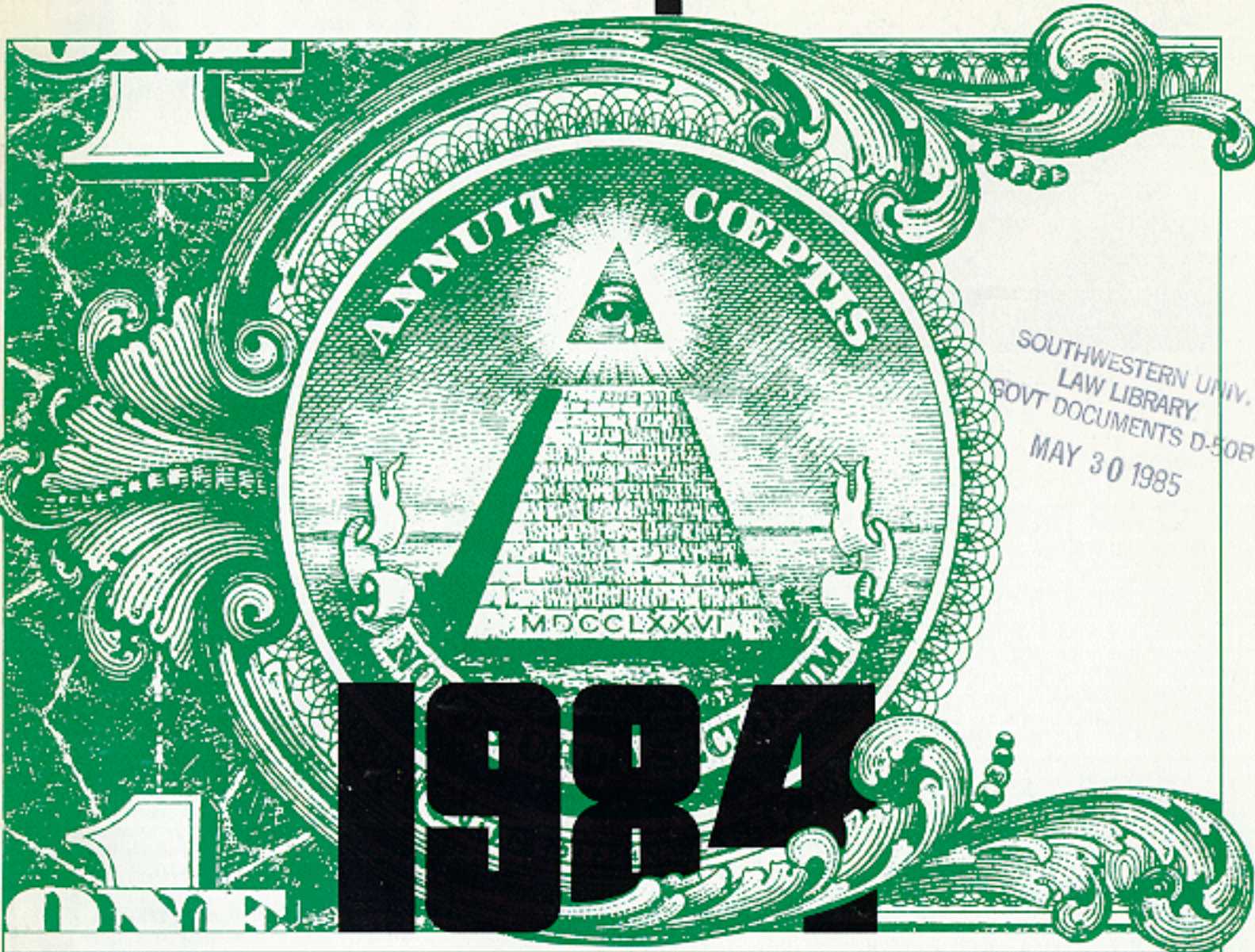


Intergovernmental

Winter 1985, Vol. 11, No. 1

# PERSPECTIVE



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# 1984

NOT  
 A GOOD  
 FISCAL YEAR  
 FOR  
 "BIG BROTHER"





# View From The Commission

Dear Reader:

After more than four years of advocacy of New Federalism by the current administration, and the reduction and proposed elimination of many federal-city programs, the propriety of the federal-city relationship is being questioned. Is it necessary? Should it continue? My answer is a resounding "Yes!"

Certainly, some reform in our federal system was necessary. The increasing tendency to address many state and local concerns with new separate federal programs gave rise to "marble-cake" federalism in programs confused and interwoven in relationships that defied reasonable accountability. An effort began in the late 1970s and continued the last four years to curb these abuses. This effort, with close involvement from the ACIR, resulted in the early block grant efforts, such as the Housing and Community Development Act of 1975, where many separate federal urban programs were joined together in one program on a formula basis and block grants went back to cities.

These grants were reasonably free of red tape, allowed cities to address their priorities and yet addressed national urban concerns. The Community Development Block Grant program has been enormously successful, yet it is a program that has been substantially reduced over the last few years.

The New Federalism efforts to straitjacket our system and produce a pure "layer-cake" federalism of federal-to-state-to-local defy one key American experience—pragmatism. Americans gravitate not to the theoretical but to the practical—does it work?

The federal-city partnership does work. Neighborhoods that were ghettos, or that were threatened with deterioration, have been restored by early urban renewal efforts and later the Community Development Block Grant program. The Urban Development Action Grant program has been the most successful economic development effort in our country's history; it has produced nationally more than 400,000 new jobs, all of which are in the private sector. Revenue sharing, one of the earliest block grant efforts, produced much-needed funds for local governments without red tape. These federal-city efforts and others have been enormously successful. In the American experience, they have worked. The ACIR's leadership was critical in the development of this practically oriented approach to federalism.

The development of federal involvement in urban problems grew out of necessity. Our country saw a growing urban nation with its cities dying. Our states, for the most part, were not even beginning to recognize or address this concern. The reason is, of course, that most states do not have an urban focus. A nation of cities can develop a national urban understanding at the federal level. But that national urban understanding is not evenly divisible by fifty. Many states have but a handful or fewer of urban areas. Our state legislators are unfamiliar with urban problems, and the state bureaucracy

is unskilled in urban issues. If cities had waited for a fifty-state addressing of urban concerns, many American cities would have died, and the crisis of the 1960s would have continued in an exacerbated fashion. It was out of American pragmatism that our federal government acted. Thank goodness it did.

There are many layer-cake federal-to-state-to-city efforts, the results of practical experience. The key is where a reasonably common experience for fifty can be found. Education and highway construction are two examples of this. While there may be different nuances from state to state, each state had a substantial ongoing program. Here direct federal-city relationships were necessary.

The administration's efforts for a complete New Federalism have stalled and I think are finished in the purest sense. However, the debate was healthy and many excesses that had peaked in the 1970s were cured. The tendency toward too many unrelated federal initiatives has been arrested. The sound programs, however, have continued.

The New Federalism debate has helped focus on the need for a much closer state-local relationship. I hope that the increasing scarcity of federal resources, as well as the New Federalism debate, will cause states to begin to focus on and address local problems. A distinguished urban writer, Neal Peirce, has called for a new state-local Magna Carta. States need to grant true home rule to local governments. The tendency of a higher level of government to want to meddle in the next lower level of government's affairs is not a peculiarly federal experience. All cities have seen the same tendency at the state

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*Intergovernmental Perspective*  
is published four times a year  
by the Advisory Commission on  
Intergovernmental Relations,  
Washington, DC 20575  
202-653-5536

# 1984— Not a Good Fiscal Year For Big Brother

John Shannon

Shortly after the end of World War II, George Orwell painted a bleak future for modern democracy: he warned that by 1984 the central government ("Big Brother") could become all powerful and individual freedom a thing of the past.

In far less gloomy terms, students of American federalism also made their predictions after World War II. Many agreed with the assessment that the states were the "fallen arches" of our federal structure; they also viewed the centralization of power in Washington as inevitable if not desirable.

When attempting to ascertain where we are going, looking back over the shoulder often proves more instructive than simply speculating about the shape of things to come. In this article, therefore, Orwell's year 1984 becomes the high vantage ground from which to look back over the great changes of the last three decades so as better to judge both the course of fiscal federalism and the prescience of yesterday's forecasters.

## FEDERAL AID—THE SLOW RETREAT

1984 marked Year Six for De Facto New Federalism: a fiscal decentralization process slowly nudged along by growing fiscal stringency at the federal level and given added impetus by the strong public support for the Reagan Administration's conservative and decentralist philosophy. Because federal aid continued to grow more slowly in 1984 than did state and local own-source revenue, aid from Washington dropped for the sixth straight year as a percentage of state-local expenditures (Chart 1).

This new brand of austere federalism (creeping fiscal decentralization) can best be understood by comparing it to the old brand of affluent federalism which began at the end of the Korean War and ended in 1978, the year of the Russian invasion of Afghanistan and the California taxpayer revolt.

- Old federalism was characterized by steadily growing state-local dependence on federal aid as the nation increasingly looked to Washington to set the domestic agenda. New federalism is marked by steadily decreasing state-local reliance on federal aid dollars as the country expects localities and the states to finance from their own funds an increasing share of their expenditure needs.
- Old federalism was intrusive in character: a steadily growing number of federal aid "strings" and conditions were designed to alter state and local budgetary priorities and to race state and local fiscal engines. New federalism is becoming partially extrusive in character: the federal government is pulling aid funds and tax resources from state and local governments to strengthen the financing of its own national programs without a commensurate rollback in federal court orders and Congressional mandates.
- Old federalism represented a steady advance of the national government into areas that had heretofore been the exclusive province of state and local governments. New federalism represents a slow retreat from national government positions staked out during the Great Society era.
- Old federalism called on Washington to provide extra aid to stabilize state and local finances during periods of economic recession. New federalism calls on the states to help themselves by setting up "rainy day" funds to cushion their finances from the shock of economic downturns.
- Old federalism flourished in a political environment that resolved the doubts in favor of social equity concerns, national defense containment, and domestic public sector growth. New federalism operates in a political environment that emphasizes economic efficiency concerns, national defense expansion, and domestic public sector containment.

This gradual decentralization process is not the orderly and swift sorting-out process for which reformers yearn. Nor does it resemble the program swap and tax turnback proposals the Reagan administration advanced in 1982 for achieving a more orderly and decentralized allocation of responsibilities between the national government and the 50 state-local systems.

Nevertheless, De Facto New Fiscal Federalism is slowly effecting a "sorting out" of sorts. Federal policy-makers are being forced by fiscal and political realities to allocate an increasing share of their resources for strictly national government programs: defense, social security, Medicare, and interest on \$1.5 trillion debt.

The decisive 1984 reelection victory of President Reagan—a candidate pledged to cutting budget deficits by cutting expenditures, not raising taxes—holds promise of both speeding up this sorting-out process and hurrying fiscal decentralization along.

### FEDERAL FISCAL CRISIS

Events in 1984 sharply underscored the fact that the national government is afflicted with two serious fiscal ailments: growing budget deficits and a badly flawed income tax.

### Massive Budget Deficits

There is an iron law that governs the federal budget process: it takes a searing crisis to generate the consensus needed for federal policymakers to take unpopular actions such as making cuts in programs with strong constituencies or enacting major tax hikes. Absent a full blown crisis, federal officials avoid making these hard

budget choices by papering over the budget gap with deficit financing when receipts fall short of steadily rising expenditure demands. Unlike their state and local counterparts, federal officials are not disciplined by a balanced budget mandate.

In a semi-crisis situation, federal authorities can enact modest "revenue enhancements" and slow down the growth of those programs with relatively weak political constituencies. Many of the federal aid programs to states and localities fall into this weak political constituency classification. As a result, federal aid is the first major component of the budget to feel the fiscal squeeze—an early warning signal to the constituencies of more popular federal expenditure programs that there may be budget trouble ahead.

From a budgetary standpoint, 1984 was another very bad year for the national government. For the fiscal year ending September 30, 1984, the budget deficit totaled \$175 billion. Moreover, in December 1984, the Director of OMB, David Stockman, revealed that the estimate for the 1985 budget deficit had been revised upward to \$200 billion—an amount slightly larger than total 1984 tax collections for all 50 state governments combined.

The national government has spent more than it has raised in taxes in 23 of the last 24 years, but the size of the annual deficit has become progressively greater over the last three decades. In the late 1950s, annual federal budget deficits averaged about 3% of total federal expenditures; by the 1980s, the average had climbed to 17% of total federal outlays (Chart 2).

When it comes to deficits, quantitative changes can have qualitative effects. For years, growing federal budget deficits have attracted remarkably little public attention; but now they have reached such massive proportions that they can no longer be ignored. In fact, the size of the federal budget deficit has become the nation's number one economic problem—if not for the immediate present, then for its threat to our future. The menacing character of this budget deficit was clearly acknowledged in President Reagan's January 1984 budget message:

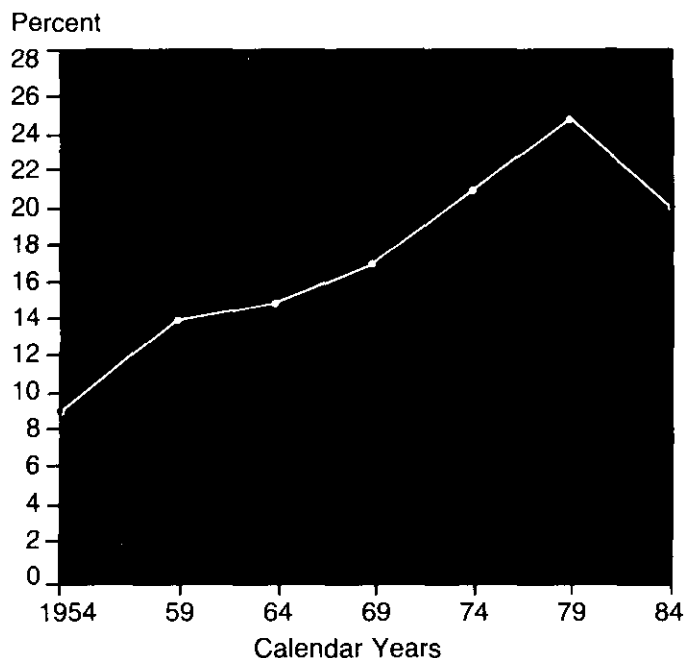
All signs point to continued economic growth, vigorous investment and rising productivity without renewed inflation—all but one. Only the threat of indefinitely prolonged high budget deficits threatens the continuation of sustained noninflationary growth and prosperity; it raises the specter of sharply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

In December 1984, the Reagan Administration unveiled a deficit reduction package designed to cut back the growth in federal spending by \$237 billion during the 1986 through 1988 period.

If enacted, this deficit reduction plan—consisting of spending freezes, cutbacks, and program wipe-outs—would adversely affect virtually every major beneficiary of federal domestic spending, including state and local governments. Prior to this proposed deficit reduction package, federal grants to states and localities were projected to rise from \$104 billion in 1985 to \$117 billion by 1987. According to a preliminary estimate by the National Association of State Budget Officers, the

Chart 1

### The Rise and Decline of Federal Aid Federal Aid as % of State-Local Budgets<sup>1</sup>



<sup>1</sup>Federal aid as a percentage of state-local expenditures after transfers.

Source: ACIR staff compilation based on Survey of Current Business reports.

adoption of the December proposals would cause federal grants to fall to \$95 billion by 1987. Thus, the pattern of slow federal aid growth would be replaced by slow actual decline. The most drastic proposal in this package called for eliminating the \$4.5 billion annual federal revenue sharing program for local governments in 1987.

### Flawed Federal Income Tax

The year 1984 provided powerful new support for the proposition that the national government's primary revenue instrument, the income tax, was deeply flawed and in need of a major overhaul. In November, *The Treasury Department Report to the President* succinctly set forth the indictment against the income tax:

The present U.S. tax system desperately needs simplification and reform. It is too complicated, it is unfair, and it retards savings, investment, and economic growth.

Under the current progressive tax system, all taxpayers face higher marginal tax rates in order to make up the revenue lost by numerous special preferences, exceptions, and tax shelters used by a relatively small number of taxpayers.

As a result, the tax system is complex and inequitable. It reduces economic incentives, hampers economic growth, and is perceived to be so unfair that taxpayer morale and voluntary compliance have been seriously undermined.<sup>1</sup>

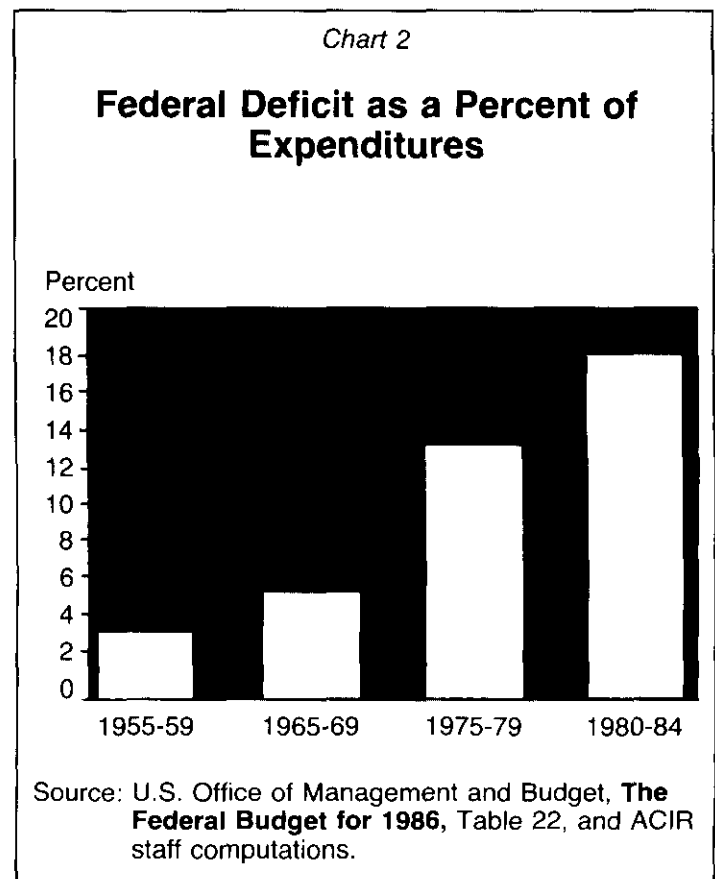
The findings of ACIR's 1984 annual public opinion poll corroborated this Treasury indictment of the federal income tax. For the sixth straight year, the federal income tax again received more votes than any other major tax when respondents were asked to select the worst tax.

The Treasury Department report went beyond indicting the present tax system to present a sweeping reform package to promote tax fairness, simplicity, and economic growth. The two most important recommendations on the individual income tax front were:

- Replacing 14 brackets of tax rates ranging from 11 to 50% with a simple three-bracket system with tax rates set at 15%, 25%, and 35%.
- Raising the personal exemption for all taxpayers and their dependents from \$1,000 to \$2,000.

To pay for this tax rate rollback and personal exemption increase, the Treasury proposed to decrease or repeal a large number of itemized deductions, exclusions, and special tax credits. Of special concern to state and local governments were the Treasury proposals that called for eliminating the itemized deduction for all state and local taxes and making taxable the interest on all new state and local bonds issued for "private purposes."

<sup>1</sup>*Tax Reform for Fairness, Simplicity, and Economic Growth—The Treasury Department Report to the President*, Volume 1 Overview, Department of the Treasury, November 1984, p. vii.



It is too early to assess with accuracy the legislative prospects for these tax reform proposals. On Capitol Hill they must contend with a harsh reality: the ease with which Washington lobbyists can throw sand into the gears of tax reform machinery.

### STATE-LOCAL RESILIENCY

Events in 1984 also obscured a badly underrated virtue of contemporary federalism: the remarkable resiliency of state and local governments. Over the last decade, these jurisdictions absorbed in rapid order a series of powerful jolts: double digit inflation, a taxpayers' revolt, two severe recessions, and a sustained slowdown in federal aid flows. Yet, as the 1984 fiscal year ended, most states and many localities were enjoying surplus funds thereby giving them a measure of fiscal discretion that few observers would have predicted two years earlier. They could replenish badly depleted working balances, build up "rainy day" funds, strengthen the financing of local schools and infrastructure projects or grant tax relief.

The rapid 1983-1984 economic recovery—a rising tide that carried up most revenue ships—stands out as one of the most obvious causes for the general strengthening of the state-local sector. The road to state-local fiscal recovery was paved, however, by the tough decisions necessary to balance budgets during the 1982 recession, the most severe economic downturn since the Great De-

pression. These unpopular actions called for expenditure belt-tightening; they also required numerous tax hikes that came hard on the heels of the tax revolt.

Public acceptance of repeated state-local tax increases is especially revealing. It proves that even in the post-Proposition 13 era, the public still accepts tax hikes when there is convincing evidence that expenditure programs have been pruned and that tax increases are necessary to maintain program standards. Public acceptance of tax increases can also be attributed to the fact that states and localities must operate in the disciplined environment of balanced budgets.

### SUMMARY—A WORLD TURNED UPSIDE DOWN

If a student of American federalism had fallen into a deep sleep in late 1964 and reawakened—like Rip Van Winkle—in late 1984, he would quickly conclude that his world of fiscal federalism had turned upside down.

- In 1964, economists feared that large federal budget surpluses would soon create a major “fiscal drag” that would jeopardize the ongoing economic recovery. In 1984, economists feared that massive federal deficits would not only jeopardize the ongoing economic recovery but would soon plunge the nation into another major recession.
- In 1964, the Johnson administration’s economists argued that the state and local governments lacked the revenue sources needed to meet their rapidly growing expenditure requirements. In 1984, Treasury economists (using a highly controversial current services approach) projected substantial state-local surpluses for the foreseeable future.
- In 1964, a federal task force (Heller-Pechman) urged the Congress to enact a federal revenue sharing program with the states in part because the national government would soon have surplus funds to share. In 1984, the Reagan Administration urged the Congress to put an end to the federal revenue sharing program because the national government now had only budget deficits to share.

- In 1964, the federal individual income tax was viewed as the revenue instrument of choice. In 1984, the federal income tax received more votes than any other major levy when the American public was asked “Which is the worst tax, that is, the least fair?”
- In 1964, the federal government was held in high esteem. In 1984, the federal government placed third when respondents were asked “From which level of government do you feel you get the most for your money—federal, state, or local?”

The modern day Rip Van Winkle will quickly discover that the year 1984 did not represent an abnormal blip on federalism’s big trend screen. The fiscal decentralization process that started in 1978 should continue to move along at a fairly good clip for several more years. It is a trend powered by growing fiscal austerity at the national government level and strong public support for President Reagan’s conservative policies.

Fortunately for our intergovernmental system, state and local officials have demonstrated an outstanding ability to adjust quickly to great changes—cyclical changes in the economy, fiscal changes in Washington, and preference changes in the body politic.

### Historical Postscript

The English historian, Thomas Carlyle, described the unitary government of France on the eve of the Revolution as a regime suffering from apoplexy at the center and paralysis at the extremities. A future historian of American federalism might well conclude that on the eve of the great federal budget battle our intergovernmental system was marked by growing fiscal distress at the center and remarkable fiscal resiliency at the extremities.

This verdict serves as a most telling argument in favor of a federal system. To put the issue more bluntly, this verdict vindicates the wisdom of the American experience—that of not placing all of our policy eggs in Big Brother’s fiscal basket.

Table 1

### From which level of government do you feel you get the most for your money—federal, state, or local?

Percent of U.S. Public

	May 1984	May 1982	May 1980	May 1978	March 1976
<b>Federal</b>	24	35	33	35	36
<b>Local</b>	35	28	26	26	25
<b>State</b>	27	20	22	20	20
<b>Don't Know</b>	14	17	19	19	19

Source: 1984 Changing Public Attitudes on Governments and Taxes, ACIR, S-13, 1984.

*John Shannon is Kestnbaum Distinguished Fellow of ACIR.*

# Whatever Happened to Federalism?

## Intergovernmental Issues Upstaged in 1984

Susan Golonka

**If the spotlight on federalism was dim in 1983, federalism lay in the shadows in 1984, upstaged by election year politics. Deficit reduction and the budget were the main issues that drove the agenda in 1984, leading Senator Dave Durenberger (R-MN) to complain, "All we do is play the money game. We're not dealing with peace to the world, with feeding the hungry. We just sit around and play the numbers."<sup>1</sup>**

The Republican platform called for the return of "nonessential federal functions" to the states but neither it nor the Democratic platform proposed comprehensive schemes to define or alter roles and responsibilities among national, state, and local governments. Despite this, a federalism agenda, although not recognized, was implicit. Democratic proposals to address a menu of domestic issues generally involved state and local governments. While President Reagan's New Federalism initiative was mentioned only once, the Republican platform advocated block grants and a reduced national role in welfare and education, and its position on federal courts carried important implications for federalism. The issue of federalism reform may galvanize few voters but recommendations for budget cuts, tax reform, deregulation, private partnerships, and likely judicial appointments all portend changes in the federal system.

Although attention to federalism issues paled in comparison to the previous years of the Reagan administration, a scattering of events significant to the federal system did occur at the national level. With support from the President, Congress passed a municipal anti-trust bill, relieving cities and counties of the threat of treble damages under federal antitrust laws. At the same time, both Congress and the President supported

measures which would constrict state and local authority in a wide range of areas and in some cases impose new costs. For example, legislation enacted in 1984 set new restrictions on state and local issuance of industrial development bonds, established penalties for states that fail to set a minimum drinking age of 21, preempted local regulation of cable TV, and mandated expanded state Medicaid coverage. The Supreme Court issued a number of decisions involving federal preemption of state laws, the legitimacy of state tax methods and federal grant law. One would be hardpressed, however, to find a pattern linking these decisions (see box, p. 15).

In short, intergovernmental developments in 1984 lacked a coherent or unifying theme. Talk of states' rights and a reduced federal role was juxtaposed with preemptory and regulatory activities. The hotly contested debates in previous years over swaps, turnbacks, and broad intergovernmental reform were narrowly focused in 1984 on discrete, usually unrelated, issues. This article explores major intergovernmental events in Washington during the past year, and considers the issues and opportunities ahead.

### EXECUTIVE BRANCH DEVELOPMENTS Initiatives from the White House

Noticeably missing from President Reagan's 1984 "State of the Union" address was any mention of New Federalism, sorting out functions, or block grants. After failing to gain significant support for his New Federalism initiative in 1982 and the four mega-block grants he proposed in 1983, the President appeared reluctant to advance major new intergovernmental changes. Nevertheless, the President's FY 1985 budget message included several modest proposals to "improve the management of intergovernmental assistance through new block grants, the consolidation of restrictive categorical programs, and the elimination of unnecessary regulatory constraints."<sup>2</sup> The President proposed a new science and mathematics education "block grant" to train teachers, consolidating programs for older Americans, consolidating child nutrition programs, and expanding the existing primary health care block grant to include black lung clinics, migrant health, and family planning programs. In response, Congress passed a science and mathematics education bill but gave scant consideration to the remaining recommendations.

On the tax side, the President proposed new restrictions on tax-exempt private purpose bonds and continued to press for enterprise zone legislation which would provide tax incentives for investment in economically distressed areas. The Senate approved enterprise zones as part of the deficit reduction package, but the plan was dropped during the House-Senate conference. State and local public interest groups, fearful that en-

<sup>1</sup>Diane Granat, "98th Congress Leaves Thorny Legacy for 99th," *Congressional Quarterly*, 20 October 1984, p. 2700.

<sup>2</sup>Office of Management and Budget, *Special Analyses, Budget of the United States Government FY 1985*, (Washington: U.S. Government Printing Office, 1984), p. H-3.



terprise zones would be substituted for existing economic development programs, gave only limited support. The President's proposals to place state-by-state volume caps on industrial development bonds and to limit the volume of bonds issued for any one user were adopted by Congress in the *Deficit Reduction Act of 1984*.

### Federalism Draws the Short Straw

Two instances in 1984 showed the President opting for national authority at the expense of states: a nationwide minimum drinking age, and proposed federal preemption of product liability. Additionally, the President, discounting strong objection from some states, opposed amendments to the *Coastal Zone Management Act* relating to federal off-shore oil and gas leasing policies and procedures.<sup>3</sup>

**Drinking age:** Last year, the President reversed his earlier position and endorsed legislation aimed at compelling states to raise the minimum drinking age to 21. The legislation utilizes a "crossover sanction" to accomplish its objective: Any state that does not adopt a minimum drinking age of 21 within two years would face a 5% reduction in its federal highway construction money in 1986 and a 10% reduction in 1987. Initially, the President had been reluctant to support such an approach, preferring to continue an existing program of incentives to induce the remaining 27 states to raise their drinking age. Moreover, legislative authority in this area seemed firmly fixed within the sphere of state responsibilities—a tradition reaffirmed by the wording of the 21st Amendment (repeal of prohibition). However, under pressure from members of Congress, Transportation Secretary Elizabeth Dole, and strong grassroots lobbying efforts led by Mothers Against Drunk Driving, the President endorsed the legislation which was then quickly passed. "The problem is bigger than the states," he proclaimed at the signing ceremony. "With the problem so clear-cut and the proven solution at hand, we have no misgivings about this judicious use of Federal power."<sup>4</sup> State officials are not quite so sanguine, resenting use of the crossover sanction and intrusion into an area they had previously regulated. South Dakota, challenging the measure, has filed a lawsuit against Secretary Dole.

**Product liability:** Despite some opposition from within the administration, the President continued to support national product liability legislation. The bill, S 44, introduced by Senator Robert Kasten (R-WI), would preempt state product liability laws but require state courts to try liability cases and interpret the federal law. State officials opposed the bill intensely:

The healthy diversity of state products liability law would be eliminated by S 44. The capacity for common law growth necessary to adapt to changing local conditions would be cut off. State legislative experimentation would be precluded. No truly compelling national objective would be achieved. The sweeping preemption of state tort law in both versions of S 44 can only be characterized as radical and unjustified.<sup>5</sup> Despite these objections, the President concluded: "As

for product liability reform, my Administration's support is based on the fact that product liability law as it has developed today has become a significant burden on the free flow of goods in interstate commerce."<sup>6</sup> Although the bill did not reach the Senate floor, the measure is expected to receive a big push in 1985.

**Offshore leasing:** Last year, the conflict between the expansion of domestic energy sources and states' environmental and economic interests was heightened by the Supreme Court's ruling in *Secretary of Interior v. California*.<sup>7</sup> The federal-state conflict arose in 1981 when former Interior Secretary James Watt proposed leasing the outer continental shelf (OCS) for oil and gas exploration and recovery over a five-year period. In response, several states attempted to hold up OCS development by bringing lawsuits against the national government. In the *California* case, the Court ruled that the *Coastal Zone Management Act* (CZMA) did not require the national government's offshore oil and gas leasing activities to be consistent with the coastal zone management plans of affected states. The Court decision limited the consistency requirement of the CZMA to the actual drilling and production and not the leasing. Although some studies have concluded that state economic interests are often met under existing law, states with active coastal recreation and fishing industries which are particularly concerned about the Court decision and the environmental consequences of the administration's leasing policies, sought changes to the act.<sup>8</sup>

In May, the Senate Commerce, Science and Transportation Committee, led by chairman Bob Packwood, (R-OR), approved a bill (S 2324) which would amend the CZMA to make the consistency requirement apply to the lease-sale phase and reverse the Supreme Court decision. A similar bill was approved by a House subcommittee. The bill slipped through the Senate, but strong opposition from the oil industry and the threat of a veto by the President prevented the bill from advancing further. While Interior Secretary William P. Clark argued that the bill "has the potential for adversely affecting the activities conducted by virtually every agency of the government,"<sup>9</sup> Sen. Packwood pointed out that under the CZMA, state coastal plans and any changes to them must be approved by the Secretary of

<sup>3</sup>For additional details on these issues, see Timothy J. Conlan, "Federalism and Competing Values in the Reagan Administration," *Publius*, Spring 1985.

<sup>4</sup>Steven Weisman, "Regan Signs Bill Tying Aid to Drinking Age," *New York Times*, 18 July 1984, p. A1.

<sup>5</sup>Testimony of State Representative Jeffrey Teitz (RI) on behalf of the National Conference of State Legislatures. U.S. Congress, Senate, Committee on Commerce, **Product Liability Act, Hearing Before the Subcommittee on the Consumer**, 98th Cong. 2nd, Sess, March 5, 1984, pp. 419-20.

<sup>6</sup>"Where They Stand on State-Federal Issues: Ronald Reagan and Walter Mondale Answer Six Questions Posed by *State Legislatures*," *State Legislatures*, November-December, 1984, p. 28.

<sup>7</sup>104 S. Ct. 656 (1984).

<sup>8</sup>See for example, General Accounting Office, "Mitigating Socioeconomic Impacts of Energy Development," March 1982.

<sup>9</sup>Quoted in Joseph A. Davis, "Senate Commerce Moves Bill on Offshore Leasing Actions," *Congressional Quarterly*, 12 May 1984, p. 1138.

Interior.<sup>10</sup> The issue will continue in 1985 when the CZMA comes up for reauthorization.

Meanwhile, Congress, in the FY 1985 Interior Appropriations bill, re-enacted the ban on offshore oil and gas leasing in selected areas. Congress is also expected to reconsider a proposed coastal zone management block grant to be funded from outer continental shelf revenues. The administration currently opposes this proposal.

### Grant Management Reforms Continue

Although its support for deregulation and flexibility vis-a-vis the states appeared to lessen in some areas, the administration maintained its support for initiatives that would simplify the management of federal grant programs. The Office of Management and Budget (OMB) was at the center of these efforts, providing impetus for the single audit legislation enacted by Congress in 1984 and the uniform relocation assistance legislation approved by the in Senate in 1984 and expected to pass the full Congress in 1985.

**Single audits:** The past federal practice of auditing grants received by state and local governments individually often created burdens for those governments that provided time, resources and information to myriad federal auditors. These audits, furthermore, have not provided the national government with a complete financial picture of state and local governments or of the total universe of grantees. The single audit concept, developed during the 1970s, was formalized as Attachment P to OMB Circular A-102 in 1979 in an effort to remedy both problems. The voluntary Attachment P procedure considerably diluted the concept of a single audit by requiring extensive grant-by-grant compliance testing. For this and other reasons, the Attachment P approach to single audits was not widely used. ACIR and others recommend legislation to stimulate implementation of the single audit concept.

In October, Congress enacted the *Single Audit Act of 1984* which requires each state and local government (including special districts and authorities) receiving more than \$100,000 in federal grants annually to conduct a comprehensive audit of all its operations, covering (1) financial accounting and reporting procedures, (2) internal control systems, and (3) procedures for compliance with federal requirements. In addition, there is provision for grant-by-grant compliance testing for major federal programs.

OMB has drafted guidelines for federal agencies in their implementing regulations, which are to be completed in early 1985. State and local governments and the accounting profession, supporters of the single audit concept, are anxious to see how many supplemental audits will be required by the agencies and how burdensome the compliance testing prove to be. The degree of this legislation's success will start to become evident in 1985.

**Relocation assistance:** During 1984, the principle was reinforced that relocation benefits for persons and businesses displaced by federal or federally aided activities should be uniform, regardless of which federal program is responsible. The ACIR has supported this prin-

ciple since 1965, and supported legislation in 1970, the *Uniform Relocation Assistance and Real Property Acquisition Act*, implementing it. Although enacted, that legislation did not provide the means for achieving uniformity and substantial differences have continued among federal agencies. Amendments to bring greater uniformity have passed the Senate several times in recent years, but the House has not acted. In 1984, substantial agreement was achieved between the two chambers, but the relocation provisions bogged down in the House when they were attached to the *Surface Transportation Act* that failed to pass in the final days of the session.

For two years, OMB has tried to bring federal agencies together on a uniform set of implementing regulations. By the end of 1984, agency agreement had been achieved; only final stages of OMB's clearance remained to be concluded. When legislative amendments pass (expected early in 1985) these uniform regulations will be adjusted to reflect the expanded eligibility for benefits, greater equality between residential and business displacees, increased benefit levels, and further simplified administrative procedures.

**Consultation:** The federally required inter-governmental consultation process was officially transformed on October 1, 1983 from a federally administered process (under OMB Circular A-95) to a state-administered process (under Executive Order 12372). Forty-eight states have established their own procedures; the majority of these states made only modest changes to the pre-existing review and comment process. A controversial change from the outset, disagreement continues over the results. OMB considers the new state-administered process a success. However, according to survey by the National Association of Regional Councils, many grantees believe that the highly touted potential for the system to increase federal agency responsiveness has not been realized.<sup>11</sup>

## LEGISLATIVE EVENTS

### Intergovernmental Funding

Congress authorized and funded several new grant programs last year, and, overall, federal aid continued to increase modestly. In FY 1984, federal grant-in-aid outlays to state and local governments were \$97.6 billion, compared to \$93 billion in FY 1983, an increase of 5%. With inflation running at 4% in FY 1984, this "real" growth amounted to 1%. As a result of the appropriations and budget activity last year, budget outlays in FY 1985 for grants-in-aid are estimated to be \$107 billion, an increase of 10% from FY 1984.<sup>12</sup> If inflation is maintained at 4%, as projected throughout FY 1985, a real increase of 5-6% would occur. So, in spite of deficit worries, Congress has yet to repeat its actions of

<sup>10</sup>Congressional Quarterly, 12 May 1984, p. 1138.

<sup>11</sup>Special Report No. 103, "Executive Order 12372—One Year After," (Washington: National Association of Regional Councils, November 1984). Also see pp. 28-29 below.

<sup>12</sup>Office of Management and Budget, **Special Analyses, Budget of the United States, FY 1986, and FY 1985.** (Washington: U.S. Government Printing Office, February 1984), Section H.

Table 1

# FEDERAL GRANT-IN-AID OUTLAYS

(in millions of dollars)

	1983 <sup>1</sup>	1984	1985 (est.)	Percent Change	
				1985/ 1984	1984/ 1983
ENERGY	\$ 482	\$ 534	\$ 583	+ 9%	+ 11%
NATURAL RESOURCES AND ENVIRONMENT	4,018	3,779	3,944	+ 4%	- 6%
AGRICULTURE	1,822	1,832	2,209	+ 21%	+ 1%
TRANSPORTATION	13,248	15,013	18,027	+ 20%	+ 13%
COMMUNITY AND REGIONAL DEVELOPMENT	4,962	5,157	5,366	+ 4%	+ 4%
EDUCATION, TRAINING, EMPLOYMENT AND SOCIAL SERVICES	16,125	16,669	18,434	+ 11%	+ 3%
HEALTH	20,742	21,837	24,768	+ 13%	+ 5%
INCOME SECURITY	24,758	25,678	26,531	+ 3%	+ 4%
GENERAL PURPOSE FISCAL ASSISTANCE	6,330	6,677	6,576	- 2%	+ 5%
OTHER	526	403	576	+ 43%	- 23%
<b>TOTAL OUTLAYS</b>	<b>\$93,013</b>	<b>\$97,577</b>	<b>\$107,016</b>	<b>+ 10%</b>	<b>+ 6%</b>

<sup>1</sup>Federal Fiscal YearsSource: Office of Management and Budget, *Special Analyses, Budget of the United States Government, FY 1985 and FY 1986* (Washington: U.S. Government Printing Office, 1984 and 1985), Special Analysis H.

1981 when it actually reduced aid to state and local governments.

In FY 1985, health and income security programs which receive the largest portion of federal grant-in-aid dollars are expected to increase by 13% and 3%, respectively. Sizable increases of about 20% are expected in the functional categories of agriculture and transportation (see Table 1).

Specific intergovernmental programs that received increased appropriations for FY 1985 included the hazardous waste Superfund, the Maternal and Child Health block grant, compensatory education, impact aid, the state education block grant, and comprehensive emergency planning. General Revenue Sharing and most employment training programs received funding at their 1984 levels. Contract authority for highway programs remained fairly constant. However, because Congress failed to enact the interstate cost estimate for the second year in a row, states will be unable to use the more than \$7 billion in funds authorized for FY 1984 and FY 1985 for interstate construction and interstate highway transfers.

**Housing programs:** In the Department of Housing and Urban Development (HUD) appropriations bill, Congress provided funding for the first new housing initiatives in four years. Congress appropriated \$615 million for the FY 1984 and FY 1985 Housing Development Grants (HoDAGs) and the Rental Rehabilitation Program which were authorized in the *Housing and Urban-Rural Recovery Act of 1983*. In October, HUD made the first HoDAG awards totalling more

than \$288 million for 141 projects which will result in an estimated 14,500 new or rehabilitated rental housing units in areas of substantial need. Cities and counties receiving the awards can use them for grants, loans, interest reduction payments, or other forms of assistance to private developers. In return, developers must reserve at least 20% of the units for lower income families.

The Rental Rehabilitation program provides grants on a formula basis to cities with populations over 50,000 and urban counties and states to assist in financing moderate rehabilitation of privately owned housing and commercial rental property. Last year, after HUD received the appropriation, it disbursed funds to nearly 400 cities and counties.

Despite a few exceptions, such as the new housing appropriations, states and localities must necessarily and increasingly rely on their own revenue sources for any new spending initiatives.

Even if federal officials for domestic programs did attempt to reverse course and return to the "good old days," the federal deficits would cut them off at the pocketbook. Unless federal taxes are raised well above the level necessary to close the budget gap, which seems unlikely, the federal government does not have the fiscal flexibility to reverse the flow of influence and responsibility to the states.<sup>13</sup>

<sup>13</sup>Richard P. Nathan and Fred C. Doolittle, "The Untold Story of Reagan's New Federalism," *Public Interest*, Fall 1984, p. 105.

Moreover, the deficit reduction package enacted last year demonstrated that indirect forms of federal aid, such as the tax exemption on private purpose industrial development bonds, will receive increasing congressional scrutiny.

### Deficit Reduction Act (DEFRA)

In mid-1984, Congress responded to public outcry over the growing deficit by approving a package of tax increases and spending cuts which is expected to result in a \$63 billion "downpayment" on the deficit by FY 1988. DEFRA makes numerous changes in current laws to achieve a \$50-billion increase in federal revenues and a \$13-billion cut in spending. Increased revenues will result from closing and postponing a wide range of tax shelters and loopholes; retaining or increasing some consumer taxes; and cutting back deductions for real estate depreciation. The Medicare program, bearing the brunt of the spending cuts, will experience a \$7.6-billion reduction between FY 1985 and FY 1988.

Spurred by strong state lobbying, House conferees on DEFRA refused to accept a Senate provision that would have reduced federal contributions to Medicaid by 3% annually over the next three years. The defeat of this cut, which would have increased state Medicaid costs by \$1.3 billion, was considered a major victory by interest groups.<sup>14</sup>

The Bill does impose restriction on tax-exempt private purpose bonds and changes the tax treatment of municipal sale-leasebacks and contracts. The act also imposes additional state and local costs through mandated changes in AFDC and Medicaid (see below).

Controversy boiled throughout 1984 over the tax-exempt status of private-purpose industrial development bonds (IDBs). Congress looks askance at the revenues lost due to the exemption, and at bonds issued in small amounts for private enterprises that do not serve a public purpose. In the *Tax Equity and Responsibility Act of 1982* (TEFRA), Congress enacted a number of reforms designed to increase public accountability and limit the commercial use of IDBs. The TEFRA reforms, however, did little to reduce the total volume of IDBs issued; federal revenue losses from all tax-exempt private-purpose bonds were estimated at more than \$10 billion in 1984.<sup>15</sup>

In DEFRA, Congress enacted additional IDB reforms. To check the growth of IDBs, prohibit their use for some purposes, and increase federal revenues by \$400 million, Congress took major steps.<sup>16</sup> The act sets a \$150 per capita or \$200 million per state annual volume cap (whichever is greater) on issuing tax exempt industrial development bonds. This restriction applies to bonds for student loans, pollution control, private health care facilities, and agriculture, and small-issue IDBs, including those for projects in economically distressed areas. It exempts IDBs used to finance multi-family housing, publicly owned convention and transportation facilities, and public and nonprofit health facilities.

Although Congress sought to restrict the use of IDBs, it permitted state and local governments to issue tax-

exempt mortgage revenue bonds to help finance low- and moderate-income housing.

In 1983, 14 states' new issues of IDBs exceeded \$150 per capita (excluding new issues for convention and transportation facilities) although some of these states would meet the total volume limit.<sup>17</sup>

ACIR opposed the volume caps, but supported other provisions of the bill which limit the use of IDBs for purchasing of land or existing facilities and prohibit using IDBs for airplanes, arena skyboxes, gambling facilities, and liquor stores.<sup>18</sup>

The new restrictions were strongly opposed by cities and counties which claimed IDBs are an important economic development tool for stimulating and attracting investment to distressed areas. Analyses by the Treasury Department, however, conclude that IDBs are an inefficient tool for economic development, providing financing for projects that would occur without IDB financing, and that IDBs only subsidize the relocation of businesses rather than create new firms and jobs.

Local officials remain wary that the changes will result in unwanted interference by states into local development decisions. The National League of Cities, encouraging opposition to the IDB provisions, stated: "Congress should let cities determine how to apply restrictions in their own communities, rather than imposing another level of government's priorities upon them."<sup>19</sup> The bill establishes a formula to allocate the cap, although in the first year, the allocation may be made at the governors' discretion. After that, the state legislature has the authority to make allocations. The new legislation may foster intense competition as local governments scramble to get their "fair share" of the ceiling. ACIR has long been in favor of the states controlling the issuance of IDBs by local governments.<sup>20</sup>

**Leaseback limits:** Another thorn in the side of localities is the bill's treatment of municipal sale-leaseback arrangements. The provisions curtail accelerated depreciation and the use of rehabilitation and investment credits on personal and real property leased by local governments. These restrictions drew strong resentment from municipalities.

The municipal leasing provisions in the House and Senate tax bills, which set a restrictive standard for cities while retaining the generous tax treatment for the private sector, set a discriminatory precedent for the administration which urged the route of "pri-

<sup>14</sup>National Conference of State Legislatures, "Budget and Appropriations Update," July 19, 1984, p. 1.

<sup>15</sup>U.S. Congress, Joint Committee on Taxation, "Estimates of Federal Tax Expenditures for Fiscal Years 1984-1989," (Washington: U.S. Government Printing Office, November 1984), pp. 9-17.

<sup>16</sup>"First Installment of 'Down Payment' Clears," *Congressional Quarterly*, 30 June 1984, p. 1542.

<sup>17</sup>Treasury data reprinted in Advisory Commission on Intergovernmental Relations, *Strengthening the Federal Revenue System: Implications for State and Local Taxing and Borrowing* (A-97), October 1984, p. 125.

<sup>18</sup>ACIR, *Strengthening the Federal Revenue System*, p. 9.

<sup>19</sup>Frank Shafroth, "Conferees to Determine Fate of IDB Caps," *Nation's Cities Weekly*, 23 April 1984, p. 6.

<sup>20</sup>Advisory Commission on Intergovernmental Relations, *Industrial Development Bond Financing*, June 1963.



# DIMENSIONS OF THE FEDERAL GRANT-IN-AID SYSTEM: 1981-84

- In FY 1981, 534 categorical grants\* and 4 block grants\*\* available to state and local governments were funded. In FY 1984, 392 categorical grants and 12 block grants were funded.
- A substantial portion of the decrease in the number of categorical grants is traceable to the consolidation of 77 programs into 9 new or revised block grants by the *Omnibus Reconciliation Act of 1981*. The single education and 4 health block grants absorbed the largest number of categoricals—37 and 27, respectively.
- The decline in the overall number of categorical grants was shared proportionally between formula and project grants as they retained roughly their one-third (formula) and two-third (project) shares from 1981 to 1984.
- Over the three-year period, significant numbers of programs were terminated in such areas as energy conservation and regulation (7 programs), pollution control and abatement (8), care for migrants and refugees (5), area and regional development (6), and health maintenance operations (3).
- There was a pronounced reduction in the number of programs designed to build the capacity of state and local governments. These terminations encompassed about a dozen programs keyed to upgrading management, personnel training, and planning, in addition to the two assistance programs under the *Intergovernmental Personnel Act*.

- Despite the New Federalism focus on block grants, the intergovernmental grant-in-aid system continues to be dominated by categorical grants. Block grants received less than 15% of total federal grant-in-aid dollars in FY 1984 and Congress has been slow to respond to administration proposals for more block grants.<sup>1</sup>

\*Categorical grants are directed at specific, narrowly defined activities and are distributed either according to a legislatively or administratively prescribed formula (formula grants) or at the discretion of administrators (project grants).

\*\*Block grants are distributed in accordance with statutory formulae for use in a variety of activities within a broad functional area largely at the recipients' discretion.

Source: Advisory Commission on Intergovernmental Relations, *A Catalog of Federal Grant-in-Aid Programs to State and Local Governments: Grants Funded in FY 1984*, December 1984.

<sup>1</sup>Office of Management and Budget, *Special Analyses, Budget of the United States, FY 1986*, (Washington, D.C.: U.S. Government Printing Office, February 1984), p. H-22.

vatization" and public-private partnerships to make up for reduced federal grants. For the first time, it will set a double standard in federal tax laws. . .<sup>21</sup>

The national government is expected to raise \$5.5 billion in new revenues from the municipal sale-leaseback provision over the four year period FY 1984-87.<sup>22</sup>

## Municipal Antitrust

"Unless you're an antitrust lawyer or a clever plaintiff, you can thank your lucky stars that the 98th Congress, in its dying minutes . . . passed the *Local Government Antitrust Act*," was a columnist's comment.<sup>23</sup> Enactment of this law, which protects local governments from paying most damages under federal antitrust statutes, was viewed by many as the major legislative victory for local officials in 1984.

**Background:** In 1978, the Supreme Court in *City of Lafayette v. Louisiana Power and Light Co.* ruled that cities and counties are subject to federal antitrust laws unless a local government's actions are based on a "clearly articulated and affirmatively expressed" grant

of authority from the state.<sup>24</sup> In a subsequent ruling in *Community Communications Co., Inc. v. City of Boulder*, the Court reaffirmed its position and found that a grant of home rule powers from the state did not itself constitute sufficient expression of state authorization for anticompetitive local conduct.<sup>25</sup> Since the *Boulder* decision in 1982, an estimated 200-300 suits have been filed against cities and counties for anticompetitive behavior in such fields as cable TV regulation, land use and zoning decisions, waste collection and disposal, hospital and ambulance service, water and sewerage systems, taxicabs, licenses, and concessions. The prospect of paying damages—automatically trebled in antitrust suits—caused extreme concern among local officials who, prior to *Lafayette* and *Boulder*, had presumed

<sup>21</sup>*Nation's Cities Weekly*, 23 April 1984, p. 6.

<sup>22</sup>*Congressional Quarterly*, 30 June 1984, p. 1541.

<sup>23</sup>Neil R. Peirce, "Antitrust Legislation Will Only Save Money," *County News*, 19 November 1984, p. 10.

<sup>24</sup>435 U.S. 419 (1978).

<sup>25</sup>102 S. Ct. 835 (1982).

that local governments, as creatures of the state, enjoyed the states' immunity from antitrust suits. A common belief among proponents of local immunity was that, without it, the fear of litigation would perversely influence decisionmaking and implementation at the local level:

Simply raising the antitrust specter may have a chilling effect, stopping a municipal action in its tracks. The dreaded cost of preparing a defense, both in time and money, can delay, if not reverse, policies threatened by lawsuit. In some cases—as in the City of Boulder where the pending suit inhibited expanding cable services for several years—the “chilling effect” can inconvenience many people.<sup>26</sup>

The potential financial consequences of municipal antitrust suits struck thunderously in January 1984 when a \$28.5 million judgment was awarded against the Illinois village of Grayslake, adjacent Lake County, and officials of both jurisdictions. In contrast to the award, the annual budget for the village of Grayslake is \$1.4 million.<sup>27</sup> In this case, a developer was denied a sewer connection for a proposed housing and commercial complex. The local officials claimed their decision served the public interest because sewage treatment plant could not accommodate the additional demand. However, the jury found for the developer who alleged that the local officials engaged in a conspiracy to prevent construction of low-cost housing in Grayslake.

**Immunity question:** While local officials called for total immunity from treble damage suits under federal laws, opponents of broad grants of immunity, including Senators Strom Thurmond (R-SC), chair of the Senate Judiciary Committee, and Howard Metzenbaum (D-OH), argued the deleterious consequences of unrestrained anticompetitive or monopolistic behavior by local governments. They contended that regulations which restrict market entry, such as limits on taxicab concessions, enable existing businesses to charge higher prices to the consumer. They expressed concern that public monopoly power, as was used in the *Grayslake* case, threatens the rights of individuals to engage in commerce, particularly if officials are performing proprietary rather than traditional governmental functions.

Consensus among policymakers was difficult to reach on a number of issues: the need for immunity; what functions and types of government should be protected if immunity is granted; and what level of government—state or national—should extend immunity or other protections. ACIR, adopting the position that the power and responsibility to grant immunity lies with the states urged Congress to amend the federal antitrust laws with new guidelines for the states to do so.<sup>28</sup> However, local governments were reluctant to rely on states to adopt immunity measures, and pressed Congress to pass legislation which would accord local governments immunity from federal antitrust laws. In 1983, four bills were introduced in Congress but members were unable to agree upon which activities should be immune and what types of governments should be exempted.

Further attention was directed to the issue in 1984 when the Federal Trade Commission (FTC), seeking injunctive relief, brought the federal government's first antitrust complaints against local governments. The FTC asserted that the cities of New Orleans and Minneapolis had entered into agreements with local taxi companies to fix fares and to restrict the entry of new taxicab companies. Shortly thereafter, the House, viewing the FTC's actions as intrusive, voted to prohibit the FTC from using its FY 1985 funds for municipal antitrust actions.

**Hill action:** After weeks of negotiation, the *Local Government Antitrust Act* was passed in the final days of the 98th Congress. The bill prohibits awarding monetary damages against local governments and their officials while maintaining injunctive relief in municipal antitrust cases. It does not, however, address the issue of antitrust immunity for local governments. (See *Perspective*, Fall 1984, page 4, for fuller discussion of the bill.) At the Senate's insistence, the bill also restored FTC's authority to pursue antitrust suits against local governments.

President Reagan, signing the bill, said, “While the antitrust laws serve very important purposes, they were never intended to threaten public treasuries and the taxpayer's pocketbook, or to disrupt the good faith functioning of local government.”<sup>29</sup> Protection from damage claims without granting total immunity is expected to mitigate some of the most burdensome aspects of antitrust litigation that impede effective governance at the local level, while continuing to discourage anti-competitive actions by local governments. The act makes clear that, for now, Congress views antitrust immunity as inappropriate for local governments, although continuing pressure from local governments may induce Congress to return to the question in 1985. In the meantime, local governments can look to their state legislatures for further grants of immunity.

### Federal Preemption

The sleeper issue of the 1980s may be the growing proclivity of all three federal branches to preempt state laws. Federal preemption of product liability laws has already been mentioned. Other legislative proposals that would supersede state policies and regulations were considered in a number of areas in 1984: cable TV, public employee pensions, banking regulation, unitary taxation, telephone access charges, and truck regulation. Taken singly, national assumption of policy in each of these areas may not appear ominous. Viewed in totality, however, and combined with numerous prior preemption actions, they are seen by many as an imposing threat to the states as viable partners in the federal system.

<sup>26</sup>Jerry R. Fensterman, “Antitrust and Local Governments,” *Inter-governmental Perspective*, Fall 1983, p. 9.

<sup>27</sup>Ronald D. Waterman, “The Local Government Antitrust Act of 1984,” *Wisconsin Counties*, December 1984, p. 21.

<sup>28</sup>Statement of S. Kenneth Howard, executive director, ACIR, before the Senate Judiciary Committee, April 24, 1984.

<sup>29</sup>Quoted in “Reagan Signs Antitrust Measure, Ceremony Ends Long Battle for Protection,” *County News*, 5 November 1984, p. 1.

# STATES, LOCALITIES AND THE COURT

The Supreme Court's 1983-84 Term may have been as notable for what was not accomplished as for what was. Decisions on what were arguably the two most eagerly awaited cases of consequence to state and local governments were postponed. Thus, *Donovan v. San Antonio Metropolitan Transit Authority*, a case testing the constitutionality of applying the federal *Fair Labor Standards Act* to transit workers—one of a number of cases hinging on the *NLC v. Usery* doctrine—was sent back for reargument. (See *Post-script*.) In addition, although the Court granted South Carolina's request to file an original complaint against the Secretary of the Treasury challenging the constitutionality on Tenth Amendment grounds of the *Tax Equity and Fiscal Responsibility Act of 1982*, it also found that the facts were insufficiently developed to permit a hearing on the merits. The Court subsequently appointed a special master to amplify the record. Nonetheless, the past Term did produce significant decisions of importance to states, localities, and the balance of power in the federal system.

## Eleventh Amendment Immunities

The Court's most far-reaching pronouncement was born of the now familiar *Pennhurst State School and Hospital v. Halderman*, the 1981 landmark conditional spending power decision in which the Court propounded its "clear statement" rule, admonishing Congress to be unambiguous when it "intends to impose a condition on the grant of federal moneys."

In its 1984 reincarnation, *Pennhurst* asked the question whether a federal court could order Pennsylvania state and county officials to obey the *Pennsylvania Mental Health and Mental Retardation Act of 1966*. In a 5-4 decision with sweeping implications for federal judicial authority, the Court held that the Eleventh Amendment prohibits federal courts from ordering state officials to conform their conduct to state law. Writing for the majority, Justice Lewis F. Powell, Jr. noted:

[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment.

## Preemption

As usual, the Court, in its 1983-84 Term considered a number of cases which tend to fall under the broad heading of preemption. In most, the states' arguments were unpersuasive.

A notable exception among state preemption losses was the much publicized case of *Silkwood v. Kerr-McGee*—the notoriety of which stemmed less from the legal questions at hand than from public atten-

tion focusing on Karen Silkwood's death. At issue before the Court was an Oklahoma statute allowing the recovery of punitive damages for contamination injuries. Kerr-McGee contended that the statute conflicted with the federal *Atomic Energy Act* and the *Price-Anderson Act*, which established an indemnification scheme for operators of nuclear facilities. The Court, however, found no such conflict nor frustration of national objectives, and ruled that the Oklahoma statute was not preempted by federal law.

In two other cases—*Hayfield Northern Railroad Company and Minnesota v. Chicago and Northwestern Transportation Company* and *Brown v. Hotel Employees, Local 54*—state laws alleged to have been superseded by federal statutes were found by the Supreme Court not to have been preempted.

Despite these successes, more often than not, the states found themselves on the losing end of the high court's preemption rulings. For instance, in *Connecticut v. U.S.*, a case of intense interest to a number of states, the Supreme Court unanimously upheld a U.S. district court's rejection of Connecticut's due process, equal protection, and Tenth Amendment challenges to the *Surface Transportation Assistance Act*. The federal act preempts state statutes that block tandem trailer trucks from state highways.

Additional preemption losses for the states included *Capital Cities Cable v. Crisp*, *Aloha Airlines v. Director of Taxation of Hawaii*, *Michigan Cannery and Freezers Association v. Agricultural Marketing and Bargaining Board*, and *Southland Corporation v. Keating*. In each case, federal statutes or regulations were held to supersede state laws.

## Tax Discrimination

States suffered losses in both major cases that pitted certain state tax provisions against the interstate commerce clause. In *Armco v. Hardesty*, West Virginia's wholesale gross receipts tax was found to discriminate unconstitutionally against interstate commerce. Moreover, despite the states' special status under the Twenty-First Amendment regarding commerce in liquor, in *Bacchus Imports, Ltd. v. Dias*, an Hawaiian sales tax exemption for certain indigenous liquors was held to discriminate in favor of local products in violation of the commerce clause.

## Grant Law

Two significant cases questioning conditions attached to federal aid were decided by the Supreme Court in its 1983-84 Term. The first, *Grove City College v. Bell*, tested the limits of Title IX of the *Education Amendments of 1972*. Title IX is a crosscutting requirement prohibiting sex discrimination in education programs or activities receiving federal financial assistance. In a decision that has sparked lively

congressional debate, the Court ruled that the Title IX prohibition was limited to the programs receiving aid rather than to institutions as a whole. In another portion of that decision, however, the Court held that a college itself need not be the recipient of direct federal assistance in order to trigger Title IX coverage; students' receipt of aid is sufficient to warrant regulation.

Another grant-in-aid program was at issue in *Irving Independent School v. Tatro*. Specifically, the case involved a claim that a particular medical procedure necessary for those suffering from spina bifida qualified as a "related service" under the *Education for All Handicapped Children Act*. The Court agreed, unanimously ordering the school district to comply.

### Regulation

In *Secretary of Interior v. California*, the administration won a major victory at the expense of state statutory prerogatives under the *Coastal Zone Management Act (CZMA)*. The case revolved around that section of CZMA that calls for what are known as "consistency reviews" by affected states where coastal zones are concerned. Coastal zones belong to the states; the Outer Continental Shelf to the federal government. Not surprisingly, the federal interest in energy matters and states' interests in recreation, fishing, and other environmental matters have often come into conflict.

In the California case, that conflict was resolved in favor of the federal interest, with the Court limiting consistency reviews in such instances to later stages of development when actual oil and gas exploration begins.

### Local Preference Contracts

A Camden, NJ, ordinance requiring that at least 40% of the employees of contractors and subcontractors working on city construction projects be Camden residents was found unconstitutional in *United Building and Construction Trades Council of Camden v. Mayor and City Council of Camden*. Finding the ordinance in violation of the Privileges and Immunities Clause, the Court asserted that the clause "applied not only to laws that discriminate on the basis of state citizenship, but to laws that discriminate on the basis of municipal residency."

### POSTSCRIPT

On February 19, 1985, relatively early in the decision-making season, the Supreme Court issued a ruling that is likely to be its most important federalism-related judgment of the 1984-85 Term—one that is likely to have profound future constitutional ramifications. Justice Harry A. Blackmun, speaking for a Court divided 5-4, overruled *National League of Cities v. Usery* (1976), calling standards set forth in that case "not only unworkable but . . . inconsistent with established principles of federalism. . . ." Specifically, Blackmun was referring to the third prong of the so-called

"NLC test" (developed in a subsequent case) which asserted that in order for states and their subdivisions to invoke governmental immunity from national regulations enacted and promulgated under the authority of the Commerce clause they must prove that compliance with the regulation would "directly impair their ability to structure integral operations in areas of traditional governmental functions." Such immunity was held to derive from the Tenth Amendment to the Constitution.

The Court has had difficulty grappling with the NLC doctrine over the past decade. State and local governments have largely failed to use NLC effectively in their challenges to national intrusion. As a result, the usefulness of the NLC tests for constitutional inquiries, has been questioned. But few observers were prepared for the Court's complete reversal in *San Antonio*. The five-member majority went well beyond the already unusual step of overturning recent precedent. The Court denounced "judicially created limitations on Federal power," calling "unsound in principle and unworkable in practice, a rule of state immunity from Federal regulation that turns on a judicial appraisal of whether a particular function is 'integral' or 'traditional.'" Moreover, the decision implied that to the extent that states are protected from regulatory intrusions by the federal government, that protection is found not in the Constitution but in the "structure of the Federal Government itself" and the political process which, according to the Court, "insures that laws that unduly burden the states will not be promulgated." Ironically, in recent years, scholars and state and local officials have pointed to the decreasing influence of state and localities in the national political arena. (For ACIR's research findings on this subject, see "Federalism and American Politics," page 32.)

Not surprisingly, the *San Antonio* dissent was stinging. Justice Lewis F. Powell declared that the decision "substantially alters the Federal system embodied in the Constitution" and represents "an outright rejection of the history of our country and the intention of the Framers of our Constitution." Justice Sandra Day O'Connor accused the majority of reducing federalism to a "weak 'essence'."

At issue in *San Antonio* was extension of the *Fair Labor Standards Act's* minimum wage and overtime provisions to employees of publicly owned mass transit systems. The decision is likely to have a prompt impact on state and local budgets.

Much more important, however, the Court's opinion holds long-range implications for the constitutional status of states and localities. More than four decades ago, the Supreme Court, in its first ruling on the *Fair Labor Standards Act*, called the Tenth Amendment "but a truism." That description appeared to have been rejected in *National League of Cities*. By its February 1985 holding, however, the Court seems to have consigned the amendment once again to a state of doctrinal insignificance. In the words of the dissent, the decision "reduces the Tenth Amendment to meaningless rhetoric. . . ."

—CCC



No one expects Congress to obliterate the states in one fell swoop. If there is any danger, it lies in the tyranny of small decisions—in the prospect that Congress will nibble away at state sovereignty, bit by bit, until someday essentially nothing remains but a gutted shell.<sup>30</sup>

Last year, Congress gave final approval to preemptory legislation dealing with cable television rate-setting and truck safety regulations. Congress is expected to resume consideration on the other issues in 1985.

**Cable TV:** After four years of wrangling, Congress passed a bill setting national policy for regulation of the cable television industry. The *Cable Communications Policy Act of 1984* resulted from long negotiations between the cable TV industry and representatives of municipal governments. After rulings by the FCC and the Supreme Court earlier in 1984, which asserted the FCC's power to regulate the cable television industry and to preempt conflicting state and local statutes, the cities' bargaining power was weakened and they became more agreeable to a compromise. The legislation recognizes the authority of municipalities to grant and renew local cable franchises but establishes national standards for renewal. After two years, local governments are preempted from setting rates for basic services.

**Commercial vehicles:** In the *Motor Carrier Safety Act of 1984*, Congress preempted all state commercial motor vehicle safety laws and regulations. The bill instructs the Secretary of Transportation to establish federal standards for state inspection of commercial motor vehicles. Existing and future state laws, standards, and regulations governing motor carrier safety must be submitted to the Secretary of Transportation for review to determine whether they can coexist with federal laws. States questioned the necessity of this preemption because more than half the states had already adopted programs based on a model developed by the Bureau of Motor Carrier Safety.

The same bill amends the *Surface Transportation Assistance Act of 1982*, a controversial measure which preempted state laws prohibiting tandem trucks on interstate highways. The 1984 amendment offers some flexibility to states, permitting state authorities to request exemption for specific segments of the interstate system which cannot safely accommodate the longer and wider vehicles permitted by the 1982 act.

### Regulatory Federalism

Congress tightened its regulatory grip on state and local units by imposing new penalties for non-compliance, by adding conditions for receiving grants and by mandating new state expenditures. Congressional activity highlighted the tension between targeting grants to specific needs and allowing greater state flexibility in priority and program setting—a tension heightened by the curtailed growth in inter-governmental grants.

With strong support from the administration, Congress passed a bill to strengthen states' efforts to collect

child support payments from delinquent parents. The *Child Support Enforcement Amendments* requires states to extend collection assistance to nonwelfare families and employs a smaller carrot and a stronger stick than the previous program. States that fail to meet the new requirements, including mandatory wage withholding by employers, may lose a portion of their federal AFDC funds. A 5% sanction has been part of the previous program but, because of its severity, was never enforced. The new program establishes a graduated system of penalties based on performance measures, in the hope that the penalty will be imposed more often, if warranted. At the same time, the national government's contributions to state administrative costs will decline and a restructured incentive system is expected to result in lower incentive payments to states.

A bill reauthorizing aid to states for child-abuse prevention programs included a hotly debated provision designed to ensure that severely handicapped infants receive adequate medical care. As a condition for receiving the aid, state child protection agencies are required to establish procedures for responding to reports of medical neglect in so-called Baby Doe cases.

**DEFRA cost impact:** The *Deficit Reduction Act* was not limited to spending cuts and tax increases. It amended the AFDC and Medicaid programs causing increased expenditures by both national and state governments. Although these changes did not receive much attention, they will have major financial impacts on some states. The law requires that states not already doing so provide Medicaid assistance for some poor, pregnant women, as well as children not previously covered. The bill provides \$270 million in federal matching funds. The Child Health Assurance Program mandates Medicaid coverage to the following groups meeting AFDC income and resource requirements: first-time pregnant women, pregnant women in two-parent families where the principal wage earner is unemployed, and children in two-parent families born on or after October 1, 1983, up to age five. At the average state matching rate of 46%, the state share of these costs over the next four years would be \$239 million. However, actual costs will be lower because states required to expand their coverage generally have lower matching rates.<sup>31</sup>

DEFRA also makes a number of changes in the AFDC program. The bill raises the income limits for AFDC eligibility and requires nine months of Medicaid coverage to recipients who lose AFDC because they accept low-paying jobs. The bill also permits up to \$50 received in child support payments to be subtracted from a family's monthly income when calculating AFDC eligibility. This change will permit some families to remain on AFDC despite child support payments, and qualify other families for AFDC benefits. As a result, benefits paid by the national government will increase by more than \$200 million and some states will face significantly increased AFDC costs.<sup>32</sup>

<sup>30</sup>Laurence Tribe, *American Constitutional Law*, (Mineola, NY: The Foundation Press, 1978) p. 302.

<sup>31</sup>NCSL "Budget Update," p. 2.

<sup>32</sup>*Ibid.*, p. 3.

## Other Grant Activity

Several new grant programs were enacted by Congress, including a formula grant for states and local education agencies to train mathematics and sciences teachers and a program to assist magnet schools carrying out desegregation plans. The anticrime package included a grant program to states for criminal justice projects and created a new grant initiative which will allow up to \$100 million per year in federal criminal fines and penalties to be distributed to existing state victim assistance and compensation programs. In contrast to block grants, the money authorized in these grants is for narrowly defined purposes and programs.

In the area of block grants, Congress reauthorized the Alcohol, Drug Abuse and Mental Health Block Grant, the Preventive Health and Health Services Block Grant, the Maternal and Child Health Block Grant, and the Community Services Block Grant, all at increased funding levels.

## THE FORECAST

In 1985, Congress will have the task of reauthorizing a number of programs which expire before October, including the *Coastal Zone Management Act*, assisted housing programs, low-income weatherization, and the *Higher Education Act*. Items that Congress failed to complete in 1984 will also be on the 1985 agenda. Immigration reform, reauthorization of the *Clean Air and Clean Water Acts*, hazardous waste superfund, banking deregulation, and highway construction are among those issues that will face even greater difficulties in the 99th Congress as elections year jitters are replaced by deficit tremors. All of these issues, however, will take a back seat to tax reform and deficit reduction.

Programs that aid and subsidize state and local governments are prime candidates for spending reductions in 1985. Indeed, the President's FY 1986 budget recommended the elimination of General Revenue Sharing (GRS), Urban Development Action Grants (UDAG), and mass transit funding. In addition, large reductions were proposed in public housing subsidies and modest reductions in welfare expenditures. Overall, the President has requested reductions in federal aid to state and local governments amounting to more than \$6 billion.

The Treasury's tax reform and simplification proposal is also of great interest to state and local governments. Like several tax reform plans introduced in Congress (Bradley-Gephardt and Kemp-Kasten, for example), the Treasury plan proposes to reduce marginal tax rates by removing and modifying most of the existing deductions (including the deductibility of state and local taxes), credits, and exemptions.

The administration proposals have left many fearful that the budget will be balanced on the backs of state and local governments. Some observers of the federal scene wonder if 1985 will be the year of "whiplash federalism."<sup>34</sup> However, the administration's proposals have elicited strong reaction from many corners, indicating that they are far from being *fait accomplis*. Congress is already grappling with its own budget and deficit re-

duction plans and may choose to adopt one quite different from the President's budget. One thing is certain: Congress and the administration face a rigorous agenda of tough decisions in 1985, one that could lead to strikingly new approaches or to resumption of stalemate.

## CONCLUSION

Intergovernmental activity at the national level was not inconsequential in 1984; neither was it extraordinary. Fiscal pressure and election year politics effectively eclipsed interest in major federalism reforms. Changes that occurred were incremental—a few new categorical grants, exemption from municipal antitrust damages but not immunity from suits, new grant-in-aid conditions, narrow Supreme Court rulings. In many instances, changes were byproducts of activity driven by other purposes, such as reduction of the deficit and deregulation of the private sector.

As the political debate over taxes, budget cuts, and the deficit intensified, state and local officials turned their attention from service delivery and balancing their own budgets to participating in the national policy arena. A resolution passed by the National League of Cities (NLC) in November declared that "resolving the deficit problem is the most urgent priority confronting the nation as well as the cities," and NLC President George Latimer called for the cities to become the "watchdog" of the Treasury and the tax code.<sup>35</sup>

Yet within the widely accepted notion that these are desperate budgetary times requiring drastic measures, there lies an opportunity for states and localities, and the public interest groups which represent them. Intergovernmental aid cuts, which are certain to occur, can be made with a budget hatchet or, they can be accomplished through policy reform. State and local governments have begun to weigh the risks and decide between strategies: they can take a defensive posture and man the barricades to minimize cuts, or they can agree upon a level of cuts and present them in a positive package of policy reform. The fundamental issues confronting the nation present an opportunity for states and localities to demonstrate that federal spending reductions can be the byproduct of genuine federalism reform. In this way, the federal deficit crisis could prove to be the mechanism that is needed to rebalance our federal system.

<sup>33</sup>Memorandum of disapproval from the President to the Congress, the White House, Washington, October 30, 1984.

<sup>34</sup>Term used by Harry N. Scheiber, "Some Realism About Federalism: Historical Complexities and Current Imperatives," in *Emerging Issues in American Federalism*, Advisory Commission on Intergovernmental Relations, (forthcoming).

<sup>35</sup>Raymond G. Dick, "Cities Taking 'Watchdog' Role on Deficit," *Nation's Cities Weekly*, 3 December 1984, p. 1.

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# States, Localities Continue To Adopt Strategic Policies

Jane Roberts, Jerry Fensterman,  
Donald Lief

More than most election years, 1984 may be remembered as a pivotal one for the future of state and local governments for two reasons: (1) a national mood emerged favoring basic changes in the tax system, and (2) public concern increased that state and local governments can—and must—help themselves by considering long-term growth policies as well as fighting today's battles over fiscal austerity. The conjunction of these events, and the healthy national economy in which most—but not all—states shared, provided state and local leadership an opportunity—some might say a mandate—to shape the future. This article reviews some of the past year's events which illustrate that governments as entrepreneurs play important roles in assuring financial stability and private-sector growth using fiscal, developmental, and educational strategies.

## STATES' FINANCIAL EFFORTS

During the past five years, state and local governments have been through extraordinary financial weather: two recessions, a 25% decline in the real value of federal grants, and a sustained tax revolt which, in effect, reduced state and local taxes by more than 13%. After three decades of growth in real expenditures at an annual rate of more than 4%, the real outlays of state and local government per capita declined 6.5% between 1978 and 1983. A Treasury Department official, in reporting these events, praised the states' "admirable fiscal responsibility" since 1979.<sup>1</sup>

Voters appeared to concur with this judgment. Public confidence in the performance of states and localities was greater than in that of the national government.<sup>2</sup> Efforts to limit or reduce taxes did not score sweeping victories at the voting booth. In fact, one-third of the impressive increase in state-local receipts since 1983 has been due to legislative action by states and localities—not only the rebounding economy. Still, no state has adopted a new tax since 1978 (see Table 1).

Debate over the future financial health of state and local governments will carry great weight in shaping the federal budget for fiscal 1986, particularly for such programs as General Revenue Sharing. At the state level at the close of fiscal 1984, a balance of about \$6.3 billion was reported by the National Governors' Association (NGA) which estimated the general fund balance for fiscal 1985 would be about \$5.3 billion. The NGA cautioned:

National totals . . . mask a wide range in the size and trend of balances in the individual states. In 1984, more than one-half of the aggregate general fund balance was accounted for by eight states. . . . The majority of the states still have balances of three percent or less. . . . Only 16 states are expecting general fund balances of greater than 5 percent in FY 1985.<sup>3</sup>

Perhaps as important will be the final disposition of the tax reform issue and its consequences on state-local revenue systems. Growing reliance on income-related taxes makes these systems more sensitive to swings in the national economy, and especially to those industrial sectors most important regionally. The current experience of energy-producing and agricultural states underscores the point. Where tax reform will skew investment and employment is not yet fully understood.

## Contingency Funds

The most significant new trend in state finance is the establishment of budget stabilization accounts—"rainy day funds"—to hedge against revenue shortfalls.

<sup>1</sup>Testimony of Robert W. Rafuse, Jr., deputy assistant secretary, U.S. Department of the Treasury, in hearings, House Subcommittee on Intergovernmental Relations and Human Resources, December 12, 1984.

<sup>2</sup>ACIR, *Changing Public Attitudes on Governments and Taxes* (S-13), 1984, p. 1.

<sup>3</sup>National Association of State Budget Officers/National Governors' Association, *Fiscal Survey of the States*, February 1985, p. 2. (Processed.)

Table 1

## State Personal Income and Sales Tax Legislation

Personal Income Tax		Sales Tax	Commentary
<b>Real State-Local Growth: 1959-77</b>			
New Tax Adoptions	13	12	Steady strengthening of state tax systems to underwrite real expenditure growth.
Tax Increases	75	76	
Tax Decreases	N/A	N/A	
<b>Tax Revolt: 1978-80</b>			
New Tax Adoptions	—	—	Sharp contractions in state tax powers.
Tax Increases	2	6	
Tax Decreases	35	19	
<b>Recession: 1981-83</b>			
New Tax Adoptions	—	—	Dramatic tax hikes to offset recession-induced revenue losses. No countercyclical aid from Washington.
Tax Increases	28	30	
Tax Decreases	2	1	
<b>"Wait and See": 1984</b>			
New Tax Adoptions	—	—	Industrial based states experiencing recovery; other states are not. States are waiting to see how the federal government deals with the deficit and the economy.
Tax Increases	2	9	
Tax Decreases	10	3	

Calculations not only count state tax rate increases and decreases, but also include adoptions and extensions of temporary tax changes, major changes in personal exemptions or credits or standard deductions, indexation of personal income taxes, tax rebates, elimination of taxes, and changes in major tax exemptions.

Source: ACIR staff compilations.

Florida's contingency fund stood alone from 1959 until Michigan followed in 1977. Today, 24 states have such funds, with 15 using an automatic method to determine when the fund receives revenue. Eleven states divert surplus revenues up to a ceiling, defined as a percentage of revenues, appropriations, or expenditures. Four states' formulas are based on personal income growth. Rainy day funds amounted to slightly more than \$1 billion in 1984, and could reach between \$1.7 billion and \$3 billion next year.

To balance the state budget in case of shortfall, 10 states use appropriations from the fund; 14 provide for automatic outlays. Fiscal experts suggest that a rainy day fund, separate from a surplus in the general fund, imposes an important discipline on spending decisions during times of prosperity and austerity. To some ex-

tent, these funds are now regarded as a positive criterion by credit analysts when rating state bonds.

## State Tax Systems

Tax changes may replace education as the top priority on 1985's legislative agenda in many states; continuing pressure for tax cuts will be felt, despite the 1984 defeat of tax and expenditure limitations (TEL) in eight of nine states.<sup>4</sup> State budget officials see prospects for TEL efforts in Colorado, North Carolina, Louisiana, Nevada, New Jersey, Virginia, Florida, Oklahoma, and Oregon.

Contributing strongly to public debate will be the findings and recommendations of a large number of tax studies. In 1984, commissions studied revenue systems in a dozen states: Minnesota, New York, Massachusetts, Tennessee, Iowa, Texas, California, Kansas, West Virginia, Hawaii, New Mexico, and Utah. Previously, tax studies were done in Connecticut, Pennsylvania, Rhode Island, Illinois, Michigan, Georgia, Louisiana, and Ohio. These studies were not spawned solely because of financial crises or tax relief arguments. Minnesota's reflected concern that the state's tax system might be too complex, retarding economic development. New York's aimed at simplifying the system.

These study groups follow no model structure. Minnesota's was broadly based, including trade unions, citizens' groups, and businesses. In New York, only assemblymen and state senators sit on the commission, but 600 persons are invited to make comments on all work done by the body. The most recent, New Jersey's Local Expenditures and Revenue Policy Commission, was approved in December after three years of negotiations between the governor and the state legislature.

## State Lotteries

Voters in California, Oregon, West Virginia, and Missouri added their states to the 17 others and the District of Columbia which have lotteries. During 1983, lotteries generally contributed less than 2% of total state revenues, but in 1984 bettors nationwide spent more than \$5 billion on tickets. In several states, lottery proceeds are functionally earmarked; the new California lottery—expected to generate \$500 million—allots 34% of its revenues to public education. Missouri's lottery will direct 45% of its total revenue to the general fund, and Oregon's will set aside 34% of the proceeds to economic development and job creation.

Hailed as a major source of new revenue, lotteries have some fiscal limitations. Lotteries are, on the average, about five times more costly to administer than more traditional revenue sources. In 1983, 2.5% of total tax revenues went to tax administration costs; administering lotteries averaged 12.6% of lottery revenues. In four states, lottery administration costs exceeded two-thirds of revenues: Maine (76.9%), New Hampshire (73.8%), Vermont (68.2%), and Arizona (66.9%).<sup>5</sup>

<sup>4</sup>Intergovernmental Perspective, Fall 1984, pp. 4-5.

<sup>5</sup>National Journal, 19 Jan. 1985, p. 188.



## SUPPORT FOR INFRASTRUCTURE

Voters, continuing the surge of 1983, strongly supported 1984 bond issues for physical infrastructure. In November, \$3.8 billion in bond issues were approved, 85% of the value on the ballots. A year earlier, voters approved \$3.4 billion, 90% of the total value. The 1983-84 approval rates contrast with recent years; in November 1975, for example, voters passed less than 10% of the issues brought before them—only \$619 million in new bonds.

States and localities finance infrastructure by taxing as well as borrowing. Last year, seven states increased the motor fuel tax: Alabama, Connecticut (for the second straight year), Louisiana, Oklahoma, South Dakota, Texas, and Wyoming. Another 18 raised the tax in 1983. These tax revenues and the increased federal motor fuels tax—raising about \$5 billion annually—have spurred road, bridge, and public transit spending.

The scale of current efforts is shown by the value of state and local construction contracts awarded. During the first nine months of 1984, such contracts were awarded at an annual rate of \$50.5 billion, nearly 12% higher than the 1983 figure of \$45.3 billion. The latter figure was 10% higher than 1982, \$41.3 billion.

State governments have been especially active on the physical infrastructure stage, often devising innovative mechanisms for planning, financing, and administering their programs. Washington enacted a law that requires at least \$10 million annually be deposited in a public works assistance fund, separate from the general fund. The new fund will pay principal and interest on bonds issued for local public works projects. New Jersey Governor Thomas Kean offered to issue state bonds on behalf of local governments to give them the benefit of the state's generally higher bond rating.

A complex infrastructure financing mechanism—MassBank—survived legal challenge when Massachusetts' Supreme Judicial Court ruled in its favor. The plan is still pending in the state legislature. It would establish a development bank for business—related physical infrastructure, to be financed by earmarked

taxes on business corporations. The tax rate, adjusted to raise up to \$145 million annually, would be set as a portion of total business tax collections. In return, the state would offer savings to business through changes in its unitary tax system, an extension of investment tax credits, and continuation of an earlier reduction in the state's unemployment tax rate.

The court ruled that the assessment for physical infrastructure is, in fact, a tax but (1) it is constitutional, (2) the legislature had the authority to delegate taxing authority to a revenue commissioner, and (3) it is constitutional for MassBank to spend revenue for a specific purpose even though the funds were not appropriated by the legislature.

The ACIR concluded in 1983 that physical infrastructure problems, while often serious, could be dealt with largely through existing mechanisms; the Commission suggested that improved coordination between governments could further this process.<sup>1</sup> For example, Cleveland's coalition, Build Up Greater Cleveland, will set priorities for infrastructure investment and develop a funding plan supported by all major governmental entities in Cuyahoga County. It recommended \$1.6 billion in capital investment through 1987, including about \$700 million from local sources.

One of the biggest blows to state infrastructure programs was Congress' failure to pass comprehensive highway aid for the second straight year. Without legislative approval for the Interstate Cost Estimate and Interstate Substitute Cost Estimate, the Federal Highway Administration cannot distribute more than \$7 billion in federal-aid highway funds to states in fiscal 1985. Although both the House and Senate each passed a highway bill, sharp differences between the conferees blocked final agreement before Congress adjourned.

—MM

<sup>1</sup> See *Financing Public Physical Infrastructure (A-96)*, ACIR, June 1984.

## ECONOMIC DEVELOPMENT INITIATIVES

State and local governments have long been involved in economic and industrial development. Obvious as the relationship is between government and business, 1984 suggests that their interactions are changing: government is going beyond its traditional supportive role (e.g., fiscal climate, public physical infrastructure) and business decisions increasingly consider total impact on communities and states. The rhetoric of partnership is gradually turning into ongoing institutional behavior, less adversarial and more entrepreneurial.

A survey of 570 local chambers of commerce in 1984 found that 70% of the communities had an economic development plan, list of priorities, or a statement of objectives. In addition, 85% of the chambers noted improved cooperation between local development organizations.

Even as the effects of the recession began to fade, states and localities redoubled their efforts to foster economic development, broadly defined. Hard financial and economic skills, tough realism honed by the recession, and genuine creativity are being melded together to advance local economic growth. Past experiments

matured and became ongoing efforts, and new ideas moved from concept to start-up venture.

Recent years have witnessed an expansion into new directions. State and local governments still fund physical infrastructure, but now they also promote high-technology, apply new technologies to mature industries, provide the bulk of job training, support small businesses, and target their aid to distressed communities.

This expansion results largely from two forces, the national government's retrenchment from large proactive economic development programs and the increasing capacity of states to fill this vacuum. State and local government initiatives play a relatively small role in the condition of the overall economy; at the same time, their initiatives create products, services, jobs, and revenues which aid the national economy.

### Creating Employers

To create jobs—with all their benefits—governments no longer focus on public employment; creation of employers has the priority. The variety of efforts fall into several categories: making capital more available, providing other incentives to business, and adopting statewide development strategies.

Delaware's *Blue Collar Jobs Act of 1984*, enacted in August, illustrates some of the diversity. The measure includes tax incentives for businesses moving into or expanding within the state, with other incentives for targeted industries and geographic areas. A .1% unemployment insurance tax on all employers is expected to raise \$1.5 million, earmarked for dislocated worker and school-to-work programs.

### Making Capital Available

**Venture capital:** Few people think of state and local governments in terms of venture capital, largely the province of private firms and individuals. More than 20 states, however, are now involved. These plans have varied forms: state or quasi-publicly owned, state or independently operated, an earmarked fund or tax incentives for direct investments in targeted industries and locales. By stimulating the private sector, they seek to diversify their economies as well as to create jobs.

Several cities, including Louisville and Baltimore, are setting up modest venture capital pools when efforts to attract private funds fail.<sup>6</sup> Baltimore and Milwaukee are targeting their pension funds toward long-term small business loans.

**Lender commitments:** Another good example of public-private partnership is the lender commitment program. Illinois Governor James R. Thompson announced in October the commitment of more than \$1 billion by about 300 lending institutions within the state. The nation's first such program, for \$200 million, was announced earlier in the year by Washington Governor John Spellman. Eight other states, including Maine, Ohio, Utah, and Vermont are engaged in similar efforts, as part of the federal Small Business Revitalization program which links bank loans with limited state and federal lending incentives to make long-

term capital available and affordable.<sup>7</sup> Typically, only established small and medium sized businesses can meet the rigorous loan criteria.

**Industrial development bonds:** The *Tax Reform Act of 1984* (TEFRA) imposed statewide volume limits on industrial development revenue bonds. Although these limits—\$150 per capita annually with a minimum \$200 million allocation to each state—posed no problem in 1984, states must cope with a lower ceiling of \$100 per capita in 1986. In addition, Congress' action forces states to allocate IDB issuance among all eligible state and local agencies and authorities, with 50% of the total allocation reserved for state-level use. State legislatures, formerly largely uninvolved, are becoming important participants in economic development because they must help determine equitable ways to allocate IDB authority.

Five states, Arkansas, Iowa, Illinois, Minnesota, and Wisconsin, enacted laws in anticipation of TEFRA's complex provisions on IDBs. The governors of California and Georgia signed executive orders after President Reagan signed the measure in July. By the end of the year, every state had taken steps to govern the allocation of IDB authority among state and local governments.

### Other Incentives

Capital is not the only requirement for business development. Enterprise zones and incubators offer other incentives.

**Enterprise zones:** Although national legislation is stalled, 21 states have established enterprise zone programs that confer tax and financial incentives on businesses in specific locations. Among the leaders in designated target sites are Louisiana (620), Florida (186), and Arkansas (123). A number of the programs have not yet become fully operational, and their long-term viability is not known. One criticism of enterprise zones is that their incentives have comparatively little value for new businesses which have yet to turn a profit, regardless of their prospects.

**Incubators:** For the fledgling enterprises in a community, business incubators are now designed to help hurdle obstacles during start-up. Typically, a vacant building is converted into flexible office or industrial space and small business tenants are sought: high-tech firms, services, artisans. Rents are low, many administrative services are shared; even management consultation is available on a shared-cost basis. With flexible but tough leases, failing businesses are jettisoned and successful ones are sent off to fly on their own.

Sponsored publicly and privately, by nonprofit organizations and universities, incubators are spreading like brushfire. Colorado, Illinois, Kansas, Michigan, Mississippi, North Carolina, and Pennsylvania are among the states encouraging them. The corporate structure behind incubators is as entrepreneurial as their tenants. Flint, MI, has a \$3.5 million partnership between

<sup>6</sup>Economic Developments, 31 July 1984.

<sup>7</sup>Developments, Fall 1984.

## PAY FOR COMPARABLE WORTH: CONTROVERSIAL, MOVING AHEAD

The highly controversial issue of comparable worth—roughly defined as the concept of equal pay for work of equal value—grew in importance among the states in 1984. Although the idea suffered setbacks along the way, the contention that there is a built-in gender gap in public employment is drawing closer scrutiny. At least 30 states have established mechanisms to evaluate jobs and to recommend actions that would be needed to carry out the concept of pay equity.

Minnesota, the first state to adopt a comparable worth pay policy, began payments to its clerical workers, funded by a biennial appropriation of \$21.8 million for salary increases; during the next two years, each clerical worker will receive an additional payment averaging \$1,600. The state anticipates a similar appropriation will achieve full pay equity by 1987. New Mexico's \$3.2 million program began in July 1983. In July, Iowa began a \$10 million plan for fiscal 1984-85; comparability is to be complete by mid-1987.

Despite these state-initiated steps, impetus for widespread public attention came from the December 1983 ruling of a U.S. District Court judge in *AFSCME v. the State of Washington*. On the basis of Title VII of the *Civil Rights Act of 1964*, the judge ruled that Washington had discriminated against employees on the basis of their sex. The state had already begun a program of comparable worth compensation, and obtained a stay of the AFSCME decision while it carries forth an appeal. Thus, under its own plan, Washington began its program in July; about 20,000 of 45,000 state workers will receive approximately \$8 monthly through June 1985. Meanwhile, two state-level personnel boards are evaluating all job classes currently with at least 70% female incumbents. Potential beneficiaries, according to one estimate, could be entitled to as much as \$500 million in back pay.

During 1984, legislative steps to advance comparable worth were either defeated or tabled in five states: Colorado, Florida, Missouri, Nebraska, and Pennsylvania.

A survey by the Council of State Governments identified 23 states with formal study groups on comparable worth; others used other means to assess their personnel systems' performance.<sup>1</sup> The CSG survey found that only seven states had taken no

specific action on the subject. Where task forces or commissions have been started, reports are expected in one to two years.

The National Committee on Pay Equity, an umbrella group representing some 200 organizations, reported in September that job evaluation studies had been completed in seven states: Connecticut, Idaho, Illinois, Michigan, Minnesota, Washington, and Wisconsin.<sup>2</sup>

As the personnel experts and other consultants examine state systems, local systems will face similar scrutiny. In Minnesota, the *Local Government Pay Equity Law* requires each jurisdiction to submit an implementation plan for pay equity by October 1985. Urban counties surrounding Washington, D.C., and other central cities are responding to the issue much as are the states, with studies.

The work of the various task forces and commissions will be difficult; agreements on the basic premises of discussion will not come easily. Vigorous disputes have been triggered over the scientific basis of determining comparable worth. There is serious skepticism that formal job evaluation can be isolated from the evaluators' personal judgments. Finally, there is the most frequently asked question: how realistic is it to set government pay rates independent of market forces?

The concept of comparable worth, were it to be fully validated and carried out, would sharply change collective bargaining on pay rates. Depending on the cost factors used, comparable worth standards could cost state governments from \$11 billion to \$44 billion—equivalent to total tax increases of from 6% to 24%.<sup>3</sup>

Awesome as the fiscal implication may be to states, the private sector's concern is still greater. Although state-level actions are most closely monitored currently, an official of the U.S. Chamber of Commerce estimated that comparable worth in the private sector could cost up to \$320 billion annually.

—DWL

<sup>1</sup>Keon S. Chi, "Comparable Worth in State Governments," *State Government News*, November 1984, pp. 4-6.

<sup>2</sup>See *Who's Working for Working Women?* (Washington, DC: National Committee on Pay Equity, September 1984).

<sup>3</sup>For background and current information, see *State Policy Reports*, June 22, 1984, pp. 9-23; July 26, pp. 15-17; September 28, pp. 24-26.

the city, the Mott Foundation, and the Flint Community Development Corp. Heywood County, NC, received the first state grant to stimulate job creation through incubator facilities; an SBA "503" company, the Smoky Mountain Development Corp., emerged with funds coming from the state Technological Development Authority, which administers North Carolina's *New Technology Jobs Act*. A Pennsylvania survey showed that incubators are more likely to attract local residents rather than entrepreneurs from elsewhere; only one in 44 firms expected to relocate if financially successful.

### Statewide Economic Strategies

The most ambitious effort to further economic growth through state government was Rhode Island's comprehensive Greenhouse Compact. It also suffered rejection by 80% of the voters in June, but it stands as a significant chapter in such activities, raising many questions that attracted national attention.

Deeply concerned by the state's weak economy and the steady outmigration of its youth, former Rhode Island Governor J. Joseph Garrahy in late 1982 created the Strategic Development Commission (SDC) to analyze the state's industries and to recommend ways of making them increasingly competitive. The SDC devised what came to be called the Greenhouse Compact, an ambitious attempt at state economic development planning.

The multifaceted Compact sought to bolster existing businesses with product development loans, loans to develop new markets, and expansion programs. Some of the loans would turn into grants if certain investment, employment, and wage standards were met. The Compact focused on specific state industries, including jewelry and boat building, hoping to vault them into the position of industry leaders. It also would have created four research centers, or "greenhouses," to support the basic research and then help to develop practical applications in the fields of robotics, services for the elderly, medical technology, and "thin film" computer materials.

As originally conceived, the Compact would have been wholly funded by a tax increase, but the state legislature, which eventually adopted the plan, replaced that idea with a mix of state bonds and general funds. The funding proposal included a public combined expenditure of \$250 million over a seven-year period, with the expectation of a private sector \$500 million match. To put these figures in perspective, Rhode Island's 1983 economic development program budget was about \$4 million, and the \$250 million would have equalled about one-quarter of the annual state budget.

Following adoption by the legislature the Compact was put before the voters who turned it down by a resounding 4-to-1 margin. Most observers credit the sizable defeat to distrust of local politicians and suspicion of state planning in general. This may be too simplistic. Other factors were involved: (1) the proposal went well beyond most states' levels of involvement in supporting private-sector activity; (2) the funding level was controversial in itself; and (3) two critical groups—small

business and some Brown University economists—were not among the consensus supporters, the latter's opposition becoming visible and influential.

The Compact is not dead, however. Though it will not be brought before the voters, Governor Edward DiPrete has stated his intention not to allow the state needs identified by the SDC to go unheeded.

### Plant Closings

The shifts of the national economy in a global marketplace will continue to be symbolized by plant closings. To ease the ordeal of plant closings, 22 states considered plant closing legislation between 1981 and 1984.<sup>8</sup> Last year, Massachusetts became the fifth state to enact such a law, following Connecticut, Maine, Michigan, and Wisconsin.

Using analysis begun in 1983 under the direction of Governor Michael Dukakis, the Commission on the Future of Mature Industries issued recommendations which were adopted by the legislature. The public/private agreement established: voluntary advance notification by businesses of impending plant closings and provisions by them to maintain income and health insurance benefits; a state fund to provide income and health coverage as well as expand current retraining and reemployment programs; a hands-on research system to root out potentially troubled plants to provide time for devising a solution; funds for plant modernization and expansion; and, loans to help existing firms bring new products to market.

Massachusetts' action stands in contrast with Pittsburgh's experience. The Commonwealth Court of Pennsylvania ruled that the city's plant-closing notification ordinance was invalid; the city had exceeded its powers under the state's home rule law.

Other new, developing and mature programs have not been mentioned here because there is now more state and local activity than can be compiled briefly. Problems are still far from resolution. Many opportunities still exist (greater reliance on public pension funds figures prominently in many economic development specialists' dreams). Furthermore, these programs mentioned are still quite controversial. But sub-national governments are proving themselves to be increasingly fertile lands for the seeds of homegrown economies.

### THE EDUCATION CONNECTION

Education continued to occupy center stage on the states' policy and budget agendas last year. The Education Commission of the States (ECS) estimates that nearly 250 high-level task forces or study commissions in all 50 states have reported their recommendations for school improvements. Governors made public education a central point in their legislative programs, and state lawmakers considered over 7,000 school-related measures. According to a National Conference of State



## STATE ELECTIONS: GOP GAINS

Democrats still control state legislative bodies by more than a 2-to-1 margin, but Republicans continued to make inroads last year. As the 1985 sessions opened, Republicans held 339 more seats, controlled seven more chambers (for a total of 32), and had enough votes to tie in two other states. These gains are in clear contrast to the Republicans' net loss of 215 seats and control of nine chambers just two years ago, and continue a ten-year reversal of the Democratic landslide of 1974.

Perhaps some of the most noteworthy GOP advances were registered in the South where major gains were made in that region's largest states: Florida, Georgia, North Carolina, and Texas. According to Curtis Gans, director of the Committee for the Study of the American Electorate: "My impression is that the Republicans are going to be a competitive party in the South, and maybe the dominant party, in the next six years. It has been building for quite some time, and this was a real breakthrough year for them as far as the South was concerned."<sup>1</sup> Five southern states did not hold statewide elections last year.

State legislative election results also seemed to bode well for women candidates, but the outcome was less clear for minorities. More women than ever will serve in legislatures, accounting for 14.4% (or 1,067) of the state legislative seats. Hispanics also made gains, now holding 108 seats, 1.5% of the total. Over 80% of the Hispanic representation is concentrated in

five states: Arizona, California, Colorado, New Mexico, and Texas. The number of black legislators increased by six over 1984, one of the smallest gains since 1960. Blacks now hold 384 legislative seats, about 5% of the total.

The issues of state legislative composition and control will become increasingly important as preparations are made for the next reapportionment in 1990. A federal court decision in December may have great impact on redistricting. A special panel of judges split 2-1 in ruling that the districts used in the 1982 Indiana legislative elections had been drawn unconstitutionally because they failed to reflect the entire state's political composition. Although the ruling favored Democrats in Indiana, Republican officials in Washington and state capitals saw their party as ultimately winning more seats if the ruling is applied nationwide.

In the executive branch, nine new governors were elected in 13 state contests. Republicans scored a net gain of one governorship, with the partisan line-up now standing at 34 Democrats and 16 Republicans. Former Lieutenant Governor Madeleine Kunin was elected in Vermont and became the Nation's second currently serving woman state chief executive. The number of women lieutenant governors was raised from three to five with the election of Harriet Woods in Missouri and Ruth Meiers in North Dakota.—JR

<sup>1</sup>New York Times, 11 November 1984.

Legislatures (NCSL) survey, education was cited by over 60% of the states as one of the year's leading budget issues, out-distancing the second choice (taxation) by better than 2-to-1.<sup>9</sup> By year's end, nearly half the states had increased appropriations for elementary and secondary education by 10% or more.

Two significant factors have served as catalysts for the recent nationwide initiatives to improve public education. First is the 1983 report of the National Commission on Excellence in Education. The report, *A Nation at Risk*, challenged the country to stem the "rising tide of mediocrity" in public schools, and called for wide-ranging reforms in virtually every segment of the education system. The second factor is the recognition that education is a basic element of economic growth and job development, and that a highly-skilled and trained workforce will be needed to support a more diverse and high-tech industrial base. A conference touched on a basic issue: "The current public debate has again brought education center stage, and we currently have

more options and greater opportunities than ever before to improve education for the next generation. We will do well to remember that the kindergarten student of 1983 will be the college graduate of the year 2000."<sup>10</sup>

The current wave of public attention to and support for education has been likened to the post-Sputnik era of the late 1950s. However, there are at least two important differences between the post-Sputnik initiatives and current efforts. First, the earlier reforms had a distinctive "national" flavor, focusing in large measure on new and expanded federal programs and funding. By contrast, today's education reform efforts are the product of a vast array of state and local initiatives—a "bottom-up" approach. Second, the post-Sputnik reforms targeted science and mathematics; current efforts are

<sup>9</sup>National Conference of State Legislatures, *State Budget Actions in 1984*, Denver, September 1984.

<sup>10</sup>University of Virginia Institute of Government, "News Letter," Charlottesville, June 1984.

directed toward quality improvements across the education spectrum.

Recent state actions have addressed five broad themes directed toward improving the overall quality of public education:

- **Curriculum:** course content and objectives, learning goals, minimum classroom skill levels, and textbook evaluations. In Delaware, for example, the state will now develop program objectives and performance standards for the two state-mandated courses in math and science. Virginia has new procedures for approving textbooks and is creating a new center to evaluate classroom computer software.
- **Classroom (or learning) time:** about half the states have increased the amount of time students must spend in the classroom. As part of its comprehensive reform package, Arkansas will increase daily instructional time by half an hour and will lengthen the school year by three days beginning in 1987.
- **Graduation requirements:** over 40 states have increased the number of academic courses needed for high school graduation. For example, credit requirements in Kansas schools will be raised from 17 to 20 starting in 1988. In Nevada, math units will be doubled. Fifteen states now require seniors to pass an achievement exam before they can graduate.
- **Teacher salaries:** at least 17 states have raised salaries, and another two dozen have similar proposals pending. More than a dozen states, including Tennessee, Florida, and California, have adopted "master teacher" plans that tie salary increases to superior performance. A pilot merit pay program in New Jersey was begun last fall.
- **Teacher training and standards:** nearly 60% of the states have adopted new requirements for teachers including stricter certification standards, proficiency exams, and inservice development programs. In New York, for example, all new teachers must pass a proficiency test in basic teaching and academic skills. Massachusetts' Commonwealth Inservice Institute offers grants to local education agencies for teacher-planned and controlled training programs.

In evaluating the education reform record during the past year, the ECS Task Force on Education for Economic Growth gave high marks to states' efforts. According to the task force chair, former North Carolina Governor James Hunt, the initiatives represented "the best example in many years of the vitality of the federal system."<sup>11</sup>

The scope of the states' education reforms, however, may pose another challenge to the "vitality" of the intergovernmental system. Education traditionally has been viewed as a function shared by state and local governments. Yet, as state lawmakers become more involved in determining course content, setting salaries, and mandating standards, they also are eroding the basic tenet of local control. Although many local school officials are concerned about this centralizing trend, some observers believe that the shift is justified. As noted by a former cabinet member: "It's certainly true that, rather than leaving it up to the discretion of local

school boards, a lot of legislatures said 'we're going to mandate reform by putting it into law,' and I say hurry for that. I know the criticism that we are getting curriculums written on the floor of state senates, but I feel that the urgency right now justifies the action being taken."<sup>12</sup>

Some of the most notable reform efforts and funding gains have been enacted in the Southeast, where nine states increased elementary and secondary education appropriations by more than ten percent. Governors in two states, South Carolina and Tennessee, finally won approval for their comprehensive programs first offered in 1983. In South Carolina, the legislature approved Governor Richard Riley's recommendation for a one cent sales tax increase that will generate over \$200 million to support higher teacher salaries and more than 60 new school programs ranging from aid to disadvantaged students to prekindergarten child development. Tennessee Governor Lamar Alexander's "Better Schools" program, perhaps the most ambitious package of reforms in the country, includes a 22% increase in elementary and secondary appropriations, the nation's most comprehensive teacher career ladder (master teacher) program, salary hikes, and a sales tax increase.

In North Carolina, Governor James Hunt's \$255-million reform package was passed with little dissent and did not require a tax increase. The package included funding for a 15% teacher salary increase; programs for exceptional children; textbooks; vocational education equipment; math, science, and computer labs; and better student-teacher ratios for the fourth, fifth, and sixth grades.

In Texas, the legislature approved a major education reform package that will be funded from a variety of tax and fee increases, raising \$2.7 billion over the next three years. Included among the reforms are a new legislative education oversight board, tests for high school graduation, an appointed (and smaller) state board, salary increases, improved courses and instruction time, and a state aid formula designed to achieve greater equalization.

In its report *Education Finance in the States: 1984*, the ECS raised this question: who should fund education and how should the monies be allocated? According to the report, a significant difference between current reform efforts and those of a decade ago involves the issue of equity. Earlier reforms stressed equity for disadvantaged students; current programs emphasize excellence for all students.

Similar concerns about equity in school finance were voiced in early 1985 by the National Coalition of Advocates for Students, comprised of 18 child advocacy organizations. The coalition cautioned that the national emphasis on higher standards overlooked the needs of children "at risk," and could help create "a permanent underclass in America." Responding to the 1983 *A Nation at Risk* report, the coalition observed: "(The national report) was a bugle call . . . for greater aca-

<sup>11</sup>The Washington Post, 31 July 1984.

<sup>12</sup>Terrell Bell, quoted in The Washington Post, 9 September 1984.

# INITIATIVES GAIN SUPPORT

Using initiatives to set policy proved to be more popular than ever in November. Of the 40 initiatives that reached the ballot, about 50% were approved, a high rate in historical terms. On balance, there was no clear pattern in the results to indicate a strong conservative or liberal groundswell.

What is clear is a growing recourse to initiatives. As recently as 1982, 225 measures were given formal titles and approved for the process of distributing petitions for signatures. In 1984, the total reached 305, including 64 in California and 57 in Oregon. Next among the leaders were Massachusetts (20); Florida, Michigan and Washington (17), and Arizona (15).

The attrition rate for initiatives is high; only 13% of the 1984 crop reached the ballot—Oregon's eight and California's seven being highest.

## Tax Revolt Abating?

Efforts to cut taxes or restrict expenditures were not widely successful because state governments have been hard-pressed for funds, even while operating on leaner budgets.<sup>1</sup> California, a bellweather state for initiatives, suggested the national mood: the state's voters rejected Proposition 36, billed as furthering the tax cuts sought by 1978's Proposition 13. Opponents had claimed that Prop 36 would curtail localities' ability to issue bonds and raise fees for services. Californians also voted down an initiative which would have sharply reduced welfare spending.

Many campaigns surrounding tax-related referenda turned heavily on "a deep-seated fear among voters that any reductions in state government revenues might adversely affect public education."<sup>2</sup>

## Influence of Courts

The 1984 crop of initiatives gave added visibility to the role of state courts. Increasingly courts are being asked to determine the validity of proposals. Successful challenges resulted in courts knocking initiatives off the ballot in Arkansas, Missouri, Florida, and Oregon. As interest groups become more skilled in proposing and opposing initiatives, court challenges are now mounted less on the specific content of initiatives than on the underlying process. Provisions for titling, signature certification, preparation of voter information, and the like, are increasingly questioned. Many challenges hinge on the random sampling of signatures which is used to determine their validity quickly and cheaply.

During 1984, several cases showed that some state courts are willing to give close attention to the underlying justification for the initiative and its proper use. Rulings in four cases focused on the intended use of the initiative—as established in the respective states: that it is to propose statutes or constitutional

amendments. Courts in Nebraska, California, and Montana rejected using an initiative to have an "advisory" or "resolution" purpose. A Massachusetts decision also carefully laid out differences between a law and a rule. These rulings in widely disparate political and geographic settings are strong evidence that only limited legislative powers are vested in the initiative process.<sup>3</sup>

## Little Legislative Action

The impact of the courts is not matched by state legislatures, although most state laws and constitutional provisions are from the pre-1920 era, when multi-million-dollar campaign chests and technological mass political persuasion were not contemplated. In 1984, only three new laws dealt broadly with basic aspects of initiatives.<sup>4</sup> Arizona now requires its attorney general to analyze popular initiatives and referenda in the same way the legislative council analyzes measures referred to the ballot by the legislature. Ohioans will now receive a summary of a proposed initiative—certified by their attorney general—before being allowed to sign a petition about a law or the state constitution. Nebraska changed provisions of its statute governing initiative and referendum.

Some differences between states have great bearing on the intent and conduct of the initiative; for example, petition circulators may be paid in some states but not in others. Initiative strategies of local and national organizations consider these factors in planning campaigns, whether to control hospital costs, to sanction lotteries, or to permit wine sales in grocery stores.

Today, business interests and citizen activists look to the initiative as an important form of direct access to government; governors and state legislators also may take recourse in the initiative to bypass stalemates. Of the 27 states that do not authorize initiatives, 21 have considered adopting them since 1980.<sup>5</sup>

As shown here, the route to direct democracy is not as uncluttered as contemplated by its early proponents. Initiative, with its complexity, unpredictability, and differing ground rules, has been likened to "a loose cannon on the political deck."<sup>6</sup>

—DWL

<sup>1</sup>"Voters Reject Tax Cuts; Steer to Middle of Road," *The Initiative News Report*, November 16, 1984, pp. 1-2.

<sup>2</sup>Patrick B. McGuigan, "Voters Steer Mixed Course on November 6 Ballot Measures," *Initiative and Referendum Report*, November 23, 1984, pp. 1-2.

<sup>3</sup>*Initiative Quarterly*, Third Quarter 1984, pp. 1-7.

<sup>4</sup>Public Affairs Information, Inc., *Initiative and Referendum Legislation Enacted by the States in 1984 Session*. (Processed.)

<sup>5</sup>Lucinda Simon, "Representative Democracy Challenged," *State Legislatures*, August 1984, p. 13.

<sup>6</sup>Interview with Walter Klein, director, National Center for Initiative Review, Denver.

democratic rigor, but does not recognize that some 20 to 25 percent of students . . . need very special help . . . and that that help is going to cost money and is going to take changes in schools and is going to take a long time to bring about."<sup>13</sup>

Several states did, in fact, revise their school finance systems in addition to increasing the amounts of aid. Lawmakers included more accurate measurements of district wealth and tax effort in the Delaware aid system, and the Maryland legislature adopted a \$616-million five-year plan to equalize spending among school districts. Minnesota implemented a new finance system approved in 1983, and the Texas school reform package included a new funding formula based on the varying costs of educating different types of students.

Clearly, education was a major winner in 1984, benefiting in large part from improving economic conditions. One possible bellweather of the public's willingness to continue to commit resources to schools—even if it means higher taxes—may be seen in the birthplace of the Proposition 13 tax revolt: California. Not only did the legislature increase school spending by more than 14% to continue a major school reform plan enacted in 1983, but a majority of citizens also voted for higher taxes for schools in all but one of 13 school district elections. The tax elections were held in late 1983 and mid-1984. This high level of public support, however, was not always sufficient to meet the two-thirds requirement imposed by Prop 13; only five of the measures were enacted. Nevertheless, a significant change in voter attitude is apparent. During the decade prior to Prop 13, less than half of such school tax elections received even simple majority votes.

## STATE-LOCAL RELATIONS

The issues of education and economic development exemplify stresses and adjustments inherent in the state-local partnership. Heightening the importance of this relationship, states have recently assumed a stronger role in the intergovernmental system as agents, planners, and administrators of major federal and state programs.

Local government continues as the primary provider of public services, as well as the largest category of government employment and spending for domestic programs. With revenue sources changing dramatically, localities' reliance on intergovernmental aid has grown. Highlighted here are just three areas where the state-local partnership—challenged during the past year—is meeting the test.

### State Mandates

Few issues cause more concern among local officials than state-imposed mandates because these mandates restrict local political and budget autonomy. Despite widespread concern, little systematic data has been available about mandates.

Although nearly all states have taken at least one step toward establishing a mandate policy (such as

catalogs, studies, and fiscal notes), only a handful of states has addressed the most critical dimension of the issue: reimbursement. Last year's actions in at least five states may offer some hope to those officials who are searching for ways to deal with one of the most entrenched intergovernmental fiscal issues.

Citizens in New Hampshire and New Mexico approved constitutional amendments to limit the imposition of new state mandates on localities. Both amendments prohibit any state law or regulation that requires additional local expenditures from taking effect until the state provides the funding. The New Mexico provision also permits the state to authorize local governments to raise new revenues to pay the costs of the mandate, while the New Hampshire amendment allows a new mandate to take effect without state funding if it is approved by a vote of the local legislative body.

The Connecticut legislature added a reimbursement provision to that state's cost estimate (fiscal note) process. Starting this year, any bill or amendment that creates or expands a mandated service or program must be referred to the joint fiscal committee unless each house specifically dispenses with this requirement. Measures that are reported must include a statement that determines whether the state must provide reimbursement, and if so, specifies a timetable for payments.

The authority of the Massachusetts Division of Local Mandates was significantly expanded in 1984. The division had been responsible for determining the costs of mandates enacted since 1981. Under the new law, the office will examine mandates adopted prior to 1981, and to recommend continuation, revision, or elimination of programs. The agency at first will focus on those programs identified by local officials as being the least efficient and those which require additional personnel, expanded services, or increased expenditures.

Two significant court rulings and several legislative actions in California last year provided substantial encouragement, and fiscal relief, to local officials. Although considered a leader in the reimbursement area, the California system has been subject to a number of challenges in recent years.

The chain of 1984 events began when a trial court ruled 16 unfunded state mandate laws unconstitutional. This decision was followed by a state supreme court ruling that local government unemployment insurance programs and all their costs constitute state mandates. These two decisions gave strong support to local officials who then gained passage of two major mandate money bills and the establishment of a new reimbursement process. In addition, local officials received legislative assurances that mandates would continue to receive attention in 1985. According to Allan Burdick, "All in all, 1984 will be remembered as the year the . . . pendulum finally swung over to local government, hopefully for good."<sup>14</sup>

<sup>14</sup> "California County Annual Report," County Supervisors Association of California, Sacramento, CA, 1984.

<sup>13</sup>The Washington Post, 29 January 1985.

## Federal Grant Review

Another major aspect of the President's New Federalism program was implemented last year as states assumed a greater role in reviewing federal grant programs under Executive Order 12372 issued in late 1983. Specifically, the order replaced the federally directed A-95 grant review system with a state-administered intergovernmental consultation process. The order allows states, in conjunction with local governments, to develop and implement their procedures for reviewing federal grant decisions, changes affecting federal installations, and other federal development actions.

Implementation of the order evolved gradually, and by year's end all but two of the states had established their own system. Several evaluation reports on the new state procedures produced a mixed picture. For example, of the 48 states administering the new process, only six made major revisions; 20 made no significant changes in the old A-95 review and comment process, and 22 made modest modifications. Few organizational or structural rearrangements in state and local governments were evident, but significant modifications in program coverage did occur. The federal agencies themselves (and especially HUD) subjected a shorter list of activities to the consultation requirement, and 23 states made further limitations—very significant ones in six cases.<sup>15</sup>

At least 40 states continued to rely upon regional councils of government as the "review and comment" bodies. Most of the regional councils responding to a National Association of Regional Councils' survey reported good or excellent relationships with their states for this purpose; only seven councils reported poor relationships.<sup>16</sup>

The U.S. General Accounting Office reported on a number of procedural differences among the regulations established by the individual federal agencies.<sup>17</sup> The Council of State Planning Agencies found that the time for review under the state processes varies from 60 days to less than two weeks. Computers and electronic mail are used to streamline the processes in a number of states.

Another key goal of the order—increased federal agency responsiveness—has yet to be fully tested.

## State ACIRs

Interest continues to grow in state intergovernmental advisory agencies as vehicles to discuss and propose solutions to state-local issues. Individually, these organizations have very different characteristics, but an important common factor is their recognition that the state-local partnership must be nurtured.

More than a dozen states considered proposals to establish an advisory agency, but most significantly three states created or rejuvenated an ACIR during 1984. By year's end, 21 states had established an advisory panel, and more states are expected to act favorably in 1985.

South Carolina adopted legislation to re-establish and finance the ACIR that was originally set up by Gover-

nor Richard Riley in 1979. The 20-member commission has a four-person staff and operates on a \$239,000 annual budget, with the state and localities each contributing half. The commission's 1985 work program includes state and federal revenue sharing formulas, the cost of state and local industrial tax incentives, modifications to home rule, annexation, and financial management.

The Connecticut legislature approved and Governor William O'Neill signed a measure to establish a 25-member ACIR that is expected to begin work early in 1985. Members will serve two-year terms and represent state executive and legislative branches, municipalities, school districts, regional planning agencies, and the general public. A \$60,000 appropriation will finance the first year's operation.

In Ohio, Governor Richard Celeste reactivated that state's ACIR, the State and Local Government Commission. First established in 1978, the 13-member panel is chaired by the Lieutenant Governor and includes representatives from the legislature, executive branch, cities, counties, townships, and the general public.

## CONCLUSION

The year 1984 in state and local government can be characterized simply and accurately: it was a year that saw further strengthening of public conviction that sub-national governments have come of age, and that the capacity is in place to build the foundations of a workable society. With this maturity, states and localities are attempting to set priorities, attain consensus, and exploit opportunities for innovation that are inherent in a federal system.

At the same time, the economic stresses felt by these governments are not over. The mood, however, is different. It is now one of getting on with the tough tasks less through confrontation and more by cooperation between our institutions and our people.

The year 1984 may eventually be remembered for its seriousness, its optimism and—perhaps—its commitment to the future.

<sup>15</sup> *The Promise of Partnership*, Council of State Planning Agencies, Washington, February 1984.

<sup>16</sup> *Executive Order 12372—One Year Later*, Special Report (No. 103), National Association of Regional Councils, Washington, November 1984.

<sup>17</sup> Letter report to the Director of the Office of Management and Budget, U.S. General Accounting Office, Washington, October 17, 1984.

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# HEALTH CARE: COSTLY, CONTROVERSIAL

Possibly the most publicized referendum and initiative battle waged in 1984 involved five proposals to curtail rising health costs in Arizona's hospitals. Voters rejected all five, after a \$4-million-plus campaign that left both party leaders and the private sector badly divided. The Arizona experience illustrates several important aspects of health care issues: (1) their enormous complexity, (2) voters' uncertainty over the degree of regulation that would be imposed and the impact of regulation, and (3) the huge economic stakes involved.

Health care issues confront state governments from all directions: Medicaid costs which are the fastest growing item in state budgets; rising hospital charges which reflect, among other costs, the acquisition of advanced life-saving technologies; costly health insurance programs for public employees, their families, and retirees; and the needs of an estimated 20 to 30 million people who do not qualify for Medicaid and have no form of health coverage—the medically indigent.

Changes in national health policy since 1981, put in place both by Congress and the Reagan administration, with health care block grants and regulatory shifts, gave greater visibility and flexibility to state governments in the overall health care system. That was the good news. But state and local officials already had the bad news about Medicaid:

- 22.7 million Medicaid recipients in 1984—nearly double since 1969.
- Medicaid spending between 1981 and 1983 grew at almost twice the rate of state tax revenues (22% compared with 14%).

Under Medicaid, the state-administered program established in 1965, the federal government reimburses about 55% of state costs for medical care of the poor, chiefly those receiving AFDC and social security payments for the aged, blind, and disabled. The Intergovernmental Health Policy Project (IHPP) reported that the state share of Medicaid was \$17.5 billion of the total \$38 billion price tag for fiscal 1984. Prospects for a reduced federal share are not ruled out by state officials.

Belt-tightening by states in Medicaid during 1981-82 was eased somewhat in 1984, with some states reversing the trend by expanding conditions for eligibility for specific services.

## Curbing Medicaid's Cost Spiral

A system of fixed-fee reimbursement for Medicare patients was authorized by the *Social Security Amendments of 1983*, and has begun to have enormous impact on state Medicaid programs. The prospective payment concept calls for reimbursement on a fixed-fee basis for

services, regardless of the patient's condition or length of hospital stay. This approach has caught fire in state government.

Some states chose to piggy-back onto Medicare's diagnosis-related groups (DRGs)—nearly 500 categories of disease for which reimbursement schedules were established. IHPP found in 1984 that five states, Pennsylvania, Michigan, Ohio, Minnesota, and Washington, began planning to implement these prospective payment systems for hospitals based on DRGs. Other states, including Utah, New Hampshire, Indiana, and North Carolina, are considering DRGs in their Medicaid payments. The concept, more than the specific DRG fee, is spreading: Illinois and Nebraska legislatively authorized contracting for hospital services on a bid or negotiated basis. Other states have adopted various systems of contracting with group health associations to provide services for a fixed sum. Dick Merritt, director of IHPP, reported that "probably two-thirds of the states . . . have prospective payment elements in their systems," which discourages hospitals from adding marginal services.

## Nursing Homes and Hospices

The longevity of millions of Americans has given rise to new approaches to care for the elderly, in terms of both dollars and the quality of life—and death.

Nursing home care is still the largest cost element in Medicaid, but private insurance costs for nursing homes loom ever-greater. In response, many states are seeking alternatives to nursing homes. An example is the privatization of nursing homes through "lifecare." Lifecare is a living arrangement for older persons who make a down payment and monthly payments for which they receive an apartment and a range of support services. So far, 11 states have enacted laws covering these facilities—often begun by church-related groups but now a growing for-profit industry.

The hospice movement and home care are also increasingly favored alternatives to nursing home care for the terminally ill. At least 15 states have laws or regulations that deal with hospices. Maryland and West Virginia require health plans to include coverage for hospice. Connecticut requires health insurance policies to include home health care for the terminally ill.

## State Employee Health Benefits

Like corporations recognizing that health benefits are a major cost factor in their products, state governments have begun to limit the upward trend in their total in-

insurance contributions. In 1984, for example, eight states paid at least \$175 monthly in health insurance premiums for each covered employee and his or her family. Five of these states contributed at least 90% of the entire premium. Ten states paid at least \$50 in monthly medical insurance premiums for single state retirees over 65; nine of the ten paid at least 90% of the premium. State contributions per employee and family mounted dramatically in 1984 in such states as Tennessee (74%), Mississippi (69%), Florida (49%), and Utah (47%).

To curb increases like these, 21 states now have programs which fix the amount that the state as an employer will contribute toward the cost of the premiums, regardless of the plan's actual expense. Second surgical opinions are now mandatory in 10 states. Two states, Utah and Wisconsin, are cited by researchers at the National Governors' Association as achieving notable results.

Utah, a pioneer with its self-insured, self-administered benefit program, permits audits of hospital costs and other major expenses. Reimbursements can be made efficiently by draft arrangement over the telephone and by contracting with low-cost physicians.

Wisconsin, under new legislation, encouraged state employees to enroll in health maintenance organizations (HMOs). In 1984, the second "open season" to choose their coverage, employees opted strongly for HMOs—more than 70% compared to 17% two years ago.

Further changes in state employee health insurance can be expected when a number of state commissions complete their current data collection and analysis. Iowa's work may be the furthest advanced.

### **Medically Indigent—A Dilemma**

How to provide medical care for those who are, in many ways, completely outside the various public and private systems is perhaps the most poignant of the health issues faced by states and local governments, the latter typically counties. The medically indigent are basically poor and uninsured, lacking access to public health care or Medicaid.

State programs for the indigent vary greatly, and are often mandated as a local—typically county—responsibility. The localities set eligibility criteria, and usually provide emergency services. Their capacity to offer preventive services is normally limited. New York is an exception, with a generous range of services, from acute to preventive care.

Recent state efforts to improve services to this group include: expanding private insurance coverage, expanding public program eligibility, easing financial burdens on providers of uncompensated care, and increasing the efficiency of service delivery.

For those who lost their jobs, 19 states mandated continuation of benefits for periods from one to 18 months. In 31 states, conversion privileges were required, prohibiting insurers from refusing to allow persons to convert to individual coverage after losing their group health insurance. For those with "high risk" medical conditions, several states established insurance pools to permit higher-cost coverage, but participation has been modest.

Beyond insurance, some states have sought to devise better ways of bringing services to the medically indigent. These approaches include such delivery systems as rural or neighborhood health clinic networks. Ultimately, financing poses a major problem, with recipients not eligible for Medicaid and no federal matching funds available for the services.

State financial strategies are varied. They include South Dakota's pending catastrophic county poor relief fund, which will pay counties (if enough of them approve the concept) 90% of the amount in excess of \$20,000 per year any county pays on behalf of an individual eligible for county poor relief. Colorado's Medically Indigent Program pays hospitals directly for services to uninsured patients.

Florida and New York have revenue pools; Florida's derived from a 1.5% tax on each hospital's net revenues, and New York's from a surcharge levied on total hospital reimbursements paid by insurers. Study groups in Ohio and Washington recommended comparable "fair share" requirements for hospitals. Also in Washington, legislation requires that a hospital's level of charity care be given consideration in the certificate-of-need process—that is, before proposed capital investments can be approved.

Finally, three states which regulate hospital charges, Maryland, Massachusetts, and New Jersey, now recognize bad debts and charity care as allowable costs for rate-setting purposes.

These varied attacks on the problems of the medically indigent are incremental, perhaps only skirmishes in a protracted battle, but the states are demonstrating that there is no shortage of innovative thinking in health policy.

—DWL

# Federalism and American Politics: New Relationships, A Changing System

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**America's political system has changed substantially since 1960. Patterns of politics based upon lasting commitments to party and place—community, state, and region—have eroded significantly. They are being replaced by an increasingly national political marketplace in which competing candidates, interest groups, and parties vie for media attention and rely upon modern marketing techniques to win support from an ever more volatile and skeptical public. Specifically, the past 25 years have witnessed the final withering-away of once powerful political “machines”; the development of a new process for nominating presidents, characterized by the proliferation and heightened influence of presidential primaries and by the declining role of state and local party leaders at national con-**

**ventions; and the rise of television as possibly the most important single force in modern politics. As strong party loyalties have waned, the role of independent politicians, voters, and issue-oriented activists has expanded in contemporary elections. There has been an explosion of organized interest groups, “single-issue” politics, and new group-related sources of campaign finance.**

The party system has been at the center of many of these changes. Some believe the parties are trapped in a permanent pattern of decline. Others see parties adapting creatively to their new and complex political environment or undergoing a new phase of realignment. Normative assessments of these changes also vary widely. Some applaud what they perceive as greater openness, responsiveness, and heightened issue consciousness in contemporary politics. Others lament what appears to be growing volatility and fragmentation in a political system more reliant on the media and interest groups. To the extent that parties are indeed losing relative influence, however, individuals sharing both perspectives have raised concerns about the long-term exercise of effective representative government. Scholars in particular have come to view political parties as an indispensable link between elected leaders and the general public in a democratic society. According to the nonpartisan Committee for Party Renewal:

Strong parties and a strong party system remain the best hope for representative and responsible democracy in an extended and diverse republic like ours. They are the only institutions in our electoral system that can be held accountable for what government does. Those elected to public office in their name must make policy, not just advocate it, and are answerable for their actions to the electorate as a whole, not to a narrow constituency of limited and special interest.<sup>1</sup>

Because of their obvious importance, these changes have been much studied and debated. Almost overlooked, however, have been the implications of these political developments for the conduct and institutions of intergovernmental relations. In particular, federalism and the political party system appear to intersect in three significant ways:

- Historically, the highly decentralized structure of American political parties provided an important avenue of state and local influence and communication in Washington and helped maintain political balance among the different levels of government. In recent years, changes in the parties' roles in the political system appear to have upset some of these traditional relationships, especially where traditional party func-

<sup>1</sup>Committee for Party Renewal, “Principles of Strong Party Organization,” *Party Line* (September 1984): 17.

tions have been assumed by competing political institutions with predominantly national orientations.

- Both the processes and outcomes of intergovernmental policy making appear to have been affected by such political changes. Organizations representing the clients and providers of new intergovernmental programs have contributed to the proliferation of Washington-based interest groups and encouraged the expansion of national lobbying offices representing state and local governments. It may be no coincidence that one of the most prolific periods of federal growth and activism corresponded with an era marked by rapid political evolution and declining state and local party influence in Washington.
- Finally, the extent to which contemporary politics has altered roles and relationships within the federal system may have important implications for the basic values federalism was established to promote: integrating diverse community values within the framework of broadly shared national perspectives; providing multiple arenas of meaningful public expression and participation; promoting policy experimentation and programmatic diversity; maintaining an effective system of shared and separated powers; and promoting more effective and responsive government by avoiding unworkable concentrations of governmental responsibility. Although it may be possible to pursue such values through other instruments of government or to concentrate on other possibly competing values, these objectives represent the stakes involved in the interplay of politics and federalism.

This article explores how these intergovernmental issues has been affected by political change in America. Drawing upon the Commission's ongoing study of *Transformations in American Politics and Their Implications for Federalism*, it analyzes, first, changes in contemporary political processes that have had significant consequences for federal, state, and local roles in our political system. Traditional party roles in maintaining federalism, challenges to those roles by competing institutions, and emerging party adaptations to such challenges are discussed. The potential policy implications of these changes are then examined, followed by an exploration of their long term consequences for fundamental federal values.

### Parties and Political Balance in the Federal System

Because the United States has never had ideologically coherent, mass membership parties on the European model, political scientists are accustomed to thinking of American parties as relatively weak and loosely organized bodies. Yet, the party system traditionally has been the single most important political institution in American politics. The parties provided access to the governmental system for much of the elec-

torate and served as an arbiter for prevailing values in individual communities.

This central role was most clearly manifested by the large urban machines, but it was not limited to them. In the late nineteenth century, political parties mobilized the electorate so fully and effectively that they were compared to "armies drawn up for combat."<sup>2</sup> At that time, parties dominated the popular press, controlled large numbers of government positions, and—through parades, clubs, and gatherings—provided a major source of popular entertainment. More important, until the mid twentieth century, American parties retained a paramount role in the most basic electoral functions of representative democracy: recruiting and nominating candidates for office, structuring debate on public issues, organizing and mobilizing the electorate, financing politics, and informing citizens about candidates and government policies. Consequently, it is not surprising that some of the earliest research in political behavior underscored the influence of parties at both ends of the representational process: a citizen's identification with one political party or the other was found to be the single most important factor in predicting how that individual would vote,<sup>3</sup> while in Washington a representative's party affiliation was found to be the best indicator of what his or her position would be on the majority of roll call votes.<sup>4</sup>

### Party Decentralization

Equally significant, the structure of traditional American parties was intimately linked to the maintenance and operation of the federal system. American parties were traditionally organized in a highly decentralized manner. Indeed, less than 30 years ago a major authority on parties declared that:

There is perhaps no point on which writers on American politics are so . . . agreed as that our state and local party organizations, taken collectively, are far more powerful than our national party organizations. As Professor Macmahon puts it, "Considered nationally political parties in the United States may be described as loose alliances [. . . of state and local party organizations] to win the stakes of power embodied in the presidency."<sup>5</sup>

“ . . . the party system traditionally has been the single most important political institution in American politics. The parties provided access to the governmental system for much of the electorate and served as an arbiter for prevailing values in individual communities.”

<sup>2</sup>Walter Dean Burnham, *Critical Elections and the Mainsprings of American Politics* (New York: W. W. Norton, 1970), p. 72.

<sup>3</sup>Angus Campbell, et. al., *The American Voter*, abridged edition (New York: John Wiley and Sons, 1964).

<sup>4</sup>Julius Turner, *Party and Constituency: Pressures on Congress* (Baltimore: Johns Hopkins Press, 1951).

<sup>5</sup>Austin Ranney and Willmoore Kendall, *Democracy and the American Party System* (New York: Harcourt, Brace, & World, 1956), pp. 160, 161.

“ . . . the traditional party system provided broad channels for representing the interests of state and local officials in national policymaking and strong mechanisms for protecting those interests in the political arena.”

This system strongly reinforced constitutional provisions intended to ensure state representation in the federal government, such as the electoral college and the structure of the Senate. National office holders owed their election to state and local party organizations and were closely attuned to the vagaries of local politics. “In the United States,” wrote Edward Banfield and James Q. Wilson, “the connection between local and national politics is peculiarly close. . . . Congressmen and Senators are essentially *local* politicians, and those of them who forget it soon cease to be politicians at all.”<sup>6</sup> In fact, some members of Congress held important positions within state or local party organizations themselves and could be viewed as local as well as national political officials.

For their part, presidential candidates were chosen by an assemblage of independent state and local party chieftains at the national convention. Historically, the ranks of such candidates were often swelled by governors running as “favorite sons” and leading unified state delegations. Such leaders frequently sought to broker the convention’s decision and perhaps to gain the nomination themselves as “dark horse” candidates. Once the nominations were made, the chosen candidates relied for their election upon the permanently organized state and local parties with their armies of adherents and party workers.

Thus, the traditional party system provided broad channels for representing the interests of state and local officials in national policymaking and strong mechanisms for protecting those interests in the political arena. As Morton Grodzins expressed it:

The parties . . . disperse power in favor of state and local governments. . . . States and localities, working through the parties, can assume that they will have an important role in many national programs. . . . [They] are more influential in federal affairs than the federal government is in theirs.<sup>7</sup>

The corresponding absence of party discipline and hierarchy at the national level often reinforced the decentralizing thrust of state and local party influence by raising obstacles to concerted legislative action in Washington. Because legislative opponents of the president and congressional party leaders were insulated from effective party sanctions—especially in the period

after 1910—the natural difficulties of coalition building in a large and diverse nation were often magnified by national party weaknesses. On those rare occasions when presidents did attempt to use their political influence to defeat congressional opponents or to punish unreliable party members at the polls, their efforts generally failed dismally.

This is not to say that parties alone were responsible for maintaining governmental decentralization in the United States, nor that they were incapable of serving nationalizing purposes at specific points in time. During periods of national crisis, when strong leadership and popular support existed on behalf of vigorous and innovative federal policies, the parties served as convenient and necessary vehicles for mobilizing popular support and for encouraging effective legislative coalition building. At other times, the structure of the party system simply reinforced other factors promoting decentralization in the political system, notably the pervasive and intense popular attachment to the values of localism and *laissez-faire*, and constraints imposed on the federal government by reigning legal doctrines and provisions of the Constitution.

Over time, however, most of the explicit constitutional protections for states in the federal system were altered or eroded. Changing judicial interpretations greatly broadened the range of implied federal powers, and popular election of senators and presidential electors replace state legislative selection. Thus, by the early 1960s, prominent scholars widely credited the decentralized structure of American political parties with primary responsibility for shaping and preserving the decentralized character of the federal system itself. According to Grodzins:

The nature of American political parties accounts in largest part for the nature of the American governmental system. The specific point is that the parties are responsible for both the existence and form of the considerable measure of decentralization that exists in the United States.<sup>8</sup>

### Changing Roles of Parties

Over the past 25 years, the role of political parties in American politics has departed increasingly from this traditional, decentralized system—so much so that veteran political observer Theodore White maintains that our political system has changed “so dramatically . . . as to amount to a revolution.”<sup>9</sup> In the process, the parties’ capacity to act as balance wheels in the federal system

<sup>6</sup>Edward Banfield and James Q. Wilson, *City Politics* (New York: Vintage Books, 1963), p. 2. Emphasis added.

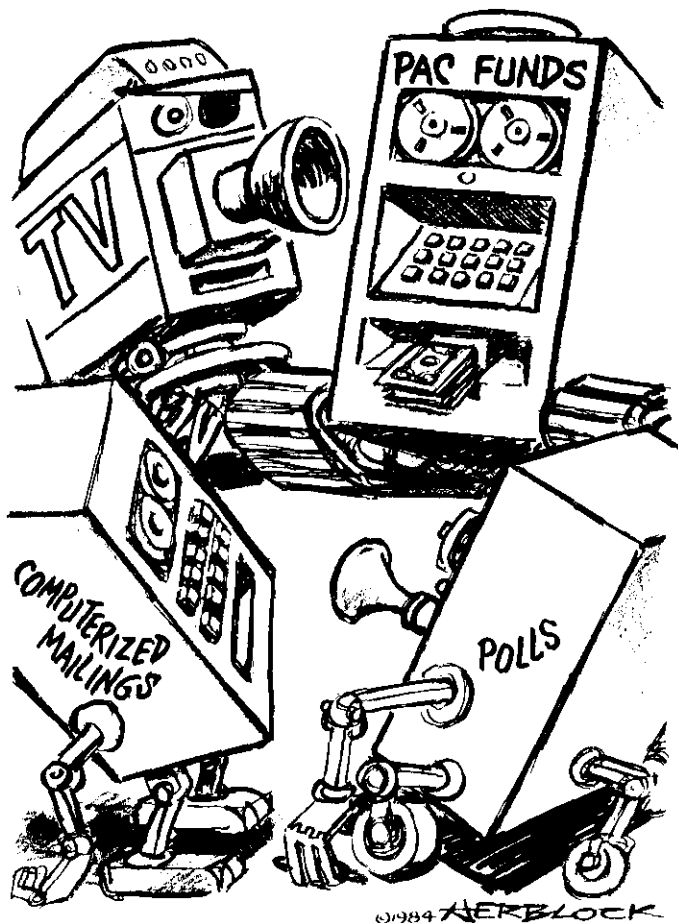
<sup>7</sup>Morton Grodzins, “Centralization and Decentralization in the American Federal System,” in *A Nation of States*, ed. Robert Goldwin (Chicago: Rand McNally, 1968), pp. 7, 9.

<sup>8</sup>Morton Grodzins, *The American System*, ed. Daniel Elazar (Chicago: Rand McNally, 1966), p. 254; see also William Riker, *Federalism: Origin, Operation, Significance* (Boston: Little, Brown and Co., 1964), pp. 91-101; and David Truman, “Federalism and the Party System,” in *American Federalism in Perspective*, ed. Aaron Wildavsky (Boston: Little, Brown and Co., 1967), pp. 81-109.

<sup>9</sup>Theodore White, *America in Search of Itself, The Making of the President, 1956-1980* (New York: Warner Books, 1982), p. 70.



"IN THE BAD OLD DAYS, THERE USED TO BE POLITICAL MACHINES"



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has diminished, in part because certain traditional party functions have been assumed by competing institutions—like the mass media—that are more national in scope and orientation.

**Public Attitudes.** For example, even though party identification remains the single most important factor influencing how most people vote, it appears to have lost much of its past effectiveness as a voting guide, and personal loyalties to parties have grown attenuated. The number of self-described political independents climbed from 22% of the population in 1952 to 35% in 1980 and encompassed a much broader cross-section of the population. In sharp contrast, the number of persons declaring a strong loyalty to either party declined from 35% to 23% of the population during this period.<sup>10</sup> Although party identification, especially among Republicans, appears to have made a significant rebound in 1984, it is presently unclear whether this constitutes a short- or long-term reversal of the post-1960 decline, or if it represents, perhaps, the be-

ginning of a long-expected party realignment.<sup>11</sup> Nevertheless, faith in the parties has diminished sufficiently that, by 1983, an ACIR-Gallup poll found that almost half the population (45%) believed that organized interest groups best represent their political interests, compared with only 34% who believed that either of the major political parties does so.

Most important, there is little doubt that patterns of party voting have changed in recent years. Voters' willingness to defect from their party and vote for a candidate from another party has increased markedly. Over 60% of American voters reported that they "split their ticket" in 1980, compared with about one-third who did so in the 1950s.<sup>12</sup> Similarly, the percentage of congressional districts supporting a congressional candidate from one party and a presidential candidate from another averaged 35% in the 1970s, compared to just 25% in the 1950s.<sup>13</sup> Comparable behavior is apparent for other offices at all levels of government.

**The Nominating Process.** The weakening hold of parties on the electorate has been paralleled by the dwindling capacity of party organizations and leaders to control candidates' use of the party label in elections. This erosion in party control over nominations began at the state and local level in the wake of the widespread adoption of primary elections. Primaries were explicitly intended to reduce the influence of party organizations in the electoral process by removing control over nominations from party conventions and granting it directly to voters instead. Initially, and especially in states and localities with strong party organizations, party leaders were often able to circumvent this effect and retain control over the nominating process by stimulating high turnout among party stalwarts. But over time, as most party organizations have faltered in their ability to determine voter behavior in primaries, they have often lost their once effective and predictable control over nominations.

At the national level as well, presidential primaries during the 1960s began to erode the capacity of national party conventions to select the presidential nominee. Previously, primary elections had been used by party leaders mainly for advisory purposes, to test the viability and weaknesses of different candidates. Due in part to a series of far-reaching reforms in the Democratic Party's delegate selection process, however, the number of presidential primaries increased from 17 in 1968 to 31 in 1980 and the number of delegates selected by primaries rose to more than two-thirds of the total.<sup>14</sup>

<sup>10</sup>Michigan Survey Research Center, reprinted in Robert J. Samuelson, "Fragmentation and Uncertainty Litter and Political Landscape," *National Journal* (20 October 1979): 1731; and Nelson W. Polsby and Aaron Wildavsky, *Presidential Elections*, 6th ed. (New York: Charles Scribner's Sons, 1983), p. 319.

<sup>11</sup>"Dramatic Shift Found in Voters' Party Ties," *Washington Post* (19 November 1984): A6.

<sup>12</sup>Everett Carl Ladd, *Where Have All the Voters Gone?* (New York: W. W. Norton, 1982), p. 78.

<sup>13</sup>Norman Ornstein, et al., *Vital Statistics on Congress, 1982* (Washington: American Enterprise Institute, 1982), p. 53.

<sup>14</sup>Nelson Polsby, *Consequences of Party Reform* (New York: Oxford University Press, 1983), p. 64.

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In combination with other party reforms, the vastly increased role of primaries has significantly altered the process of selecting presidential candidates. The role of the media as an indispensable means of direct communication between candidates and voters has increased, as has the influence of political amateurs and dedicated issue activists who form the core of new, independently established candidate organizations. On the other hand, the influence of state and local parties and government officials has diminished as critical nominating decisions have been removed from inside the halls of the party convention and transferred to an often fluctuating and poorly defined primary electorate. As a result, the nominating process has become far more open and volatile, often benefiting lesser known and less established politicians who are able to capitalize on waves of publicity stemming from a few unexpected early primary victories.

These changes in the electorate and in the nominating process have combined with the availability of new and independent electoral resources to diminish the parties' role in conducting campaigns. Primary elections encourage candidates to develop an independent and personalized campaign organization to seize their party's nomination. Consequently, primary victors increasingly find that they have less need to rely on the support of party organizations during the general election.

This tendency has been strongly reinforced by: (1) the availability of new campaign technologies that allow candidates to communicate directly with voters; (2) the proliferation of independent campaign specialists and professional consultants who perform election tasks ranging from polling and media advising to overall campaign management and strategy; and (3) the vast expansion of non-party financial and organizational resources, including new sources of funding, increased electoral activity by organized groups, and the post-1960 influx of issue-oriented volunteers.

### Competing Institutions in Politics

Paralleling and often reinforcing these changes in party functions has been the growing influence of competing institutions in the political arena: Media, interest groups, and financial organizations.

**Mass Media.** Most significant, perhaps, has been the expanding role of the mass media in American politics.<sup>15</sup> Indeed, two noted scholars of the electoral process have characterized television as:

... the new political god. It has supplanted the political party as the main conduit between candidate and voter. It is the principal influence acting on the voter in a campaign and his chief source of information. It is the medium of information he is dependent on and the one he trusts most implicitly. However, it is both an expensive and unpredictable master.<sup>16</sup>

Changes in communications technology historically have had political and intergovernmental implications. One famed media analyst has gone so far as to argue that “a speed-up in communications always enables a central authority to extend its operations to more distant margins.”<sup>17</sup> In the early years of the United States, news travelled slowly—limited by the sluggish pace of often primitive transportation—and the localistic pattern of communications tended to reinforce the decentralized system of governmental authority.<sup>18</sup> Moreover, newspapers at the time were often closely affiliated with political parties, frequently depending on them for news, patronage, and advertising and forming an integral part of their communications network.

This decentralizing influence of communications began to erode with the invention and application of the telegraph (in the 1840s) and radio (in the 1920s). Wire services and radio networks offered speed-of-light electronic communications between distant places, binding the nation much more closely together. In part because of the rise of the wire services, reporters adopted a less partisan—but somewhat more sensational—style of writing, calculated to please more diverse audiences.

The most significant changes, however, followed the introduction of television. Television has had a significant impact on politics and the news industry, as well as shaping popular culture and entertainment. Since 1963, when the networks first shifted from 15- to 30-minute evening newscasts, a majority of the population has said that television is its major source of news.

Intergovernmentally, the overall effect has been to shift the focus of political attention away from localities, away most particularly from the states, and toward the national government. The economics of broadcasting dictate that most network news stories originate in a comparatively small number of locations—with Washington and New York being the

<sup>15</sup>This section on the mass media is based largely on David Beam's chapter, “Mass Media, National Politics: Political Communications and American Federalism” in ACIR, *Transformation in American Politics and Their Implications for Federalism* (forthcoming).

<sup>16</sup>William Crotty and Gary Jacobson, *American Parties in Decline* (Boston: Little, Brown, 1980), p. 67.

<sup>17</sup>Marshall McLuhan, *Understanding Media: The Extensions of Man* (New York: New American Library, 1964), p. 96.

<sup>18</sup>Frederick Williams, *The Communications Revolution*, rev. ed. (New York: New American Library, 1982), p. 172.

major focal points. Because television is at once more national in coverage and more political in content than other news media, there is reason to believe that its development has contributed to expanding the national agenda. At the same time, coverage of state and local government activities, by the media as a whole, often seems inadequate. Although the states enjoy essentially coequal status constitutionally, evidence suggests that this tier of government fares least well in terms of media coverage and public comprehension.<sup>19</sup>

Apart from such direct interactions between government and television, TV has also affected government through its impact on the political process. Summarizing his experiences from two decades of observing presidential elections, Theodore White argues that "American politics and television are now so completely intertwined that it is impossible to tell the story of one without the other."<sup>20</sup>

No aspect of the electoral process has been influenced more by television than presidential nominations. The glare of the cameras has helped erode the deliberative capacity of national conventions and reduced the role of state and local party leaders. At the same time, media coverage has magnified the importance of early state primaries and caucuses. Presidential nominating campaigns are now "brokered" by television commentators, opinion pollsters, and tiny electorates in such states as New Hampshire, Iowa, Maine, and Vermont. Many political observers believe that the personal attributes of successful nominees have been altered by the change of process.

During the course of the campaign itself, candidates now rely very heavily on television to reach voters, rather than upon the cadres of local party workers that once offered their aid. However, the cost of television time, and the fees of professional campaign managers who know how to use the media and other modern technologies, have created new forms of dependencies.

**Interest Groups.** Interest group developments in recent years have also affected the conduct of contemporary politics.<sup>21</sup> Although interest groups and voluntary associations have always been prominent features of American political culture, never have they been as numerous, entrenched, or politically active as they are today. Estimating the number of interest groups over time is a difficult task, but there is broad agreement that their ranks have grown. By one recent count the number of groups established between 1960 and 1980 increased by as much as 60%.<sup>22</sup>

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On the whole, these modern interest groups contrast sharply with the traditionally decentralized parties by their heavy focus on Washington. Responding to "the increased salience of national politics," the number of groups represented in the nation's capital more than doubled in the 20 years after 1960.<sup>23</sup> This includes both groups that were formed in Washington and other previously established groups that migrated there. By far the fastest growing types of organizations have been citizen or "public interest" groups, civil rights and minority groups, social welfare organizations, and groups representing women, the elderly, and the handicapped. Because many of these organizations have relatively short life spans, however, and because business, trade, and professional associations also increased substantially in number, the overall distribution of group types represented in Washington has changed relatively little during this period.<sup>24</sup>

Many factors have contributed to interest group formation—from economic growth and specialization to rising levels of education—but a commonly overlooked source in recent years has been the federal government itself. As careful scholarship has documented, many recent groups were formed in response to new federal programs, as program clients and service providers banded together to share information and expand their resources.<sup>25</sup> Indeed, many groups have benefitted from direct governmental assistance to help them sustain or expand their operations.<sup>26</sup> Still other groups have organized for defensive purposes, responding to the perceived negative consequences of governmental action.

The increase in the size of the interest group population is only one component of their rise to prominence in national politics. Of equal significance have been changes in the way interest groups conduct their political activities. Many scholars contend that, during the last 20 years, interest groups have undergone a politi-

<sup>19</sup>M. Kent Jennings and Harmon Zeigler, "The Salience of American State Politics," *American Political Science Review* 64 (1970): 523-34; and Virginia Gray, "Politics and Policy in the American States," in *Politics in the American States*, eds. Virginia Gray, Herbert Jacob, and Kenneth Vines (Boston: Little, Brown, and Co., 1983), p. 16.

<sup>20</sup>White, *America in Search of Itself*, p. 165.

<sup>21</sup>The following section on interest groups draws heavily on research by Ann Martino, "The Nationalization of Interest Group Politics: New Roles, New Strategies, and New Problems," in *ACIR Transformations in American Politics and Their Implications for Federalism*, (forthcoming).

<sup>22</sup>Kay Lehman Schlozman and John T. Tierney, "More of the Same: Washington Pressure Group Activity in a Decade of Change," *Journal of Politics* 45 (May 1983): 355-356; see also Jack L. Walker, "The Origins and Maintenance of Interest Groups in America," *American Political Science Review* 77 (June 1983): 394-396.

<sup>23</sup>*Ibid.*

<sup>24</sup>Kay Lehman Schlozman, "What Accent the Heavenly Chorus?" Paper prepared for the 80th Annual Meeting of the American Political Science Association, August 30-September 2, 1984, Washington, tables 2 and 3.

<sup>25</sup>Samuel H. Beer, "The Adoption of General Revenue Sharing: A Case Study in Public Sector Politics," *Public Policy* 24 (Spring 1976): 160; and Lawrence D. Brown, *New Policies, New Politics: Government's Response to Government's Growth* (Washington: Brookings Institution, 1983), pp. 39-46.

<sup>26</sup>Walker, "Origins and Maintenance of Interest Groups," pp. 398-400.

cal metamorphosis. They have done so by adopting methods of influencing government policymakers that traditionally had been performed by political parties. The result has been a gradual blurring of the distinctions between interest group and party politics and, ultimately perhaps, a change in the political status of both.

Prior to 1964, interest groups in Washington primarily engaged in "institutional lobbying," focusing their efforts on influential legislators and administrators. Such lobbying usually consisted of exchanging technical advice and information, and, on occasion, applying various forms of political pressure. Seldom, if ever, did these kinds of political interactions include direct contributions to candidates for national office. Nor did they usually involve contact or interchanges with constituents on a daily basis.<sup>27</sup>

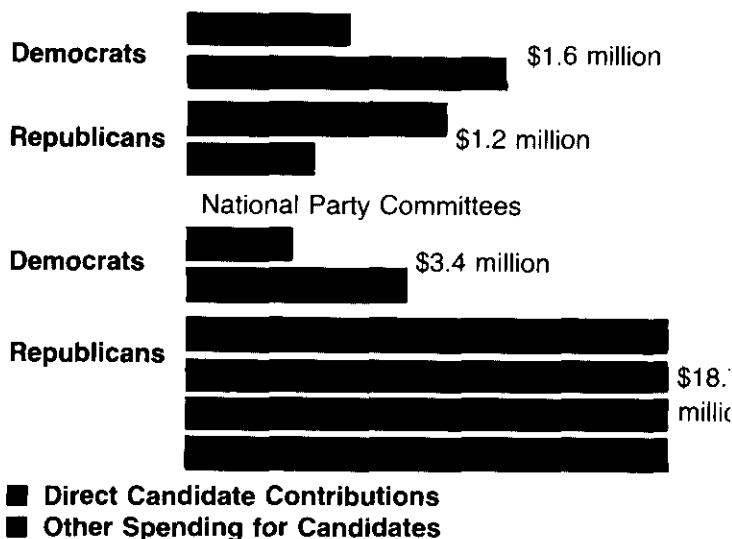
More recent research suggests that, in addition to these traditional activities of institutional lobbying, interest groups increasingly engage in broader forms of political activity, including political education, grassroots lobbying, coalition building, and electoral fundraising through political action committees.<sup>28</sup> Although traditional lobbying and information services still command the major share of most groups' resources, media contacts, coordinating efforts with other groups, and mobilizing mass membership campaigns are among the fastest growing interest group activities.

Although interest groups have always engaged in them to some extent, such techniques for financing campaigns, mobilizing the public, and building legislative coalitions have traditionally been the province of political parties. In the last few years, the functions of interest groups and the parties have continued to intersect even further. Although there have long been electoral relationships between the parties and certain interest groups, several groups have recently begun to devote substantial new financial and political resources to expanding their influence within the parties and to enlarging the scope of party activity in general. For example, some business interests have begun closely coordinating their electoral contributions with the Republican National Committee, while on the Democratic side, labor and education organizations have become intimately involved in the party's presidential nomination process.

**Campaign Finance.** Nowhere has the intersection of politics and interest groups changed more dramatically than in the field of campaign finance.<sup>29</sup> Interest-group-affiliated political action committees (PACs) have grown at an astonishing rate over the past ten years, from 608 in 1974 to 3,525 by January of 1983.<sup>30</sup> Moreover, PAC contributions to federal congressional campaigns alone increased from \$11.2 million in 1974 (accounting for 15.7% of campaign funds) to \$83.6 million in 1982 (about 28% of total funds).<sup>31</sup>

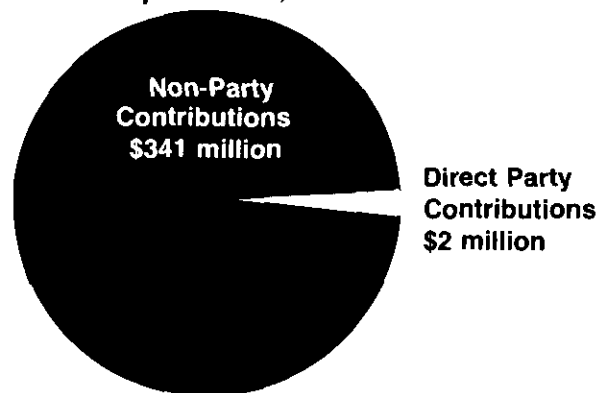
Although these data suggest much about contemporary group participation in politics, most important from an intergovernmental perspective are several nationalizing trends in campaign finance. First, in part because of the growing role of nationally-organized

Figure 1  
Party Contributions and Expenditures  
For Congressional Candidates, 1981-82  
State and Local Party Committees



Source: Federal Election Commission

Figure 2  
Congressional Candidate  
Expenditures, 1981-82



Source: Federal Election Commission

PACs, congressional (and some state and local) campaigns appear to be drawing larger proportions of funds from outside affected states or congressional districts. As one congressman lamented:

The state of Iowa is a classic example of the problem. We're mainly rural and small business, but in elections the Republicans are largely funded by business, much of which has nothing to do with the state, and the Democrats are funded by labor, much of which

<sup>27</sup>Lester Milbrath, *The Washington Lobbyists* (Chicago: Rand McNally, 1963); and Raymond Bauer, Ithiel de Sola Pool, and Lewis Dexter, *American Business and Public Policy* (New York: Atherton Press, 1963).

<sup>28</sup>See Jeffrey M. Berry, *Lobbying for the People* (Princeton, NJ: Princeton University Press, 1977); and Schlozman and Tierney, "More of the Same," p. 361.

<sup>29</sup>This section draws heavily on Cynthia Cates Colella, "Campaign Finance: The High Cost of Democracy," in ACIR, *Transformations in American Politics and Their Implications for Federalism*, (forthcoming).

<sup>30</sup>Federal Election Commission, "FEC Publishes Final 1981-82 PAC Study," *Press Release*, 20 January 1984.

<sup>31</sup>Federal Election Commission, "FEC Releases New PAC Figures," *Press Release*, 29 November 1983.

doesn't have anything to do with the state. . . . We're seeing regional politics and state and citizen politics become national. National groups determine outcomes, whereas local constituencies used to provide the crucial role. This is new.<sup>32</sup>

This pattern of funding has become sufficiently common that another member of Congress, when asked why he accepted large contributions from out-of-state PACs, replied that "I just don't feel right asking constituents in my district for campaign funds."<sup>33</sup>

Second, federal campaign election laws have had a dampening effect on state and local party activities and financial contributions to congressional candidates. (For details, see "State Parties and the National Law of Campaign Finance," *Intergovernmental Perspective*, Fall 1984.) Finally, stemming partly from these legal provisions, the relatively powerful and expanding fiscal role of the national parties, especially the Republican, has given powerful intraparty impetus to the nationalization of campaign finance. The national party committees now contribute far more to congressional (and many state) candidates than in the past. Indeed, in recent elections, the national committees of both parties have far outstripped state and local committees in their contributions and expenditures on behalf of congressional candidates. In 1981-82, for example, spending in support of congressional candidates by state and local party committees totaled \$1,627,964 for Democrats and \$1,213,999 for Republicans.<sup>34</sup> In contrast, such spending by the national, senatorial, and congressional committees equaled \$3,437,602 for the Democrats and a whopping \$18,697,179 for the Republicans (see Figure 1). Such large sums, in turn, reflect the sophisticated direct mail fundraising operations established by the national Republican committees in recent years and now being imitated by their Democratic counterparts. In the view of at least one observer, this financial development carries the potential for permanently reversing the historically decentralized structure of American political parties:

The decentralization and weak organizational structure characteristic of American parties at the national level are changing, and will continue to

<sup>32</sup>Rep. Jim Leach, quoted in Elizabeth Drew, *Politics and Money: The New Road to Corruption* (New York: Macmillan, 1983), p. 34.

<sup>33</sup>Rep. Carroll Hubbard, Jr., quoted in Joel Brinkley, "Going for the Jugular on PAC Money," *New York Times*, 30 July 1984, p. A10.

<sup>34</sup>Fred Eiland, Federal Election Commission, *personal conversation* with Cynthia Cates Colella, ACIR, November 1984.

<sup>35</sup>Xandra Kayden, "The Nationalizing of the Party System," in *Parties, Interest Groups, and Campaign Finance Laws*, ed. Michael J. Malbin (Washington: American Enterprise Institute, 1980), p. 276.

<sup>36</sup>These and all subsequent figures are derived from the following sources: Cornelius Cotter and John Bibby, "Institutional Development of Parties and the Thesis of Party Decline," *Political Science Quarterly* 95 (Spring, 1980): 1-27; Leon D. Epstein, "Party Confederations and Political Nationalization," *Publius* 12 (Fall, 1982): 67-102; M. Margaret Conway, "Republican Political Party Nationalization, Campaign Activities, and Their Implications for the Party System," *Publius* 13 (Winter, 1983): 1-17; and Larry Sabato, "Parties, PACs, and Independent Groups," in *The American Elections of 1982*, eds. Thomas Mann and Norman Ornstein (Washington: American Enterprise Institute, 1983), pp. 72-110.

change until the parties . . . become national bureaucracies with hierarchies, divisions of labor, and so on.<sup>35</sup>

## Party Adaptation and Nationalization

These fiscal developments demonstrate clearly that, whatever loss in relative influence they may have suffered, political parties in the United States have begun adapting in complex and sophisticated ways to their new political environment. Overall, parties at both the state and national levels have enlarged their staffs and budgets, modernized their activities, and expanded the services they provide to candidates. Because the national parties have frequently assumed a leadership role in such adaptations, traditional patterns of party decentralization are being modified.

Although the national parties traditionally have been viewed as weak and part-time entities, by the latter 1970s striking gains were being made. Responding in part to party weaknesses apparent in the wake of the Watergate scandal, the Republican National Committee (RNC) launched a concerted effort to expand its resource base and organizational capabilities. National committee staff, which totaled an estimated 138 in the non-election year of 1967, grew to 220 by 1977.<sup>36</sup> At the same time, the committee's 1965 budget of \$1.5 million was enlarged to \$9.7 million by 1978.

This enhancement of party resources has allowed the Republican National Committee and its congressional counterparts to provide a broad array of expanded services both to candidates and to its state and local affiliates. At the congressional level, the party has shown unprecedented activity in recruiting and training strong candidates to run in targeted districts. It also provides an array of valuable electoral services, from sophisticated polling to fundraising assistance and coordinating PAC contributions to candidates. Finally, the RNC has engaged in large-scale programs of television advertising in recent years that provide a nationwide political umbrella for Republican candidates.

Although it has remained respectful of state party prerogatives, the Republican National Committee (RNC) has also become involved in a range of activities at the state and local levels. In addition to recruiting

“ Nowhere has the intersection of politics and interest groups changed more dramatically than in the field of campaign finance . . . most important from an intergovernmental perspective are several nationalizing trends in campaign finance. ”



and assisting congressional candidates at the district level, it has provided a range of contributions and services to gubernatorial and state legislative candidates in selected races. In 1980, for example, it spent \$3 million in assisting more than 4,000 state legislative candidates, including direct financial contributions of \$1.7 million. Moreover, the RNC has engaged in a variety of efforts to help modernize state and county party organizations and to improve their fundraising and candidate-assistance capabilities. Organizationally, then, the national Republican party has assumed a strong role in modernizing the party, reversing the traditional pattern of weak national leadership. As Leon Epstein observes, "the Republicans have nationalized their party effort by a method analogous to the federal government's grant-in-aid system."<sup>37</sup>

The national Democratic party has engaged in a process of nationalization as well, although it began in a distinctly different fashion. Over the course of the past 20 years, the Democratic party has begun to depart from the traditional confederal pattern of party structure—characterized by the legal independence and political autonomy of state and local party organizations—by asserting the national party's control over the presidential delegate selection process and promoting broadened citizen participation in party affairs. "The old hegemony of the state parties [has been] broken," conclude Huckshorn and Bibby, "at least in the area of delegate selection."<sup>38</sup>

Although the promulgation of new and frequently elaborate national party rules affecting this process has sometimes led to conflicts with state and local parties, the Supreme Court has affirmed the national party's authority to regulate its own affairs, even granting it precedence over contradictory state laws. Indeed, the Court's recognition of broad national party authority may ultimately rank among the most significant developments affecting the intergovernmental balance of power in party affairs, for both Democrats and Republicans. In addition, such decisions could have major repercussions for state regulation of state and local political parties if similar reasoning is applied to judgments at that level.<sup>39</sup>

The Democratic National Committee (DNC) and its congressional counterparts have also begun to emulate the successful organizational initiatives of the RNC. Although the DNC lags far behind in fundraising and candidate contributions, it has started to develop an expanded direct mail fundraising operation; to offer additional resources, training, and services to congressional candidates; and to experiment with a small program of national party advertisements. It has also attempted in recent years to assist in modernizing state party activities and to enhance Democratic participation in elections through get-out-the-vote efforts.

Significant efforts have been undertaken to modernize parties at the state level as well. Available evidence suggests that most state party organizations today are more professional, employ larger and more specialized staffs, have larger budgets, and engage in a wider

**“ Intergovernmentally, the overall effect [of television news] has been to shift the focus of political attention away from localities, away most particularly from states, and toward the national government. ”**

range of services and activities than did their counterparts in the early 1960s.

Despite the overall growth in state party organizational capacity, however, state parties continue to vary considerably in terms of their resources and capabilities. Some, especially in many small states and in the South and West where party organizations traditionally have been weak, have only begun to join in the process of party modernization. Variations in resources and capacities are even greater at the local level, although virtually all of the once powerful local "machines" have disappeared. Thus, whatever the ultimate influence of parties vis-a-vis their functional competitors, it is clear that the relative balance of influence and resources within the parties has significantly shifted over time.

### **Behavioral Responses to the New Political Environment**

Taken as a whole, these political developments have had important implications for the conduct of politics, the behavior of elected officials, and ultimately for intergovernmental relations. These effects have been especially evident in Congress. Although it was not uncommon in the past for Senators and Representatives to be active in or closely linked to state and local party organizations, most members today have adopted highly independent political styles. "The conditions favoring individualistic politicians," observes one congressional scholar, "have become even more prevalent now than in the past."<sup>40</sup>

This situation reflects both contemporary party inadequacies and the growing significance of nonparty political resources. Thus, most current members of Congress report little interaction with or reliance upon state and local party resources. Even by the early 1960s, a commonly accepted view among members of Congress was that "If we depended on the party organization to get elected, none of us would be here."<sup>41</sup> More

<sup>37</sup>Epstein, "Party Confederations," p. 86.

<sup>38</sup>Robert Huckshorn and John Bibby, "State Parties in an Era of Political Change," in *The Future of American Political Parties*, ed. Joel Fleishman (Englewood Cliffs, NJ: Prentice-Hall, 1982), p. 81.

<sup>39</sup>See *San Francisco County Democratic Central Committee, et. al., v. March Fong Eu, et. al.*, Docket No. C-83-5599-MHP, U.S.D.C. N.C.A. (1984).

<sup>40</sup>Thomas E. Mann, "Elections and Change in Congress" in *The New Congress*, eds. Thomas Mann and Norman Ornstein (Washington: American Enterprise Institute, 1981), p. 39.

<sup>41</sup>Charles C. Clapp, *The Congressman: His Work as He Sees It* (New York: Anchor Books, 1963), p. 397.

recently, an indepth study of the "home styles" of 18 congressmen discovered that:

... in only two or three cases is there an integrated working relationship between the congressman's personal organization and the local party organization. That is exactly the way most of our House members want it—separate organizations pursuing separate tasks. The task of the congressman's personal organization is to keep him in Congress. . . . Most members . . . prefer to remain minimally involved in local politics, not to become local political leaders.<sup>42</sup>

As previously indicated, numerous resources now exist that permit members of Congress—and other major political officials—to build personalized campaign organizations capable of winning elections with little party help or even over party opposition. Moreover, once elected to office, most members of Congress find that their legislative and constituent service responsibilities provide additional opportunities for developing direct and positive relationships with constituents of both political parties and for cementing the loyalties of past supporters.

Nowhere is the changing role played by parties in congressional elections more evident than in the changing sources and expenditures of campaign funds. In 1982, congressional candidates spent approximately \$343 million on their campaigns, of which an estimated \$100 million was devoted to television advertising.<sup>43</sup> Only 2% of total campaign contributions in that election were obtained from party sources (not including indirect expenditures in support of party candidates) down from 17% ten years earlier (see Figure 2).<sup>44</sup> And, as has been shown, that party assistance which is provided comes increasingly from national committees.

Enhanced political independence by members of Congress has both positive and negative ramifications for voters, legislators, and the political system as a whole. The most apparent intergovernmental repercussion, however, has been declining interdependence between state and local parties and members of Congress. As former congressman Abner Mikva has written, modern legislators—because of their electoral independence—have "little or no loyalty to the state organization" upon their arrival in Washington.<sup>45</sup> This assessment is reaffirmed by others, who stress the increased importance of non-party sources of campaign finance:

Congressional and senatorial candidates must rely heavily on nonparty sources for funds. Therefore, representatives and senators, once in office, feel little sense of obligation to their state and local parties, and the parties lack significant influence on the behavior of legislators in the halls of Congress.<sup>46</sup>

### **The New Politics and Intergovernmental Policy**

As the preceding section has demonstrated, the American political system has been significantly altered—and in several respects nationalized—over the

“ . . . interest groups have undergone a political metamorphosis . . . by adopting methods of influencing government policymakers that traditionally had been performed by political parties. ”

past quarter century. Political parties today are less important than in past years as channels for state and local influence and communication in the federal system, while the relative role of the parties' national committees has greatly expanded. As the political significance of national sources of campaign finance have also increased, voters and public officials alike have altered long familiar patterns of behavior.

Ultimately, the most critical issue raised by these developments concerns their effects on the practical operations of government and on the substance of public policy. The general absence of direct and precise links between political changes and specific government policies tends to cloud this issue in a wealth of ambiguities, and individual assessments of the outcomes are subject to widely varying standards of evaluation. Nevertheless, a number of significant institutional and policy consequences have been convincingly linked to contemporary political change, including some that directly affect federalism and intergovernmental policy and others that involve the governmental system as a whole.

On the broadest level, most observers believe that the political system today is more open, more responsive, and more sensitive to specific issues than in the past. At least during the late 1960s and 1970s, voters' attitudes toward major public issues appeared to exert a greater influence over their decisions at the ballot box than was true in the 1950s, while the independent influence of party identification and social group affiliation declined.<sup>47</sup> Moreover, political conventions are now far more representative of women and minorities.<sup>48</sup> New groups—and new forms of interest groups—today play an active role in the nation's capital, represent a wider spectrum of political interests, and utilize new channels of access to public opinion through the mass media and modern technology. Finally, the national

<sup>42</sup>Richard Fenno, *Home Style: House Members in Their Districts* (Boston: Little, Brown and Co., 1978), p. 113.

<sup>43</sup>Richard Cohen, "Costly Campaigns: Candidates Learn that Reaching the Voters is Expensive," *National Journal* (16 April 1983): 782.

<sup>44</sup>Senator Paul Laxalt, *Congressional Record*, 24 May 1983, p. S7352.

<sup>45</sup>Abner J. Mikva and Patti B. Sarris, *The American Congress: The First Branch* (New York: Franklin Watts, 1983), p. 70.

<sup>46</sup>Huckshorn and Bibby, "State Parties in an Era of Political Change," pp. 91-92.

<sup>47</sup>Norman Nie, Sidney Verba, and John Petrocik, *The Changing American Voter* (Cambridge, MA: Harvard University Press, 1976).

<sup>48</sup>William Crotty, *Party Reform* (New York: Longman 1983), p. 136.

legislature has become more responsive to citizen initiatives and more active in identifying new issues of public policy.

At the same time, many observers believe the contemporary political system is excessively fragmented, volatile, and hyperresponsive to narrowly defined interests. Opinion analysts have detected "a much more volatile electorate . . . active and involved—but . . . with weaker institutional ties."<sup>49</sup> Political conventions—while more representative of major demographic segments of the population—appear to be increasingly dominated by dedicated issue activists, largely out of step with the party rank and file.<sup>50</sup> Moreover, because of high levels of political fragmentation both inside and outside of Congress, many observers believe that the always difficult task of legislative coalition building has become even more difficult, as members find it more and more costly to exert the political discipline needed to resolve the hard political decisions of the day.<sup>51</sup> At least one authority on Congress has related such problems directly to the declining influence of political parties:

Why . . . do we hear all the contemporary hoopla about single-issue groups? Probably because politicians fear them now more than before and thus allow them to play a larger role in our politics. Why should this be so? Simply because the parties are too weak to protect their members and thus to contain single-issue politics.<sup>52</sup>

These issues are of obvious concern to citizens and public officials alike. Within the context of American politics as a whole, they have significant ramifications for federalism and intergovernmental policymaking.

### Intergovernmental Consequences

#### Congress and Intergovernmental Programs.

Some analysts detect a more direct relationship between the declining influence of state and local parties on Congress and the content of recent intergovernmental policy. National policy activism and historic rates of growth in federal government responsibilities were among the most significant intergovernmental developments of the last quarter century. Although many factors contributed to this growth, political change and declining state and local party influence appear to have played a significant role. As Lewis Kaden has argued:

The last twenty-five years have brought enormous changes in the types of persons elected to the Senate and the House, and the techniques used in their successful campaigns. The core element in this transformation has been the decline in importance of state party organization. . . . As Senators and Members of the House develop independent constituencies among groups such as farmers, businessmen, laborers, environmentalists, and the poor, each of which generally supports certain national initiatives, their tendency to identify with state interests and the positions of state officials is reduced.<sup>53</sup>

Specifically, changes in the political environment of

Congress appeared to influence both the scope and the design of intergovernmental programs. As more and more members of Congress felt encouraged or compelled in recent years to build independent ad hoc political coalitions back home, the role of policy entrepreneur became increasingly prevalent. Initiating new programs and demonstrating legislative activism proved to be useful methods both for strengthening alliance with politically helpful interest groups and for appealing to individual constituents. The activities of former Representative John Brademas epitomized this electoral strategy. In 1968, Brademas reportedly utilized his legislative position on the House Education and Labor Committee to "mobilize the education community" on behalf of a difficult reelection bid.<sup>54</sup> Later, he authored and helped enact a new federal aid program, the *Environmental Education Act of 1970*, which enabled him to demonstrate his commitment to a highly popular issue. As two of his former staff assistants have written:

Brademas [D-IN] felt very strongly that Congress can and should play a significant role as initiator and creator of public policy. . . . [T]he Environmental Education Act was his baby; he authored it, he felt responsible for it. . . . [T]he environmental response was becoming a burning and timely political issue in late 1969. . . . This bill gave Brademas a perfect opportunity to move into the environmental area, such opportunities would be limited for members of the Education Committee.<sup>55</sup>

Similar cases of intergovernmental policy entrepreneurship abound in the legislative annals of the 1960s and 1970s.<sup>56</sup>

The end results of this new legislative style were often paradoxical. Although individual initiatives were often responsive to legitimate interest group and constituency needs, their cumulative effect upon citizen attitudes toward government and on the intergovernmental system as a whole appeared to be counterproductive.<sup>57</sup> Meanwhile, many members of Congress found that legislative activism provided no

<sup>49</sup>Nie, Verba and Petrocik, *The Changing American Voter*, p. 348.

<sup>50</sup>Nelson Polsby and Aaron Wildavsky, *Presidential Elections*, 4th ed. (New York: Scribner, 1976), p. 136.

<sup>51</sup>Anthony King, "The American Polity in the Late 1970s: Building Coalitions in the Sand," in *The New American Political System*, ed. Anthony King (Washington: American Enterprise Institute, 1978).

<sup>52</sup>Morris Fiorina, "Collective Responsibility in American Politics," *Daedalus* (Summer 1980): 40.

<sup>53</sup>Lewis Kaden, "Politics, Money and State Sovereignty: The Judicial Role," *Columbia Law Review* 79 (1979): 862-863.

<sup>54</sup>Jack Schuster, "An 'Education Congressman' Fights for Survival," in *Policy and Politics in America*, ed. Allan Sindler (Boston: Little, Brown and Co., 1973), p. 200.

<sup>55</sup>Dennis Brezina and Allan Overmeyer, *Congress in Action: The Environmental Education Act* (New York: The Free Press, 1974), p. 26.

<sup>56</sup>See for example, David Price, *Who Makes the Laws?* (Cambridge, MA: Schenkman, 1972); Roger Davidson, *The Politics of Comprehensive Manpower Legislation* (Baltimore: Johns Hopkins University Press, 1972); and Lawrence Gladieux and Thomas Wolanin, *Congress and the Colleges* (Lexington, MA: D.C. Heath, 1976).

<sup>57</sup>ACIR, *An Agenda for American Federalism: Restoring Confidence and Competence*, A-86 (Washington: U.S. GPO, 1981).

“ Although their direct channels of representation have been enhanced, state and local officials are now viewed increasingly in Washington—not as uniquely constituted co-governors—but as a few more voices among a multitude of special interest claimants.”

substitute for stable coalitions at the local level and began perceiving their environment as a legislative treadmill. No matter what new programs were enacted, the popular attitude seemed increasingly to be: “What have you done for me lately?”<sup>58</sup>

Such political pressures have not only affected the overall scope of the intergovernmental system, they have significantly influenced program structures and design as well. At least throughout the 1960s and 1970s, Congress demonstrated a strong preference for narrowly defined categorical grants and tended to resist efforts at carefully targeting federal programs to neediest areas and individuals. As David Mayhew has emphasized, categorical grants can be a particularly useful congressional tool for building electoral support. Because they provide “particularized benefits” to discrete congressional constituencies, they enable legislators to claim political credit for tangible benefits delivered to their districts.<sup>59</sup>

Another often overlooked policy development in the last 1960s and 1970s was the enormous expansion that took place in intergovernmental regulation. As fiscal constraints on federal spending grew in the 1970s, intergovernmental regulation became increasingly popular as a means of permitting continued congressional activism while placing most of the costs onto state and local governments. By one count, 34 major regulatory statutes were adopted between 1964 and 1980, each directly or indirectly regulating state and local governments in new and intrusive ways.<sup>60</sup> As one former official in the Johnson administration has observed:

Confronted with a problem and a showing that other levels of government are “defaulting,” [Congress’] strong tendency is to pass a law. [In the 1960s], money was Washington’s antidote for problems. Now, the new fiscal realities mean that Congress provides fewer dollars. Still determined to legislate against problems, Congress uses sticks instead of carrots.<sup>61</sup>

**State and Local Representation in Washington.** State and local governments also responded to the new political environment. Following the well-worn path trod by countless other groups, organizations representing the full-range of state and local officials—from the state house to townhall—have either located in

Washington or established major offices there. Especially when viewed in historic perspective, this trend has been striking. In 1957, the National Association of Counties had a professional staff of one and a budget of \$18,000. Twenty-five years later, its staff had swelled to 60 and its budget totalled \$5 million.<sup>62</sup> The U.S. Conference of Mayors, which had a budget of \$88,000 in 1960, had grown to a \$3.5 million operation by 1983 with a staff of 40. In 1954, the Conference of Mayors was joined in Washington by the American Municipal Association (now the National League of Cities), which by 1983 had a staff of 55 and a budget of \$4.5 million. Perhaps the most dramatic change occurred in the case of the National Governors Association (formerly the National Governors Conference), which did not open a Washington office until 1967. Fifteen years later the NGA had a staff of 70, a budget of \$5.4 million, and had established a Washington center housing numerous individual states and affiliated organizations. During the 1960s and 1970s, many individual cities and countries also expanded their Washington presence by establishing independent offices or hiring a part-time national representative. Localities, too, have been joined by a host of specialized organizations and others, like the National Association of Towns and Townships, representing smaller jurisdictions.

Some have interpreted this expanded organizational presence as a sign of growing state and local political strength and sophistication. Clearly it has helped enable subnational officials to play a leading role in enacting and shaping certain major pieces of federal legislation, such as general revenue sharing and community development block grants. At the same time, however, this organizational boom also reflects erosion in the unique political role once occupied by these officials and their party organizations in the political system. Viewed from this perspective, it constitutes a form of compensation for lost political influence rather than a sign of mounting strength. As Haider expressed it: “For governors and mayors, individually and collectively, national party influence is generally declining. . . . [They] have acted upon the political necessity of banding together to deal with their federal constituency.”<sup>63</sup> Although their direct channels of representation have

<sup>58</sup>See for example, Steven Roberts, “Congressmen and Their Districts: Free Agents in Fear of the Future,” in *The United States Congress*, ed. Dennis Hale, (Chestnut Hill, MA: Boston College, 1982), p. 76.

<sup>59</sup>David Mayhew, *Congress: The Electoral Connection* (New Haven, CT: Yale University Press, 1974), p. 129.

<sup>60</sup>ACIR, *Regulatory Federalism: Policy, Process, Impact, and Reform* (Washington: U.S. GPO, 1984), pp. 19-24.

<sup>61</sup>Samuel Halperin, “Federal Takeover, State Default, Or a Family Problem?” in *Federalism at the Crossroads: Improving Educational Policymaking* ed. Samuel Halperin (Washington: Institute for Educational Leadership, 1976), pp. 2,3.

<sup>62</sup>These and the following data are derived from Donald Haider, *When Governments Come to Washington* (New York: The Free Press, 1974), chapter 1; Timothy Conlan, *Congressional Response to the New Federalism: The Politics of Special Revenue Sharing and its Implications for Public Policy Making* (Ph. D. diss., Harvard University, 1982), pp. 11, 12; and *SIAM Intergovernmental News* 7 (Winter 1984): 4-6.

<sup>63</sup>Haider, *When Governments Come to Washington*, pp. 110, 111.

**“ During periods of national crisis, when strong leadership and popular support existed in behalf of vigorous and innovative federal policies, the parties served as convenient and necessary vehicles for mobilizing popular support and for encouraging effective legislative coalition building. ”**

been enhanced, state and local officials are now viewed increasingly in Washington—not as uniquely constituted co-governors—but as a few more voices among a multitude of special interest claimants.

### **Political Change and Federal Values**

In the broadest sense, these congressional and public interest group developments testify to the degree to which contemporary changes in the political system have had important intergovernmental consequences. Such changes have served to open national political processes to new responsibilities and new constituents. But at the same time they may have helped to alter the very nature of the federal system. In the view of one authority on federalism:

[We] have moved to a system in which it is taken as axiomatic that the federal government shall initiate policies and programs, shall determine their character, shall delegate their administration to the state and localities according to terms that it alone determines, and shall provide for whatever intervention on the part of its administrative agencies as it deems necessary to secure compliance with those terms.<sup>64</sup>

Agrees another academic observer:

Over the past fifteen years the United States has crossed the fault line from a federal system to a decentralized national system. . . . When it comes time to make policy, all eyes look to Washington, and federalism is viewed as one among many cross-pressures rather than as a pathway through them. When it comes time to implement policy, federalism is transformed into a managerial model in which the states and localities are cast in the roles of middle and

<sup>64</sup>Daniel Elazar, "Is the Federal System Still There?" in *Hearings on the Federal Role*, Advisory Commission on Intergovernmental Relations, (Washington: U.S. GPO, 1980), pp. 84-85.

<sup>65</sup>Stephen Schechter, "The State of American Federalism in the 1980s," in *American Federalism: A New Partnership for the Republic*, ed. Robert B. Hawkins, Jr. (San Francisco: Institute for Contemporary Studies, 1982), p. 61.

<sup>66</sup>John Naisbitt, *Megatrends* (New York: Warner Books, 1984), chapter 5.

lower echelons of management that cannot be trusted to follow orders without being paid off and reined in. The political idea of states as polities and localities as communities has all but disappeared.<sup>65</sup>

Such pessimistic assessments of the contemporary status of American federalism are not universally shared. Some noted observers perceive, instead, that our governmental institutions are poised to enter a bold new era of decentralization.<sup>66</sup> Adherents to this view point to recent actions by a national administration publicly committed to fostering a "new federalism," and they emphasize the growing fiscal constraints confronting the federal budget. Moreover, the extraordinarily high levels of party unity exhibited in Congress on key economic and spending issues in 1981, coming in the wake of unprecedented national party activity in the 1980 congressional elections, may indicate the potential of future party-building efforts for enhancing Congress' capacity to confront broad and complex public issues in a comprehensive fashion.

As the nation's constitutional bicentennial approaches, basic and perennial issues of governmental performance—and the political system's role in promoting or hampering them—will receive renewed public attention and reflection. Among the issues certain to be considered will be the federal system's performance in furthering the values it has traditionally been viewed as promoting:

- integrating and preserving diverse community values within a shared national framework;
- providing multiple arenas of meaningful public expression and participation;
- promoting policy experimentation and programmatic diversity;
- maintaining an effective system of shared and separated powers; and
- promoting more effective and responsive government by avoiding unworkable concentrations of public responsibility.

If these values remain major public priorities and the federal system continues to be viewed as an effective governmental instrument to achieve them, then methods of assuring federalism's vitality through our political system will remain important items on the public agenda. In a political culture geared increasingly to the

**“ At bedrock, the maintenance of federalism is not a political end in itself but a vehicle to broader public goals. If the influence of state and local political institutions wanes, important avenues of public participation may wither. ”**



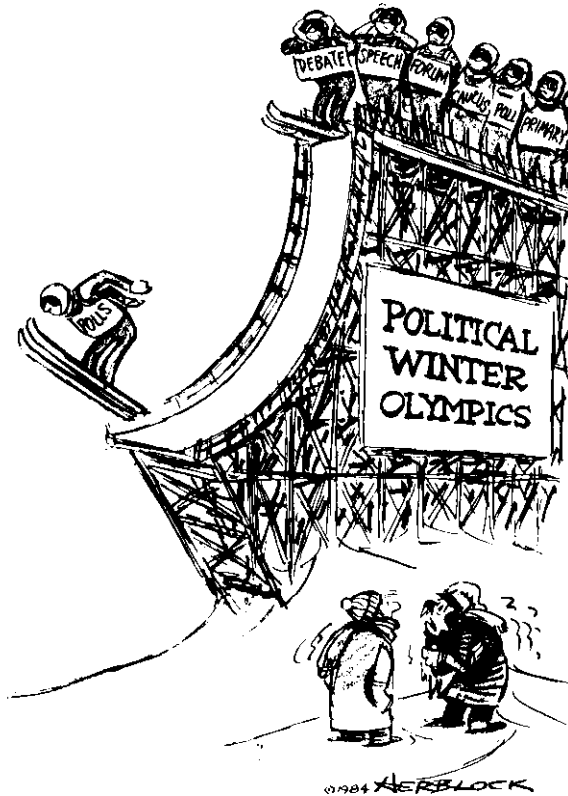
reflexive pursuit of more direct forms of democracy, thoughtful citizens may wish to place greater emphasis on representative instruments like political parties and federalism that help to manage and constrain the political agenda and impose greater structure on the policy-making process.

At bedrock, the maintenance of federalism is not a political end in itself but a vehicle to broader public goals. If the influence of state and local political institutions wanes, important avenues of public participation may wither. To the extent that local governmental and political bodies constitute "training schools of democracy," as Tocqueville put it, the civic foundations of democratic government are at stake. Moreover, the erosion of federalism's capacity to provide a territorial dimension to political representation that is distinct from the functionalism of interest group pluralism may rob our national governing bodies of a useful and important perspective in the making of public policy.<sup>67</sup> Thus, the stakes in the evolution of American politics extend beyond issues of distributing power and influence among the different levels of government, but address the wellsprings and vitality of democracy itself.

<sup>67</sup>Samuel H. Beer, "Federalism, Nationalism, and Democracy in America," *American Political Science Review* 72 (1978).

*Senior Analyst Timothy J. Conlan is project director of ACIR's study of changing American politics and federalism.*

"HOW LONG DO THEY GO ON?"



---from Herbblock Through The Looking Glass (U.W. Norton, 1984)

## VIEW FROM THE COMMISSION

(Continued from page 1)

level. The feeling is that the group above knows how to do it better. Home rule for local governments through state constitutional amendments would go a long way toward strengthening our cities. State aid and state aid formulas need to be re-examined and addressed.

State ACIRS, such as we have in South Carolina, can be valuable in this process.

The federal revenue sharing formula was a thoughtful effort to address the needs of our urban areas. Few states have such thoughtful formulas to redistribute state aid to local governments. Most often they are weighted in favor of rural areas. Perhaps 50 or 60 years ago, when the rural or suburban areas represented poverty and the urban areas represented fiscal strength, this approach was reasonable. However, the two caravans passed each other in the 1940s and 1950s, the well-to-do moving out of the city and the poor moving in. These formulas are now woefully

fully unfair and out of date. I hope a new state-city Magna Carta can begin to help to address the problems that the federal-city relationships was created to do, and in which the ACIR did such important work.

My vision of the New Federalism includes a continuation of federal-city relationships where they are necessary and prudent, particularly in the areas of community development and economic development. Further, I hope for a strengthened state-city relationship. This may not produce pure layer-cake federalism, but it will produce a sound workable system that can strengthen each level of government.

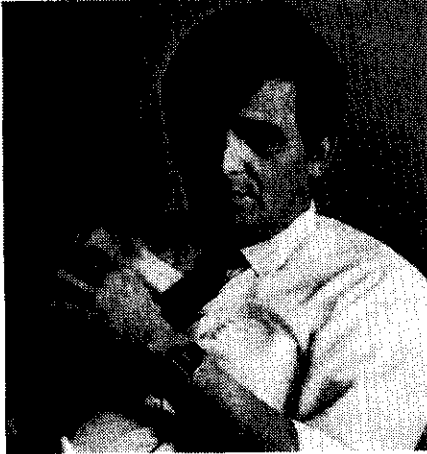
**Joseph P. Riley, Jr.**  
Mayor  
Charleston, South Carolina

### Richter Retires, Headed 21 Major Studies During 18½ Years With ACIR

Albert J. Richter, ranking senior analyst on ACIR's staff, retired December 31 after 18½ years with its research division. Mr. Richter was project leader for 21 major reports and a major contributor to 16 others. His most recent responsibilities included compilation of two authoritative reports: (1) the catalog of federal grant-in-aid programs to state and local governments and (2) the survey of intergovernmental arrangements for delivery of local public services.

In its resolution of appreciation, the Commission enthusiastically noted Mr. Richter's breadth of experience which "in several ways enhanced" ACIR's reputation for top-quality research—"balanced, factual, and authoritative, as well as usable by practitioners and academics."

# The Chairman's View



Dear Reader:

In December, ACIR held a grand dinner to celebrate its 25th anniversary. The evening celebrated many of those individuals who gave so much of their time and energy to the formation and success of ACIR. Portraits of Frank Bane, our first Chairman, and Bill Coleman, our first executive director, were unveiled. Likewise, Senator Muskie and Congressman Fountain were singled out for their contributions to the Commission.

We were also celebrating more than individuals. We were celebrating an idea and an approach to government. Soon we will begin to celebrate these ideas through the bicentennial of the drafting and ratification of the Constitution. There is no more appropriate time to remind ourselves of ACIR's role in the federal republic. For it is that role that gives us steadfastness of purpose and clarity regarding our objectives.

There is no better place to start than with the Founding Fathers. While the Founding Fathers did not see the need to create an ACIR, they would see its need today. Then as now, problems plague relationships between the national government and the states. The Articles of Confederation created a weak national government, one incapable of bringing equal means to bear upon pressing problems of the day. The constitutional con-

vention in Philadelphia was in direct response to these problems.

Their answer to these problems was the creation of a general government with adequate authority to pursue national objectives. The Founding Fathers thought that the division of powers within the general government as well as between it and the states would remain in equilibrium providing balance and reasonable government. Yet there was an even more fundamental principle in operation. The Founding Fathers held that good government could be brought about through reflection and choice rather than by accident and force. In other words, citizens could create their governments through reflection on the first principles, morals, and politics.

While few governments had ever been created through reflection and choice, none had been created on the scale of our experiment in self-governance, with the burden placed upon citizens to be not only their own governors but also to be constitution makers in deciding the rules by which their governments would operate. Yet the ability to reflect and choose implies that citizens have alternatives and information regarding the likely consequences of selecting one form of organization over another.

This is precisely where ACIR's role begins. In an increasingly complex federal system, there must be agencies committed to providing citizens and policymakers with well-thought-out studies on important issues facing

the federal system. However, to be of value these studies must be more than mere factual summations of existing research. They must also meet the following criteria:

- They must provide citizens and policymakers with a range of well-reasoned alternatives from which they can reflect and choose. This does not hinder the Commission from taking positions—far from it. Rather it lays down the basis upon which the commission and others can choose.
- Our studies must pay particular attention to the role that citizens play as constitution makers as well as governors. For these roles were the cornerstone of the American revolution in self-governance.
- We must seek ways to bring about equilibrium in the federal system. Not only between the federal and state governments but also between state and local governments.
- Finally, we must broaden our network of constituents to include those not commonly thought to be part of the intergovernmental system. Neighborhoods, special districts, and townships are important players in the intergovernmental system; we should understand their role in and contribution to a healthy federal system.

Some have questioned whether ACIR has outlived its usefulness.

The implication is that we have conducted all of the needed studies. As one who supports the elimination of unnecessary government agencies, I cannot think of any agency that a federal system needs more than ACIR. Unless we can argue that the federal system will stand still, which we can't, there will always be a need for nonpartisan and well-thought-out studies that address emerging problems in the federal system.

In the last two years we have undergone many changes. We have strengthened our staff with new appointments, are in the process of adopting a new research agenda, and will be more active in disseminating our studies to a broader cross-section of citizens and elected officials. With the appointment of John Shannon as executive director and Larry Hunter as research director, I am confident that ACIR can meet the challenges of the next four years.



**Robert B. Hawkins, Jr.**  
Chairman

## ACIR Approves Reports On Cigarette Tax Evasion, Financial Emergencies

At its December 6 winter meeting in Washington, the Commission approved three studies which updated previous ACIR research: on cigarette tax evasion, local government financial emergencies, and intergovernmental contracting for public services.

**Cigarette tax evasion:** A key finding was that organized interstate smuggling has declined dramatically since the 1970s, in large measure due to the 1978 *Cigarette Contraband Act*. This measure was enacted in part as a result of ACIR's 1977 report.

Balancing this current finding was the estimate of \$255 million in cigarette taxes lost in FY 1983 by state and local governments. An overwhelming share of this net loss occurred through tax-exempt sales on military bases and Indian reservations. The Commission concluded that, with some states' cigarette taxes increasing, the attractiveness of organized bootlegging could be on the rise. To prevent the resurgence of large-scale bootlegging, the Commission called for further actions:

- Continued congressional support for the cigarette enforcement efforts of the Bureau of Alcohol, Tobacco, and Firearms.
- Active state law enforcement, including stronger efforts if needed when state cigarette taxes are increased.
- Closer cooperation between military, federal, and state officials to reduce the incidence of bootlegging on military installations.
- Renewed efforts by states to reach agreements with Indian leaders for precollection of cigarette taxes on sales in reservations.

**Local government finances:** The report on local government financial emergencies updated ACIR's 1973 study. The researchers investigated all local government financial emergencies and defaults that occurred since 1973. They also evaluated the nation's 30 largest cities for signs of financial management practices that might lead to defaults. Between 1973 and 1983, only three general governments filed for bankruptcy; government defaults on general obligation notes were also rare.

The study found no evidence that localities are experiencing increased emergencies or that they are likely to in the near future. The report, which included no policy recommendations, concluded that there is less danger of financial emergencies now than in the past although the practice of borrowing to cover short-term deficits continues as a potentially serious problem in some jurisdictions. A new form of risk has arisen: increased local exposure to court judgments and investment losses.

The Commission observed that the study focused on the existence or likelihood of extreme emergencies and on financial management practices but not on the current fiscal conditions of localities.

**Intergovernmental arrangements:** Updating its study of a decade ago, the Commission approved a report on intergovernmental relations for delivering local public services. The 1983 survey produced several major findings:

- States have made notable progress in the past decade in expanding localities' authority to enter into joint agreements and intergovernmental contracts.
- Over half the cities and counties provide services under some form of agreement with other governments.
- Since 1972, local governments have substantially expanded their use of private sector contractors. This reflects a preference of many cities to contract with private firms and also various state laws which have authorized greater use of contractors.

The Commission adopted three recommendations on the subject:

1. States should authorize functional transfers among political subdivisions including transfers to the state government.
2. Proposed transfers should require voter approval in each jurisdiction involved when the transfer is initiated by petition.
3. States should examine their laws authorizing localities to contract for services, and eliminate any stringent procedures and conditions that are unnecessary to protect the public interest.

Each of the three reports will be published by ACIR and will be available in early 1985.

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**(February 1985)**

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Relations has determined that the  
publication of this periodical is  
necessary in the transaction of the  
public business required by law of  
this Commission. Use of funds for  
printing this periodical has been  
approved by the Director of the Office  
of Management and Budget through  
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ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS  
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