start within six months, and for 38% of all respondents the work could start in under three months. Given seven alternatives, the respondents displayed a remarkable consensus as to why highest-priority projects were chosen. "Protecting public health and safety" and "providing essential residential services" were the top two reasons. "Facilitating economic development" was a distant third choice.

The survey also asked for which facility types the city "could finance necessary work out of their own resources, either as a matter of course or with difficulty." Five of the 12 categories were chosen by at least a majority of respondents: public buildings; sidewalks and curbs; water distribution; water storage; and traffic control equipment. Nevertheless, for eight of the categories, over 30% of the respondents indicated that they required at least some state or federal financial aid. This second group comprises streets and roads; wastewater treatment; bridges, overpasses and viaducts; parks, recreation facilities, and open space; stormwater collection and drainage; sewage collection; traffic control equipment; and sidewalks and curbs. The overlap in the two sets of responses is indicative of how the manageability issue varies from city-to-city.

Many states have undertaken their own inventories and assessments of public physical infrastructure needs as well. Indicative of these state efforts is the survey completed by the Kentucky Municipal League that found that "increasing awareness of the overall condition of the infrastructure and the key role it plays in a city's continued vitality is beginning to result in a shift in priorities." The survey concluded:

> Infrastructure needs are great, but not overwhelming. The cities have and will continue to bear the brunt of the burden for repairing, maintaining and expanding the infrastructure. Proper planning, management and investment over a period of years, along with public-private sector cooperation will develop solutions to the infrastructure problems.[16]

"Last November's results on major bond issues may reflect a greater public willingness to finance large capital projects. Nearly 90% of the $4.36 billion in bond issues on state and local ballots were approved—the highest approval rate since 1960."

Current plans and actions of state and local governments have the greatest consequences of all for public physical infrastructure financing. For example, Governor Thomas Kean's proposal for a New Jersey Infrastructure Bank would establish a state-subsidized revolving loan fund based in part on existing federal public works grants, to be repaid as loans. A Massachusetts Development Bank proposal, offered by Governor Michael Dukakis, is an adaptation of the New Jersey bank and would place public works funds and bonding into a single, self-financing, revolving loan fund for local governments.

Last November's results on major bond issues may reflect a greater public willingness to finance large capital projects. Nearly 90% of the $4.36 billion in bond issues on state and local ballots were approved—the highest approval rate since 1960.[17] Voters in New York State, for example, approved a $1.25 billion bond issue to support a wide range of road and bridge projects, to perform maintenance and repairs, and to begin new construction. Although the projects will be undertaken over the next five years, more than 20 major projects in New York City will start in the next 15 months. The state already has hired 450 new design and construction workers.

[15] National League of Cities/U.S. Conference of Mayors, **Capital Budgeting and Infrastructure in American Cities: An Initial Assessment,** Washington, D.C., April 1983.

[16] Rod Edgerton and Ron Roberts, "Infrastructure: Kentucky Cities Take a Closer Look," **The Kentucky City,** November 1983.

[17] **The Weekly Bond Buyer,** November 14, 1983.

Also since January 1981, a total of 34 states have increased their tax on motor fuels. In 1983 alone, about 20 states increased this tax rate. Almost without exception, these widespread tax increases are devoted to transportation. Furthermore, state and local highway, road and bridge projects are now benefiting from the $4 billion in added revenues provided by the five cent per gallon increase in the federal gasoline tax that took effect last April, and the $900 million Bridge Replacement and Reconstruction Program that began in FY 1982.

States and Localities: New Entrepreneurs

During the past few years, states and localities have significantly expanded both the level and nature of their development efforts. Massachusetts Governor Michael Dukakis recently described this trend:

> While the national debate rages on whether we ought to have an industrial policy, there isn't a state that doesn't have one, or isn't putting one together, whether it has a Republican or Democratic, liberal or conservative governor. We're all in it, we're borrowing ideas from each other. We've come a long way since the mid-1970s.[18]

Two trends have emerged in recent years. First, public officials have begun to confront such traditional issues as health, welfare and unemployment in fundamentally different ways. Rather than concentrating efforts on after-the-fact remedies, lawmakers are examining root causes and devising and implementing prevention strategies. Secondly, state and local governments are assuming entrepreneurial roles in their economies. They are examining such things as barriers to business formation, private investment, and job markets, and they are devising research and development strategies to maintain a competitive edge. Public expenditures are now being viewed as investments to achieve not only immediate programmatic goals but long-range economic revitalization.

State and local experimentation with less-traditional alternatives and entrepreneurial investments has achieved a fairly impressive record to date. For example, in the high tech field alone, several states now offer financial incentives to attract new companies. Hawaii's Venture Development Fund contains a special inventor's fund to finance and develop new product lines, and the Pennsylvania Ben Franklin Partnership Fund provides seed money for research and development in advanced technology. Mississippi law now allows one to five counties to combine to create high tech zones that offer special tax breaks to those industries.

States also have recognized the need to help ensure that their workforces are trained, including the retraining that is usually needed as high technology industries come into communities. For example, Idaho coordinates technical and electronic programs financed by private industry. Florida community colleges and vocational schools offer customized programs to train their students to work in state-of-the-art factories. The Colorado Advanced Technology Institute develops training programs for universities and community colleges. And Virginia community colleges now offer courses in such specialty fields as rocketry and microprocessing.

Reduced federal aid for economic development and intense interstate competition for employers have stimulated increased state and local activity. Not all governments have geared up evenly to meet this challenge, but many are showing a willingness to try new approaches. For example:

- The ten-year Torpedo Factory project in Alexandria, Virginia was completed at mid-year. Designed as an art center, the facility has attracted international attention as a successful public-private endeavor. Prior to redevelopment, the obsolete factory structure was valued at $4 million. In 1983, the new complex was assessed in excess of $30 million.

- Public and private entrepreneurs have been very active in the transportation field. Shared-ride taxi services, jitneys, vanpools, light rail links, and shuttle services are among the service alternatives underwritten by cities of all sizes.

- A number of localities, such as Lincoln and Scottsbluff, Nebraska, Reno, Nevada, and St. Petersburg, Florida have developed gift catalogues offering ideas for tax deductible contributions for various goods and services that might otherwise be reduced or eliminated as budgets shrink. Baltimore, Maryland even offered an "Adopt a Pothole" option to its citizenry, a civic alternative to Cabbage Patch dolls.

Hartford, Connecticut has been identified by the Brookings Institution as one of only four cities that ranked "worst" in four problem areas: decline, distress, fiscal disparity, and growth rate.[19] In spite of this dubious distinction, Hartford is experiencing a leasing and building bonanza as a result of significant private downtown investment. A city of many economic contrasts, Hartford is undergoing a major transition from manufacturing to service industries.

One of the more notable local entrepreneurial initiatives has been undertaken in Norfolk, Virginia. Over $500 million in redevelopment projects funded mostly from local resources are transforming the downtown area. This major revitalization effort, described as "the country's most impressive public-private partnership between city officials and businessmen,"[20] includes housing units, a world trade center, recreation sites, and new office buildings. According to Mayor Vincent Thomas: "We're building, and this time building for good—no more slums."

[18]Remarks reported by Neal Peirce, **Nation's Cities Weekly,** National League of Cities, September 5, 1983.

[19]**New York Times,** April 14, 1983.

[20]Comment by Mitchell Sviridoff, president of Local Initiatives Support Corporation, **New York Times,** May 10, 1983.

State enterprise zone programs are another example of experimentation in which states have provided leadership. A federal enterprise zone proposal has received scant attention in Congress, but in 1983, the number of state programs grew to 19 with the addition of Arkansas, Georgia, Indiana, Michigan, Mississippi and Texas.

All state programs are fairly uniform in their purpose and targeting criteria. The primary purpose is to stimulate business and industrial growth in depressed areas through tax incentives and other assistance so that business can create jobs. The projects are targeted to economically distressed areas which are characterized by high rates of unemployment, welfare, poverty and physical deterioration.

Comprehensive redevelopment plans also are taking on new characteristics. One of the most significant efforts initiated in 1983 was in Rhode Island. Governor J. Joseph Garrahy named a blue ribbon panel of government, labor and business representatives to develop an economic renewal plan, called the "Greenhouse Compact." The voters in early 1984 will be asked to approve or disapprove an income tax increase to help finance its $250 million cost.

In the course of its work, the Governor's panel intensively examined recent business failures and constructed a set of 70 recommendations to help stem the tide of economic decline covering such areas as:

- aid to promising businesses;
- loans to older companies;
- grants to ailing industries;
- "grant notes" for each $8 an hour job created;
- a new academy of sciences to promote science and math instruction;
- grants to companies for day care and job training; and
- "greenhouse" designations for areas to engage in research and provide services to the elderly, to construct industrial robots, and to develop advanced medical products testing equipment.

In addition to the proposed income tax increase, financing for the far-reaching plan would come from a combination of business contributions, pension fund investments, bonds and federal aid. Notably, the Rhode Island plan would rescind certain tax breaks many states often provide to attract business. The plan seeks to restore the tax base, so that an attractive investment climate can prevail, and to target state aid—including tax incentives—to businesses that show the most promise. The plan has generated controversy, to which Governor Garrahy responds:

> A lot of business people may not like the idea of public funds being used to support this, and I'm sure labor is not happy with the special tax incentives for business. But everyone's got to have a little castor oil if we want to make the patient well. Rhode Island's image has suffered for so long it was time to do something bold.[21]

[21]**The Washington Post**, November 26, 1983.

"States have adapted, for the most part, to the new administrative roles and program responsibilities presented by one of the most visible New Federalism initiatives—the nine federal block grants authorized in 1981."

The States As Managers: Block Grants—Year Two

States have adapted, for the most part, to the new administrative roles and program responsibilities presented by one of the most visible New Federalism initiatives—the nine federal block grants authorized in 1981. The notable exception is the Primary Care Block Grant, where only West Virginia and the Virgin Islands have begun implementation. Implementation of a tenth consolidated program—the *Jobs Training Partnership Act*—also was initiated during the year.

For the states, a great concern continues to be about funding levels, especially when all but a handful of them faced revenue shortfalls and potential budget deficits during the past year. Nevertheless, states have coped with their new responsibilities and financial cutbacks in a number of ways.

During the second year of block grant implementation, states moved away from *status quo* administration. The block grants that have evoked the most administrative changes are, understandably, the ones in which the states were not previously involved—the Community Development Small Cities Block Grant (CDBG) and the Community Services Block Grant (CSBG). State changes in CDBG implementation include less emphasis on housing and rehabilitation and more on economic development, broader grant competition among a greater number of communities, and a willingness to approve applications from areas not previously funded. State willingness to shoulder administrative and programmatic responsibility for the small cities program was clearly apparent—all but four states opted to take over the program from the Department of Housing and Urban Development by the second year of operation.

Administrative changes in the community services program in most states included serving more areas—many of which were not previously covered by Community Action Agencies (CAAs). North Carolina, for example, now funds agencies on the basis of the percentage of need (poor) in an area. Massachusetts changed the program emphasis from community organization and advocacy to energy conservation and social services. Similar changes were made in South Dakota and California.[22] Wisconsin linked the old weatherization program with current interests in economic development by supporting CAA business ventures in manufacturing storm windows.[23]

Beyond setting new priorities, states also devised their own ways of administering the program. California, for example, turned over responsibility for administering and supervising block grants (except the CSBG, CDBG, and the Social Services Block Grant) to county governments. The state requires each county to establish a committee to assess its own needs, approve a local plan, select local providers, and coordinate and integrate block grant programs with other related services.

There also are indications that states are issuing their own regulations to fill the gaps left by the relative lack of federal restrictions on block grants. Several states, particularly in the South, have developed detailed regulations for program performance and fiscal audits. Those for the CSBG in particular tend to be as demanding as they were under federal supervision, and in some cases even more so. In North Carolina, where CAAs are treated as individual contractors, regulations are quite prescriptive, with agencies judged on performance. The state pulled funding from a CAA, for example, for inadequate bookkeeping practices after giving the agency a three-month opportunity to comply. Likewise, South Carolina terminated the contract of the state's oldest and largest CAA because of noncompliance with state standards, again after attempting to obtain compliance.

Legislative activity during 1983 featured a number of hearings on block grant programs, appropriations decisions, and interim studies. Committee hearings on implementing the block grants took place in every legislature that was in session during 1983. The National Governors' Association (NGA) reports that there was generally more involvement of state legislatures in the public participation process last year than before.[24] In the past, public hearings on state plans for block grant programs were usually an administrative function of the executive branch.

All legislatures in session were active in appropriating federal block grant funds and in determining the extent to which any reduced federal grant support would be replaced with state dollars. Of the 14 states surveyed in the second year of a Princeton University study, replacement was found to be highest in Oklahoma, New York and Massachusetts—but even those states' amounts were modest. Only Oklahoma replaced lost community services funds; Arizona, Massachusetts, New Jersey and New York offset social services cuts. Interestingly, in this year when education received top billing in many states, only Massachusetts supplemented reduced Education Block Grant funds.[25] Arizona increased funds for child protective services and for employment services helping the developmentally-disabled.[26]

State-Local Relations: An Unfinished Agenda

During 1983, the litany of issues affecting state-local relations grew. As noted throughout this article, officials and the governments they represent have participated in a variety of innovative efforts. Nevertheless, the basic elements of the state-local partnership—consultation and cooperation, and fiscal and discretionary authority—need constant attention.

Described here are developments on four fronts, revealing that state-local relations have progressed, but also that much remains to be done.

State ACIRs

State ACIRs and comparable organizations have become increasingly important vehicles in recent years for discussing and studying state-local issues and for proposing solutions to statewide problems. Currently, 21 states have a functioning intergovernmental advisory group, 11 of which are patterned after the national ACIR model. In addition, at least 15 other states considered creating a state ACIR during 1983.

The Local Government Advisory Council was reactivated by Virginia Governor Charles Robb and has concentrated its efforts in four key areas: local finance, education, economic development, and human resources and public safety. The Tennessee ACIR completed a major study of the state's property tax system. The Georgia Commission on State Growth Policy began work on five major topics: tax equity, city-county cooperation; state and local roles in growth and development; mandates; and the impact of New Federalism proposals. In Maryland, the Commission on Intergovernmental Cooperation was reorganized into the Joint Federal Relations Committee. New Mexico Governor Tony Anaya established an intergovernmental coordinating council, and legislation was drafted in several other states (such as South Carolina and New York) to strengthen or codify existing organizations.

State Mandates

Although no new mandate reimbursement programs were enacted during the year, there was appreciable progress in the willingness of state officials to study reimbursement policy and to assess their actions affecting local government budgets, policies and programs.

In 1983, studies of state mandates were initiated in several states such as Iowa, New York and Minnesota. In several other states, including Louisiana, Missouri

[22]Fred C.s Doolitle, "New Federalism in 14 States: Reagan's Block Grants," **State Legislatures,** NCSL, July 1983.

[23]National Association for State Community Services Programs, Legislative Conference Proceedings, March 1983.

[24]NGA Newsletter, National Governors' Association, Washington, D.C., February 1983.

[25]Richard P. Nathan, "New Federalism in 14 States: Consequences of Cuts," **State Legislatures,** NCSL, July 1983.

[26]Lisa Berland, "New Federalism in 14 States: The Arizona Experience," **State Legislatures,** NCSL, July 1983.

STATE INTERGOVERNMENTAL ADVISORY ORGANIZATIONS

Highlights of Current Work Programs

Organization	Work Program Highlights
FLORIDA Advisory Council on Intergovernmental Relations	• Complete report and recommendations regarding state annexation policy • Conduct water and wastewater capital outlay needs study • Assess revenue impact of proposed constitutional tax limit • Develop computer-based model of state and federal aid programs • Extend the computer-based fiscal model to enhance its ability to allocate federal and state expenditures to substate areas
GEORGIA Commission on State Growth Policy	• Review impact of state mandates • Study tax equity issues • Study state and local roles in growth and development
ILLINOIS Commission on Intergovernmental Cooperation	• Conduct public hearings on block grants and follow-up evaluation • Track federal aid to the state and develop data base for tracking federal aid to local governments
IOWA Advisory Commission on Intergovernmental Relations	• Review open meetings law • Study county government reorganization • Assess law enforcement system including training requirements, and joint services and facilities • Develop options for local government bond pools • Examine county general assistance program
MAINE Governor's Municipal Advisory Council	• Review governor's legislative program • Analyze state and local fiscal affairs • Study solid and hazardous waste management
MARYLAND Joint Committee on Federal Relations	• Monitor Jobs Training Partnership Act operations • Review selected interstate compacts
MASSACHUSETTS Local Government Advisory Committee	• Track implementation of new local aid formula • Study pension reform • Analyze legislation creating the Massachusetts Development Bank
NEW YORK Commission on State-Local Relations	• Issue interim reports on State's per capita revenue sharing program and constitutional tax and debt limits
NORTH CAROLINA Local Government Advocacy Council	• Complete study of state-local relations • Monitor and make recommendations for implementation of North Carolina 2000 study in areas that effect local governments
PENNSYLVANIA Pennsylvania Intergovernmental Council	• Serve as state clearinghouse (E.O. 12372) • Provide technical support to Block Grant Program • Conduct local wage/salary survey • Participate in a national 5-year study on "Fiscal Austerity and Its Consequences in Local Governments"
SOUTH CAROLINA Advisory Commission on Intergovernmental Relations	• Develop "Local Government Finance Act" • Draft legislation to identify special purpose districts • Develop proposals for sorting out government responsibilities
TENNESSEE Advisory Council on Intergovernmental Relations	• Promote consideration of property tax recommendations • Study intergovernmental health/hospital care issues • Study tax equivalent payments (PILOT)
TEXAS Advisory Commission on Intergovernmental Relations	• Study health care finance • Review intergovernmental fiscal trends • Develop community data profile for cities and counties • Examine intergovernmental issues of radioactive waste disposal
WASHINGTON Advisory Commission on Intergovernmental Relations	• Review state infrastructure needs • Examine state and local revenue systems • Continue work on current state and local criminal justice issues

and Michigan, state courts ruled on a variety of challenges by local governments on state implementation of statutory and constitutional provisions. The Virginia Joint Legislative Audit and Review Commission conducted an extensive review of state mandates and local financial resources, and called upon the General Assembly to provide a stable and predictable funding source for local governments and to specify the share of mandated costs to be funded by the state.

In California, the Governor's New Partnership Task Force on State and Local Government also called for stable local revenue sources, a number of program realignments, and reimbursing costs of new mandates. The task force further recommended that when mandates are not funded that they should become "permissive" mandates.

Pennsylvania recently catalogued all state mandates and is in the process of reviewing their current implications and, in some instances, continuing applicability. Local officials in other states such as Georgia, North Carolina and Tennessee also generated interest at the state level in considering the effects of state mandates on local governments.

One of the highlights for Connecticut localities during 1983 was the passage of a mandate measure during the June special session. The bill was an outgrowth of the January 1983 final report of the Commission on State Mandates to Cities and Towns. The bill stops short of actual reimbursements, but it does define seven types of mandates and requires the state's fiscal analysis office to develop impact statements on bills and amendments that measure first-year fiscal effects on local governments. The bill also created a legislative interim study committee to review the feasibility of a pilot program for new or expanded mandates. The interim committee is scheduled to report its findings in early 1984.

The Massachusetts Division of Local Mandates was organized in 1983 within the Department of the State Auditor. The office was created under Chapter 580 of the Acts of 1980 to implement provisions of Proposition 2-½. It has a two-fold responsibility:

- monitoring and analyzing proposed and existing legislation, rules and regulations imposing costs on towns and cities; and
- determining what those costs are and whether the costs have been duly reimbursed by the state.

The division describes itself as a "municipal advocate on the state level," and will provide a variety of services to local governments.[27]

The new office launched its program during the latter part of 1983 by issuing reports on two measures awaiting action in the legislature: one requiring expansion of local polling place hours, and the other dealing with labelling hazardous substances in the workplace. In the case of the bill on polling place hours, the division surveyed 25 localities to assess the fiscal impact of expanded voting hours and transmitted its findings to each member of the legislature. As a result of this report, the Massachusetts House amended the bill to provide reimbursement to those jurisdictions that would incur additional costs. The second measure would have required local officials to maintain records for 40 years about the manufacture, storage and use of toxic substances by local firms. Upon completion of its review of the impact on cities and towns, the division recommended a local option provision and establishing a central records repository as alternatives to mandatory local recordkeeping.

Home Rule: Geographic Limits

Several annexation-related developments that occurred during the year would appear to support the view that annexation is "bubbling up" once again as an active and highly visible intergovernmental issue. For example, the Florida ACIR reviewed the state's annexation procedures that are viewed by many—especially city officials—as impediments to coping with explosive population shifts, growth and development. Proposals will be submitted to the 1984 legislature. By contrast, Washington annexation laws are being reviewed in the context of slowed growth. That State's population increasingly is moving to unincorporated areas—now over 50% statewide. Rural counties are being asked to provide urban services but frequently are not equipped to do so. In other developments:

- In North Carolina, the Annexation Laws Study Committee, created in 1981, offered 20 recommendations to modify annexation statutes, viewed by many as the national model. Most of the proposals would provide more uniformity and fewer opportunities for exceptions, although some concerns were expressed about new reporting and administrative provisions.
- Effective July 1, property within a city de-annexed by the Georgia General Assembly is protected from annexation for five years.
- In South Carolina, efforts to liberalize annexation laws were soundly defeated again. Three roadblocks to adopt more permissive legislation have developed: electric cooperatives that are concerned about losing their franchises; special-purpose districts that also are concerned about their futures; and possible double taxation that pits residents against governments and governments against governments.
- Five proposals to change Tennessee's annexation law either were defeated or deferred, all of which were opposed by the municipal league. Of the two bills carried over until 1984, one calls for allowing people adjacent to a proposed annexation to file suit against the city, and the other prohibits a municipality from initiating an annexation.
- In January of last year, the California First District Court of Appeals nullified, at least temporarily, the actions of the state's 57 local agency formation commissions (LAFCO). The court found

[27]Massachusetts Department of the State Auditor, Fact Sheet, "Role and Responsibilities of the Division of Local Mandates," 1983.

that "spheres of influence" studies had not been completed prior to annexation actions, a requirement nearly 12 years old but never fully enforced. In response to the court's decision, the legislature passed and the Governor signed a measure requiring all LAFCOs to adopt "spheres of influence" by July 1985.

Home Rule: New Legal Challenges

Several states have begun to grapple with the troublesome outcomes of recent U.S. Supreme Court decisions that have opened local governments to federal antitrust liability. Notably, some states have passed legislation conferring immunity on local activities as allowed in the 1982 *Community Communications Co. v. City of Boulder*.[28]

North Dakota has adopted the most comprehensive measure thus far, and Maryland has acted to share much of the state's immunity with its localities. Several other states, including Louisiana, Pennsylvania and Virginia, moved to protect jurisdictions in selected areas of activity, while still others such as Iowa, are studying antitrust immunity within the broader context of tort liability.

The magnitude of the financial hazards that local governments and officials conceivably could confront is seen in two cases. In the first case, a $2.1 million judgment against a former mayor of Houston and others was levied by an appeals court. If this ruling is sustained, the judgment would be tripled under antitrust law to $6.3 million.

The second case involved a $2.5 million out-of-court settlement that Richmond, Virginia agreed to pay as compensation for damages and costs to a hotel developer. The developer had brought a $250 million antitrust suit after the city denied construction permits to build a hotel in 1981. The settlement, that included no admission of wrongdoing by the City, is by far the largest voluntary settlement since the *Boulder* decision. The City also spent $900,000 in legal fees for its defense.

Under the Supreme Court's ruling, state legislatures must determine how national antitrust policy applies to local governments. If states want to act to protect their localities, they must do so now in the absence of Congressional direction and on the basis of only vague guidance from the Court's decisions.[29] Legislation to exempt localities from federal antitrust liability is pending in Congress, but until the dilemma is resolved local discretionary authority and certain home rule powers will remain under a cloud of doubt.

THE ROAD AHEAD

Recent decentralizing and devolutionary trends, coupled with precarious fiscal conditions, pose major challenges to state and local policymakers. It is a period of transition and adjustment within the intergovernmental system, unparallelled in scope and significance for many years. When the dust settles, state and local governments probably will have substantial new responsibilities for financing and providing services and programs. The ability, capacity and willingness of state and local governments to respond to these challenges are *the* intergovernmental issues of the Eighties.

The record to date, while by no means definitive, does offer positive signs on a number of fronts. State-local partnerships are being forged to address many perennial friction points. States and localities are developing and implementing new approaches to old problems, especially in such areas as education, and economic and community development. Some governmental officials are evolving into what could become a new class of entrepreneurs. Institutionally, states have become more vigorous, open, assertive, accountable and competitive. Much more remains to be done, however, to strengthen local fiscal and functional capacities. Opportunities for serious interjurisdictional conflicts remain, especially in the environmental area, and in the competition to attract new industries and to develop job markets.

Further, a number of major factors remain beyond the reach of state and local units. Of greatest concern are the duration and depth of the national economic recovery and the size of the federal deficit that threatens that recovery. Should the recovery slow or soften, lawmakers again will face the unpalatable choice of cutting services or increasing taxes. Thus far, they have gambled that their citizens will accept the latter approach. Such a course for the future may not be practical, however, should the tax revolt sentiments so prevalent just a few years ago be rekindled.

Nonetheless, two truisms support a relatively hopeful outlook for the future. First, states *are* the laboratories of democracy. Secondly, necessity is the mother of invention, and invention is often the product of laboratory work.

"Nonetheless, two truisms support a relatively hopeful outlook for the future. First, states *are* the laboratories of democracy. Secondly, necessity is the mother of invention, and invention is often the product of laboratory work."

Jane Roberts is ACIR's State-Local Relations Associate.

[28]For more information, see the Fall 1983 issue of **Intergovernmental Perspective,** "Antitrust and Local Governments."

[29]"Conclusions and Recommendations Concerning Municipal Antitrust Liability", a report to the U.S. Advisory Commission on Intergovernmental Relations, December 1983 (working paper).

Federalism In 1983: Mixed Results From Washington

by David B. Walker and Cynthia Cates Colella

In 1983, it became apparent that the Reagan Administration's historic "Big Swap" proposal of 1982 had failed to achieve consensus. As promised, the President proposed legislation for a New Federalism early in the first session of the 98th Congress. Noticeably lacking, however, was the major trade-off of welfare and health care responsibilities contained in the original plan and much debated among governors, state legislators, local leaders, and Administration officials the previous year.

"I think it was a strategic error to put the federalism initiative on the table at the same time we were trying to get cuts out of a budget that had already suffered," Richard Williamson, former assistant to the President for Intergovernmental Affairs, told **The Washington Post** last year.[1] "It poisoned the well for the federalism discussion because the mayors and governors were so concerned they were going to be left holding the bag with a recession coming on."[2]

The biggest federalism story, then, in 1983 was the non-story of action on New Federalism initiatives. The President's proposal generated little enthusiasm on Capitol Hill where, in the words of one Senator, it was viewed as an "idea whose time had not come."[3]

Although the New Federalism was placed on the legislative back-burner in 1983, and the spotlight on federalism dimmed considerably, significant national actions affecting intergovernmental relations did occur last year. In some cases they assumed the form of executive circulars and orders, often little heralded but nonetheless important in shaping the course of domestic governance. Moreover, Congress passed, and the President signed, legislation of critical importance to states and localities.

Equally if not more important given the relative quiescence of the executive and legislative branches were the raft of intergovernmentally significant decisions emanating from the nation's High Court. Hence, in 1983, the Court addressed such perennially durable issues as federal preemption of state law, the grantor-grantee relationship, direct federal regulation of states and localities, the legitimacy of state taxing methods, and the extent of official liability under federal civil rights and anti-trust laws. Decisions in all these areas continue—subtly though profoundly—to affect the balance of power in the federal system.

This article will probe major intergovernmental developments as they emanated from Washington during 1983. Together, they suggest that the national government's role in the federal system remains significant, but probably will not expand unless and until other overarching issues are resolved.

FEDERALISM INITIATIVES 1983

In his January 25, 1983 State of the Union Message, the President indicated he would be sending to Congress a comprehensive federalism proposal that would "continue [the Administration's] efforts to restore to state and local governments their roles as dynamic laboratories of change in a creative society."[4] The legislative proposal as transmitted would consolidate 34 programs into four mega-block grants, costing about $21 billion.

In his transmittal letter to Congress, President Rea-

[1] Juan Williams, "Failed 'New Federalism' Reveals the Wages of Power," **The Washington Post,** June 12, 1983.

[2] *Ibid.*

[3] Senator David Pryor (AR) as quoted in **Congressional Quarterly,** January 29, 1983.

[4] Letter of Transmittal to the Congress from President Ronald Reagan, February 24, 1983, p. 1.

"Without strong state and local support, major restructuring through the mega-blocks was quietly dropped from the legislative agenda."

gan emphasized that controversial aspects of prior proposals had been dropped and that the new mega-block grants were not intended to be "a vehicle for budgetary savings."[5]

The President's proposals were introduced as legislation and referred to three Committees in the Senate and six in the House. The Congressional response was limited to hearings conducted in March by the Joint Economic Committee. Governor Richard Snelling (VT), the National Governors' Association's lead governor on federalism, summed up the NGA's view:

> The President has kept federalism reform before us through his recent proposal for four new mega grants. Such grants must be carefully considered, but they do not in themselves, without vesting broad operational authority in the states, constitute federalism reform. In this connection, I am disappointed that the President has decided not to submit his landmark proposal for the federalization of Medicaid, though I do recognize the difficult issues involved.[6]

Snelling reiterated NGA's call for a national income security policy, with a larger federal role, as the centerpiece for federalism reform. In testimony before the same JEC hearings, local officials also expressed their concerns. Mayor George Latimer of St. Paul, MN, said the proposals were "misdirected" and did not address "the need of thousands of St. Paul's poor and near-poor."[7]

Without strong state and local support, major restructuring through the mega-blocks was quietly dropped from the legislative agenda. Attention quickly shifted to pressing budgetary concerns and the need to authorize or reauthorize other pieces of intergovernmental legislation.

The Legislative Agenda

To those who viewed 1983 as a series of budget battles, political posturing, veto threats, and fragmentation, a picture of disarray emerges. To those who look carefully at legislative results, however, a surprising degree of consensus is apparent. At the same time, the picture remains unfinished and the second session of this Congress has a full platter of pressing business to tackle.

Without a doubt, intergovernmental legislation and issues were a sideshow—albeit an important one—to larger budgetary and international concerns. In light of real and mounting pressures on the federal fisc, Congress failed to enact major new spending programs for education, infrastructure, and industrial revitalization. Yet, Congress also rejected most further cuts in domestic programs, maintaining its commitment to the majority and even modestly increasing funds for a few.

The Record. In sharp contrast to recent years, 10 of the regular 13 appropriations bills were enacted during 1983. In all, about $1.2 billion were appropriated over the President's initial budget request. Although a relatively modest difference, the gap between Administration request and Congressional response was significant in certain areas. The defense appropriations bill called for only a 4% real dollar increase compared to the 10% called for by the President. Moreover, aggregate dollar figures mask significant shifts that did occur among functional categories of aid[8] (see Table 1).

However, Congress did honor fully or closely approximate the President's requests for certain other programs, including unemployment insurance operations, the new *Job Training Partnership Act of 1982* (JTPA), and four block grants: preventive health, community development, special programs for the disadvantaged, and alcohol, drug abuse, and mental health (ADAMHA).

The aggregate fiscal effects of these various actions was to authorize intergovernmental grant outlays that are 4% higher than those for FY 1983 and 8% over FY 1982. Yet when inflation is factored in, the growth in federal aid over these three years turns out to be static, with the estimated FY 1984 figure ($98.7 billion)[9] actually falling slightly below the level for FY 1982.

In terms of specific programs, supplemental assistance for the unemployed was extended 18 months, health planning funds were renewed, JTPA was provided advanced funding, the wastewater treatment plants program received continued budget authority, and the vocational rehabilitation program was extended. Even more significant was the passage of three major authorization measures: the emergency jobs package, General Revenue Sharing, and the omnibus housing bill.

Congress overwhelmingly approved a $4.6 billion emergency jobs package in March as part of a $15.6 billion supplemental appropriations bill for FY 1983. The compromise legislation was rushed through Congress as a response to the very high unemployment figures that prevailed during the winter months.

The emergency measure increased funds for a wide assortment of existing aid and loan programs including six in the transportation area; four in housing and urban development; seven in parks, recreation, and Indian affairs; eight in rural development and con-

[5] *Ibid.*, p. 6.
[6] Statement of Governor Richard A. Snelling before the Joint Economic Committee, March 2, 1983, p. 5.
[7] Statement of Mayor George Latimer before the same JEC hearings.

[8] Press release issued by the National Conference of State Legislatures and the National Governors' Association on December 9, 1983.
[9] *Ibid.*

servation; three in energy and water development; and, 18 in employment and human services. Some of the funds were allotted to direct federal undertakings such as repairing federal buildings, but most were channeled into intergovernmental grant and loan programs.

Two-thirds of the total was slated for public works jobs with the remainder going to social services, health, and other humanitarian purposes. All told, three quarters of the $4.6 billion was expected to generate public service and works jobs. Backers of the measure claimed it would create 400,000 full-time jobs. By late fall, however, only a small proportion of the estimated jobs had been produced.

General Revenue Sharing was finally passed late in the session, reflecting significant differences between the House and Senate that required resolution. Under threat of a Presidential veto if funding were increased, a simple three-year extension of the current $4.6 billion program was finally adopted. Major program changes included modified audit requirements: local jurisdictions receiving less than $25,000 annually will be exempted; those receiving from $25,000 to $100,000 will be audited once every three years (as the earlier legislation required for all recipients); and those receiving more than $100,000 will be audited annually. A study was mandated of federal-state-local fiscal relationships, including alternative GRS allocation formulas and means of returning revenue sources. Finally, the states were formally dropped from the program.

During the final hours of the first session, Congress broke a five-month impasse and enacted a $15.6 billion omnibus housing and community development authorization, attaching it as a rider to the President's International Monetary Fund (IMF) bill. Although many provisions of the multi-faceted measure had been opposed by the Administration, its forced marriage to the IMF bill obviated a veto. The housing measure featured:

- a new rental housing rehabilitation and development project grant (replacing the old Section 8 program) that, over its two year duration, is expected to create 31,000 units of new construction and 30,000 rehabilitated units in low- and moderate-income neighborhoods.
- a pilot program to provide rent vouchers for low-income tenants to encourage such tenants to shop for the lowest rent on the open market.
- a requirement that tenants in subsidized housing pay 30% rather than the earlier 25% of their household income for rent; however, certain income deductions were liberalized by the legislation, in effect, helping to reduce tenant rent contributions.

The Act also (1) continued funding for urban homesteading and neighborhood development; (2) extended the Section 312 rehabilitation loan program and the Section 202 housing assistance for the elderly and handicapped; (3) funded public and Indian housing at $1.29 billion and $390 million, respectively; (4) authorized two project grants to assist the homeless; and, (5) extended two rural housing programs.

Of major importance were the extensions of both the community development block grant (CDBG) and the

Table 1. Functional Shifts in Grants-In-Aid (in millions)

	1982[1]	1983	1984	PERCENT CHANGE 1984/1983	PERCENT CHANGE 1984/82
NATIONAL DEFENSE	61	72	84	18%	38%
ENERGY	351	703	405	100%	15%
NATURAL RESOURCES AND ENVIRONMENT	4,858	3,526	3,500	−27%	−28%
AGRICULTURE	497	534	544	7%	9%
TRANSPORTATION	12,207	16,586	17,706	36%	45%
COMMUNITY AND REGIONAL DEVELOPMENT	4,316	5,512	4,311	28%	0%
EDUCATION	5,704	6,108	6,461	7%	13%
TRAINING & EMPLOYMENT	3,567	3,840	2,824	8%	−21%
SOCIAL SERVICES	5,653	6,120	6,212	8%	10%
HEALTH	18,865	20,964	22,504	11%	19%
INCOME SECURITY	29,511	25,364	27,468	−14%	−7%
ADMINISTRATION OF JUSTICE	42	42	42	0%	0%
GENERAL PURPOSE FISCAL ASSISTANCE	5,947	5,866	6,659	−1%	12%
TOTAL	91,581	95,237	98,720	4%	8%

[1] Federal Fiscal Years.
SOURCE: National Governors' Association and the National Conference of State Legislatures, December 9, 1983 press release.

urban development action grant (UDAG), the first at $3.468 billion annually through FY 1986 (slightly larger than the FY 1983 figure) and the second at $440 million annually. Fifty-one percent of CDBG funds were restricted to benefit low- and moderate-income persons, settling an earlier dispute on this matter between HUD and the authorizing House Committee. The same constraint applies to the now largely state-run small cities CDBG program. In addition, for the small cities program, beginning in FY 1984 the states must include in their "fiscal statements" a description of how the funds made available since FY 1982 were used and an evaluation of the relationship between such uses and the program's statutory goals.

Unfinished Business. Alongside this record of accomplishment stands a lengthy list of dead-locked, delayed, or "deep frozen" measures of intergovernmental interest. The President's urban enterprise zones and criminal justice assistance programs were among these, as well as revisions in the Clean Air and Clean Water Acts, a new authorization for the health planning program, extension of the Resource Conservation and Recovery Act (Hazardous Wastes), natural gas pricing, immigration reform, disaster relief, reauthorization of the marine sanctuaries legislation, cable TV deregulation, and municipal antitrust liability. This listing does not include pending proposals for upgrading public education; repairing, replacing, or expanding public capital facilities; new health care cost containment measures; industrial policy alternatives; and, a host of other items in the legislative hopper.

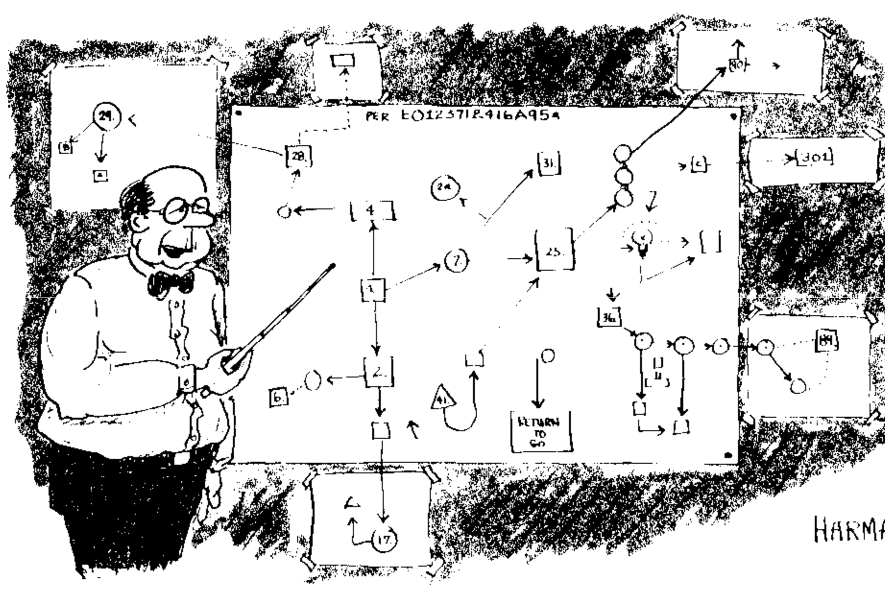
THE DEREGULATORY DRIVE

Vice President Bush's Task Force on Regulatory Relief went out of business in 1983, but the Reagan Administration continued its deregulatory drive through other means. Chief among these other approaches were a firm federal "hands off" when administering block grants (within the latitude permitted by law); delegation to the states of certain watchdog functions, also when allowed by statute; and, decentralizing responsibilities through executive orders and administrative circulars.

To date, the Administration's deregulatory thrusts have been partially successful in devolving authority back to the states and in cutting administrative burdens. What is still lacking is a comprehensive approach to intergovernmental regulatory reform. Omnibus reform legislation—including measures that were intergovernmental in nature—received scant attention in Congress last year. To paraphrase Sherlock Holmes, regulatory relief legislation was "the dog that did not bark in the night," a clue that meaningful reassessment of the regulatory process is difficult to accomplish, especially when popular social and environmental programs are involved. Congress may choose to revisit the regulatory reform issue in 1984 and may begin to tackle the complicated and controversial problem of simplifying national standards without sacrificing national goals. In 1983, regulatory reform remained part of Congress' unfinished agenda, and the major stories emanated from the executive branch.

The Block Grants. The administration continued, to the extent permitted by law, a "hands off" federal position in administering the nine block grants enacted in 1981. As a result, some federal, and even state, officials expressed frustration in trying to maintain oversight over the block grant monies. Representative Ted Weiss (NY), chairman of the House Subcommittee on Intergovernmental Relations and Human Resources, stated during Congressional oversight hearings, "Congress never really passed intelligent judgment on block grants" approved in 1981.[10] Because congressional intent remains unclear, some uneasiness in administering the consolidated programs prevailed in 1983—a sense of unease that probably will continue until the first audits of state programs pass muster and states become convinced that the federal government will not intervene in determining program activities and goals.

[10] "Chapter 2 Block Grant Reviewed After First Year; Congress Asks, 'Is It meeting the Need?' " **Education Times**, 26 September 1983, p. 4.



"THIS IS THE PROPOSED NEW PROCEDURE TO SIMPLIFY THE OLD A-95 PROCESS."

REGULATING LOBBYING: THE

During the first two years of the Reagan Administration, the use or misuse of federal grant and contract money for political advocacy was sharply criticized by both liberal (Common Cause on defense contractors) and conservative (**Conservative Digest** on nonprofits) groups. In January 1983, the Office of Management and Budget (OMB) issued a set of proposed regulations restricting federally subsidized lobbying that was intended to appease members from both ideological camps. As originally proposed, the regulations would have prohibited contract and grant recipients from using federal funds to pay for any office space, equipment, or personnel devoted wholly or in part to political advocacy. The regulations constituted, as one observer noted, "a sweeping revision of federal purchasing laws—a revision that would erase even the faintest blush of partisanship from more than $120 billion dollars in federal grants and contracts."[1]

During the weeks immediately following the release of the lobbying regulations, the Administration was besieged by protest from groups across the political spectrum. Critics charged that the new rules were politically "motivated," "counterproductive," and possibly "even unconstitutional."[2] In response, OMB issued a statement on January 20, 1983 claiming: "It is a distortion of the market place of ideas for the government to use its financial resources" for partisan purposes.[3] The regulations, it was emphasized, would in no way inhibit political advocacy by any group willing to finance their activities with their own, nonfederal, resources. Yet few of the public and private groups affected by the new rules found solace in the Administration's assurances.[4]

[1] Michael Wines, "Lobbyists Unite to Lobby Against OMB's Proposed Curbs on Lobbying," **The National Journal** (February 19, 1983), p. 370.
[2] Steven Pressman, "OMB to Unveil New Lobbying Regulations," **The Congressional Quarterly** (July 9, 1983), p. 1404. See also Diane Granat, "OMB to Rewrite Lobby Rules for Grant Contract Holders," **Congressional Quarterly** (March 5, 1983), p. 464.
[3] Fred Barbash, "New Rules Would Stiffen 'Political Advocacy' Curb," **The Washington Post** (January 21, 1983), p. A15.
[4] *Ibid.*

The set of regulations proposed as amendments to OMB Circular A-122, the circular governing how nonprofits organizations use federal funds, proved to be by far the most controversial. Those nonprofits responsible for implementing various social programs dating back to the 1960s and early 1970s viewed the proposed regulations as but another part of a conservative effort by the Administration "to defund the left."[5] Several of these organizations argued that the new rules would render them politically impotent—with neither the resources nor authority to defend their programs' objectives.

Among the most ardent and visible critics of the amendments to A-122 were organizations in the intergovernmental sector. Still accommodating to cuts in their project grants, many of the public interest groups believed the regulations would mute the voice of state and local officials in federal policymaking.

The Administration flatly denied the charges that the restrictions on lobbying were designed to either stifle intergovernmental interest groups or impose a different ideology on liberal nonprofits. OMB General Counsel Michael Horowitz stated: "Nobody wants to destroy the fabric of western civilization. I'm just trying to come up with the most workable way of seeing to it that public funds are not used for political advocacy.[6]

Meanwhile, the General Services Administration (GSA), the Department of Defense (DOD), and the National Aeronautics and Space Administration (NASA) issued proposed lobbying regulations for private firms similar to those proffered by OMB. The regulations would have required private contractors to file a complicated and potentially costly—in both time and money—series of forms that itemized where and when federal dollars were spent and for what purposes. Despite the fact that such contractors with non-

[5] Spokesperson for the Independent Sector, quoted in Felicity Barringer, "OMB Releases Proposed Restrictions on Lobbying by Contractors, Grantees," **The Washington Post** (November 3, 1983), p. A19.
[6] Michael Horowitz, quoted in M. Wines, **The National Journal** (February 19, 1983), p. 370.

In the case of the newest block grant, the *Jobs Training Partnership Act of 1982* which became operational in October 1983, signs of tension have emerged already. Most controversy to date has revolved around designating service delivery areas, funds for administering the new program, and the composition of private industry councils. In New Hampshire, for example, counties appealed to the Secretary of Labor when the state failed to recognize certain counties as service delivery areas qualified to administer the job training program. When the Secretary rejected their appeal, the counties petitioned the First Circuit Court of Appeals in Boston.

In spite of certain problems in a few states, overall administration of existing block grants and implementation of the one new block grant appeared to be proceeding smoothly. In some areas, as noted, Congress has begun to tighten up requirements and to express frustration due to incomplete reporting requirements. The ultimate arbiters may well turn out to be auditors, with recourse to the courts if funds are deemed misspent.

Regulatory Delegation to the States. Another Administration effort in the devolution area is to turn over more responsibility for regulatory administration to states. Delegation of this kind is possible under what are sometimes termed "partial preemption" statutes which are especially common in the environmental

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governmental sources of revenue were expected to be far less affected by the new rules than the nonprofits, business and trade associations were no less vehement in their attacks on the proposed rules. Indeed, the private sector played an integral role in coalescing both profit and nonprofit groups against the regulations and in stimulating congressional concern about the constitutionality of the reforms.

Not long after Congress entered the fray, hearings began and final approval of the lobbying regulations seemed far from certain. Members of Congress rallied against the new rules arguing that they were far too sweeping in intent and hence potentially threatening to basic political rights protected by the Constitution. Representative Jack Brooks (D-TX) stated that the proposed regulations were "a gag rule that would throttle the free speech of federal contractors and grantees."[7] Other members of Congress denounced the lobbying regulations because of the restriction on grassroots lobbying—a restriction that violates the "citizenry's basic right to organize and let their protests against government be heard."[8] In the face of this kind of intense congressional criticism, the Administration withdrew the proposed regulations in early March.

Late in June, OMB announced that a new set of regulations aimed primarily at nonprofit organizations would be released in the near future. Representatives of these groups charged that the change in the focus of the revised regulations was a politically motivated attempt to weaken bipartisan opposition to the new rules.[9] In the wake of this criticism, a second round of negotiations between the Administration and congressional staff members began in early July.

In November 1983, OMB finally published a revised version of the lobbying regulations.[10] The period for public comment was extended until January 18, 1984. At the same time, DOD, NASA and GSA issued virtually identical regulations covering the lobbying activities of defense and other private contractors. Missing in the final regulations for both public and private contract and grant recipients are the restrictions on grassroots lobbying and the time-consuming requirements initially included in the January 1983 proposals.

Business groups and trade associations, which spent the better part of the summer negotiating with OMB and DOD officials, appeared to be pleased with the final proposal. Public interest groups, on the other hand, complained that they had not been consulted about the regulations by OMB until late September.[11] However, after extracting concessions from OMB on restrictions prohibiting grassroots as well as state and local lobbying, they appeared to be more willing to accept the final package. Representatives of several of the larger intergovernmental groups have stated that they are reserving final judgment, and will use the review period to take a careful look at the new regulations.

In sum, OMB's attempt to revise lobbying regulations proved to be a far more arduous task than the Administration had anticipated. The compromise version of the regulations is expected to take effect, barring major revisions, early in 1984. The final rules are unlikely to hamper lobbying for most of the plethora of public and private groups that seek and receive federal aid and contracts. Ironically, OMB's inability to implement the original and much stricter set of regulations is largely the result of a massive and unrelenting lobbying effort on the part of federal grant and contract recipients. As one astute observer noted "OMB officials [got] a belated lesson in why recipients of federal largess lobby in the first place: it works."[12] **Ann M. Martino**

[7] Rep. Jack Brooks, quoted in S. Pressman, **Congressional Quarterly** (July 9, 1983), p. 1404.

[8] Testimony at the hearings of the House Governmental Operations Committee held in March of 1983. See Diane Granat, **Congressional Quarterly** (March 5, 1983), p. 464.

[9] Robert Pear, "U.S. Agency Draws Rules on Lobbying: Nonprofit Organizations with Federal Money Would Be Put Under Restrictions," **The New York Times** (July 1, 1983), p. 7.

[10] **The Federal Register** (Washington, DC: U.S. Government Printing Office (November 3, 1983), pp. 50860-64.

[11] Felicity Barringer, *op. cit.*

[12] M. Wines, *op. cit.*

area. Such laws allow states to carry out administrative tasks if they establish programs that meet federal specifications. Otherwise, regulations are enforced by a federal agency.

Formal delegations of this sort accelerated at an unprecedented pace during the first 24 months of the Reagan Administration, according to an Urban Institute analysis.[11] For example, the study found that 27 of the 37 delegations for managing hazardous waste control efforts were completed during this period. This pattern of rapid activity continued throughout 1983, with an additional eight states receiving interim authorizations. Twenty-five states also have "achieved primacy" for operating strip mining control programs, nearly all of them during the Reagan years. Most of the states that have surface mining within their borders were participating a year ago, hence no additional states were added to the list during 1983.

At the same time, there has been little or no change in some of the older regulatory programs. No new states have assumed responsibility for Occupational Safety and Health Administration operations since 1978. Thirty-six states now issue permits for discharging effluents into a waterway under the *Federal*

[11] Michael Fix, "The Prospects for Regulatory Federalism," paper presented at the National Municipal League Conference on Government, Baltimore, MD, November 14, 1983, p. 6.

Water Pollution Control Act, but only one additional state was added during 1983.

Other Administrative Changes. In 1983, Executive Order 12372 (amended by E.O. 12416) went into effect, replacing OMB Circular A-95 which had governed the intergovernmental consultation process for over a decade. The new process allows states, in concert with local governments, to develop and implement their own consultation procedures covering federal grant decisions, changes in federal installations, and other federal actions affecting states and localities.

Implementation of the new order is gradually evolving at the state level. A survey conducted by the National Association of Regional Councils during the months of August and September revealed that 32 out of 41 responding states planned to have a process in place. All but one of the 32 states indicated substate regional agencies would have a role in implementing the order. Of the remaining eight states, six were uncertain about creating a state process and two, Kansas and Idaho, indicated that no plans to implement a state system were being considered.[12]

In a related action, the Office of Management and Budget began a comprehensive review of Circular A-102, established in 1971 to standardize and simplify the administrative requirements attached to intergovernmental grants. Audit requirements were the main subject of discussion in 1983. The other 15 areas covered by A-102 are slated for review during 1984.

Although many of the Administration's efforts have been geared to delegating responsibility from Washington to state and local governments, a few have taken a different tack. A number of federal officials have been alarmed at the states' ability to drawdown federal grant funds before they are needed, thus earning interest on the money prior to actual disbursement. To correct this situation, the Department of Health and Human Services began delaying drawdowns until after the states claimed they needed the funds. In 1983, a joint Federal-State Task Force on Cash Management tried to find a compromise between the federal and state positions. The Task Force endorsed a series of 17 cash management principles and undertook a series of pilot tests using different methods of reimbursement. Additional changes at the national level will depend on the results of these tests.

Also in 1983, OMB rescinded Circular A-111, the guidelines for implementing the *Joint Funding Simplification Act*. This action leaves the future of joint funding projects unclear. When the Act was reauthorized in 1980, Congress addressed criticisms of the program by calling for OMB to have a stronger implementation role.[13] By 1983, however, following the adoption of several new block grants and a negative evaluation of joint funding by federal agency administrators, OMB concluded that Circular A-111 was unnecessary and rescinded it along with five other management circulars.

STATES AND LOCALITIES BEFORE THE SUPREME COURT: THE YEAR IN REVIEW

> One message of the past few months is that the [C]ourt is totally unpredictable. There are within the [C]ourt two courts, maybe three and sometimes eight or nine. They coexist, side by side, like Jekyll and Hyde, depending on the case, the reading of precedent or the shift of a single vote.[14]

Although the commentator quoted above was describing the Supreme Court generally, the same could be said with regard to those cases which hold special significance for state and local governments. Thus, to attribute—as some have—a singleminded pro-local bias to a "Burger-Powell-Rehnquist-O'Connor bloc," while assigning an equal—though pro-national—tunnel vision to a "Brennan-White-Marshall-Blackmun-Stevens contingent" is to ignore a number of complicating factors.

First, quite obviously, no group of justices within the Court shares a consistent, controlling world vision—nor, even a "mini-Weltanschauung" ordering its federal-state-local decisionmaking patterns. Although it is true that certain justices appear to give more weight to federalism concerns than do others, by no means does there exist a monolithic viewpoint favoring one level of government over another.

Second, as the discussion below will show, there is no single "hook" upon which to hang intergovernmental disputes. Some cases may revolve principally around the Tenth Amendment, others around the spending power, and still others around the extent of immunity enjoyed by governments and their officials. Nor, for that matter, does most of the legal community even view the federal or intergovernmental dimensions of a case as being predominant. For instance, **Law Week's** prestigious annual review of the Supreme Court's Term groups major decisions under the headings of labor and employment discrimination law, business law, individual rights, and criminal law.

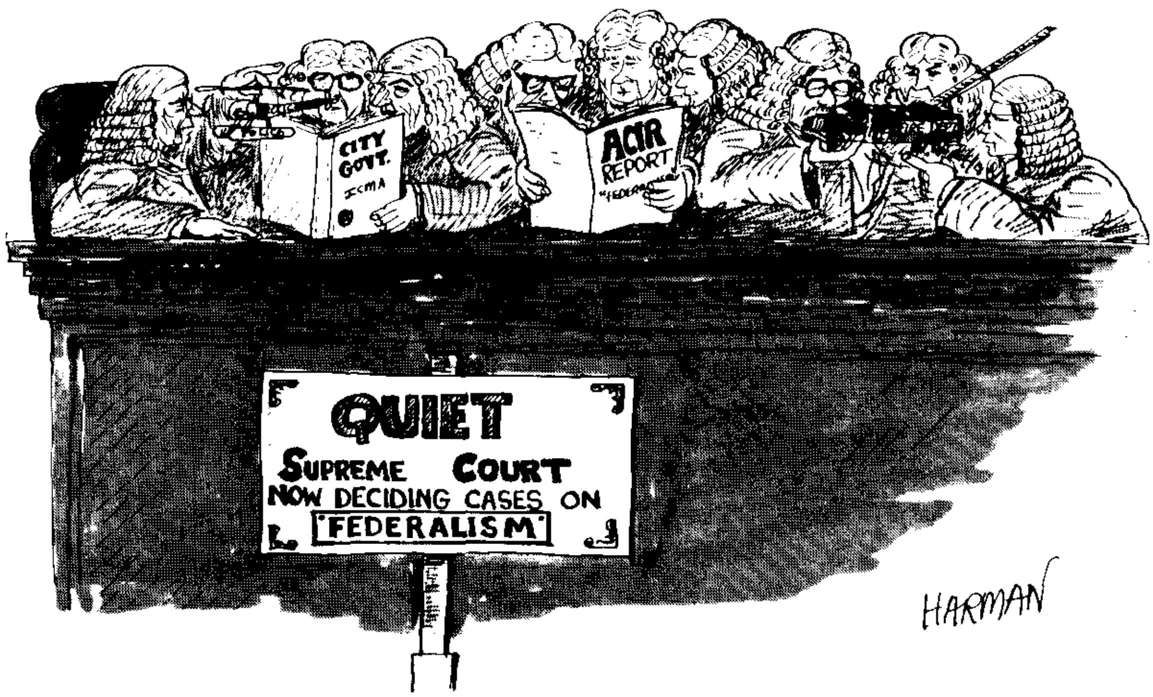
Finally, as more than a few observers have noted, states and localities frequently have been relatively inexperienced performers before the Supreme Court—often failing to deliver their cases in a manner that would educate the Court on those issues of central importance to the maintenance of state-local sovereignty. Indeed, at a recent Conference on Supreme Court Advocacy, Chief Justice Burger chided state and local attorneys for consistently presenting the Court with weak defenses, particularly when compared to a number of

[12] National Association of Regional Councils, **Implementation of Executive Order 12372,** Report No. 87, October 1983.

[13] U.S. Congress, Senate, Committee on Governmental Affairs, **Extending the Joint Funding Simplification Act of 1974,** S. Rpt. 96-530, 96th Cong., 1st sess. (1979), p. 6.

[14] Fred Barbash, "Unpredictable Court Flexes Its Muscle," **The Washington Post,** June 26, 1983, p. A1.

other groups including the federal government, business, and private interests.[15] Not surprisingly then, "[w]hen the claims of state and local governments clash with the claims of the federal government, the federal government wins two times out of three."[16]



In 1983, the Supreme Court heard and delivered opinions on a number of cases of critical importance to states and localities. True to past form, judicial blocks shifted, subnational governments "won some and lost some," and underlying legal principles varied. Because, in any given year, one-third of the cases considered by the Supreme Court are of direct concern to state or local governments,"[17] this brief review will necessarily be limited to only a very few key cases. Five themes—sometimes overlapping—have been selected for the purposes of this summary: the Tenth Amendment, preemption, the spending power, state taxation, and official immunity.

The Tenth Amendment: Revisiting the Perennially Revisited. Since 1976, states and localities have pinned their hopes for major legal victories on the Tenth Amendment principles articulated in *National League of Cities v. Usery*.[18] And, since 1976, they have been continually frustrated. In 1983, one more case joined the string of disappointments.

Very briefly, in *NLC*, the Court held that

> Congress may not exercise its power to regulate commerce so as to force directly upon the states its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made.[19]

That ruling was later refined by means of a fairly stringent three-pronged test, each portion of which a jurisdiction's claim must meet to invalidate Congressional legislation:

> First, there must be showing that the challenged statute regulates the "States as States;"
>
> second, the federal regulation must address matters that are indisputably "attributes of state sovereignty;" and,
>
> third, it must be apparent that the States' compliance with the federal law would directly impair their ability "to structure integral operations in areas of traditional functions."[20]

The difficulty of meeting all three requirements was nowhere more apparent than in 1983's most prominent *NLC*-based case.

In *Equal Employment Opportunity Commission (EEOC) v. Wyoming*[21] the Court considered a challenge to the 1974 amendments to the *Age Discrimination in Employment Act* (ADEA). Those amendments expanded the definition of "employer" to include state and local governments. Accordingly, it became unlawful for states or their political subdivisions to discriminate against employees or potential employees between the ages of 40 and 70 solely on the basis of age, except in instances where age is a "bona fide occupational qualification." For all practical purposes, then, a decision to retire a state or local employee prior to age 70 must be made on an individualized, case-by-case-basis.

[15] The Honorable Warren E. Burger, Chief Justice of the United States, remarks before a Conference on Supreme Court Advocacy, Washington, DC, October 17, 1983.

[16] Lawrence R. Velvel, "Judicial Federalism Today," August 1, 1983, p. 1.

[17] *Ibid.*

[18] 426 U.S. 833 (1976).

[19] *Ibid.*

[20] *Hodel v. Virginia Surface Mining and Reclamation Assn., Inc.*, 452 U.S. 264 (1981).

[21] ___ U.S. ___; 103 S. Ct. 1054 (1983).

In a 5-4 decision requiring four separate opinions, the Court ruled that "[t]he extension of [ADEA] to cover state and local governments is a valid exercise of Congress' powers under the Commerce Clause . . . and is not precluded by virtue of external constraints imposed on Congress, commerce powers by the Tenth Amendment."[22] Conceding that the management of state parks (the function at issue in the case) "is clearly a traditional state function" and that ADEA does indeed "regulate States as States," the Court nonetheless based its decision on a finding that the state failed to demonstrate that the law would directly impair its ability to structure integral operations. Indeed, the Court hinged its decision on the *degree of federal intrusiveness* as opposed to the simple *fact of intrusiveness*.

According to Lawrence Velvel of the State and Local Legal Center, the string of post-*NLC* losses experienced by the states is attributable not to a shift in judicial philosophy, but rather to the facts of the cases subsequently presented and to the failure of the states to offer more suitable solutions:

> The underlying reasons for our problems lie elsewhere. After [*NLC*] there were a string of cases involving energy, the environment, the national economy, and age discrimination. In every one of these cases the Court clearly felt that there was a tremendous national interest at stake. In most of them there had been extensive Congressional hearings and Executive consideration of the law at issue, hearings and consideration that sometimes stretched over many years and even decades. . . .
>
> The Court's attitude was fostered by another fact as well. With the possible exception of the *Long Island Rail Road* case, the states were not coming to it with a better program for solving the problems involved . . . . Rather, the states were simply in the position of nay-sayers . . . .
>
> The states were, then, in the worst possible position. They were attacking long-considered federal efforts to deal with national problems, while themselves putting forth no "mousetrap" for solving the problems. . . .[23]

During the current Term, states and localities will once again be given the opportunity to persuade the Court that a federal regulation improperly impinges on a traditional governmental function—in this case, publicly-owned and operated mass transit systems. (See **Intergovernmental Perspective,** Vol. 9, No. 4, Fall 1983.) Whether they are successful in *Donovan v. San Antonio Metropolitan Transit Authority*[24] may well depend not on their ability to finesse the "*NLC* tests," but rather, as Mr. Velvel suggests, on their ability to convince the Court of the supererogatory and harmful nature of the federal *Fair Labor Standards Act* rule in question and the existence of an equal or better subnational "mousetrap."

Preemption: For An Old Issue, A New Era. The question of when a federal law preempts a state action is one of the oldest among American constitutional issues. Given judicial substance 160 years ago, the legitimacy of federal supercession was described by Chief Justice John Marshall in the following manner:

> [T]o such acts of the State Legislatures as do not transcend their powers, but . . .interfere with, or are contrary to the law of Congress, made in pursuance of the constitution, . . . [i]n every such case, the act of Congress . . . is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it.[25]

While that definition could hardly be more clear, actual preemption conflicts may involve a great many legal subtleties, thus making judicial determinations difficult. Moreover, state and local interests contend that preemptory activities have been increasing precipitously over the past decade or so[26]—"so much that powers constitutionally reserved to the states are dwindling to an ever-decreasing number."[27] Despite such ominous assertions, the states prevailed in 1983's major preemption case, *Pacific Gas and Electric Company v. State Energy Resources Conservation and Development Commission*.[28]

At issue in that case was a moratorium on nuclear power plant construction imposed by the state of California. Petitioners, joined by the federal government, claimed that California's Warren-Alquist Act, the statutory basis for the moratorium, was preempted by the *Atomic Energy Act of 1954*.

Surprising many observers, the Court handed down a unanimous judgment in favor of California, holding that the relevant portion of the Warren-Alquist Act "is not pre-empted by the *Atomic Energy Act;*" "does not conflict with federal regulation of nuclear waste disposal;" and "does not frustrate the *Atomic Energy Act's* purpose to develop the commercial use of nuclear powers."[29] Rather, the Court found that in the area of nuclear energy, a dual regulatory authority exists:

> [A]s we view the issue, Congress . . . intended that the federal government should regulate the radiological safety aspects involved in the construction and operation of a nuclear plant, but that the States retain their traditional responsibility in the field of regulating electrical utilities for determining questions of need, reliability, cost and other related state concerns.[30]

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[22] *Ibid.*

[23] Lawrence R. Velvel, Speech Delivered at NCSL State-Federal Assembly Meeting, Washingtron, DC, April 14, 1983.

[24] Docket No. 82-1951.

[25] *Gibbons v. Ogden*, 9 Wheaton 1 at 209 (1824).

[26] See for example Enid Beaumont, "Background Paper on Preemption," draft, July, 1982; Curtis W. Copeland, "Federal Preemption of State Authority," draft paper prepared for the Council of State Governments, n.d.; and Andrea Kailo, "Federal Preemption of State Law is Alive and All Too Well," **State Legislatures,** March 1982.

[27] Copeland, "Federal Preemption of State Authority," p. 1.

[28] 51 LW 4449 (1983).

[29] *Ibid.*

[30] *Ibid.*, at 4453.

Nuclear fuels were again the focus of one of the most celebrated preemption case of the 1983-84 Term. In *Silkwood v. Kerr-McGee*[31]—a case that has received nationwide attention due primarily to the circumstances surrounding the 1974 death of Karen Silkwood—the Court was asked to decide whether federal law preempts state laws that permit punitive damage awards against companies which allow their employees to become radioactively contaminated. Fifteen states joined the Silkwood Estate in the case; the Reagan Administration supported the position of Kerr-McGee.

In a narrowly arrived at decision creating such unexpected legal bedfellows as Brennan and Rehnquist for the majority and Burger and Marshall for the minority, the Court ruled in favor of the Silkwoods and the states, finding "ample evidence" that although the states are preempted from most forms of nuclear safety regulation, state negligence law may permit awarding punitive damages.

Grant Law: The Gray Area of Federalism. Of all the areas of law confronting the Supreme Court in the contemporary era of intergovernmental relations, perhaps none is possessed of as many confusing nuances as grant law. Nor, probably, has any other field been the recipient of less satisfying legal doctrine. Nonetheless, it is an increasingly rare Court Term in which the justices are not asked to decide some major grant question.

In a ruling that could cost the nation's states and cities millions of dollars, a unanimous Supreme Court decided in 1983 that federal agencies may seek repayment of misspent grant funds. Questions resolved in *Bell v. New Jersey and Pennsylvania*[32]—a suit in which the two respondent states were joined by a large number of their fellow states, local governments, and public interest groups—included: 1) whether the federal government may recover misused funds even when the original grant law did not contain a specific recovery provision; and 2) in any case, whether imposition of liability for misapplied moneys constitutes interference with state sovereignty in violation of the Tenth Amendment.

At issue in the case were Department of Education audits finding that New Jersey had misapplied over $1 million and Pennsylvania over $400,000 in funds obtained under Title I of the *Elementary and Secondary Education Act of 1965* (ESEA). Thereafter, the Secretary of Education asserted his right under the provisions of law to recover the misspent money. The states presented the questions proffered above.

Applying both the "plain language" rule set forth in *Pennhurst State School and Hospital v. Halderman*[33] and a reading of legislative history, the justices found that although the final determination of the Education Appeal Board had occurred prior to the enactment of the 1978 amendments to ESEA, which gave the Secretary explicit authority to recover misused funds, "the pre-1978 version contemplated that states misusing federal funds would incur a debt to the Federal Government for the amount misused . . . . [34] Moreover, the Court found rights of recovery under the *General Education Provisions Act of 1970*.

Having resolved to its satisfaction the statutory question, the Court summarily dismissed the states' constitutional complaint, averring that "[i]f the [grant] conditions were valid [a question not under review], the State had no sovereign right to retain funds without complying with those conditions." Although the ruling affirms the authority of federal agencies to recoup misapplied grant funds, actual repayment disputes will be decided by the lower courts on a case-by-case basis.

Early in the 1983-84 Term, another important grant law issue was decided. In this case, however, the Court (again unanimously) found for state and local interests. Under consideration in *Norfolk Redevelopment and Housing Authority v. Chesapeake and Potomac Telephone Co. of Virginia*[35] was the *Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970*. The Act applies to most displacements caused by government programs using federal funds other than General Revenue Sharing.

The case in question arose when C&P Telephone requested relocation assistance after it was required to move some of its transmission facilities from a public right-of-way as part of a Norfolk urban renewal project. Although businesses as well as people may be considered "displaced persons" for the purposes of the Act, public utilities are a unique category of business, presenting government with special problems. For example, a long-established principle of common law holds "that a utility forced to relocate from a public right-of-way must do so at its own expense."[36] Hence, *amici* joining the Norfolk Authority asked the Court to decide that "[a]bsent a clear Congressional statement that public utilities should be compensated under the statute, the courts should be reluctant to interpret the law in such a way as to obviate decades of State common law providing for State legislative oversight of utility relocation assistance through eminent domain and public utility regulatory agency oversight."[37] The Court upheld that contention, adding that the *Relocation Act* was aimed at "residential and business tenants and owners, not the separate problems posed by the relocation of utility service lines."[38]

Yet to be decided this Term is the much-publicized case of *Grove City College v. Bell*.[39] Of particular importance both to grant lawyers and women's groups, *Grove City* will test the scope of Title IX of the *Education Amendments of 1972*. That provision forbids sex dis-

[31] Docket No. 81-2159
[32] 51 LW 4647 (1983).
[33] 451 U.S. 1 (1981).

[34] *Bell v. New Jersey and Pennsylvania*, 51 LW 4647 at 4649 (1983).
[35] *Ibid* at 4652.
[36] 52 LW 1069 (1983).
[37] Memorandum from Richard B. Geltman, General Counsel, to Members of the Committee on Legal Affairs, National Governors' Association, February 24, 1983.
[38] 52 LW 1069 (1983).
[39] Docket No. 82-792.

crimination in "any education program or activity receiving federal financial assistance." The college along with the federal government will be arguing for a limited interpretation of the law—one holding its provisions to be program-specific. Advocates of a broad interpretation of Title IX will ask the Court to uphold a Third Circuit decision finding that federal aid to a student constitutes aid to the student's college and that aid to an individual college program constitutes aid to the entire institution, thus outlawing sex discrimination on a college-or university-wide basis.[40]

State Taxation. Among all the decisions handed down by the Supreme Court during its last Term, arguably the states' greatest victory came in *Container Corporation of America v. Franchise Tax Board.*[41] In that case, the Court upheld the constitutionality of the "worldwide unitary" method of calculating corporate state income taxes. Specifically, in a 5-3 decision, it ruled that

> California had the right to force Container Corp. of America to report its "worldwide combined income"—including that of its subsidiaries—everywhere it operates as if the company and all its subsidiaries constituted a single "unitary" business. California could then tax a fraction of Container Corp.'s worldwide income equal to the fraction of Container's business conducted in California, regardless of its actual income from California.[42]

The extremely controversial tax methodology pitted states' rights not only against large portions of the American business community but against the "good will" of many of the nation's foreign allies and trading partners as well. At the time, the ruling affected 11 states. Since the June 27, 1983 decision, however, an additional state, Florida, has adopted the unitary method. Although no one knows with any degree of certainty how much revenue states annually garner by employing the unitary approach, estimates run as high as $730 million.[43]

In its current Term, the Court is expected to address one of the most ancient and enduring of intergovernmental constitutional issues—that of tax immunity. In *South Carolina v. Regan,*[44] the plaintiff state, joined by 24 others, will ask the Court to overturn on Tenth Amendment grounds those portions of the federal *Tax Equity and Fiscal Responsibility Act of 1982* (TEFRA) that require state and municipal bonds to be issued in registered form if the interest is to be exempt from federal income tax.

The outcome of the case may well turn on whether the Court takes a *prophylactic* or a *pragmatic* approach to TEFRA's alleged infringement on state sovereignty. The prophylactic approach "provides that any burden on a constitutionally protected right must be set aside,"[45] while the pragmatic approach provides for weighing the constitutional principle against "the purpose of the federal regulation and the [extent of] the burden it imposes on states . . . ."[46] In recent years, the Court has tended—both in its tax rulings and other Tenth Amendment decisions—to take a pragmatic view of federal regulatory burdens. Just such pragmatism was exhibited last year in the previously discussed case of *EEOC v. Wyoming* when the majority upheld the ADEA because the *degree* of federal intrusion was insufficient to warrant overturning the Act on constitutional grounds.

Official Liability. Among evolving legal doctrines, perhaps none have aroused quite as much anxiety among state and, even more so, local authorities than those concerning liability for official actions—anxiety which may indeed be warranted by the fact that the trend has largely been toward stripping such officials (and local governments themselves) of the immunity that once protected them in the performance of their duties. Of particular concern has been the increasing threshold of liability—in terms of liable actions, liable "persons," and damages awarded—under Section 1983 of the *Civil Rights Act of 1871* (see **Intergovernmental Perspective,** Vol. 7, No. 4, Fall 1981), and under federal antitrust laws (see **Intergovernmental Perspective,** Vol. 9, No. 4, Fall 1983).

Virtually unused for nearly a century after its enactment, Section 1983 has become "the statute which courts are most often using as a basis for the award of damages for state [and local] officials' violations of individual rights."[47] However, what may have marked the 1982-83 Term more than any other factor was the "paucity of cases involving the older civil rights statutes . . . [particularly when c]ompared to previous Terms. . . ."[48] Nonetheless, at least one case was notable for further expanding the extent of the law.

In 1983, a bitterly divided Court considered whether punitive damages[49] are available under Section 1983 and, if so, what underlying threshold of conduct will trigger awarding of such damages.[50] The case in question involved an inmate of a Missouri reformatory who was beaten and sexually assaulted by his cellmates.

[40] *Grove City College v. Bell, CA 3, 8/12/82, 51 LW 2152 (1982).*
[41] 51 LW 4987 (1983).
[42] Philip Dion, "Foreign Governments Up in Arms Over State Taxation of Multinationals," **National Journal,** October 8, 1983): 2056.
[43] *Ibid.*
[44] Docket No., 94-Orig.
[45] Edward G. Eisert, "South Carolinas v. Regan: A Legal Overview," **The Weekly Bond Buyer,** October 5, 1983, p. 9.
[46] *Ibid.,* p. 13.
[47] Thomas J. Madden, "Increasing Liability of Federal, State, and Local Officials Involved in Administering Federal Grants," Address to the National Assistance Management Association, Washington, DC, November 14, 1983, p. 4.
[48] "Review of the Supreme Court's Term: Individual Rights," 52 LW 3137 (1983).
[49] *Compensatory* damages are awarded to individuals to make good some injury actually suffered. They have long been available under Section 1983. *Punitive* damages, on the other hand, are assessed to penalize the individual who has inflicted the injury and to deter that individual from violating rights in the future.
[50] *Smith v. Wade,* 51 LW 4407 (1983).

The inmate, Wade, had been the subject of repeated assaults and one of his cellmates had a history of assaulting other prisoners. Wade brought suit under Section 1983 against a number of reformatory guards and other officials alleging that his Eighth Amendment rights had been violated. Thereafter, a district court jury awarded Wade both compensatory and punitive damages, an appeals court affirmed that award, and the Supreme Court upheld the appellate decision. Thus, for the first time, the Court sanctioned the availability of punitive damages under Section 1983.

The Court then considered what sort of behavior would leave an official open to punitive damages. That is, must the official in question have acted with malicious intent to cause injury or is "reckless or callous indifference to . . . federally protected rights" sufficient motivation? The Court here held that indifference was an adequate standard for allowing juries to assess punitive damages. The decision is likely to stimulate a new wave of Section 1983 litigation.

In its 1981-82 Term, the Supreme Court stripped local governments of all the immunity they were once thought to enjoy under the federal antitrust laws.[51] The 1982-83 Term divested the states of a portion of their immunity. In a narrowly decided *Jefferson County Pharmaceutical Assn., Inc. v. Abbott Laboratories*,[52] the Court held that "the sale of pharmaceutical products to state and local government hospitals for resale in competition with private pharmacies is not exempt "from the [Robinson-Patman] Act's proscriptions."[53] Although the ruling was a narrow one, it raises a number of difficult questions which may, in the words of one observer, lead to "a paralyzing uncertainty [among] state and local governments, and those with whom they deal, with respect to when [competitive] bidding will be "deemed lawful, and when it will not."[54]

First, the Court drew a distinction between traditional governmental functions and proprietary ones. But, it left unclear what would constitute a state purchase "for use in traditional governmental functions." And left muddy the legal waters surrounding the meanings of "use" and "traditional governmental functions."[55]

Second, employing one of the *NLC*-based tests, the Court averred that "[t]he retail sale of pharmaceutical drugs is not 'indisputably an attribute of state sovereignty.' "[56] However, it did not address questions revolving around the definition of "retail" as opposed to "wholesale" sales nor whether that distinction matters for Tenth Amendment purposes.[57]

Third, although the Court said that it "need not decide . . . whether . . . sales . . . made by a state to a class of indigents . . . are 'in competition' with private enterprise,"[58] it did not say, among other things, "[w]hat sort of program would involve 'sales . . . made by a State to a class of indigent'; [w]hat constitutes a 'sale' for such purposes; [or w]hat is a class of indigents."[59]

"If there was a major federalism story at the national level in 1983, that story was written by the Supreme Court. Yet, it was a story lacking one coherent theme while, at the same time, possessing an overabundance of plots."

Judicial Readings. If there was a major federalism story at the national level in 1983, that story was written by the Supreme Court. Yet, it was a story lacking one coherent theme while, at the same time, possessing an overabundance of plots. It was a story where "winners and losers" varied along a varying continuum of issues. It was, for the most part, a story without clear conclusions—a continuing serial whose endings (if there are to be endings) will be played out over successive Terms. Hence, the meaning and application of the Tenth Amendment remain elusive; the field of grant law persists in being an enigma; and questions surrounding liability continue, if through confusion alone, to evoke the criticism that they are enervating state and local officialdom.

In its current Term, the Court will revisit many of the same issues that it addressed in 1983. It will again speak to the Tenth Amendment, federal preemption, grant law, and state taxation—in general, to a wealth of constitutional and statutory issues of extreme intergovernmental significance. Whether it will produce any clear conclusions, however, is unlikely given the independent nature of the Burger Court Justices and an understandable judicial preference for ruling on narrow issues as opposed to broad principles. Nonetheless, even narrow decisions of opaque implication may work to shift the balance of power among levels of government. Thus, each case will be, in its own way, important; each decision, in its own way, momentous.

PORTENTS AND PROSPECTS

The three branches of the national government dealt with some intergovernmental initiatives in 1983, delayed others, and may have defeated permanently still others. Decisive, though not necessarily determinative, actions were taken by the Supreme Court. From pre-

[51] *Community Communications Co., Inc. v. City of Boulder*, 102 S. CT. 835 (1982).
[52] 103 S. Ct. 1011 (1983).
[53] *Ibid.*
[54] Letter from Thomas J. Madden to Daryl D. Perry, May 20, 1983.
[55] *Ibid.*
[56] 103 S. Ct. 1011 at 1014 n. 6.
[57] Madden letter to Perry.
[58] 103 S. Ct. 1011 at 1014 n. 7.
[59] Madden letter to Perry.

emption to state taxation to civil rights, the Court confronted a variety of issues—giving weight to federalism as a deciding factor in varying degrees—with which it will have to deal repeatedly in succeeding Terms.

In 1983 as in other years, both the Congress and the Presidency engaged in posturing, politics and polemics. Yet significant enactments did occur. The record of achievement generally suggests a return to an incremental approach to intergovernmental relations. Major federalism reform initiatives were rejected. And federal aid will flow at about the same rate that it has for the past several years. The proportion of aid dollars channeled through general revenue sharing and block grant conduits will be about the same (approximately 20%) as it was in 1980. There is less "bypassing" of state governments than in 1980, but the renewal of GRS, UDAG, and the entitlement portion of CDBG, plus the passage of the new housing assistance program, all assure continuance of a strong direct federal-to-local linkage. Congress, not unexpectedly, began to impose added conditions on a few of the new block grants, even as the Administration sought to devolve greater discretion to recipient governments. Neither branch came to grips with amending the statutory bases of regulatory federalism.

This summary might suggest that few nationally initiated changes have occurred in the federal system. But this is not the case. The changing nature of the national debate was significant. Mounting interest payments on the national debt, the fiscal crisis confronting Medicare, the long-term solvency of Social Security, the condition of the federal pension system, increased expenditures for defense, and international tensions overshadowed other issues. Moreover, all these matters are fully federal responsibilities, and all will require national, not intergovernmental, action.

In short, a real, but unplanned, "sorting out" of government functions appears to be taking place. This rearrangement is being done largely because of fiscal duress on the federal side, without serious consideration being given to what level of government is best suited to conduct which functions. The Reagan Administration's New Federalism was a bold attempt to raise this consideration but it, too, quickly became enmeshed in a debate over dollars. Charles Kurfess, former Speaker and Minority Leader of the Ohio House of Representatives, stated at an ACIR hearing held in September 1983:

> Proposals for realignments of government functions have usually been based upon the cost of those functions and where the money should be coming from . . . I would suggest that we look at not just what level is best equipped to raise the funds but also at what level is best equipped to effectively administer the function in question.

"It is now nearly 200 years since the federal system was constitutionally created and our bicentennial celebration could—and should—include a serious national debate on the shape of the system of shared but separate powers created among the three levels of government. Even Madison might smile at the thought."

It is now nearly 200 years since the federal system was constitutionally created and our bicentennial celebration could—and should—include a serious national debate on the shape of the system of shared but separate powers created among the three levels of government. Even Madison might smile at the thought.

David B. Walker is ACIR Assistant Director for Structure and Functions. Cynthia Cates Colella is a Senior Analyst in the Structure and Functions Section. Others members of ACIR staff contributing to this article included David Beam, Timothy Conlan, Dorothy Dickerson, Robert Dilger, and Lori Henderson.

ACIR News

Financing Infrastructure a Serious But Manageable Problem, ACIR Finds

At its December meeting, the Commission examined the findings from its study, **Financing Public Physical Infrastructure,** and concluded that infrastructure problems, although serious, are generally manageable using existing financing mechanisms. Given the pressure to reduce massive federal deficits, it is unlikely that the national government will be able to provide states and localities with additional large-scale aid programs for capital facilities. At least for the next few years, ACIR members found that most new funds will probably have to come from state-local tax sources, user charges, and through bond financing.

Congress can improve existing federal programs by balancing more carefully both construction and maintenance needs, by allowing flexibility in statutory and regulatory construction standards, and by emphasizing research and development efforts in the infrastructure field. In many instances, infrastructure renewal will require a coordinated federal, state, and local effort.

Commission Recommends Increased State Aid to Distressed Communities

States should formulate coordinated policies to target assistance to people, places and businesses in need, the Commission recommended last December.

Specifically, the Commission called upon the states to develop tailored policies and programs for attracting commercial and industrial development to economically distressed areas. In such areas, special attention should be paid to the needs of minority and small business enterprises.

ACIR's policy recommendations stemmed from a four-year study, **The States and Distressed Communities.**

ACIR's Spring Meeting to Focus on Tax, Municipal Antitrust Issues

At the Commission's spring meeting, to be held in Phoenix (AZ) on March 2 and 3, the major agenda topic will be the intergovernmental implications of federal revenue raising proposals brought to the fore by large and increasing federal deficits. Until now, little has been known about how certain proposals would affect state and local abilities to finance public services. ACIR will address the intergovernmental implications of three broad strategies for augmenting federal revenues:

1. Raising existing rates;
2. Broadening the federal income tax base; and,
3. Adopting new taxes.

The Commission will again examine the issue of municipal exposure to federal antitrust law. The Commission will consider alternative recommendations on lessening municipal exposure to such antitrust suits.

Preparations Underway for ACIR's 25th Anniversary

As part of ACIR's activities to commemorate its 25th anniversary, the Commission is sponsoring a series of hearings, panel discussions, and workshops to: (1) review and assess standing Commission policy recommendations; (2) note intergovernmental trends and issues; and, (3) identify potential friction points likely to arise within the federal system.

The first such gathering was held in conjunction with ACIR's regular spring meeting in Phoenix, Arizona. The March 1 hearing was concerned with tax and public finance issues for the Eighties. Another hearing will be held on June 6, preceding the Commission's regular meeting. Other meetings are tentatively scheduled to be held in tandem with national conferences of public interest groups and professional associations as listed below:

April 8	**Implementing Government Reforms** American Society for Public Administration Denver, CO
June 6	**The Role of the National Government** Washington, DC
June 16-20*	**The Federal-Local Partnership** U.S. Conference of Mayors Philadelphia, PA
July 7-11*	**The State-Local Partnership** National Association of Counties Seattle, WA
July 23-27*	**The States' Role in Fiscal Policy, Preemption, and Regulation** National Conference of State Legislatures Boston, MA
July 29-31*	**The States' Role in the Federal System** National Governors' Association Nashville, TN
November 17-20*	**ACIR—The Institution** National Municipal League Kansas City, KS
November 24-28*	**State-Local Cooperation** National League of Cities Indianapolis, IN

*Tentatively scheduled to coincide with national meetings—exact dates to be announced.

And Briefly: Books

The following publications are reports issued in 1983 by the Advisory Commission on Intergovernmental Relations.

Changing Public Attitudes on Governments and Taxes (S-12).
This 12th annual survey of public opinion on governments and taxes was conducted by the Gallup Organization for the ACIR. This year's results are presented in tables with explanatory notes. Appendix tables present the results of previous surveys.

Tax Capacity of the Fifty States, 1981 (A-93).
This report assesses the fiscal capacity and tax effort of the 50 states using the Representative Tax System (RTS) measure. Tables are also provided on each state's tax capacity and effort.

Staff working paper,
"Measuring Metropolitan Fiscal Capacity and Effort: 1967-1980."
This report presents estimates of fiscal capacity and effort for 69 metropolitan areas for the years 1967 and 1980. It marks the first time ACIR has applied the RTS measure to substate areas.

In Brief: Regulatory Federalism (B-7).
This **In Brief** summarizes the Commission's findings and presents recommendations from its report entitled **Regulatory Federalism: Policy, Process, Impact, and Reform.**

In Brief: Jails: Intergovernmental Dimensions of a Local Problem (B-8).
This **In Brief** summarizes the research findings and lists recommendations from the Commission's report on local jails.

Significant Features of Fiscal Federalism, 1981-82 Edition (M-135).
This year's edition of **Significant Features** provides updated information on federal, state and local revenues and expenditures, employment, earnings and tax rates. New additions to 1981-82 edition include a glossary of public finance terms and an index.

The States and Distressed Communities: The 1982 Report (M-136).
This ACIR report was prepared with the assistance of the National Academy of Public Administration for the Department of Housing and Urban Development. This volume is the third report on state efforts to direct assistance to urban and rural areas with special needs. The study examines 19 indicators in five areas of state-funded activity: housing, economic development, community development, fiscal and financial assistance, and local self-help programs.

In addition, the ACIR released the following in 1984:

"Block Grant Implementation: A Preliminary Review of the Second Year's Experience" **Information Bulletin** No. 84-1.
This **Information Bulletin** discusses trends noted during second year implementation of the block grants authorized by the *Omnibus Budget Reconciliation Act of 1981* and the jobs training block grant implemented in 1983.

The following publications are available directly from the publishers cited. They are not available from ACIR.

Policy Positions, 1983-84. National Governors' Association, Hall of the States, 444 North Capitol Street, Washington, D.C. 20001.

Suggested State Legislation, 1984. Council of State Governments, Iron Works Pike, P.O. Box 11910, Lexington, KY 40578. $15.00.

A Quiet Revolution in Local Government Finance: Policy and Administrative Challenges in Expanding the Role of User Charges in Financing State and Local Government, by William G. Colman. National Academy of Public Administration, Suite 540, 1120 G Street, N.W., Washington, D.C. 20005.

Charging for Federal Services. U.S. Congress. Congressional Budget Office. U.S. Government Printing Office, Washington, D.C. 20402.

Employment in the 1980s: Jobs for a Changing Economy. Council of State Governments. Iron Works Pike, P.O. Box 11910, Lexington, KY 40578. $10.00.

Strengthening Legislative Oversight of Federal Funds: Problems, Issues, and Approaches. National Conference of State Legislatures, Fiscal Affairs Program, 1125 17th Street, 15th Floor, Denver, CO 80202.

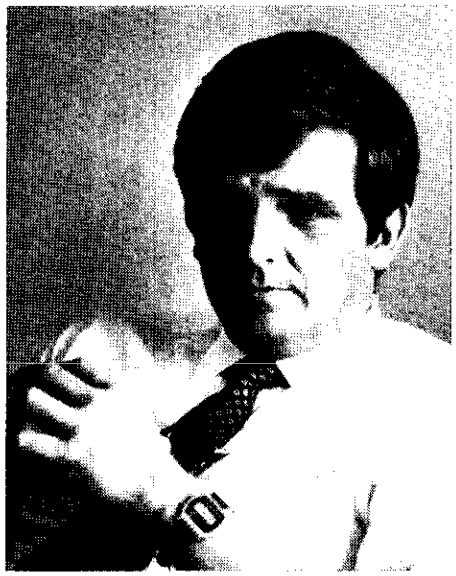
Information Regarding the Effect of Applying the Representative Tax System to the General Revenue Sharing, Medicaid, and Vocational Education Programs. U.S. General Accounting Office, Document Handling and Information Services Facility, P.O. Box 6015, Gaithersburg, MD 20760.

continued from p. 4

sions, however, continued to squeeze breath out of the Tenth Amendment, while court interpretations of federal civil rights and antitrust laws encouraged growing volumes of litigation against state and local entities and officials.

The ebb and flow continues as our federalism is shaped in new ways. A rebalancing is occurring, but it is being done without any formal "sorting out" of governmental roles and responsibilities. The national government's attention is increasingly riveted on matters that are indisputably national in scope. Meanwhile, state and local governments did what it took to survive the recession and have sharpened their own priorities, in the process sometimes restoring federal grant reductions they deemed most hurtful. These governments have emerged from this experience a little leaner, and surely different. As the same wringing out occurs in the national government, American federalism "it is a-changing" whether reflected in theory and statutes or not.

The Chairman's View



Dear Reader:

If one scans most of the major national newspapers on the issue of federalism reform, one is left with the impression that the issue is dead. However, if one looks at a number of issues of concern to state and local officials, one comes away with a much different sense. The issue is alive and merely awaiting another opportunity for a public hearing.

Constitutional issues may well lead the next round of federalism reform. The most likely issue to be addressed will be federal budgetary policy and its effect on the federal system.

Several constitutional issues are likely to be seized by reformers. Thirty-two states have already passed resolutions calling for a constitutional convention to consider the issue of a balanced budget. Two more states are needed to reach the two-thirds required to put the call for a constitutional convention in motion.

The more likely course will be for congressional action to forestall a convention. The triggering event may come from either of two states. Vermont is giving serious consideration to a resolution. In California a citizen organization, the National Taxpayers Committee, in association with various California tax groups, is now seeking signatures to place the issue on the November ballot.

If the Congress decides to act it will have a number of choices. It could consider the balanced budget amendment that passed the Senate in 1982. Passage of an item veto is another option. Or, they might increase the needed majority to pass a budget.

ACIR has been on record for some time calling on the Congress to clarify so far unused portion of Article V of the U.S. Constitution regarding the ability of states to call single-purpose conventions. The logic is straightforward. If the Congress has the power to amend the Constitution on a single purpose basis, it would seem logical that the founding fathers would have intended the same powers for the states. Clarification of Article V would make an incremental but important step in rebalancing the federal system.

Regardless of the outcomes of these constitutional issues, they have an important federalism component. For too long, debates on federalism have ignored constitutional issues. Those of us interested in federalism, whether between the federal government and states, or between states and local governments, can only cheer on discussions regarding their constitutional foundations.

Robert B. Hawkins, Jr.
Chairman

Current Members of the Advisory Commission On Intergovernmental Relations

(February 1984)

The Chairman of the Advisory Commission on Intergovernmental Relations has determined that the publication of this periodical is necessary in the transaction of the public business required by law of this Commissiom. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through March 20, 1985.

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