

1049-D

RECEIVED
OCT 22 1987
GOV DOCUMENTS DIV

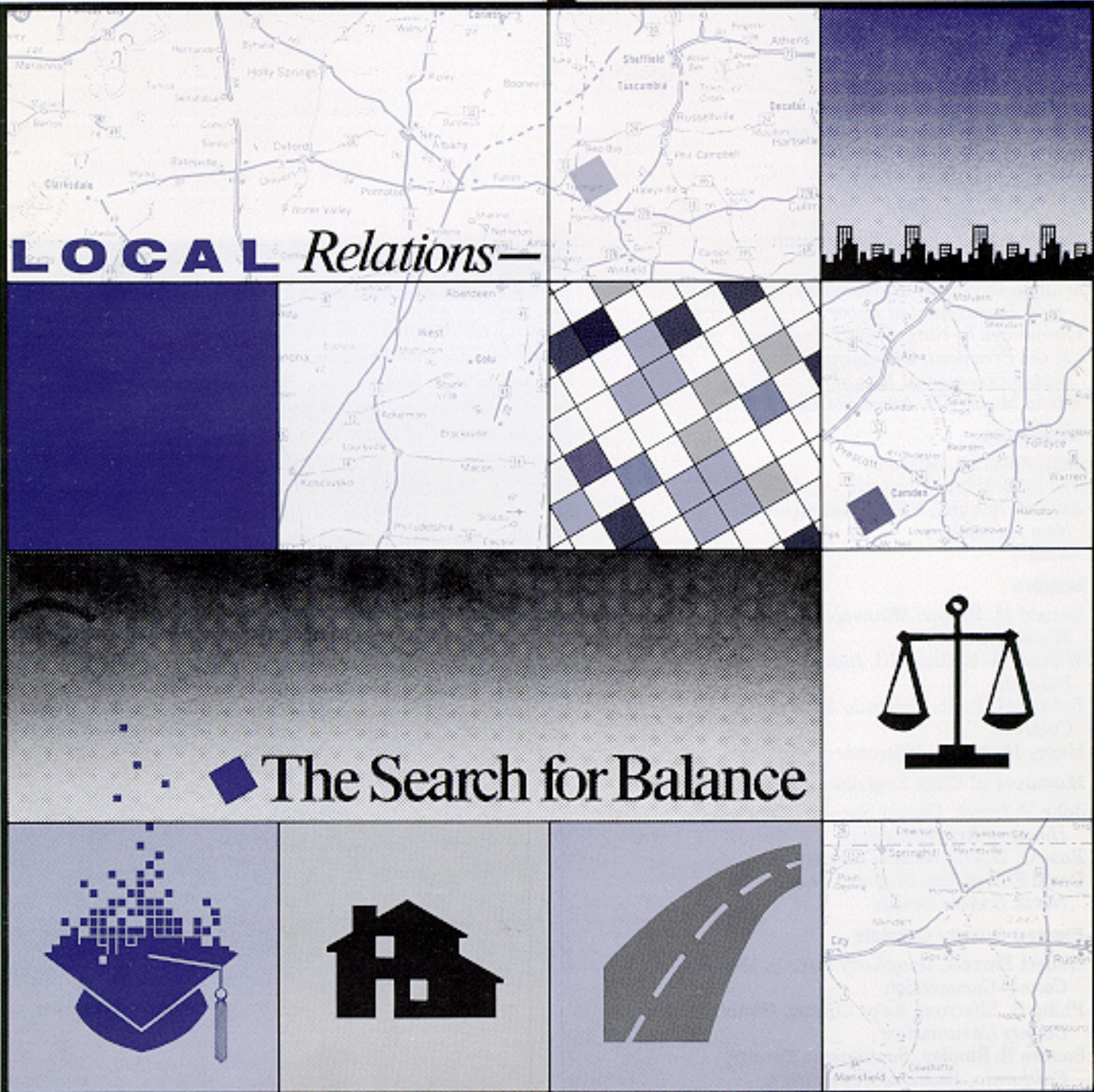
Intergovernmental

Summer/Fall 1987, Vol. 13, No. 3/4

STATE

PERSPECTIVE

LOCAL *Relations—*



The Search for Balance



Current Members of the Advisory Commission On Intergovernmental Relations

(September 5, 1987)

Private Citizens

James S. Dwight, Jr., *Arlington, Virginia*

Daniel J. Elazar, *Philadelphia,
Pennsylvania*

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

Members of the United States Senate

David Durenberger, *Minnesota*

William V. Roth, Jr., *Delaware*

James R. Sasser, *Tennessee*

Members of the U.S. House of Representatives

Sander Levin, *Michigan*

Jim Ross Lightfoot, *Iowa*

Ted Weiss, *New York*

Officers of the Executive Branch, Federal Government

William E. Brock, III, *Secretary,*
U.S. Department of Labor

Gwendolyn S. King, *Deputy Assistant
to the President, Director of
Intergovernmental Relations*

Edwin Meese, III, *Attorney General*

Governors

John Ashcroft, *Missouri*

Ted Schwinden, *Montana*

John H. Sununu, **Vice Chairman,**
New Hampshire

Vacancy

Mayors

Donald M. Fraser, *Minneapolis*
Minnesota

William H. Hudnut, III, *Indianapolis,*
Indiana

Robert M. Isaac, *Colorado Springs,*
Colorado

Henry M. Maier, *Milwaukee, Wisconsin*

Members of State Legislatures

John T. Bragg, *Deputy Speaker, Tennessee*
House of Representatives

Ross O. Doyen, *Kansas Senate*

David E. Nething, *Majority Leader,*
North Dakota Senate

Elected County Officials

Gilbert Barrett, *Dougherty County, Georgia,*
County Commission

Philip B. Elfstrom, *Kane County, Illinois,*
County Commission

Sandra R. Smoley, *Sacramento County,*
California, Board of Supervisors

In This Issue . . .

This Summer/Fall 1987 issue of *Intergovernmental Perspective* focuses on the theme of **State-Local Relations: The Search for Balance**. Two articles deal with local governments in court and the development of new aspects of constitutional law. Richard Briffault of Columbia University details the litigation over public school finance and local control of land-use regulation. Michael E. Libonati of Temple University reviews issues relating to local governments' standing to challenge the state. (These two authors were participants in a conference on "State Constitutional Law in the Third Century of American Federalism," held March 15-17, 1987, co-sponsored by ACIR. Their articles are based on presentations at the conference.) Advisory Commission on Intergovernmental Relations Senior Analyst Ronald J. Oakerson offers an analysis of "local public economies"—multiple local governments organizing to provide and produce services in quite different ways. Micahel Tetelman, an ACIR summer intern, presents an overview of the 25 state intergovernmental panels. A **Special Report** highlights ACIR's highway studies. In **A Fiscal Note**, ACIR Executive Director John Shannon offers a prognosis for "fend-for-yourself federalism." The **Intergovernmental Focus** is on the Florida Advisory Council on Intergovernmental Relations.

Intergovernmental Summer/Fall 1987, Vol. 13, No. 3/4
PERSPECTIVE

4 ACIR News

6 Intergovernmental Focus

Spotlight on the Florida Advisory
Council on Intergovernmental Relations

**10 State-Local Relations and
Constitutional Law**

Richard Briffault

**15 Local Governments in State Courts:
A New Chapter in Constitutional Law?**

Michael E. Libonati

**20 Local Public Economies:
Provision, Production and Governance**

Ronald J. Oakerson

26 State-Local Panels: An Overview

Michael Tetelman

32 A Special Report:

Financing the Nation's Highways

34 A Fiscal Note:

The Return to Fend-for-Yourself Federalism:
The Reagan Mark

38 And Briefly: Books

Staff

John Shannon
**Executive Director and
Kestnbaum Fellow**

John Kincaid
Research Director

Robert Gleason
**Director of Communications
and Publications**

Joan A. Casey
Editor

Cover Design: Baskin and Associates

Intergovernmental Perspective
(ISSN 0362-8507) is published
four times a year by the
U.S. Advisory Commission
on Intergovernmental Relations,
Washington, DC 20575
202-653-5540

*The Chairman of the Advisory Commission on Inter-
governmental Relations has determined that the pub-
lication of this periodical is necessary in the transac-
tion of the public business required by law of this
Commission. Use of funds for printing this document
has been approved by the Director of the Office of
Management and Budget.*

Commission Approves New Research Agenda

At the June 1987 quarterly meeting, the members of the Advisory Commission on Intergovernmental Relations unanimously approved a new research program and agenda to be implemented over the next three years. The commission is now completing the work on its current agenda, and will issue a number of policy and information reports in the next few months (six have been released since the spring).

The new research agenda was prepared under the direction of a committee chaired by Commissioner Daniel J. Elazar. Numerous ideas and comments were submitted by the Commissioners, staff members, and interested persons and organizations in and outside of government—indeed, the most painful part of planning the agenda was selecting from among the many good projects. The breadth and depth of ideas clearly indicated that the Commission can and should continue to play a vital role in helping to shape American federalism and intergovernmental relations.

In an era of “doing more with less,” the Commission has sought to organize its research and information program to ensure that solid research on vital federalism issues can be advanced while information services historically provided by the ACIR are not interrupted. In addition, one of the realities faced by the Commission is the need to charge for its publications and services.

The research and information program has been organized along three lines: continual monitoring and information dissemination, computer data services and topical research projects.

Monitoring and Information Dissemination

One very important function of the Commission is monitoring the federal system and intergovernmental relations, particularly through data collection and dissemination. In this area, the Commission will continue to publish the following:

Significant Features of Fiscal Federalism

Fiscal Capacity and Tax Effort of the States

Changing Public Attitudes on Government and Taxes

Catalog of Federal Grant-in-Aid Programs to State and Local Governments

Intergovernmental Perspective

The Commission will also experiment with the following as regular monitoring publications:

Changing Views of Public Officials on Federalism and Intergovernmental Relations (to complement the annual public opinion survey)

Local Revenue Sources and Their Uses

Federalism/IGR Digest (an occasional report on current issues)

Microcomputer Data Services

Since 1985 the staff has been developing diskettes designed to make data more useful and accessible to the users of the publications described above. Three major series—*State-Local* and *City-County Finance*, and *State Fiscal Capacity*—have proven very popular. A fourth series on *State Government Tax Revenue FY1983-86* has just been re-

leased. These will be updated regularly.

Also being developed are a new *Local Government Data Bank* and a *Public Opinion Poll Data Bank*.

Topical Research

The Commission will undertake research on the following topics, listed in an approximate order of priority:

State-Local Relations in Highway Planning, Financing and Construction

Federal and State Compliance with National Mandates and Standards: Does the Federal Government Practice What It Preaches? Access for the Handicapped and/or Environmental Standards

The Federal Union in the International System: State and Local Responses to International Economic and Political Challenges

Interjurisdictional Tax Policy and Competition: Good or Bad for the Federal System? (also includes research on competitive incentives for business)

The Congress, the States and Federalism

How Local Public Economies Work: Equity, Viability and Service Responsiveness in America's Civil Communities (also includes research on equity, fiscal disparities, small-government viability and boundary review commissions)

A Decade of Change, 1978-1988: The Emergence of a New Federalism?

State Law in the Federal System: Shaping a New Judicial Federalism

The Role of the National Guard in Protecting the Nation and the States: Issues and Options

New Jersey Constitution Conference

On November 5, Rutgers University-Camden and the New Jersey League of Women Voters will cosponsor a conference to celebrate the Bicentennial of the U.S. Constitution and the 40th anniversary of the adoption of the 1947 New Jersey Constitution. The conference will be held in the State Museum in Trenton, and participants will examine the development of the 1947 constitution and its impact on the state's recent political history. (For further information, contact Professor Alan Tarr, Department of Political Science, Rutgers University, Camden, New Jersey 08102, (609) 757-6084.)

State and Local Taxation and Regulation of Interlocal and Interstate Service Businesses: Fairness and Equity in a Complex Political Economy

Reconsidering Theories of Federalism: Cooperative Federalism, Redistributive Federalism, Congestion and Sorting Out

Immigration and Federalism: Costs, Civil Liberties and Intergovernmental Tensions

Water Management in the Federal System: Competition, Coordination and Cooperation

State Court Recognition of Local Autonomy: Can Local Governments Find Relief in Their State Courts?

Federalist Approaches to Democracy and Economic Development Abroad: Does American Foreign Policy Preach What Americans Try to Practice?

Antitrust Policy in the Federal System

State-Local Revenue Sharing and State Aid to Cities and Counties

Prisoner Litigation in the Federal Courts: Is There a State Solution?

Pending funding and staff resources, research may be undertaken on the following topics:

Coordinating Governments in the Federal System for Effective Drug-Abuse Law Enforcement

Stewardship, Property Rights and Intergovernmental Influence on Land Use

Statewide Information and Data Networks

State Assumption of Local Functions

Use of Major State-Local Tax Bases: Implications for the Size of the Public Sector, Tax Rates and the Incidence of Tax Burden

State Business Climates: Measurement and Efficacy

The Diffusion of Information and Innovation among the States and Their Localities: Federalism without Washington?

Finally, to help expedite research, explore the feasibility of studying certain topics, promote interest by other organizations, or bring together the relevant parties to an issue to promote mutual understanding and cooperation, the ACIR plans to conduct one-day conferences on such topics as the following:

State-Local Relations: A Reconnaissance

Residential Community Associations: Partners or Renegades?

When State and Local Governments Serve as "Robin Hoods"

Intergovernmental Approaches to Work Force Preparation

The Status of School Financing Arrangements in the States: Efficiency, Effectiveness and Equity

Federal Grant Formulas: Matching Variables and Structures to Objectives

Assisting the Homeless: Can the States Make Effective Legislative Responses?

Benefit Capture and the Financing of Local Government: A Changed Philosophy or Old Wine in New Bottles?

As the nation celebrates the Bicentennial of the United States Constitution, the Commission looks forward to being actively involved in the issues and debates that will shape the third century of American federalism. Persons wishing to contribute ideas or resources for items on the ACIR research agenda are welcome to contact John Kincaid, Director of Research.

**WE'D LIKE TO
REMINDE YOU
THAT THE
UNCENSORED
CONTENT
OF THIS
MAGAZINE
IS MADE
POSSIBLE
BY THE
CONSTITUTION
OF THE
UNITED STATES.**

**THE
CONSTITUTION**
The words we live by

To learn more about the Constitution write: Constitution, Washington, D.C. 20540. The Commission on the Bicentennial of the U.S. Constitution



Intergovernmental FOCUS

Spotlight on the Florida ACIR

Robert B. Bradley
Executive Director

The statutory premise for the Florida Advisory Council on Intergovernmental Relations (ACIR) is quite simple: "The primary role of the Council shall be to study the relationships between state and local government." The Executive Office of the Governor has primary responsibility for federal-state relationships. Florida statutes are largely silent on the matter.

In a sense, this design is curious. The Florida ACIR was created ten years ago, near the high-water mark of fiscal federalism. Federal grants-in-aid as a percentage of total federal outlays and of gross national product were approaching historic highs. Reliance by Florida's cities and counties on federal funds had reached record levels. By many measures, federal actions were of singular consequence for Florida's state and local governments. Yet, in the creation of the Florida ACIR, it was the less dramatic but more intricate constitutional, statutory and administrative relationships between state and local government that galvanized state policymakers.

By the seventies, Florida's lawmakers were acutely aware of the significance of state-local relations. Forty years of sustained population growth had altered the traditional methods of handling issues and resolving disputes. In 1940, fewer than a million people lived in Florida. The state's population nearly doubled in the fifties, and then it doubled and doubled again, bringing with it a set of problems and a complexity largely beyond the compass of existing po-

litical and administrative arrangements.

Popular ratification of the revised state constitution in 1968 was perhaps the first, most palpable response to the changing circumstance of the state and its local governments in the post-war era. The 1968 constitution dramatically altered the role of counties and municipalities. It provided one of the strongest home rule statements in the nation. But the constitution did not resolve matters fully. It allowed for considerable interpretation, required extensive implementing language and ignored some significant issues.

The Commission on Local Government was created by the Legislature in 1972 to examine state-local relations in light of the changes wrought by the revised constitution. The commission was to examine the operation and organization of local governments in detail and to recommend necessary changes in state policy.

The commission was an enormous success. Under the guidance of John DeGrove, it published a number of influential reports on matters as diverse as financial reporting, municipal home rule and special districts. Its recommendations resulted in a substantial revision of the state statutes affecting annexation procedures, municipal incorporation, state revenue sharing, local budgeting procedures, local management capacity and jurisdictional dispute resolution. By the time the commission completed its work in 1974, the value of a formal body within state government

devoted to consideration of state-local relations had been established in the minds of many.

The Florida ACIR can properly be considered the successor to the Commission on Local Government. Its purview and organization are similar. But the creation of an ACIR also should be seen as an indication of the persistent, perennial nature of problems between state and local government. Florida's ACIR was established in part because both the 1968 constitution and the Commission on Local Government had not settled a range of issues. Home rule did not prove to be the panacea some had thought. Relations between cities and counties were not arranged to everyone's continuing satisfaction.

The Florida ACIR held its initial organizational meeting on August 19, 1977, with Representative Carl Ogden as chairman. Before it lay time-worn issues. Its enabling legislation directed the Council to give careful study to the pressing issue of double taxation between cities and counties, to identify state mandates on local governments and to recommend revenues that might pay for them, and to prepare analyses for the Constitutional Revision Commission on the impact of the state tax structure on intergovernmental relations. Ten years later, these same issues, albeit in different guises, still face the Council. With the ACIR, though, the state has a formal mechanism within the Legislature to address such issues.

Organization

The Florida ACIR has 17 voting members and four ex-officio members. Four senators are appointed by the President of the Senate, four representatives by the Speaker of the House, and the remaining members by the Governor. The terms of the legislative members run concurrently with their legislative terms. By law, the chairman and vice chairman must be members of the Legislature, and by agreement between the two chambers, the offices rotate annually between the House and Senate. Under the state constitution, the Florida ACIR is considered part of the Legislature, where it is treated administratively as a joint committee.

The Governor appoints a majority of the Council membership. Historically, most gubernatorial appointees have been drawn from city and county governments. Though it is not required by the statute, the Governor typically has appointed equal numbers of members representing cities and counties. Local government officials have been appointed without regard to political affiliation. These include elected and administrative officials. However, members of the Governor's staff, heads of state departments and distinguished private citizens also have been asked to serve. Gubernatorial appointees serve four-year terms. In addition, the executive directors of the Florida League of Cities, Florida Association of Counties, Florida School Board Association and the Florida Association of School Administrators are members of the Council ex officio.

The Council is funded through a yearly legislative appropriation, and it may seek grants from other sources. In fact, the ACIR did use grant money to conduct an investigation into various aspects of community preservation during 1979 and 1980. However, the Council typically has relied solely on state appropriations for support of its activities.

The Council employs a staff of seven full-time analysts. The Council, by majority vote, hires the execu-

tive director, who has authority to employ and remove additional staff, within available funds and consonant with the personnel policies of the Joint Legislative Management Committee. At present, all staff members are social and economic researchers. The Council currently does not employ an attorney, although several of the members are attorneys.

Activities

The Florida ACIR serves as a forum for the study and discussion of intergovernmental problems. Over the years, the Council has investigated a wide range of topics. Because many intergovernmental problems involve financial matters, however, the Council has concentrated much of its research on fiscal issues. Although the ACIR is a joint legislative agency, and meets several times a year, it does not enjoy the full range of powers granted standing committees of each house. For example, it may not issue subpoenas, find for contempt, or introduce committee bills. Instead, the Council has five other functions.

First, the ACIR undertakes long-term research at the request of other legislative committees or the Governor, or on its own initiative. Since the ACIR does not handle committee bills, its activities are not tied as directly to legislative sessions as are other committees. This allows the Council to tackle research problems which require a lengthy commitment, often a year of staff time. Thus, the Council can explore policy issues in considerable detail, conduct public hearings, and provide for the sort of sustained deliberation not always available to other legislative committees. The ACIR has published a number of reports on various subjects after such studies, including property tax assessment and exemptions, double taxation, local government retirement systems, the use of fiscal indicators, federal block grants, municipal annexation, initiative and referenda, and impact fees. In all, the Council has published 63 reports.

The second major function of the ACIR is to serve as a resource for the

Legislature and the Governor on matters affecting state-local relations. Here the Council benefits from the diverse character of its membership and the expertise developed by the staff in the course of its research. Thus, the Council has been asked to address various issues for review and recommendation, often with an eye toward immediate legislative action. Also, the staff frequently is asked by other legislative committees to analyze bills, prepare fiscal impact statements (especially for local government bills), and to give testimony before the legislature. During the 1987 legislative session, for example, the staff provided assistance on matters related to local government sovereign immunity, initiative and referenda, special assessments, indigent care, state shared revenue formulas and local bonded indebtedness. In addition, the staff responds to requests for information from legislators. These involve the staff in matters as diverse as water management districts, capital budgeting and municipal mergers.

The third function of the Florida ACIR is to act as a resource for city, county and special district governments on matters in which the staff has developed expertise. In this role, the Council frequently provides information to local officials and their consultants pertaining to state-local financial matters, administration of state laws and governmental organization. The staff makes a number of presentations before local groups and handles written requests throughout the year. The Council also annually prepares three publications of interest to local officials: the *Legislative Mandates Report*, an *Estimate of County Constitutional Officers' Salaries*, and a *Local Government Financial Handbook*.

The Council is required to report annually to the Governor and the presiding officers of the Legislature on the impact of state mandates imposed on municipalities and counties. In Florida, mandates are defined as those state actions that impose costs on local government through an ero-

sion of the tax base, or through a requirement to perform an activity or provide a service or facility. Simply stated, they are actions which either limit or place requirements on local government without making compensating changes in fiscal resources. The annual mandates report is designed to meet the charge of the statutes by listing, analyzing and reporting on legislative acts containing mandates. Because of limited resources, the Council does not attempt to monitor administrative mandates.

Although the primary purpose of the report is to identify legislative mandates, it also contains information on actions which repeal or amend existing mandates or increase the revenue or revenue-generating capacity of local government since these items offset, to some extent, the fiscal impact of new mandates. The report also includes information on non-recurring appropriations going directly to local government. In recent years, the report also has given state and local officials an historic perspective on the enactment of mandates.

In Florida, the salaries of seven county officers (clerks of the circuit court, comptrollers, commissioners, property appraisers, sheriffs, supervisors of elections and tax collectors) and two county school board district officers (district school board members and superintendents) are established by state law through a rather involved process. Although not required to do so by law, the ACIR performs the annual recomputation of annual salaries in order to assist local officials. It provides an estimate of salaries early in each government's budget cycle, and issues a final statement later in the year when complete information is available.

In cooperation with the state Department of Revenue and the Economic and Demographic Research Division of the Joint Legislative Management Committee, the ACIR also prepares a local governmental financial handbook. The handbook is designed to assist counties and municipi-

palities in their financial planning by making available state revenue and economic forecasts as they pertain to major state shared revenue sources and state-administered local option taxes. The handbook draws on the official state estimates to provide information on nearly a dozen programs for over 460 local governments. It also includes population estimates and projections, and a forecast of a variety of price indices which may be helpful when compiling local budgets.

The fourth major function of the ACIR is to provide a forum for discussion of intergovernmental policy issues. Typically, such discussions are not meant to produce immediate solutions to intergovernmental problems, since many involve longstanding and particularly intractable issues. Instead, their purpose is to begin a dialogue which may ultimately lead to new approaches to persistent intergovernmental conflicts. Over the past year, for example, the ACIR has initiated a discussion of the state trial court system, focusing on the responsibilities of different levels of government. This is part of a larger Council discussion of local functional responsibility and the sorting out of service roles that has gone on for some time.

The fifth function of the ACIR is to maintain and make available financial and demographic information about municipalities, counties and special districts for use in policy development and research. The Council maintains an extensive computerized data base with detailed revenue and expenditure information on every local government. The data base also includes a profile of every outstanding local bond issue in the state, as well as demographic records for most cities and counties. A portion of the data base is maintained through the cooperative efforts of the Division of Bond Finance in the Department of General Services, the Bureau of Local Government Finance in the Department of Banking and Finance, and the Office of Planning and Budgeting in the Office of the Governor. Information

about current fiscal year activity is obtained directly from cities and counties and is processed by ACIR staff. Information from the data base is available to the public and is directly accessible to legislative and executive staff through the Legislature's data center.

Operation

The work of the Council proceeds on several levels. Much of it necessarily involves the staff, which provides extensive reports, background reports, briefing documents, fiscal analyses and draft legislation. By and large, the staff is deployed to work on specific projects commissioned by the Council. In addition, as noted earlier, the ACIR works on a number of regular and recurrent activities. Here, again, the staff is crucial. But the real work of the ACIR is accomplished by the membership.

By law, the Council must meet semi-annually; in fact, it meets more frequently. The full Council convened five times over the 1986-87 working year. Meetings of the full Council are often scheduled in concert with regular legislative committee meetings in the capital. However, the ACIR attempts to meet at various sites throughout the state each year, often using subcommittees to focus attention on an issue and to gather information.

The subcommittee on special district accountability is a case in point. During the 1986-87 working year, it met seven times. Hearings were held in Tallahassee, Orlando, Tampa and West Palm Beach. The subcommittee began its round of hearings after reviewing an extensive staff report. The hearings were designed to focus on difficulties in various issues areas identified in the report. They provided the backdrop for comprehensive recommendations affecting ten policy areas: state assistance to special districts, coordination among agencies, state oversight procedures, definitional issues and formation procedures, bond issuance, financial emergencies, special assessments

collection, district elections, budgetary hearings and governing practices.

Subcommittees have been employed by the Council to study a number of thorny issues; most recently they have examined shared revenues, considered local infrastructure problems and taken testimony on state annexation policy. Most issues are considered without the benefit of subcommittees, however. The expertise and knowledge of the membership is sufficiently broad to handle most issues in full Council. Thus, topics such as impact fees, local government liability insurance and occupa-

tional license fees have been debated within the full Council, guided by staff papers, under the chairman's direction.

In the long run, of course, it is the Council members who must sustain its recommendations. The Florida ACIR is only advisory. It does not introduce legislation. It does not write rules. It commands only the authority vested in it as a credible source of information and a fruitful discussion forum. Its legislative members carry the Council's recommendations to the Legislature, but only by accession. The Council works best when its

members participate most.

The Florida ACIR celebrates its tenth anniversary this year. Ten years have altered the character of federalism, and perspectives have changed. Certainly, the Florida ACIR exists in part to ensure that the lessons of the decade are not forgotten and to explore new approaches to old problems. Yet, the Council continues to serve its original intent. By custom and design, the Florida ACIR is primarily concerned with state-local relations, and it continues to bring state and local officials together to consider mutual problems.

Florida ACIR Membership

Tom Tobiassen, State Representative, Gonzalez (Chairman)

Lawrence Plummer, State Senator, South Miami (Vice Chairman)

City Officials

Paul S. Buchman, City Attorney, Plant City

J. Larry Durrence, Mayor, Lakeland

Howard Tipton, City Manager, Daytona Beach

State Officials

Glenn Robertson, Director, Governor's Office of Planning and Budget, Tallahassee

County Officials

James Minix, St. Lucie County Commissioner, Fort Myers

Barbara Todd, Pinellas County Commissioner, Clearwater

Citizen Members

T. Wayne Bailey, Chairman, Department of Political Science, Stetson University, Deland

John M. DeGrove, Director, FAU-FIU Joint Center for Environmental and Urban Problems, Fort Lauderdale

Tom Lewis, Director, Disney Development Company, Lake Buena Vista

State Legislative Members

Carol G. Hanson, Representative, Boca Raton

Everett A. Kelly, Representative, Tavares

Jeanne Malchon, Senator, St. Petersburg

William G. Myers, M.D., Senator, Stuart

Charles L. Nergard, Representative, Port St. Lucie

Marlene Woodson, Senator, Bradenton

Ex-Officio Members

Wayne Blanton, Executive Director, School Board Association of Florida, Tallahassee

Raymond Sittig, Executive Director, Florida League of Cities, Tallahassee

Kurt Spitzer, Executive Director, Florida Association of County Commissioners, Tallahassee

John Gaines, Executive Director, Association of Florida School Administrators, Tallahassee

State-Local Relations and Constitutional Law

Richard Briffault

A persistent theme in the literature on state-local relations has been the plenary power of state governments and the legal powerlessness of local governments. The “black letter” rules of state-local relations are that the state governments enjoy complete hegemony over their political subdivisions, that local governments are mere “creatures” of the states, with only those powers that the states delegate to them, and there is no such thing as an “inherent right” of local self-government.

This notion of plenary state power/inherent local powerlessness significantly understates the degree to which state courts have supported the concept of local control, and, as a result, it also misses the substantial amount of real power enjoyed by many local governments in most states. The force of the local control idea in state jurisprudence has been dramatically underscored by the consequences of two major law reform initiatives during the last two decades—the challenges to the local property tax based system of funding public schools and to suburban exclusionary zoning.

The school finance and exclusionary zoning litigations are of central significance in understanding the structure of contemporary state-local relations. They concerned the most important service provided by local governments and the principal local regulatory activity. The parties frequently framed their arguments in terms of state constitutional doctrines and presented their cases in state supreme courts. Moreover, the challenges addressed weaknesses in the concept of local autonomy which even advocates of local power recognize: the limited fiscal capacity of many localities to provide basic services, and the problems associated with local decisions that have significant extralocal consequences.

Nevertheless, neither law reform initiative actually did much to weaken local responsibility for public schools or local power over land use. The state courts displayed a strong localist orientation. Most concluded that local control of education is a legitimate state interest worthy of judicial protection even at the cost of significant taxing and spending inequalities among school districts. The courts which found that local control of education violated state constitutional provisions have nevertheless affirmed the wisdom of continued local autonomy over the schools and sought to reconcile greater state financial responsibility with a constitutional commitment to local control. Similarly, the states have generally left undisturbed the delegation of zoning authority to local governments.

The Setting

The school finance and exclusionary zoning litigations of the 1970s and 1980s grew out of four underlying conditions in state-local relations.

First, the states have generally delegated to local governments the responsibility for providing many basic public services, including police, fire, sanitation, local roads and public schools, and authority to control land use. Second, local governments derive the bulk of their revenue from the real property tax. Third, there is an enormous variety in taxable wealth among localities. Finally, although localities operate within essentially fixed boundaries, people and industry are legally free to move.

The school finance reform effort sought to sever the link between local wealth and the quality of local public educational programs by requiring the states to assume a significant degree of financial responsibility for public education. The attack on exclusionary zoning attempted

to open up the suburbs to lower-income housing, thus reducing the concentration of the poor in central cities and increasing the degree of social and economic integration in metropolitan areas generally. The goals of the two movements were interrelated. Reducing or eliminating the school finance role of local governments would greatly reduce local tax burdens and the incentive to zone out lower-income residents. Opening up the suburbs to lower-income families would reduce the disparity in property wealth per capita among communities, thereby reducing the difference in communities' ability to spend on education.

Both challenges were initially brought as claims under the Fourteenth Amendment to the U.S. Constitution. During the early 1970s, however, the U.S. Supreme Court rejected these claims, and the focus of litigation shifted from the federal courts to the states.

School Finance Cases in the State Courts

Two aspects of the Supreme Court's rejection of the challenge to the school finance system gave plaintiffs some grounds for hope as they turned to the state courts. First, the Court had indicated that federalism concerns persuaded it to defer to state legislatures on the subject of state taxing and spending. Federalism would not play a role in state court decisions, and the state courts have a long history of considering issues of state and local tax and finance. Second, the court based its determination that education is not a "fundamental" interest for equal protection purposes on the fact that education is not afforded explicit or implicit protection under the federal Constitution. By contrast, most of the state constitutions explicitly direct the state to provide for a system of free public education.

The challenges to school finance relied heavily on the state constitutions' education articles. Plaintiffs contended that the explicit inclusion of education in state constitutions made education a "fundamental interest," triggering strict scrutiny under state equal protection clauses. They also urged that the enormous interdistrict disparities in the funding of public schools constituted a failure on the part of the states to satisfy the independent mandate of the education articles. Most state courts were, however, unpersuaded.

State courts upholding the existing school finance system: Challenges to the school finance system were heard by the supreme courts of 17 states. Both the state equal protection and education article claims were rejected outright in ten states: Arizona, Colorado, Georgia, Idaho, Maryland, Michigan, New York, Ohio, Oregon and Pennsylvania. In a related case, the high court of Wisconsin also affirmed the traditional system. These states denied that explicit references in their constitutions made education "fundamental," and they generally concluded that provision of a minimally adequate education in each district could satisfy state requirements. Moreover, many courts treated local control of education

as integral to effective local self-determination. The constitutional provisions for state maintenance and support of public schools were no bar to the delegation of administration and funding to the school districts. Indeed, the courts often treated such a delegation as highly desirable.

Plaintiffs did not challenge the legitimacy of the local control idea but rather sought to turn it to their own advantage. They argued, first, that local administrative authority could be preserved even if fiscal responsibility were shifted to the state; and second, that for poorer districts, local control required equalization aid as these districts lacked the taxable wealth necessary to support the educational programs their residents desired. These courts, however, determined that local control entailed local fiscal responsibility and that the benefits of local empowerment were worth the costs to the poorer districts. The courts held that full state funding of the schools, or other state efforts to equalize spending, would erode local control. The New York, Ohio and Pennsylvania courts expressly vindicated the right of individual school districts to spend more than their neighbors. The Wisconsin court held that the local interest in administering and funding schools is of a constitutional magnitude comparable to the state's.

State courts finding constitutional violations: Seven state courts upheld plaintiffs' claims, at least in part. These courts fell into two groups—those that found a violation of the education articles, and those that found a violation of the state equal protection clauses.

Three states proceeded on an education article basis: New Jersey, Washington and West Virginia. Their holdings were strikingly narrow. The courts stressed the exemplary position of education among all public services, and denied that their decisions had any implications for the funding of other local services or for inequalities in local taxation. Even within the context of education, these courts limited the force of their decisions by denying that the states had any duty to fund education fully or to equalize interlocal wealth and spending differences. The courts affirmed the right of local districts to spend above state requirements, and to outspend their neighbors.

Four state supreme courts—Arkansas, California, Connecticut and Wyoming—determined that the school finance system based on local property taxes violated the state's equal protection clause. Three courts concluded that education was a "fundamental" interest for equal protection purposes, triggering strict judicial scrutiny, and that the existing system failed the compelling state interest test. The fourth court, Arkansas, held that the state's reliance on the local property tax base to fund the public schools served no rational purpose.

These four courts held that their states had acted unconstitutionally in making educational opportunity dependent on the "fortuitous circumstance" of the assessed

valuation of each district. They rejected the conclusion of the other state courts that local authority over education required local fiscal responsibility. They found that greater equalization and state support would not reduce local autonomy.

The courts were unclear as to what their state constitutions would allow in terms of local wealth disparities under a reformed system, and there is some indication from later cases that despite the strong language about equalization these courts would be satisfied with a remedy comparable to that ordered in the New Jersey case, *Robinson v. Cahill*, i.e., increasing the resources available to the poorest districts without either capping the richest districts or compelling full equalization of district tax bases. Moreover, none of these courts interpreted their state constitutions to require either full state funding or complete equality in district spending.

Exclusionary Zoning Cases in the State Courts

During the last two decades, courts in several states have rejected the view that local zoning is to be assessed solely in terms of its effect on the "welfare of the particular community," have required municipalities to take into account the extralocal consequences of their zoning decisions, and have invalidated exclusionary ordinances. These cases have been seen as part of a "quiet revolution" in land use, in which state-level institutions—legislatures and administrative agencies as well as the courts—are said to be asserting greater oversight and operational responsibilities in an area traditionally delegated to local governments. Whatever the magnitude of the legislative and administrative dimensions, the extent of the judicial limitation of local exclusionary zoning has been overstated.

Only four state supreme courts have undertaken significant review of exclusionary zoning—California, New Jersey, New York and Pennsylvania. Each of these courts has pointed to the regional effects of local zoning decisions and compelled localities to consider the extralocal consequences. Each court has also urged the state to monitor local zoning regionally or statewide. Yet, with the exception of New Jersey, each court has largely left the structure of local zoning authority intact.

New York. The New York Court of Appeals (the highest court) in its 1975 decision in *Berenson v. Town of New Castle* held that a zoning ordinance must not only provide a balanced and well-ordered plan from the perspective of the community but must also reflect attention to regional needs. *Berenson* also affirmed the legitimacy of the community's desire to maintain the status quo. But the decision gave little indication as to how to strike the balance between local interest and regional needs.

Berenson invalidated a local ordinance excluding multifamily housing where it was plain that the town had given no consideration to regional issues. In subsequent

decisions, however, the court upheld a five-acre lot minimum and an ordinance excluding multifamily housing.

California. A close reading of the 1976 landmark case *Associated Home Builders of the Greater East Bay, Inc. v. City of Livermore* also gives rise to doubts as to just how far the court was willing to limit local land use regulations. The Livermore ordinance imposed a complete moratorium on local growth through a ban on new housing construction permits. The court noted that local land use controls would satisfy state judicial review so long as the "general welfare" was served. The court had previously considered general welfare to refer to the zoning community, but plaintiffs here alleged that "the ordinance may strongly influence the supply and distribution of housing for an entire metropolitan region." The court ruled that the ordinance must be measured by its impact both on the community and the region.

While this was an apparent setback for local autonomy, other aspects of the opinion tended to preserve local power. Like the New York court, the California court ruled that the desire to exclude new residents was not illegitimate per se, and it gave little guidance on how to balance the interests of the community and the region. The court was ambivalent as to how strictly lower courts were to review local exclusionary actions. In this case, the court placed the burden of proof on the challengers, presumed that Livermore had balanced local and regional interests in good faith, and affirmed that since nonresidents had no constitutional entitlement to move into the community, the ordinance would be measured by the traditionally more liberal standards for validity of local land use restrictions. The ordinance was upheld.

Pennsylvania. The Pennsylvania Supreme Court was the pioneer, invalidating in 1965 a suburban ordinance requiring four-acre minimum lots, and in 1970, a two-acre minimum and an exclusion of multifamily housing. In 1975 and 1977, the court upheld the rights of landowners or developers to build apartments on tracts zoned for single families in communities which had zoned token amounts of land for apartments but would not permit building. In a pair of cases decided in 1983, the court upheld the application of municipal ordinances which prevented the construction of townhouse developments, but in 1985 it held unconstitutional the total exclusion of multifamily dwellings from a suburban community with most of its land zoned for five-acre minimum lots.

The court, however, has permitted municipalities to continue to zone, to impose some costs on new housing and to reduce the availability of multifamily residences, without any new state or regional legislative or administrative oversight.

New Jersey. The assault on exclusionary zoning has been carried out furthest in New Jersey. In the well-known *Mount Laurel* case in 1975, the New Jersey Supreme Court declared that "the zoning power is a police power of the state and the local authority is acting only as

a delegate of that power." Since there was no state interest in excluding low-income people from a community, the *Mount Laurel* court ruled that municipalities could not impose requirements which unnecessarily drive up the cost of housing. Moreover, the court found that the community's duty to zone for the general welfare entailed an obligation to "affirmatively plan and provide, by its land use regulations, the reasonable opportunity for an appropriate variety and choice of housing, including, of course, low-and moderate-cost housing."

Despite the strong language of the *Mount Laurel* doctrine, the court initially acted cautiously and preserved a substantial amount of local autonomy over zoning. In 1977, the court held that localities need not come up with a precise formula to measure their "fair share" of regional housing needs. Reviewing courts could look simply to the "substance" of a challenged zoning ordinance and the "bona fide efforts" of a municipality to remove the exclusionary barriers. The court expressed a strong preference for legislation to determine and allocate regional housing needs.

In 1983, the New Jersey court decided that it would no longer defer to local decision making or wait for the state to come up with regional plans. In *Mount Laurel II*, the court put the burden on the suburbs to demonstrate that they were providing for their fair share of present and prospective housing needs. Localities were required to remove all excessive restrictions and exactions; the court's prior decision upholding local power to ban mobile homes was overruled; suburbs were directed to provide incentives for the construction of low-and moderate-cost housing; and the trial courts were authorized to enter remedial orders directing that developers who include a low-income housing component in their plans be allowed to build.

Mount Laurel II, especially its remedial provision, galvanized the state legislature into action. The *Fair Housing Act of 1985* requires communities to use their land use regulations to provide a realistic opportunity for the construction of low-and moderate-income housing. The legislation preserved a measure of local autonomy while greatly increasing the state's role: the locality would determine its fair share of the housing and prepare implementation plans, but a new State Council on Affordable Housing would set criteria and guidelines, monitor municipal actions and, through its power to immunize municipalities from lawsuits, affect the content of municipal zoning and housing plans. The legislation was far more protective of the local interest in controlling growth than the court had been. Challenges to exclusionary zoning were transferred from the courts to a new administrative process, and a moratorium was imposed on builders' remedies. The New Jersey Supreme Court upheld the act.

The New Jersey Supreme Court probably went further than any other in limiting local autonomy out of concern for broader regional interests and in forcing the

state to take back some of its delegated powers over land use. *Mount Laurel* is the best—perhaps the only—contemporary illustration of judicial utilization of the underlying legal norms of plenary state power and inherent local powerlessness in order to curb local autonomy. Yet, even here, the powerlessness of local governments seems overstated. The legislation still allows communities to protect themselves from unwanted development.

Local Control as State Constitutional Value

State supreme courts place a high value on the idea of local control, even against a legal background of presumptive state power and limited local self-government. Why? The courts have actually said surprisingly little about what they mean or why they consider local control to be so valuable. While the general lack of agreement or explanation may confirm the strength of the judicial commitment to the local government idea, it also makes analysis more difficult.

Scholars have put forward two general normative arguments for local autonomy: allocational efficiency and political participation. A third explanation, which seems to capture more closely the tenor of the judicial reasoning, is the courts' apparent equating of local autonomy with individual or family autonomy.

Local Control as Efficiency. Some scholars have argued that local control promotes efficiency because it permits a closer match between services provided and constituents' preferences than would be possible if the decisions were made at a higher level of government. A number of courts have echoed this approach.

In the school finance cases, courts repeatedly noted how local control enabled different communities to act on different preferences. In the land use cases, local zoning was seen as permitting diverse patterns of development so that households could have different kinds of communities available to them.

Local Control and Participation. Other scholars have argued for local control as a means of enhancing opportunities for popular participation in government, and several courts have agreed. The courts which affirmed the traditional school finance system referred to local control in the decision-making process: local fiscal responsibility meant that there was real local power. The land use cases also reflect judicial appreciation of the value of local participation. Only the New Jersey court induced the state to oversee more closely its delegation of power over land use. The other activist state courts left alone continued local participation in land use decisions.

Local Control and Personal Autonomy. While localist courts have been attentive to the values of efficiency and participation, the tenor of their opinions suggests that the strength of the judicial commitment to localism is due to their intuitive linkage of localism to home and family.

Local control of zoning has been supported because it has been seen as more protective of the home than state or regional regulation. Local responsibility for public education has been maintained because local school districts seem more likely to protect the family. Indeed, "home" and "family" were frequently relied on or alluded to in these cases. The linkage of local government to home and family results in a deferential attitude toward local power. These courts tended to view local governments less as decentralized wielders of public or political power and more as extensions of the individual or the family. This connection between local governments and home and family may explain the tendency to protect local autonomy and defer to local judgments in cases where the formal legal primacy of the states might have led to very different results.

These courts tended to downplay the doctrine that local governments are created by the states and instead took local governments and their powers as givens and not as the product of conscious choices by states to structure governmental authority in a particular way and with particular consequences. As a result the courts assumed that in a system of local governments inequalities happen. The state was generally held not responsible for the inequalities or even for the system of local government.

Since, for the most part, these cases involved the efforts of private parties to curb localities or force the states to take a more active role, the power of the state to displace local decisions was not at issue and the inherent-right idea was not directly tested. It is, thus, still good law that there is no inherent right to local self-government and that states have plenary power over their subdivisions. But, in the aftermath of these litigations, it is evident that many courts take the existence and power of local government as given and highly desirable. Such localism has constrained efforts to reduce disparities in the quality of education and to open the suburbs to more low-income residents.

These cases suggest that the issue of state versus local power is a false one because of the overinclusiveness of the term "local government." Not all local governments benefit from localism. Cities faced with heavy demands for public services and the emigration of the middle class are likely to favor greater state support of those services. Local autonomy is of limited use to localities lacking the financial resources to enjoy it.

Many upper-income suburbs do better under localism. Their primary concerns are for control of their schools and the protection of their homes. Those powers have been delegated to them by the state legislatures and, in general, vouchsafed by the courts. These communities may be legally powerless to prevent state legislation interfering with local autonomy, but they are practically powerful due to the strong and continuing tradition of state delegation to local governments in these matters.

Richard Briffault is an Associate Professor of Law at Columbia University.

Local Governments in State Courts: A New Chapter in Constitutional Law?

Michael E. Libonati

To the casual reader, state constitutional texts seem to delimit state legislative powers over the activities and affairs of local governments, just as they safeguard private autonomy. For example, prohibitions against local or special legislation in a state constitution would appear to protect against a legislative enactment applicable only to a single individual as well as one applicable only to a specific city. Yet this is not the case.

Similarly, state constitutional provisions mandating that due process be afforded before a person or a corporation is subject to a serious deprivation by government do not expressly distinguish between *protected* private corporations and *rightless* municipal corporations. State constitutional provisions proscribing the taking of "property" do not, on their face, differentiate between property owned by a private person and that owned by, say, a redevelopment authority. So, too, a constitutional requirement that each bill have a title that accurately describes its content would seem to be applicable whether the litigant claiming noncompliance is a county or a public employees union.

In addition to general state constitutional provisions that limit legislative discretion as to substance, process, form and mode, there are many restrictions that speak to particular questions of public law. Take the case of a school district with a limited tax base which feels aggrieved by current arrangements for state financial support of public education. It is not clear that the service provider (i.e., the school district) is less affected than an individual student-consumer or parent-consumer of educational services where a state constitution guarantees a right to a thorough and efficient system of public education.

Another example is provided by state constitutional prohibitions of "ripper legislation," that is, legislation purporting to vest the power to administer municipal affairs in a special board or commission. It would be most peculiar if such a constitutional norm—the purpose of which is to provide a defense against state interference with local authority—could not be invoked against the state by an affected municipality. It would be a sorry state of affairs if the governmental unit (e.g., a municipality) representing a local electorate that opted for home-rule status was barred from raising in court the claim that a state statute is repugnant to the home rule provision in the state constitution. Yet that is the law in a majority of jurisdictions.

The Received Doctrine

The received doctrine concerning the juridical status of local government units can be summarized in the following propositions: (1) the state constitution confers no rights on a local government unit against the sovereign state; (2) consequently, a local government has no standing to assert state constitutional claims against the state sovereign. "Standing" is the ability of a litigant to raise a claim in court. Without standing, a case, however meritorious, is simply not heard. The question of who has standing to invoke the law can determine whether the law is enforced or not. If local governments lack standing, the state is effectively immunized from challenge based on constitutional grievances, unless a private plaintiff is sufficiently affected to have standing to bring the claim.

As a practical matter, much of the legislation having to do with local government takes the form of "pure" public law, that is, statutes addressed to internal proc-

esses and routines of state or local public administration. A reading of state statutes pertinent to local government law will reveal the absence of judicial decisions appraising the constitutional validity of an enormous body of law, except for governmental powers or activities that affect the private sector.

Annotations of local government law that do appear are the product of advisory opinions rendered by state attorneys general or comptrollers. Thus, elected or appointed state officials serve, for all practical purposes, as the court of last resort for local governments seeking to resolve public law controversies. No judicial forum is available because judicial doctrine denies standing to local governments. It is hard to see how a practice that gives the last word on state constitutional law questions to an executive official can be squared with the traditional notion that the rule of law can be assured only if executive branch decisions are subject to review by the judiciary.

Since no individual rights or entitlements are affected by pure public law statutes, neither individuals nor private organizations have standing to contest them. Even where states recognize that a taxpayer has standing to challenge the lawfulness of governmental activity, there is a significant empirical question as to whether a given individual has the initiative, expertise or resources necessary to litigate complex public law questions in the public interest. Yet even if an individual taxpayer has the "right stuff," how can it be that a local government (as a collectivity) cannot assert claims that can be made by any taxpaying constituent by virtue of his or her stake in the proper management of the collective entity?

In recent years, state courts have begun to take a new look at the capacity of local governments to have constitutional "rights" and to assert constitutional claims against the state. By doing so, many courts have ruled in favor of local governments and, in the process, have begun to develop a new and intellectually exciting body of state constitutional doctrine on state-local relations.

Standing for Local Governments

As to the question of standing, several approaches are now discernible in case law. Decisions from New York and Utah are illustrative. In *Town of Black Brook v. State* (362 N.E.2d 579, 1976), the New York Court of Appeals (the highest court) held that a town has standing to contest an alleged statutory infringement of the home rule power of the state constitution. In *Village of Herkimer v. Axelrod* (449 N.E.2d 413, 1983), however, the court held that a village has no standing to challenge the constitutionality of a statute restricting its governmental powers. Thus, the New York approach assigns different rules of standing to different controversies, depending on which provisions of the state constitution are invoked. It is hard to imagine on what basis courts can justify such a sorting of constitutional provisions into

two piles, only one of which legitimizes a locally initiated and financed challenge to state legislation.

The laurel for the most sensible approach in reported cases goes to the Utah Supreme Court, in *Kenecott Corporation v. Salt Lake County* (702 P.2d 451, 1985). The county sought to challenge a state assessment of mining properties which did not reflect the full cash-value standard in the constitution. The state supreme court enunciated two criteria for standing, one aimed at ensuring a full and vigorous adversarial presentation of the claim and another aimed at vindicating the public interest in assuring the rule of law. The county was held to have standing on the basis of traditional criteria: that the interests of the parties be adverse, and the other that the challenging party have a legally protectable interest in the controversy. The court did not succumb to the blandishments of the notion that the county, as a creature of the state, was irrebuttably presumed to exist in happy harmony with the state. The court held that the assessment determinations of the state tax commission directly and adversely affected county budget and taxing functions to the extent that mining properties were underassessed.

The court also delineated a second, separate standing test, according to which local government is afforded standing to raise issues of great public importance, suitable for judicial resolution, when such matters as underassessments might otherwise be insulated from challenge. That is, a challenge would not likely be brought by a property owner benefiting from an underassessment, the state agency making the underassessment, or a county taxpayer. The court recognized county standing for the very pragmatic reason that only the local government unit is likely to have the will and the resources to check constitutional misconduct in state administration of the assessing function.

Asserting State Constitutional Claims

Another line of decisions of importance to local governments concerns specific allegations of infringement of state constitutional norms.

One significant cluster of claims has to do with the procedural validity of state statutes that impinge on local government. These challenges involve purported violations of such state constitutional arcana as the subject-title rule and the prohibition of local or special legislation. Unless the affected local entity has standing to challenge their validity, statutes which are, at root, unconstitutional will be controlling. Recent decisions, however, recognize successful challenges by local governments against statutes with a defective title (New Mexico), local or special legislation (South Carolina), and even statutes violating separation of powers principles (Utah).

Some state courts are also tacitly recognizing the "dignitary" interests of local governments, that is, their rights to procedural and substantive fair treatment. Municipalities in New Jersey and Pennsylvania subject to

the regulatory authority of state land-use development agencies were held to be constitutionally entitled to notice and to an opportunity to be heard on a development application pending before the agency. An intermediate appellate court in Ohio ruled that the equal-protection provision of the Ohio Constitution applied to a municipality exercising proprietary functions. The court held that a state agency acted unconstitutionally when it imposed obligations on the city of Cleveland that were not imposed on other private or public sector entities. Other courts have employed a rational basis standard for appraising the validity of local government challenges to state statutory classifications.

Several other recent constitutional cases show a willingness to apply substantive constitutional protections to local governments. Thus, a provision in the Louisiana Constitution prohibiting the taking of property without just compensation was held to invalidate uncompensated expropriation of a city-owned park. A Tennessee appellate court ruled that retroactive application of a statutory provision holding the statute of limitations applicable to actions against governmental entities impermissibly stripped a governmental entity of a vested right.

A fascinating set of cases traces the implementation of state constitutional provisions in Michigan and Missouri that prohibit the state both from mandating new or expanded activities by local governments without full state financing of the additional costs and from reducing the state-financed portion of the costs of existing mandates. Accordingly, a Michigan statute imposing new duties on localities resulting in increased costs of solid waste management was ruled unconstitutional. In Missouri, a state statute increasing the salaries of county employees was held to violate Missouri's version of this significant new protector of local fiscal autonomy.

A New Chapter In State Constitutional Law?

Recognition that a local government possesses procedural, dignitary and autonomy interests protected by the state constitution opens a significant new chapter in the development of state constitutional law. In the first place, state courts have begun to undo the unitary theory of sovereignty according to which localities are presumed not to have interests adverse to those of the state which "created" them. Second, local governments are viewed not as mere servants of the state, but as potential protagonists in the ongoing process by which state legislative claims to omnipotence are checked and balanced by judicial review. Thus, a significant new class of potential plaintiffs is now empowered to vindicate the rule of law in a variety of public law areas hitherto unscrutinized by the state judiciary. Fourth, state courts have indicated an increased willingness to resolve conflicts that inevitably arise between the general interests represented by the state and the particular interests represented by local governments within the overriding framework of the state constitution.

These decisions, which come from every region of the country, portend the emergence of an intellectually challenging state constitutional law of intergovernmental relations. Until now, state constitutional discourse about state-local relations has focused almost exclusively on home rule. Richard Briffault has shown how courts have given weight to the value of local autonomy in educational finance and zoning litigation, even though the state constitution contains no express command to do so. New rules of standing, however, suggest a strategy for linking the inchoate claims of local autonomy and decentralization to a variety of express state constitutional provisions, whose potential for transforming the received body of public law doctrine has not been completely explored.

Until now, the impact of legal doctrine on the theory and practice of state-local relations has ranged between indifference and outright hostility toward decentralization and state-local power sharing. Witness Dillon's Rule of narrow and ungenerous construction of statutes empowering local governments, and the judicially created doctrine of implied preemption. Recently, however, various state appellate courts have begun to establish the foundations of a modern constitutional law of state-local relations to replace the monolithic concept that has ruled the conceptual roost for the last century.

Michael E. Libonati is a Professor of Law at Temple University.

A Catalog of Federal Grant-in-Aid Programs to State and Local Governments: Grants Funded in FY 1987

Report M-153 \$10 August 1987

ACIR's fifth Catalog of Federal Grant-in-Aid Programs to State and Local Governments chronicles changes in intergovernmental aid since 1984, and offers particular insight into trends during the Reagan years. The Catalog lists all categorical and block grant programs funded on January 1, 1987, highlighting the 73 new programs added since the last compilation. New in this edition is a separate listing of 43 aid programs not funded from 1984 to 1987.

A Catalog of Federal Grant-in-Aid Programs to State and Local Governments: Grants Funded in FY 1987



Achery Commission on Intergovernmental Relations

M-153
August 1987

Significant Features of Fiscal Federalism: 1987

Report M-151 \$15 June 1987

Significant Features of Fiscal Federalism: 1987 contains completely revised and up-to-date information on federal, state and local revenues and expenditures; tax rates; public sector employment and earnings; constitutional and statutory restrictions on state and local spending and debt; and per-capita rankings for state and local governments. New in this edition are exclusions, adjustments and deductions permitted under state income tax codes; and sources of revenue and expenditure for all cities with populations over 25,000 and all counties over 50,000.



(See page 39 for order form.)

**Fiscal Discipline in the Federal System:
National Reform and the
Experience of the States**

Report A-107 \$10 July 1987

ACIR's major new study of fiscal discipline in the federal system reviews the experience of the states with various mechanisms to determine how they might be applicable to the federal government. The study finds that fiscal discipline tools are generally effective in the states, resulting in lower spending, and lower deficits or higher surpluses. States use all or some of the following mechanisms: constitutional and/or statutory requirements for balanced budgets, executive line-item veto, constitutional debt limitations, spending and taxing limits and capital budgeting. This policy report outlines historical trends and perspectives, reviews current reform actions and proposals, analyzes the effects of state measures, and makes fiscal discipline recommendations for consideration by the federal government.

**Fiscal Discipline In
The Federal System:
National Reform And The
Experience Of The States**



Advisory Commission on
Intergovernmental Relations
1111 20th Street, NW
Washington, DC 20037

A-107
July 1987

**Federalism and the Constitution:
A Symposium on Garcia**

Report M-152 \$10 July 1987

Can the states survive as autonomous political units? Can the benefits of a federal system be preserved? Explore the impact of the U.S. Supreme Court's controversial Garcia decision on federalism and the Constitution in this important new ACIR report. The decision has refocused national attention on political and legal questions of federalism, defining the issues more sharply than at any time since the New Deal. A symposium of legal and political scholars convened by ACIR in 1986 debated the causes and impacts of the decision in a broad context of constitutional law, history and politics.

**Federalism and
The Constitution:
A Symposium on Garcia**



Advisory Commission on
Intergovernmental Relations

Local Public Economies: Provision, Production and Governance

Ronald J. Oakerson

The last two decades have seen a major shift in thinking about patterns of public organization affecting local government. New ideas and concepts have generated new research with important, often counter-intuitive, conclusions. Patterns once despised are seen to have virtues; those once welcomed are viewed with skepticism. Yet the traditional American commitment to local self-government appears to be as strong as ever. A new consensus may be emerging around a simple but powerful idea—that multiple local governments together constitute a “local public economy,” consisting of a *provision side* and a *production side* that can be organized in quite different ways.

Distinguishing provision (taxing and spending) from production and delivery of local goods and services has far-reaching implications for the organization and governance of a local public economy, including a greater reliance on private and intergovernmental contracting to produce services, and a greater number and variety of local government jurisdictions to make provision for local services. Both of these implications raise issues of interlocal governance to a high order of priority.

Conceptual Foundations

The structure of a local public economy rests on a distinction between provision and production of local public goods and services. *Provision* refers to collective choices that determine:

- What goods and services to provide (and what are to remain private);
- What private activities to regulate, and the type and degree of regulation;
- The amount of revenue to raise, and how to raise it (whether by taxing or user pricing);
- The quantities and quality standards of goods and services; and
- How to arrange for production (whether by a department of local government, contracting or some other interlocal arrangement)

Production on the other hand, refers to the more technical processes of transforming inputs into outputs—making a product or rendering a service. Although production is often viewed as entirely the work of agents, it is frequently better viewed as “coproduction,” a process in which a specialized producer interacts with a citizen-consumer to produce a service.

The distinction between provision and production lays the conceptual foundation for a new understanding of the organization of local public economies. Different considerations apply in the choice of an organizational unit to *provide* a service from those involved in the choice of an organizational unit to *produce*. The work of local government is increasingly viewed primarily in terms of provisioning rather than producing. Although the organization of production can be and often is governmental, frequently it becomes a private responsibility. Patterns of organization on the provision side of a local public economy thus can differ from those on the production side, and a variety of different arrangements can be designed to link provision with production.

Organizing the Provision Side

The organization of the provision side of a local public economy involves a set of problems that fall into three main classes: (1) preference revelation, (2) fiscal equivalence and (3) accountability.

Preference Revelation. The problem of individual preference revelation derives from the incentives of individuals to conceal their true preferences for public goods and services if provision is organized strictly on a

voluntary basis. The institutional requirement is for some process of collective choice from which an individual cannot simply opt out. (Individuals can of course move out of a local jurisdiction, but this is different from opting out of provision while continuing to live there.) Given some form of collective choice, *boundary issues* become critical. An optimal set of boundaries will include those directly affected by provision choices, but not extend so far as to include communities with widely different preferences. In sum, any provision unit should, as closely as possible, define a *community of interest* among a group of people who share a piece of local geography.

Fiscal Equivalence. Efficiency on the provision side of a local public economy depends on the degree of "fiscal equivalence" that is attained. This criterion means simply that individuals (households or firms) and groups (neighborhoods or communities) "get what they pay for and pay for what they get." A lack of fiscal equivalence undermines the local community of interest.

Accountability. Provision units also must deal with the potential for distortion in "principal-agent" relationships between citizens and officials. All communities stand in need of agents, including both elected officials and civil servants, who can represent the interests of members. Provision units need to be organized in such a way that ordinary citizens are able to exercise a significant measure of "voice" so that agents can be held accountable in the conduct of community affairs.

Organizing the Production Side

Organization on the production side is based on considerations having to do with the technical transformation of resource inputs into product or service outputs. Unfortunately, no one has a recipe for producing good policing or education, for example, though somewhat more is known about producing good streets. Almost all local public goods and services, however, depend on the availability of specific time-and-place information, such as neighborhood conditions, to support effective production choices. Emphasis has to be placed on the scale and organization of a production process that allows individual producers to make locally informed judgments. This is a much different problem than involved, for example, in a typical assembly line.

Economies of Scale. An important distinction exists between local public goods that tend to be capital intensive and services that tend to be labor intensive. Capital intensive goods are more likely to be characterized by economies of scale, a decrease in the average unit cost of production as the scale of production increases. Labor intensive services are more likely to exhaust potential economies of scale quickly, in part because of greater dependence on specific time-and-place information.

Coproduction. Traditionally, production side considerations have placed a heavy emphasis on the importance of management. Some public services also depend on the participation of citizen-consumers in produc-

tion—a process called "coproduction." While it is well known that the productivity of local public agencies such as schools and fire departments depends in part on the cooperation of citizens, it is not well understood how to incorporate citizens into production processes. Yet citizen-consumers are often a crucial source of the time-and-place information producers need to be effective.

Linking Provision with Production

Distinguishing provision from production in a local public economy opens up a range of possibilities for linking one to the other. The main options are as follows:

Self-production. A provision unit organizes its own production unit. This is the traditional model of local organization with departments for police, fire, public works and so forth.

Coordinated production. Two or more production units coordinate their activities in whole or in part.

Joint production. Two or more provision units jointly organize a single production unit.

Intergovernmental contracting. A provision unit contracts for production with another provision unit which then assumes responsibility for organizing production.

Private contracting. A provision unit contracts with a private vendor, who is responsible for organizing a production unit.

Franchising. A provision unit sets production standards and selects a private producer, but allows citizen-consumers to choose whether to purchase the service.

Vouchering. A provision unit sets production standards and decides on the level of provision (through its taxing and spending powers), but allows individuals (or groups) to engage different producers, public or private, at their discretion.

The potential variety in organizing and relating provision to production is much greater than a traditional view of local government would suggest.

Governance

The governance of a local public economy is not concerned directly with either provision or production, but instead has to do with a choice of rules within which patterns of provision and production emerge, and with the resolution of conflict among participants, including maintaining agreeable and equitable arrangements. Viewed in this way, governance is separable from both provision and production.

When conflict occurs (for example, over municipal boundaries or the incidence of taxes), governance arrangements must exist to apply general rules to specific cases and constrain participants to reach settlements. Fiscal disparities among provision units are a potential source of conflict in most highly differentiated local public economies. Adjustments in the fiscal rules governing revenue capabilities—in particular the availability and possible sharing of various tax bases—are often responses to fiscal conflict.

Distinguishing Provision and Production: Implications

Distinguishing provision and production implies a greater use of both private and intergovernmental contracting to produce local public goods and services.

Current Practice. Private and intergovernmental contracting is widely practiced. A recent ACIR study found that 90.8 percent of the municipalities in a national sample reported at least one service contract among 34 service activities. Most municipalities that contract out, however, use this method of production in only a small proportion of their service responsibilities.

Significant change in the nature of municipal contracting has taken place since the 1970s. Contracting in the period prior to 1970 was heavily skewed toward the public sector. ACIR found in a 1972 study of municipal governments that intergovernmental contracting was the preferred alternative to self-production. Because of a lack of private vendors and/or a lingering concern with corrupt practices in awarding contracts, municipal governments avoided private producers in favor of governmental jurisdictions when shedding service production. This reluctance to use private vendors has diminished significantly. The proportion of communities reporting at least one private service contract exceeds the percentage reporting at least one intergovernmental contract by 18 percent. This reflects the growing number of private service contracts, not an absolute decline in intergovernmental contracting.

Although contracting is employed to some extent by almost every community, such arrangements still are utilized to produce only a fraction of the total services provided by local government. The mean percentage of services contracted in our sample is only 27 percent. Almost half (45 percent) of cities contract for less than 15 percent of their service responsibilities.

Efficiency Gains from Contracting. Empirical studies of garbage collection, electrical power, fire protection, police protection, and an assortment of custodial and general services have found that contracted service production nets significant—but variable—savings over government self-production.

An economies-of-scale argument suggests that the advantages of contracting would tend to diminish, other things being equal, as provision units increase in population size. The ACIR study finds, however, that this relationship holds only over a range of small municipalities. Over the middle to upper size range, reliance on contracting tends to increase with size. This is not what one would expect if economies of scale lead municipalities to contract out.

The ACIR study confirms that competition among potential producers is important to a decision on the part of a municipality to contract out. Municipalities that are located in more competitive economic environments, such as densely populated metropolitan areas, tend to do more contracting. Competition does not always require,

however, having alternative vendors in place. A municipality generally retains some capability for self-production (if only legal authority), thus ensuring at least that much choice between production arrangements.

Various political factors also are associated with a decision to contract out. Relatively liberal annexation or consolidation authority tends to diminish reliance on contracting. The incidence of contracting also tends to increase with the presence of fiscal rules that restrict local taxing and/or spending.

The Relevance of Provision Arrangements. In order for citizen-consumers to benefit from contracting, there must also be a provision unit able to acquire information about alternative producers, choose a production method, select a producer, negotiate a contract and monitor performance. Provision arrangements are crucial to the utility of contracting.

Provision arrangements also determine how efficiency gains will be distributed. Who benefits? Is it citizen-consumers, either through tax savings, increased levels of service, or both? Or do local politicians, managers and bureaucrats grab the lion's share of benefit by in effect distributing efficiency gains to the advantage of their particular interests?

The ACIR study contains some interesting results relative to these questions. First, contracting tends to reduce expenditures when municipalities contract out less than 25 percent of their service responsibilities, but tends *not* to reduce expenditures when contracting moves beyond 25 percent. This makes economic sense. If there are efficiency gains from contracting, it follows that the more a municipality is able to contract out (presumably within some limit), the lower the tax-price of services provided. As the tax-price decreases, services demanded by citizens can be expected to increase.

The fundamental importance of contracting is the ability of provision units to choose whether or not to contract out. The availability of a marketplace on the production side does not necessarily mean that provision units should always choose to enter the market as collective consumers, rather than produce for themselves. A basic function of provision units is to decide how to arrange for production. That ability to choose, not the inherent superiority of one mode over another, becomes the key factor in determining relative efficiency.

Organizing the production side of a local economy is likely to involve a mixture of production arrangements.

The differentiation of the production side of a local public economy is the result of choices on the provision side. *Distinguishing* provision and production conceptually does not always—even usually—lead to their actual *separation*. Most provision units, except small neighborhoods, choose to organize the production of some services for themselves. *Differentiated production*—dividing a set of closely related production tasks among different production units—rests on the fact that most public services actually consist of a number of different service

components. Production criteria vary among components of the same service.

For example, consider police services. Police patrol, including response to emergencies, can be distinguished from criminal investigation. In addition, patrol can be distinguished from dispatching, and investigative work in the field from the work of a crime lab. As a classification scheme, patrol and investigation can be considered "direct services," those activities that deliver services directly to citizen-consumers, while dispatch and crime lab can be considered "indirect services" that support the production of direct services. With respect to each component of a service, different production arrangements are possible. Economies of scale may differ sharply. If one component of a service is labor intensive, while another is capital intensive, the economies of scale are almost sure to be different. Depending on specific circumstances, different production components may be produced internally, contracted out, or produced jointly with another jurisdiction.

A traditional concern about multiple production units is possible duplication of effort. A recent ACIR study of police, education, fire and street services in St. Louis County, Missouri found little duplication in spite of a multiplicity of production units. Specialization, not duplication, is characteristic of production systems that rely on multiple units. A mutual interest in avoiding duplication may be sufficient to minimize its occurrence.

In addition to coordination, production units specialize by "alternation"—dividing responsibility on the basis of time, space or clientele—to avoid duplicating one another. This tendency of multiple and/or overlapping units to avoid duplication may account for the failure of consolidation efforts to result in demonstrable cost savings, as often predicted by metropolitan reformers.

Distinguishing provision and production draws attention to the potential economic viability of very small local governments as "pure provision" units.

In the past, analysts frequently evaluated local government units on their ability to *perform* a range of functions. This language—functional performance—does not distinguish provision and production. Inability to *produce* was equated with inability to *perform*. But, as is now widely accepted, inability to produce does not entail inability to *provide*. The acceptability of contracting raises the possibility of "pure provision" units—local governments that produce very little for themselves, but remain very active as providers—raising revenue, holding elections, deliberating on the needs of the community, choosing desired goods and services and determining supply levels, shopping for vendors, negotiating contracts and monitoring service flow.

Small units of local government—those under 1,000 population—have been characterized as toy governments, postage-stamp governments and "lilliputs." Somehow, the term "government" is identified with greater concerns than maintaining the livability of a few

thousand—or several hundred—households living within a dozen or so blocks. The legal nomenclature is often no help. Fourth-class cities in Missouri, for example, have a maximum size of 3,000 people. If a city of 3,000 attempted to function as a city of 30,000, it would not be economically viable. But such units are not, in any functional sense, cities. Nor are their governments city governments, except in name, despite the presence of mayor and council. This fact does not make small local governments insignificant. It makes them, functionally, neighborhood governments, providing a limited set of services. With few exceptions, they tend to be pure provision units, with most services contracted out either to public or private vendors.

The provision side of a local public economy will tend to be highly differentiated among a variety of units, small and large, with some "nested" inside others.

Types of Provision Units. The variety of potentially useful provision units is quite large, but the basic types are as follows:

Municipalities. State laws generally enable local citizens to create a variety of municipal units—cities, towns, and villages—varying along the dimensions of population size and governing authority. The limiting factor is the rule that one municipality cannot overlap another—municipal governments are, by definition, mutually exclusive jurisdictions.

Counties and townships have the virtue, in this context, of being able to overlap municipalities. Usually, counties are larger than municipalities; townships are more likely to be smaller and, in some cases, contain only parts of municipalities in addition to unincorporated territory. Counties and municipalities (and to some extent townships and municipalities) have the potential to function as complementary provision units. Small municipalities can function effectively as neighborhood governments when county government (among possible jurisdictions) is able to provide for larger scale public concerns. The limitation is that county and township boundaries are predetermined and relatively fixed.

Special districts are governmental units, usually created at local discretion with citizen initiative and consent, that can overlap municipalities and have flexible boundaries. The variety of special districts is greater than any other type of provision unit. Their purpose, in general, is supplementary. Some special districts are nested inside existing units; some overlap existing units, often including both incorporated and unincorporated territory; still others are coterminous with existing units but are created to add specific, specialized provision arrangements. This variety and flexibility can allow the organization of communities of interest that do not happen to coincide with existing local government boundaries. To be sure, not all special districts are equally worthy, but each should be evaluated on the basis of its performance, especially its ability to represent citizen-consumer interests. A blanket bias against special districts does not

appear to be warranted, given the limitations inherent in the design of general purpose governments.

Performance Differences. No single type of provision unit is equally well suited to providing for all local public goods and services. One dimension on which provision units vary widely is size. Another key issue is the extent to which a variety of units can efficiently coexist within a metropolitan area. Traditionally, there has been concern about fragmentation of metropolitan areas, and also a parallel concern about possible inefficiencies from overlapping jurisdictions. If provision is not sorted out from production, these traditional concerns make a great deal of sense. Local public economies function in part by finding ways to avoid the inefficient consequences that are potentially associated with both fragmentation and overlap.

Elinor Ostrom and her colleagues at the Workshop in Political Theory and Policy Analysis, Indiana University, Bloomington, have carried out an extensive research program to determine the effect of jurisdictional size on citizen evaluations of police, among other measures of police performance. Their work consistently demonstrates that smaller units tend to be more responsive providers of police services. Similarly, William A. Niskanen and Mickey Levy at the Graduate School of Public Policy, University of California, Berkeley, found in a study of California school districts that larger district size has a consistent negative effect on various measures of school performance.

Recent empirical research has found *lower* levels of local government expenditure to be associated with *higher* levels of fragmentation and overlap, even when controlling for the level of community service demand. Although it would be incorrect to claim that more fragmentation is always better than less, it has been shown that a variety of provision units can efficiently coexist and frequently do.

A highly differentiated local public economy need not "fragment" a metropolitan community.

The term used to describe a differentiated local public economy is "fragmentation." Unfortunately, this term mixes description with evaluation. It is one thing to say that a metropolitan area contains a large number of provision units; it is another to say that the multiplicity of those units fragments the area. Degree of fragmentation is usually measured, by opponents and proponents, as the number of jurisdictions per 10,000 population. Such a measurement, however, tells us nothing about the "fragmenting" effect of multiple jurisdictions.

The important questions are whether, and the degree to which, a more highly differentiated local public economy subtracts from the coherence of a metropolitan community. A coherent political community is one that is able to act in relation to communitywide concerns; a metropolitan political community is one that is able to act on metropolitanwide concerns.

Daniel J. Elazar of the Center for the Study of Federalism at Temple University has argued that a complex of

local governments can be understood as a "civil community" constituted on the basis of intergovernmental relationships. One mark of a civil community would be an ability to tend simultaneously to common and diverse interests. The recent ACIR study of St. Louis County found a civil community of nearly a million people and of immense vitality. The community finds diverse expression in 90 municipalities, a vigorous county government, 23 school districts and 25 fire protection districts, plus countless organized subdivisions. It also finds common expression, not only in the county government but also in organizations of municipalities, fire chiefs and police chiefs, the Cooperating School Districts of St. Louis County, a special district for special education, and, most especially, in the county delegation to the state legislature and occasional countywide referenda. The county delegation—31 representatives and seven senators, all elected from districts—become, in effect, "constitutional" decision makers for the civil community. Special state legislation for the county, together with the traditional legislative deference on local bills, gives the civil community a significant "constitutional" capability.

The civil community thus is able to maintain a form of metropolitan governance without having to create a metropolitan government. The ideal of metropolitan government would consist of a *single provision unit* for an entire metropolitan community. A local public economy on the other hand generally consists of a variety of provision units. A single unit would, almost certainly, be nonoptimal. Instead of thinking of metropolitan governance only in terms of large general-purpose governments, it is possible to think in terms of a civil community that maintains a set of rules. These rules, usually embodied in state law, become a kind of "local government constitution," a framework within which local citizens are able to constitute the provision units that become the building blocks of a local public economy.

To maintain an efficient local public economy requires structural flexibility and continued availability of alternative arrangements for provision and production.

A local public economy is not static. The sources of change include shifting citizen-consumer preferences, population growth (or loss) and developing technology. Adaptation depends on the availability of alternatives and the development of new ones. On the production side, the availability of alternatives is simply another way of saying "competition." In a public economy, however, the competition is not simply among private vendors but also between public and private vendors and among public suppliers. If competition among private suppliers is not well developed, it may be important to maintain the option of public production. Maintaining the public option may mean, in turn, not contracting out everything that could be. Maintaining a competitive environment could also mean, for a large provision unit, choosing to divide up the production of some service among different contractors rather than contracting

with a single vendor. Where there are a large number of small provision units, however, competition on the production side tends to be self-generating.

The development of new production alternatives is a key both to adaptation and to productivity improvement—it is also a source of change. This sort of development depends on *entrepreneurship*, which can be both public and private. In both cases, initiative is a necessary condition. Initiative increases with the number of possible entrepreneurs. Counting the number of police chiefs, fire chiefs, directors of public works, city administrators or managers, and school superintendents yields a crude measure, in each of these services, of the potential for public entrepreneurship in a metropolitan area. Such activity in St. Louis County, for example, is ongoing, and results in many successful joint production efforts from the formation of educational consortia for computer technology to drug enforcement programs.

The continued availability of alternatives must extend also to the provision side. Provision alternatives are sustained in several ways. One way consists of creating nested provision units with somewhat overlapping authority, e.g., municipalities within a county. A form of political competition exists between officials in overlapping jurisdictions, allowing “voter sovereignty” (analogous to consumer sovereignty) to exercise a choice. Provision alternatives can also be maintained by means of special districts. In general, the greater the number of available provision units, either in place or to be created at citizen option, the more likely it is that citizens will be able to obtain satisfaction of their preferences.

Distinguishing provision and production suggests the possibility that redistribution on equity grounds may be more effective when recipient communities are organized as separate provision units, able to make their own production choices.

A difficulty posed by a large number and variety of provision units is the emergence of fiscal disparities. Provision-side efficiency implies a degree of disparity in spending from own-source revenues. At the same time, principles of equity suggest limits to the permissible range of disparity—although no objective definition of those limits is possible.

The problem of equity in local service provision is complex. If it were possible to achieve equity simply by reducing disparities in revenue potential, then any pattern of organization that tended to increase those disparities would earn a negative rating on equity in its overall scorecard. Matters are not, however, so simple. The expenditure side of local government is at least as relevant to equity as the tax side. What is more, the efficiency with which money is spent, and the responsiveness of service provision to community preferences, intervene between expenditures and equity. Equity is an attribute of service, tax and expenditure outcomes.

Several unanswered empirical questions are at issue. How do differences among jurisdictions in a highly differentiated local public economy compare to the differences among communities or neighborhoods within local juris-

dictions, especially large cities? How do fiscal disparities among jurisdictions compare to service disparities within jurisdictions? Moreover, how is this comparison affected by intergovernmental fiscal transfers? Which pattern of organization provides for better trusteeship of intergovernmental revenues?

Future research should also study both the instruments of fiscal transfer used by overlapping jurisdictions, including state and federal grant-in-aid formulas, and the performance of provision units that receive funds. At issue is the ability of both granting and receiving jurisdictions to focus assistance on those communities in greatest need. Historically, ACIR has closely monitored metropolitan fiscal disparities. The challenge now is to expand the scope of inquiry to include neighborhood disparities within urban jurisdictions in order to render a comparative assessment and formulate an effective intergovernmental strategy for addressing both urban and suburban equity problems.

Conclusion. No one can determine the “correct” or “best” pattern of organization for a local public economy a priori. Instead of trying to determine what an ideal structure of metropolitan organization ought to look like, our efforts should go into studying the “rules of the game” to help individuals and communities better order their relationships.

REFERENCES

- Elazar, Daniel J., *Cities of the Prairie: The Metropolitan Frontier and American Politics*. New York: Basic Books, 1970.
- Kolderie, Ted, “Rethinking Public Service Delivery,” in Barbara H. Moore, ed., *The Entrepreneur in Local Government*, Washington, DC: International City Management Association, 1983.
- Niskanen, William A., and Mickey Levy, “Cities and Schools: A Case for Community Government in California,” Working Paper No. 14, Berkeley: Graduate School of Public Policy, University of California, 1974.
- Ostrom, Elinor, “Size and Performance in a Federal System,” *Publius* 6, No. 2 (Spring 1976), pp. 33-73.
- Ostrom, Vincent, and Elinor Ostrom, “Public Goods and Public Choices,” in E. S. Savas, ed., *Alternatives for Delivering Public Services: Toward Improved Performance*. Boulder: Westview Press, 1978, pp. 7-49.
- Schneider, Mark, “Fragmentation and the Growth of Government,” *Public Choice* 48 (1986), pp. 255-63.
- Stevens, Barbara, *Delivery of Municipal Services Efficiently*, Washington, DC: U.S. Department of Housing and Urban Development, 1982.
- Stein, Robert, and Dolores Martin, “Contracting for Municipal Public Services,” ACIR Working Paper, 1987.
- Whitaker, Gordon P., “Coproduction: Citizen Participation in Service Delivery,” *Public Administration Review* 40, No. 3 (May-June 1980), pp. 240-46.

Ronald J. Oakerson is a Senior Analyst at ACIR. This article was based on two forthcoming ACIR Reports: The Organization of Local Public Economies and Understanding Fragmentation: A Study of Metropolitan St. Louis. He was assisted in preparing the article by Analyst Gary M. Anderson.

State-Local Panels: An Overview

Michael Tetelman

The age of “fend for yourself” federalism has forced states to reassess their policies toward local government. As suggested by the National Conference of State Legislatures (NCSL) Task Force on State-Local Relations late last year:

One of the major challenges facing the states is to find ways to help local governments without necessarily incurring heavy financial burdens for the states We believe that state-local organizations can play a pivotal role in studying and resolving local problems.

Thirteen years ago, when the Advisory Commission on Intergovernmental Relations (ACIR) first suggested that states create their own intergovernmental panels, there were only four in existence. Today, there are 25 state counterpart organizations, and over a dozen other states have proposals under consideration.

These state-local commissions fall into three structural categories: the ACIR “model,” the local advisory panel, and the legislative organization. These agencies exhibit a wide variety in structure, purpose and achievement. Eighteen have been established by statute, and five have been created by executive order. Two are “private” organizations outside of state government. Staffing patterns range from part-time or loaned services to a complement of 20 full-time employees. Funding patterns also vary greatly—from no appropriation to over \$1 million.

This article highlights the structural variations and describes the diversity of topics that these commissions have addressed. The wide range of accomplishments reveals the tremendous potential of an organization to facilitate state-local relations.

State ACIRs

State ACIRs are markedly disparate and broadly based. There are currently 18 panels which follow the state ACIR pattern: Connecticut, Florida, Iowa, Louisiana, Massachusetts, Minnesota, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont and Washington. Although not all of these state organizations use the acronym, they generally follow the membership pattern and scope of work set out for a state ACIR. Thirteen of the commissions have been established by statute, while four have been created by executive order and one (Pennsylvania) is a nonprofit corporation.

The average size of the state ACIRs is 22 members; Massachusetts has the largest with 39, and Ohio has the smallest at 13. The membership profile exemplifies the diversity in state outlook and needs. For example, Washington’s ACIR includes the state’s Director of Indian Affairs, and special districts are represented in South Carolina and Texas. State and local education interests are represented in 11 states, and town and township officials are members in four states. Federal interests are represented in two states: two federal agency officials serve on the Texas ACIR, and the eight members of the congressional delegation (or their representatives) have been named to the Oklahoma ACIR.

State ACIR funding and staffing patterns also vary. At least nine of the organizations have a specific appropriation, and eight have full-time staff. The remainder of the ACIRs rely on staff and receive administrative support from other agencies (such as a department of community affairs). For example, the New Jersey panel, a well-established ACIR, has an appropriation of \$221,000 and a seven-person staff, while North Carolina currently has a budget of \$5,397 and one professional staff mem-

ber. Texas, through a combination of a state appropriation, publications sales, and grants and contracts, has a FY 1987 budget of \$703,768 and a 12-person staff. The Pennsylvania council relies solely on grants and contracts to underwrite its \$550,000 budget and staff of ten. The South Carolina ACIR, with four staff members, receives half of its \$239,000 budget from a state appropriation and the other half from state-shared revenues to cities and counties.

Because of their broad representation and generally flexible revenue sources, state ACIRs have been able to address a wide variety of issues and problems, and perform five major roles: (1) acting as ombudsman; (2) conducting technical training; (3) serving as an information clearinghouse; (4) formulating research; and (5) recommending policy.

In the ombudsman role, Washington's ACIR has performed admirably. In 1986, the ACIR successfully mediated a dispute between the state Department of Labor and Industries and the local government associations over workers' self-insurance. Florida's ACIR also has been an active coordinator, sponsoring forums with the Center for Policy Studies at Florida State University to develop comprehensive information on local government issues.

Technical training assistance has been one of the South Carolina ACIR's strong points. In 1985, the ACIR sponsored a conference in conjunction with the University of South Carolina as part of a training program for local officials. The Texas ACIR publishes a guide to state laws for city officials, and the Pennsylvania council conducts training and technical assistance programs for state agencies.

A number of state ACIRs maintain extensive data bases. For example, Texas has established a business/industry data center to assist economic and development specialists. The Texas ACIR also has coordinated with Texas A&M and the University of Texas to collect data on demographic and cultural changes. Florida maintains a general data base on financial information, ranging from local government finances to outstanding bond issues. The Pennsylvania council has developed a data base for an early warning system to detect local fiscal stress.

Undertaking research and subsequent policy recommendations most clearly shows the diversity, common issue areas and impact of the state ACIRs. Several organizations have produced in-depth infrastructure reports covering such broad topics as street and water system improvement (Iowa) and innovative financing techniques (South Carolina). Examples of commonly shared policy concerns include tort reform and liability insurance (Florida, Iowa, Minnesota, Missouri, New Jersey and Texas), the impact of the decline in federal aid on local governments (Florida, Missouri, Pennsylvania, South Carolina and Tennessee), home rule (Connecticut, Florida, Iowa, Missouri, New Jersey, South Carolina and Washington), and state mandates (Florida, Iowa, New

Jersey, Ohio, Pennsylvania, South Carolina and Vermont).

State ACIRs also have responded to more specialized needs. One such area of concern is waste disposal. For example, the Texas ACIR has worked with the state Nuclear Waste Programs Office and the Texas Low-Level Water Disposal Authority to implement effective local government relations. In 1985, Washington's ACIR coordinated with the state Department of Ecology to develop guidelines for waste disposal facility operation and management. The recommendations were incorporated into legislation, passed the legislature, and were signed by the governor.

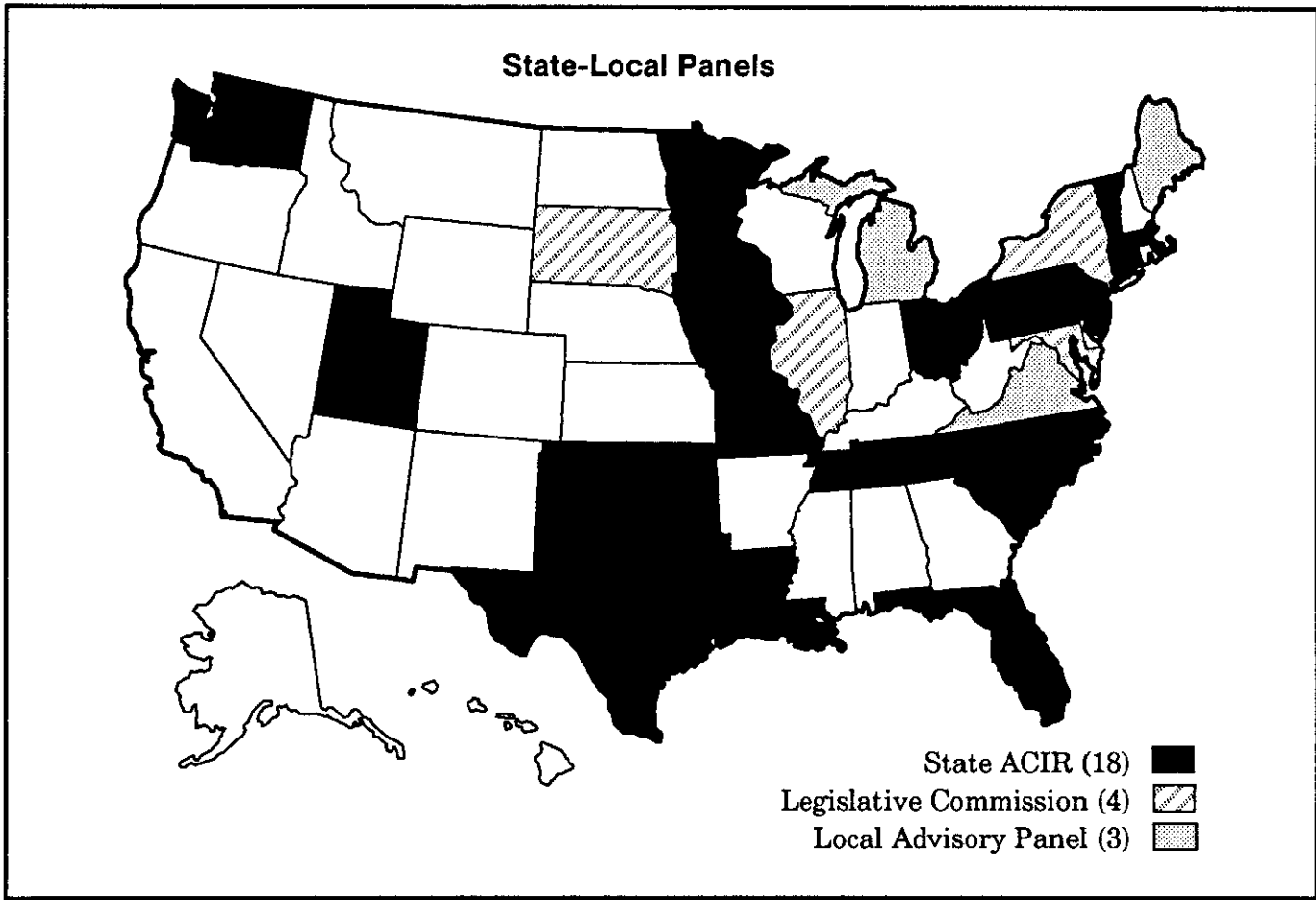
In 1985, Missouri's Commission on Local Government Cooperation made recommendations on liability insurance which led to passage of legislation forging the Public Entity Risk Management Fund. This fund enables Missouri's local governments to obtain liability coverage through a state-administered insurance pool program. The Tennessee ACIR's 1986 series of tax studies led to the equalization of taxing districts, improvement in appraisal ratio studies, and development of a current value index. New Jersey's Commission on County and Municipal Government developed legislation authorizing municipalities to allow counties to construct flood control and storm drains of any type they choose.

State ACIRs' success in recommending policy underscores the national ACIR observation about the difference in impact among advisory organizations: This distinction—between commissions which are broadly representative and have the resources to initiate policy recommendations, perform research, and follow up on recommendations, and those which serve only as a forum for discussion of intergovernmental issues raised primarily by local officials—is the most important difference between current state organizations.

Local Advisory Panels

The three local advisory groups are fairly uniform in membership and purpose. Their members are predominantly local representatives, and their primary focus is advising the governor. The Virginia Local Government Advisory Council is a statutory agency chaired by the governor. The Maine Municipal Advisory Council is an executive order agency whose chairman is appointed by the governor. The Michigan Council on Intergovernmental Relations is an organization created by a contractual agreement among the four local government associations, and the chairmanship is rotated annually among the organizations.

The average size of the local advisory bodies is 15 members, with a high of 26 in Virginia and a low of eight in Michigan. The Maine panel has 12 members. Staffs and funding are relatively modest. Maine's advisory council liaison, for example, is the Commissioner of Transportation, and members' expenses are paid by their respective associations. Michigan's council utilizes staff from the four local government associations, as



needed. Each organization also is assessed an equal share to underwrite expenses. Only the Virginia council has an assigned staff person and a specific state appropriation (\$10,000).

Local advisory boards perform a vital service—to provide a forum. They serve as a “local voice” in discussing a broad range of specific issues such as taxation, education, social services, land use, zoning, solid waste disposal, community development and the environment.

Each of the panels has been successful in bringing attention to issues and problems of importance to local governments. Yet, the very design of these panels makes them somewhat limited. Their structure does not take into account an increasingly important participant in the intergovernmental system—the state legislature. And, the availability of only very modest staff and financial resources militates against their being able to undertake any long-term or sustained project or activity.

Legislative Organizations

All four of the legislative organizations are statutorily based agencies of the state legislature. The Illinois, Maryland and New York panels are comprised entirely of legislators, with equal representation from each chamber. The South Dakota commission is a “permanent committee” of the Legislative Research Council and includes four local government officials.

Each of the panels has staff and budget resources, ranging from one staff person and a \$5,000 annual appropriation in South Dakota to a 20-person staff and a budget of about \$1 million in Illinois. The Illinois budget includes support for a four-person staff in the legislature’s Washington, D.C. office.

As legislative entities, these organizations are well positioned to have an important role in their respective state’s policymaking processes. Each panel has addressed and proposed recommendations on a wide variety of topics—from day care to housing and from annexation to federal aid. Two of the commissions, in Illinois and New York, also have developed extensive fiscal data bases.

For example, Illinois’ commission has conducted extensive analyses of federal grants, state mandates and education. The commission also has sponsored conferences on issues ranging from child care services to affordable housing. Their recommendations have resulted in wholesale changes in such areas as child protection enforcement (1981-84) and hazardous waste (1982-83). Recommendations from New York’s commission led to the 1985 enactment of significant revisions in the local government general purpose aid program. The New York panel also has issued a number of extensive studies focusing on the delivery of local services, developed a catalog of federal and state aid programs, and sponsored several

statewide conferences and seminars. The Maryland committee prepares an annual summary of major legislative proposals, monitors congressional and federal administrative developments, and has assumed the role of the former intergovernmental cooperation commission in interstate matters. The South Dakota commission has studied such diverse issues as home rule, which led to the adoption of a constitutional amendment; payments in lieu of taxes and the classification of state park and game lands; court clerks' salaries; real property valuation; day care services; and annexation, which resulted in a complete overhaul of the state's annexation process.

While three of the panels (excluding Maryland) have no formal mechanism to involve state executive officials, the Illinois, Maryland and New York panels have begun to include local officials more actively in their deliberations. The New York commission utilizes a "working group" of the local associations as a sounding board to review and comment on research projects, and regularly contributes articles to these associations' newsletters. The Illinois commission publishes a newsletter, is responsible for the state's block grant advisory committee, and regularly utilizes local officials as advisors to the commission.

In response to a measure sponsored by the Maryland committee, a statutory advisory group has been reactivated and reorganized to involve both state executive and local government officials, and to focus specifically on state-local relations.

Conclusion

The nature of today's federalism debates and global economy place even greater emphasis on the need for strong state governments and a sound state-local partnership. State ACIRs and similar types of intergovernmental panels, demonstrating continuity, capability and ever-increasing credibility, have a very necessary role to play during this critical period for governments at all levels, and will continue to have a positive effect on state-local relations.

Michael Tetelman is a student at Yale University, and served as an ACIR Intern during the summer of 1987.

MICROCOMPUTER DISKETTE SERIES

State-Local Government Finance Data—These diskettes developed by ACIR provide access to Census finance data in a format not previously available, and are designed for ease of use. State-by-state data for 66 revenue and 70 expenditure classifications, population and personal income are included on each two-diskette set for state and local governments combined, state government only, or all local governments (aggregated at the state level—see below for data on individual cities and counties).

Format: *Lotus 1-2-3* or *Symphony*

Price: \$150 (three-year set), \$90—FY85, \$50—FY84, \$25—FY83; FY86 available December 1987.

Government Finance Data for Individual Cities and Counties—The data are available for substantially all cities over 25,000 population, all counties over 50,000, and selected counties between 25,000 and 50,000. All data are for fiscal 1984. Each two-diskette set contains data for population, 62 types of general revenue, 30 types of general expenditures, four categories of debt, 14 revenue and expenditure categories of locally operated government utilities, and seven categories of local retirement system finances. The diskettes may be purchased by region or as a 12-region set as follows:

New England (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont—117 cities, 37 counties)

Mideast (Delaware, Washington, DC, Maryland, New Jersey, Pennsylvania—103 cities, 95 counties)

New York State (76 cities, 49 counties)

Great Lakes I (Michigan, Ohio—122 cities, 101 counties)

Great Lakes II (Illinois, Indiana, Wisconsin—157 cities, 133 counties)

Southeast I (Kentucky, Tennessee, Virginia, West Virginia—41 cities, 137 counties)

Southeast II (Georgia, North Carolina, South Carolina—98 cities, 153 counties)

Southeast III (Alabama, Arkansas, Florida, Louisiana, Mississippi—40 cities, 138 counties)

Plains (Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota—78 cities, 114 counties)

Southwest (Arizona, New Mexico, Oklahoma, Texas—94 cities, 117 counties)

Rocky Mountain/Far West (Colorado, Idaho, Montana, Utah, Wyoming, Nevada, Oregon, Washington, Alaska, Hawaii—79 cities, 91 counties)

California (168 cities, 43 counties)

Format: *Lotus 1-2-3* or *Symphony*

Price: \$850—(complete set) or \$90—(per region); FY85 data available September 1987.

Just Released

State Government Tax Revenue Diskette, FY83-86—To a considerable extent, the State Government Tax Revenue Diskette contains the same revenue fields as the State-Local Government Finance Diskettes described above. However, the State Tax Diskette is distinct from the state-local series in the following ways: 1) Tax data on state governments are released by the U.S. Bureau of the Census approximately six months prior to the entire government finance series (which includes various categories of federal aid, user charges, miscellaneous general revenue as well as tax revenue and expenditure data). The State Government Tax Diskette makes the state tax portion of the government finance series available to the public a half of a year earlier than entire state-local government finance series. 2) Because the data base on the State Government Tax Diskette is smaller than on the state-local government finance series, four years of data (FY83-86) are included in a single diskette. 3) Unlike the state-local finance series or the city-counties series, the State Government Tax Diskette does not contain any information on local governments nor does it contain any expenditure data.

Format: *Lotus 1-2-3* or *Symphony*

Price: \$60 (for FY83-86, inclusive).

State Tax Resources and Utilization—This series is based on the data used to produce ACIR's annual publication **Tax Capacity of the States** (also called the Representative Tax System, or "RTS" for short). The disks, which contain data not published in the annual report, permit users to monitor changes in tax bases and revenues, compare and contrast states' rates, and project future revenues. The data base includes the dollar amount of the state-local tax base, state-local tax collections, statutory state tax rates, and effective tax rates. Data for selected years are presented for five other indices. Most data covers 1981-84.

Format: *Lotus 1-2-3*, Release 2.00 or later (contains graphs not available on earlier releases), releases 1 or 1A and *Symphony*

Price: \$200

Please mark your selections on this form and return it *with your check or money order to:*

**ACIR Publications,
1111-20th Street, NW, Washington, DC 20575**

For questions regarding orders contact:
Betty Smith (202) 653-5640

Type	Quantity	Format (specify <i>Lotus</i> or <i>Symphony</i> format)	Price	Amount
State-Local Government Finance Diskettes				
(Complete set, FY83-85)	_____	_____	\$150	_____
FY 1985	_____	_____	\$ 90	_____
FY 1984	_____	_____	\$ 50	_____
FY 1983	_____	_____	\$ 25	_____
Cities and Counties (Complete Set)				
Region _____	_____	_____	\$850	_____
Region _____	_____	_____	\$ 90	_____
Region _____	_____	_____	\$ 90	_____
State Government Tax Revenue Diskette				
FY 1983-86, inclusive	_____	_____	\$ 60	_____
State Tax Resources and Utilization				
(Specify <i>Lotus 1-2-3</i> , Version <u>1</u> , <u>1A</u> , or <u>2</u> or <i>Symphony</i>)	_____	_____	\$200	_____

ORDER TOTAL—AMOUNT PAYABLE _____

INCLUDE CHECK OR MONEY ORDER PAYABLE TO ACIR

Name (print or type) _____

Organization _____

Address _____

City _____ State _____ Zip Code _____

Phone () _____

A Special Report

Financing the Nation's Highways

On March 20, 1987, ACIR approved three recommendations pertaining to highway financing. The recommendations call for: (1) stabilizing federal highway financing as an immediate goal; (2) improving state-local cooperation in highway planning and financing as an intermediate goal; and (3) devolving all non-Interstate, federally aided highway programs and revenue bases to the states as a long-range goal.

ACIR has just released its policy report on the subject—*Devolving Selected Federal-Aid Highway Programs and Revenue Bases: A Critical Appraisal*. According to the report, written by Mark David Menchik, turnbacks—the simultaneous devolution of a federal responsibility to states and localities along with the relinquishment of a federal revenue base—are a potentially promising mechanism to decentralize the American federal system and to achieve a better assignment (i.e., a “sorting out”) of responsibilities and revenues to individual governments.

ACIR's research on questions of decentralization and sorting out revenues and responsibilities goes back more than a decade, and the Commission recently endorsed turnbacks in a general way. In its 1986 report *Devolving Federal Program Responsibilities and Revenue Sources to State and Local Governments*, ACIR suggested criteria to assess sorting-out mechanisms, established principles for program turnbacks, and examined the choice of revenue bases to be given to state and local governments. The 1986 report also raised certain con-

cerns and suggested further consideration of the turnback concept before its implementation. The current report is a further exploration of the concept. Following are excerpts from the Introduction to the report.

Highways were considered an appealing possibility for turnbacks because state and local governments already finance many important roads; indeed, these governments plan, build and operate essentially all the streets and roads in the nation. The devolved roads would be financed—as most roads are—by a tax on motor fuels, in this case a share of the current federal tax base. With state and local governments freed from federal requirements, some of which are unsuitable and expensive, turnbacks offer the possibility of more flexible, more efficient and more responsive financing of those roads that are of predominantly state or local concern. Investment in highways could be matched more closely to travel demand and to the benefits received by the communities served by particular roads.

However, given that some very important benefits of the nation's highways are national in scope, it is important to consider which highway functions are most appropriate for devolution. At the same time, given the major role the federal government has played in highway finance since 1916, as well as the complex interplay between state and local highway concerns, any movement toward road and highway devolution must proceed with care and deliberation.

Highway turnbacks potentially can add both certainty and flexibility—as well as efficiency and accountability—to the financing of the nation's transportation infrastructure, as well as to the design and operation of both new and modernized roads. Turnbacks can improve more than roads. They offer an opportunity to reform an important component of fiscal and political federalism. Decentralization of specific highway programs can also be part of a larger “sorting out” of program responsibilities that would focus the attention and funding of the federal government on those national transportation issues which it is best qualified to address.

Any turnback proposal must answer some important questions, however, because highway turnbacks would significantly change the political and fiscal authority for roads, not simply alter highway financing. For example, the flexibility of funding and program operation that turnbacks would effect means that some states might not maintain existing spending priorities. A state government might cut spending so much as to reduce the level

of highway services (despite efficiency improvements), particularly if the state faced hard times or a tight budget. Under the present federal matching grants, state-local funding is matched at a very favorable rate—at least three federal dollars for each state-local dollar. This matching rate provides a strong incentive to continue the state-local contribution. Similarly, if state-provided highway funds were cut, or if urban transportation or local growth concerns were given short shrift in a state house, a turnback might strain state-local relations.

A separate staff report on highway issues was developed as a result of concern over the third ACIR recommendation—devolving all non-Interstate federally aided highway programs to the states as a long-range goal. This recommendation was approved with the understanding that, to be effective, it would require that state and local governments address important issues of state-local relations in highway planning, financing and construction. National public interest groups representing local officials expressed concern to the Commission that state governments would not be fully responsive to local road and highway needs after devolution.

As a first step in exploring the feasibility of implementing the devolution recommendation, ACIR staff conducted a preliminary investigation of state-local relations and of the degree and quality of consultation and cooperation in highway planning, financing and construction.

A questionnaire was mailed to the directors of all 13 state associations of towns and townships, 49 state municipal leagues, 47 state associations of counties, and 38 state associations of regional councils. The results of the survey were issued in *Local Perspectives on State-Local Highway Consultation and Cooperation: Survey Responses from State Associations of Local Officials*. The total response rate was very good—75.5 percent. Of 147 questionnaires mailed, usable responses were received from 69.2 percent (nine) of the town and township directors, 67.3 percent (33) for the state municipal leagues, 76.6 percent for the county associations, and 86.8 percent (33) of the regional councils associations.

The results of the survey are not intended to be definitive, but to gauge the climate of state-local relations on highway matters. The survey suggests that there is, for the most part, a satisfactory climate of cooperation and consultation. General findings are as follows:

- Highway issues are as important as other issues;
- State officials consult with local officials often enough;
- Federal officials do not consult with local officials on highway matters very often;
- States frequently require regional but not necessarily local approval of highway projects;
- States generally notify local officials before initiating projects;

State officials involve local officials somewhat actively in planning;

Local officials can usually influence state officials to modify projects;

Local officials are less likely to be able to convince federal officials to modify projects;

Local officials are somewhat-to-very satisfied with state-local consultation procedures;

Many local officials would prefer more consultation;

State-local cooperation is rated good to fair;

The level of state-local highway cooperation has improved slightly during the last five years;

A transfer of federally aided highway programs to states would not result in less overall state highway spending; and local areas would often do better but rarely do worse under a highway "turnback."

In sum, a generally good foundation for state-local highway consultation and cooperation exists in most areas of the nation. Although there are state-local relations issues to be dealt with in the implementation of any transfer of federal-aid highway programs to the states, the environment in most states appears to be conducive to addressing these issues.

Devolving Selected Federal-Aid Highway Programs and Revenue Bases: A Critical Appraisal. Report A-108, September 1987, 68 pages, \$10

Local Perspectives on State-Local Highway Consultation and Cooperation: Survey Responses from State Associations of Local Officials. Report SR-4, July 1987, 48 pages, \$5.00

(See page 39 for order form.)

The Return to Fend-for-Yourself Federalism: The Reagan Mark

John Shannon
Executive Director

Introduction

When compared with the states of other major democratic federations—Australia, Canada and West Germany—American state governments operate in a fairly harsh and politically risky fend-for-yourself fiscal environment. While the long road to stronger state revenue systems in the United States has been paved with the political bones of former governors, state officials in the other major federations have been more successful in enlisting the help of their central governments in raising revenue.

- The Australian states derive most of their revenue from unconditional federal grants negotiated periodically by federal and state policymakers.
- Most of the revenue that flows into the coffers of the German states is the product of tax sharing arrangements worked out with the central government in Bonn.
- In the not-so-distant past, the Canadian provinces also received powerful revenue raising assistance from Ottawa in the form of full tax credits (political heat shields) that permitted the provinces to re-enter the income tax field after World War II at virtually no political risk to their elected leaders—an innovative federal-state tax sharing program.

The distinctive “fend-for-yourself” brand of American fiscal federalism is also underscored by the fact that not even the poorest states in

our Union receive special help from Washington. This hands-off policy with respect to interstate equalization stands out in sharpest contrast to the Australian, Canadian, and West German policies that provide special (equalizing) aid to their poorer states.

Three Distinctive Features

The American brand of federalism is marked by diversity, competitiveness, and resiliency, and the Reagan Administration’s contribution boils down to this—it has helped give our pre-Great Society brand of fend-for-yourself federalism a new lease on life.

Diversity—Providing Choices within the System. Because all states and most localities must raise most of their revenue, there are great variations in state and local tax and expenditure policies in the United States. These fiscal differences—which provide real choices for citizens and business firms—are found in all regions of the country.

In New England: New Hampshire has neither a broad-based personal income tax nor a general sales tax, and leans heavily, therefore, on the local property tax. The neighboring states make use of all three of these revenue producers.

In the Mid-Atlantic Region: State and local expenditures (per capita) for New York are far above average, while Pennsylvania’s expenditures are definitely below the national average.

In the Great Lakes Region: There is a real difference between the progressive tax policies of Minnesota

and Wisconsin and those of the more conservative states of Illinois and Indiana.

In the Far West: An interesting choice exists between Washington State, where voters have repeatedly voted down an income tax, and Oregon, where voters are strongly opposed to a sales tax.

A Striking Interregional Difference: New England states make above average use of the property tax and place heavy emphasis on local control. In contrast, southern states make rather anemic use of the property tax and favor more centralized state financing.

These great differences can be traced largely to three factors: (a) widespread variations in fiscal capacity, (b) substantial differences in voters’ tastes for both public services and taxes to support them, and (c) a federal hands-off tradition with respect to equalizing intergovernmental fiscal disparities.

These great state and local fiscal variations are viewed quite differently by liberals and conservatives. Liberals often view these fiscal differences as disparities, and call for equalizing federal and state actions. Most conservatives tend to view these variations as diversities that should not be wiped out by redistributive federal and state actions. For the supporters of decentralized government, one of the toughest policy issues is this: When does a “good diversity” become a “bad disparity” that necessitates corrective federal and/or state action?

However one views these variations, one thing is clear—state and

local boundaries do make a difference in the American federal system. In the United States, "You pays your money and you takes your choice."

Competitiveness—Stabilizing the System. If diversity is one of the hallmarks of American fiscal federalism, what prevents our 50 state-local systems from becoming too diverse? Again, the quick answer: Competition for jobs and economic development appears to be an important factor in preventing our states from drifting too far apart.

The 50 state-local systems behave much like ships in a naval convoy. Because they are spread out over a great area, there is considerable room for each state to maneuver within the convoy. Two considerations prevent a state from moving out too far ahead or lagging too far behind.

1. If a state moves out too far ahead of the convoy on the tax side, it becomes increasingly vulnerable to tax evasion, taxpayer revolts and, most importantly, to tax competition for jobs and investments from other states.
2. If a state-local system lags too far behind the convoy on the public service side, it becomes increasingly vulnerable to quality of life and economic development concerns—poor schools, poor roads and inadequate support for high-tech operations.

It should be noted that this competition issue is given different spins. Conservatives are more apt to focus on the price (tax) side of the competition coin and warn that high tax levels in general and highly progressive tax policies in particular can drive footloose upper-income taxpayers and businesses to jurisdictions with more salubrious tax climates. There is no doubt that this message is now causing many of the northern liberal states to scale down sharply their progressive tax rates. In the last two years, New York, Wisconsin, Minnesota, Delaware and West Virginia have pulled their top personal income tax rates down from the double-digit category into the single-digit range.

Liberals, on the other hand, are more inclined to play down the importance of state and local taxes in business location decisions, and focus instead on the public service side of the competition coin. They contend that good schools, well-financed physical infrastructure and quality of life amenities figure importantly in the value systems of high-tech policymakers. There also is no doubt that these concerns are causing some lagging states to upgrade their educational systems.

This competitiveness factor points up another distinctive feature of American fiscal federalism. The other major federations provide special assistance to the poorer states to keep interstate tax and spending differentials from becoming too great. In the United States, however, we rely on interjurisdictional competition for economic development to perform this stabilizing role—simultaneously forcing high-tax states to slow down, while prompting low-spending states to accelerate on the public service side of the ledger, especially for education and physical infrastructure.

This federal hands-off policy with respect to interstate fiscal equalization will come under increasing criticism now that the poorer regions of the nation are no longer slowly closing the rich state-poor state gap, as they did between 1929 and 1979. In fact, since 1979, that gap has slowly widened because the wealthier states located in New England and the mid-Atlantic regions are once again growing at a faster rate than most states in the other regions, especially the south. Without outside help, can the poorest states and localities be competitive? This issue poses another tough equity question for fend-for-yourself federalists.

No matter how the equity question is resolved, one thing appears fairly certain—the competition issue is not going to go away. In fact, competition for jobs and investment dollars is likely to become increasingly fierce because: (a) the U.S. economy is becoming more and more open to global competition and (b) the recent and sharp cuts in federal income tax

rates have substantially reduced the value of state and local tax deductions on the federal 1040. This development, in turn, is bound to increase the sensitivity of upper-income taxpayers and business firms to interstate and interlocal tax differentials.

The memory of the taxpayers' revolt and the squeeze on the federal budget also put a keener edge on interjurisdictional competition for jobs and economic development. In the post-Proposition 13 era, major tax hikes are still quite risky and the prospects for more aid from Washington are almost nil. Thus, the growth in the tax base generated by economic development stands out as a most attractive method for revenue enhancement. It should also be emphasized that bringing in new jobs and retaining existing jobs are becoming two of the most important tests of a successful state or local administration. In view of these political realities, it is highly unlikely that many governors or mayors would be willing to sign nonaggression pacts with their counterparts in neighboring jurisdictions.

Resiliency—Keeping the System Going. Now for the third distinctive feature of American federalism—the resiliency of state and local governments. In my judgment, the most underrated feature of our federal system is clearly the demonstrated ability of our 50 states and thousands of localities to absorb and then to rebound from regional and national shocks.

The fiscal resiliency of the 50 state systems can be easily documented. Since 1978, the 50 state-local systems have absorbed the shock of the three Rs:

Revolt of the taxpayers—Proposition 13, et al.

Recession—the 1981-82 economic downturn, which was the sharpest since the Great Depression.

Reduction in federal aid flows.

More recently, many of the states have been hit hard by regional downturns. The farm states have been pinched severely by the agricultural recession and the energy states of the southwest have taken hard hits

from the sharp drop in oil prices. Yet, despite all these shocks, the states as a collectivity are doing far better than most students of state and local finance would have predicted a few years ago.

The resiliency of our 50 state-local systems also comes through clearly when the fiscal fortunes of the federal government and the states are compared over time. If a modern Rip van Winkle had fallen into a deep sleep at the end of the Korean War and awakened recently, he would not believe the changes that have transformed our intergovernmental system. By the 1950s, the federal government towered over the states and localities, its revenue system massively strengthened first to combat the Great Depression and then to finance World War II and the Korean War. While Washington appeared all powerful, the states were being described as the "fallen arches" of the American federal system.

Now, the states and localities are both playing the activist roles in education and welfare reform, and collecting well over one-half trillion dollars from their own resources. Even more surprising to the modern Rip van Winkle, however, would be the spectacle of the federal government mired down deeply in massive budget deficits because the Congress and President Reagan cannot agree on a budget balancing strategy.

Although the diversity and competitiveness features raise equity questions, the resilience of states and localities poses no such problem. The ability of states and localities to bounce back is both an unqualified virtue and the most significant feature of American fiscal federalism.

The Reagan Mark

The creation of a fiscal environment that forces state and local officials to become more self-reliant stands out as the primary impact the Reagan Administration has had on our federal system. Three developments support this verdict.

- Federal aid as a percentage of total state-local outlays has dropped from 25% in 1981 to an

estimated 19% for FY 1987. More significantly, this downward trend (which actually started in the latter half of the Carter Administration) reverses the long 1955-78 Affluent/Great Society trend in which federal grants grew at a consistently faster clip than did state-local own source revenue. (See *Exhibit 1*.) As noted earlier, in 1987, state and local governments will collect from their own sources well over one-half trillion dollars—about five times the amount that they will receive from Washington.

- The federal government did not provide countercyclical aid when states and localities were buffeted in 1981-82 by the sharpest economic downturn since the Great Depression, nor has the federal government provided special aid to the state and local governments in the farm states severely pinched by the agricultural recession or to the state governments to the southwest hard hit by the dramatic drop in oil prices.* This hands-off Reagan policy not only stands out in sharp contrast to the countercyclical action taken by previous administrations, it also sends up a powerful fend-for-yourself message to the states. Over half of the states have now created their own "rainy day" funds to help cushion the shock of an economic downturn.

- The Reagan Administration has also maintained the traditional federal policy with respect to the poorest states—no special (equalizing) aid. Moreover, citing the federal budget squeeze, the current Reagan Administration

*While the federal government was unwilling to prop up sagging state and local revenues in the farm belt, it was willing to shore up the sagging income of many farmers. Farm "stabilization" aid rose from \$9.8 billion in 1981 to \$29.6 billion in 1987. Thus, states and localities in the farm belt region were at least indirect beneficiaries of this "bubble up" form of countercyclical aid.

pushed successfully for the elimination of the General Revenue Sharing Programs for localities—an unconditional assistance program with some equalizing power.

The determination of the Reagan Administration to shift more financing responsibility back to the states and localities received powerful support from the three Ds—deficits, defense and demographics (social security and medicare). These three federal budgetary realities of the 1980s would have made it difficult for even a President Lyndon Johnson to maintain—let alone expand—the federal fiscal presence on the state-local front.

This gradual decentralization process is not the neat, 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, fend-for-yourself federalism is slowly effecting a "sorting out" of sorts. Federal policymakers 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 a \$2.4 trillion debt.

To sum up, three significant changes have emerged from the interaction of the federal budget crisis and the Reagan decentralist philosophy.

- A sea change has occurred in the expectations of state and local officials—when forced to search for "new money," they once again look to their own resources.
- The recent burst in state activism and the remarkable demonstration of state-local fiscal resiliency can be attributed in no small part to this return to fend-for-yourself federalism.

- Federalists no longer worry that states and localities will become "federal aid junkies."

The Near Future. What is the prognosis for this tough brand of fend-for-yourself federalism after Ronald Reagan leaves the Presidency? This inquiry takes on added significance because most of the federal aid programs (over 400) are still intact, albeit in a semi-frozen condition.

In my estimation, the future of Reagan-type federalism will be shaped more by the financial condition of the federal Treasury than by the political philosophy of the next President. Because deep slashes in federal spending appear highly unlikely, the condition of the federal Treasury will be largely determined by whether or not Washington policymakers gain access to a major new tax—a national sales tax or value added levy.

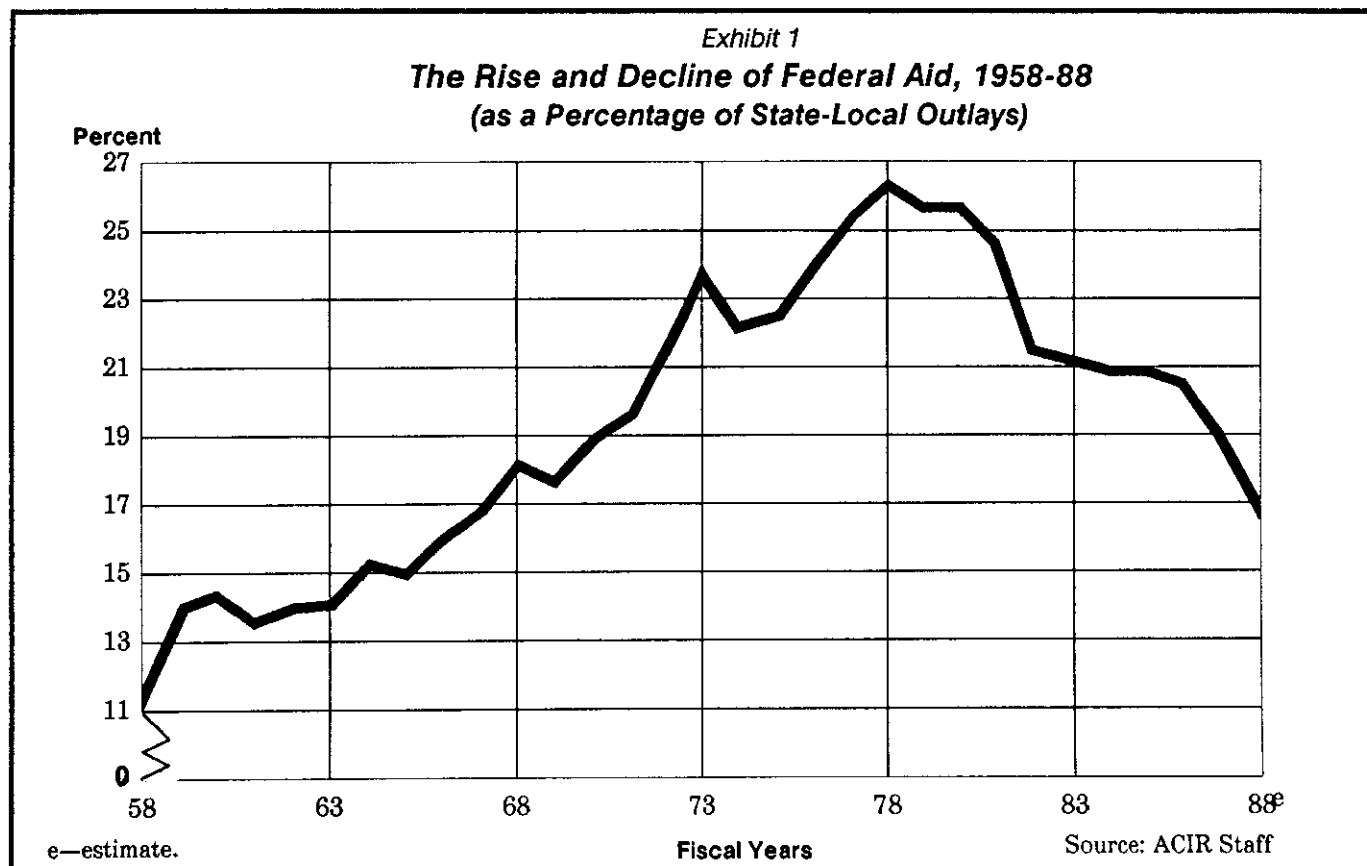
The prospects for finance-it-yourself federalism remain fairly bright if Washington fails to

strengthen its revenue system in a very major way. In that case, the federal budget squeeze will continue for some time to come and state and local officials will have no alternative but to keep on tapping their own sources when confronted with the need for additional revenue to finance their own new initiatives.

On the other hand, if Washington gains access to a major new source of revenue, then the prospects for the continuation of fend-for-yourself federalism become cloudy. In that case, the squeeze on the federal budget will be relaxed and Washington should once again be in a fairly good position to push more funds into the state-local arena—with more federal expenditure strings attached. Why? Because there no longer exists real political and judicial restraints on federal entry into areas once considered the exclusive domain of the states. With the withering of all but the fiscal constraint, more than ever federalism is finance.

The Recent Past. While a prognosis for even the near future is uncertain, the experience of the recent past is reassuring. The demonstrated ability of elected state and local leaders in our decentralized system to cope with adversity and to fend for themselves stands out in sharp contrast to the rigidity of a unitary state. The great English historian Thomas Carlyle described the highly centralized government in 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 during the 1980s the intergovernmental system was marked by growing fiscal distress at the center and remarkable resiliency at the extremities.

This verdict serves as a most telling argument in favor of our decentralized federal system and vindicates the wisdom of the framers of the Constitution in Philadelphia 200 years ago—that of not placing all of our policy eggs in Washington's basket.



And Briefly: Books

Here, from the ACIR back list, is a collection of publications on federalism and politics in the 1980s particularly appropriate for the Constitutional Bicentennial.

The Transformation in American Politics

By the 1980s it was clear to virtually all observers that the traditional role of American political parties has been substantially altered. This report suggests that one way of restoring constraints in the national government is by revitalizing state and local political parties. It examines the decline in voter identification with parties, the proliferation of special interest groups, the rise of the independent politician, television's nationalizing influence, the revolution in campaign finance, and the growth of the national parties at the expense of state and local organizations.

(A-106) 1986 382 pages \$10
(B-9R) 1987 76 pages \$6
In-Brief Version)

A Framework for Studying the Controversy Concerning the Federal Courts and Federalism

Many observers have cited a substantial alteration in the states' position in the federal system over the past 50 years through federal court decisions that have disrupted the way state and local governments fulfill certain functions, e.g., correctional systems, mental health care, legislative apportionment, criminal prosecution and defense procedures. This report provides an analytical framework to evaluate the federalism consequences of the effects of judicial decisions on state policy.

(M-149) 1986 75 pages \$3

Reflections on *Garcia* and Its Implications for Federalism

This report explores the implications for the future of federalism of the Supreme Court decision in *Garcia v. San Antonio Transit Authority* that it will no longer play "umpire" of the federal system, leaving a determination of the precise scope of national authority in the hands of Congress. The analysis examines the broad constitutional context of *Garcia* in an effort to learn what, if anything, has gone wrong in the workings of the system with respect to federalism. A range of possible state responses and a variety of approaches to constitutional reform are suggested.

(M-147) 1986 56 pages \$3

Emerging Issues in American Federalism. Papers Prepared for ACIR's 25th Anniversary

The Condition of American Federalism. Hearings Held in ACIR's 25th Anniversary Year

Since 1959, the ACIR has pursued its primary responsibility: proposing ways to improve the federal system that are based on research, analysis and deliberate consideration by concerned participants from many different settings. The silver anniversary year offered an appropriate opportunity to give attention to the Commission's past actions and their importance to contemporary and future federalism. These volumes reflect the insights and conclusions of elected and appointed officials, public interest groups, scholars and citizen groups, supplying ample evidence that the philosophy and actions underlying federalism—the unique creation of the U.S. constitutional system—are relevant for Americans' lives.

(M-143) 1985 86 pages \$5
(M-144) 1986 37 pages \$5

Regulatory Federalism: Policy, Process, Impact and Reform

Beginning in the early 1970s, a new development surfaced in inter-governmental relations: the emergence of a host of regulatory programs aimed at or implemented by state and local governments. Starting with an analysis of constitutional and judicial perspectives, this volume examines developments in environmental protection, elementary and secondary education, and higher education.

(A-95) 1984 326 pages \$5

A Crisis of Confidence and Competence

The Condition of Contemporary Federalism: Conflicting Theories & Collapsing Constraints

An Agenda for American Federalism: Restoring Confidence and Competence

These are part of a ten-volume study—*The Federal Role in the Federal System: The Dynamics of Growth*—which examined the present role of the federal government; reviewed theoretical perspectives on federalism, assignment of functions and governmental growth; and identified historical and political patterns in the development and expansion of national government domestic activities. (The other seven volumes are case studies of governmental functions.)

(A-77) 1980 160 pages \$5
(A-78) 1981 251 pages \$5
(A-86) 1981 188 pages \$5

The Future of Federalism in the 1980s

At the opening of the Bicentennial decade of the U.S. Constitution, ACIR believed that the future of American federalism was as crucial a topic for discussion as it has been at

various points throughout its 200-year history. Reviewing fundamental principles, this volume asks in what direction we might be expected to proceed throughout the decade. ACIR proposed a middle-range approach to reform to relieve the "overloading" of the inter-governmental network.

(M-126) 1981 136 pages \$5

Studies in Comparative Federalism

In 1976, Congress asked the ACIR to study and evaluate the allocation and coordination of taxing and spending authority between levels of government, including a comparison with other federal systems. These studies conclude that fiscal federalism in the U.S. is less formally structured, more fragmented, and consequently less neat and orderly than in other countries—a reflection of the heterogeneous and diverse nature of U.S. society and government.

Canada (M-127), 1981, 95 pages, \$3: **West Germany**(M-128), 1981, 89 pages, \$3: **Australia**(M-129), 1981, 60 pages, \$3: **Australia, Canada, the US and West Germany**(M-130), 1981, 99 pages, \$5.

Intergovernmental Perspective (\$3 per issue)

American Constitutions: 200 Years of Federalism (Spring 1987, Vol. 13, No. 2)

Federalism in 1987: Challenges and Choices (Winter 1987, Vol. 13, No. 1)

Garcia v. San Antonio: Federalism under Fire? (Spring/Summer 1985, Vol. 11, No. 2/3)

1984 Not a Good Fiscal Year for "Big Brother." (Winter 1985, Vol. 11, No. 1)

Coming Soon

The Transformation in American Politics: Implications for Federalism—In Brief, B-9, revised, September 1987, 76 pp. \$6.00

Is now the time for all good federalists to come to the aid of the parties? The 1985 Supreme Court decision in *Garcia v. San Antonio Metropolitan Transit Authority* suggests that it is. The Court held that it is the political process, not the judiciary interpreting the Constitution, that affords states and localities their rights in the American federal system. Where are the institutional pressures forcing federal officials to guard the constitutional rights of the states?

This is an updated summary of ACIR's 1986 study on the transformation of political party structure and the pronounced decline in party influence—especially at the state and local levels—and their effect on intergovernmental relations.

De Facto New Federalism in 1983. (Winter 1984, Vol. 10, No. 1)

The Constitution, Politics and Federalism. (Summer 1983, Vol. 9, No. 3)

Federalism in 1982: Renewing the Debate. (Winter 1983, Vol. 8, No. 4)

Perspectives on a New Day for Federalism. (Spring 1982, Vol. 8, No. 2)

1981: A Threshold Year for Federalism. (Winter 1982, Vol. 8, No. 7)

1980 Spotlights Rebalancing Federalism. (Winter 1981, Vol. 7, No. 1)

ORDER FORM

Mark your selections on this form and return

WITH CHECK OR MONEY ORDER to:

ACIR, 1111-20th Street, NW, Washington, DC 20575

ALL ORDERS MUST BE PREPAID.

Report Amount	Quantity	Price
A-108	_____	\$10
A-107	_____	\$10
A-106	_____	\$10
A-95	_____	\$5
A-77	_____	\$5
A-78	_____	\$5
A-86	_____	\$5
B-9R	_____	\$6
M-153	_____	\$10
M-152	_____	\$10
M-151	_____	\$15
M-149	_____	\$5
M-147	_____	\$5
M-143	_____	\$5
M-144	_____	\$5
M-126	_____	\$5
M-127	_____	\$5
M-128	_____	\$5
M-129	_____	\$5
M-130	_____	\$5
SR-4	_____	\$5

Intergovernmental Perspective

Vol/No	Quantity	Price
_____	_____	\$3
_____	_____	\$3
_____	_____	\$3
_____	_____	\$3
_____	_____	\$3

Total Enclosed _____

Name _____

(type or print)

Organization/Company _____

Address _____

City, State, Zip _____



ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, DC 20575

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

BULK RATE
U.S. POSTAGE
PAID
PERMIT G-34
WASHINGTON, DC

3RD CLASS BULK RATE