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PERSPECTIVE





View From The Commission

March 1988

Dear Reader:

Over the past seven years so much progress has been achieved in restoring power to state and local governments that even the astute readers of *Intergovernmental Perspective* may want to refresh their memories on how far we have come together. To set the stage, take note of the President's own remarks at a meeting with the nation's governors last month: "Federalism, as arcane and maybe even antiquated as it may sound to some, is gaining momentum, with success following success. As states and localities take on more of their rightful responsibilities, they're showing that they can teach the all-wise federal government a thing or two.

Welfare Reform

When the President began his search for a solution to the welfare problem, he asked for help from the real experts in welfare reform: mothers and fathers who have had first-hand experience with the welfare system and know how it *shouldn't* work; and governors, who had time and again demonstrated their ability to creatively package ideas that will work best for the people of their states. The President's proposal for a program of widespread, long-term experimentation in welfare reform through community-based and state-sponsored demonstration projects has found favor with a number of states and is embodied in at least two legislative proposals now under active consideration in the U.S. Congress.

Regulatory Relief

In addition to Executive Order 12291 on regulatory review, implementation of the *Paperwork Reduction Act*, and formation of the Presidential Task Force, all in the first year of his presidency, President Reagan has moved over the past 17 months to improve the management and administration of federal assistance programs by responding to over 80 recommendations from the National Governors' Association (NGA). An additional 163 recommendations for change have just been presented to the President by NGA and will be addressed during the remainder of the Administration.

Relief for small units of government will now be provided by the newly formed working group of the National Association of Towns and Townships (NATaT), OMB, and the Small Business Administration. The interests of small entities, as required by the *Regulatory Flexibility Act*, are taken into consideration during, not after, the regulatory process.

Avoiding Preemption

This year full implementation of the Executive Order on Federalism, signed by the President last October, is under way in the federal departments and agencies. Federal officials have been instructed to distinguish between problems of national scope and those common to state and local governments, and to make sure certain states are not preempted by federal regulations unless explicitly required by statute. Again, state and local concerns are being taken into consideration as regulations and legislative proposals are being drafted rather than after the fact.

Avoiding Mandates

President Reagan has just submitted to the Congress a legislative proposal entitled the "Truth in Federal Spending Act of 1988." This pro-

posal fulfills the President's promise made last year on the steps of the Jefferson Memorial, where he vowed to end once and for all the desire by some in Washington for overregulating and overlegislating without ever appropriating. Under this proposal every new piece of legislation that requires increased spending would have to assess the impact on state and local government. Moreover, the President makes it clear that cost shifting to state and local governments in order to achieve federal deficit neutrality is not acceptable. His hope is to force the federal government to do what it should have been doing all along: take federalism seriously, and treat state and local governments with respect.

Over the next nine months of the Reagan Administration, we will seek every opportunity to restore federalism principles and common sense governance to our intergovernmental relationships. Reports like *James Madison High School, Schools without Drugs*, and *What Works?* from the U.S. Department of Education, and the "Minnesota Project" from the U.S. Department of Commerce will continue. We have come far toward improving the quality and effectiveness of federal programs and services; more needs to be done. But of one thing I am certain: responsible state and local officials will never want to return to the days when the federal government, full of wisdom and arrogance, made all of the decisions for them. No amount of money and no desire for uniform standards will be worth the cost of federalism lost again.

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

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Staff

John Kincaid
Acting Executive Director

Robert Gleason
**Director of Communications
and Publications**

Joan A. Casey
Editor

Cover Design: Baskin and Associates

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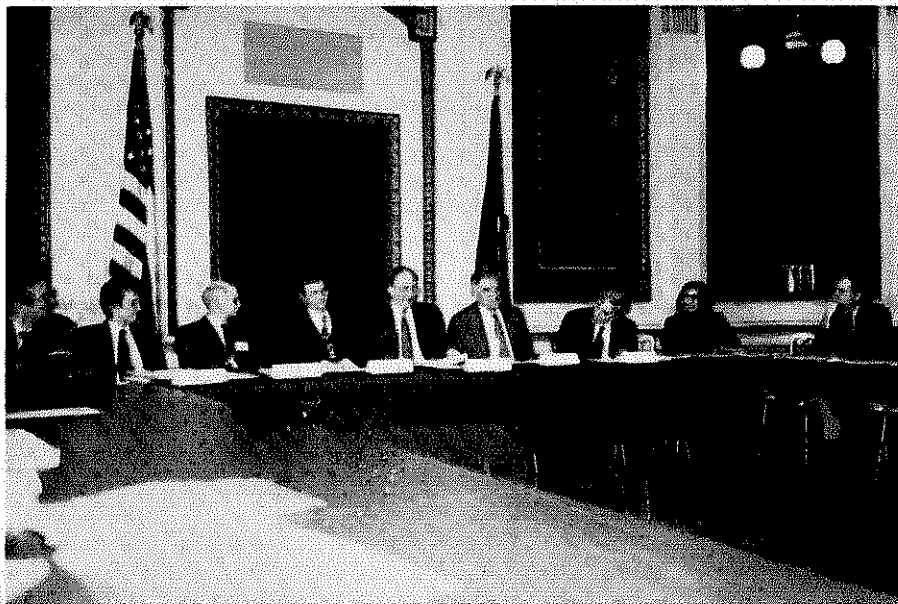
ACIR Holds Conferences on Decentralization and Homelessness

The Advisory Commission on Intergovernmental Relations recently held two major conferences on intergovernmental issues.

Setting New Agendas for Intergovernmental Decentralization: The International Experience was co-sponsored by ACIR and the Center for Urban and Regional Studies at Virginia Polytechnic University, in cooperation with the London School of Economics and Pion, Ltd.

The conference was held February 22-24 at ACIR, with participants from all levels of government and universities in Australia, England,

Ralph C. Bledsoe, Special Assistant to the President, addressed the final session of the Decentralization Conference in the Indian Treaty Room in the Old Executive Office Building. The session was arranged by the White House Office of Intergovernmental Affairs. Pictured are Gerard Marcou, University of Lille; Robert Bennett, London School of Economics; Howard Davies, Audit Commission for Local Authorities in England and Wales; ACIR Commissioner James S. Dwight, Jr., former ACIR Executive Director John Shannon; Acting ACIR Executive Director John Kincaid; Susan Lauffer, White House Office of Intergovernmental Affairs; and Clay Durethoff, ACIR research associate.



France, Italy, Portugal, Spain, the United States, and West Germany.

Among the topics discussed were new agendas for decentralization in theory and practice, decentralization and taxation, fiscal federalism, local government and regional growth and development, and the need for in-depth comparative research on the structure and operations of federal systems of government.

More than 100 people attended ACIR's policy conference on *Assisting the Homeless: State and Local Responses in an Era of Retrenchment*, held March 10-11 in Washington, DC. Cassandra Moore, executive director of the federal Interagency Council on the Homeless, presented the opening remarks.

The principal purpose of the conference was to identify crucial intergovernmental issues affecting policy responses to homelessness. The program dealt primarily with state and local responses to the problem of the homeless, but also discussed the roles

of the federal government and the private and voluntary sectors. The basic premise was that given the complex, multifaceted nature of the problem, policy prescriptions to aid the homeless must be varied.

The major topics on the agenda were low-income housing and the homeless; deinstitutionalization and mental health; innovative state and local experiences; and policy alternatives for federal, state, and local governments.

Tax and Policy Competition Roundtable on Agenda for Commission Meeting

"Interjurisdictional Tax and Policy Competition: Good or Bad for the Federal System?" is the subject of a roundtable discussion to be held in conjunction with the March 25, quarterly meeting of the Commission.

Because state and local governments are independent decisionmaking units, a certain amount of rivalry among these governments has always been inherent in the American federal system. More recently, several factors have accentuated the public debate over interjurisdictional competition—e.g., the realization that Americans live in an increasingly competitive world economy, shifting regional economic fortunes, the diminished value of deductibility of state and local taxes from federal income taxes as a result of federal tax reform, and a cutback in federal grants-in-aid.

Participating in the roundtable will be Albert Breton, University of Toronto; Daniel Bucks, Multistate Tax Commission; Parris N. Glending, Prince George's County (MD) Executive; William A. Niskanen, Cato Institute; and Richard D. Pomp, University of Connecticut.

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Public Assistance in the Federal System

ACIR Staff Report

Many aspects of public assistance in the United States have been subject to considerable debate and criticism in recent years. While much of the current criticism parallels past debates about welfare, there seem to be at least three new elements.

1. Current critiques have focused mainly on program effectiveness rather than program legitimacy. Are public assistance programs cost effective? Do they target the persons most in need? Do the programs help to lift people out of poverty by fostering greater self-sufficiency whenever possible? If not, how can the programs be made more effective? In short, there is widespread public support for a governmental welfare function, even while there is widespread criticism of how well government executes that function and how far government should go in defining and fulfilling welfare needs.

2. There is a general consensus encompassing most of the political spectrum that: (a) public assistance benefits should be tied to strong training and work requirements for recipients who are able to work; (b) absentee parents should bear greater financial responsibility for the economic well being of their children; and (c) welfare rules and benefits should not discourage the formation or preservation of two-parent families.

3. Perhaps most surprising has been the criticism of a major assumption of welfare reform of the last three decades, namely, that the federal government should have full or principal responsibility for financing public assistance nationwide. The question has been raised, therefore, as to whether state and local governments should maintain shared responsibility for financing as well as designing and administering public assistance programs to promote diverse efforts aimed at improving effectiveness and accountability.

In March 1985, the Commission directed the research staff to study welfare reform and reexamine ACIR's standing recommendation for full federal government funding of Aid to Families with Dependent Children (AFDC), Medicaid, General Assistance, and "those existing government programs which are aimed at meeting basic human needs for employment security, housing, medical benefits, and basic nutrition." As a result of that study, the Commission adopted a recommendation in June 1987 urging the design of more effective intergovernmental approaches to public assistance. In December 1987, the Commission adopted additional recommendations pertaining to funding arrangements, waivers of federal law, and the development of community-based infrastructure to help promote self-sufficiency.

A reexamination of ACIR's position appeared appropriate for a number of reasons, including: (1) changes in the relative fiscal condition of the federal government and the 50 state governments; (2) improvements in state governments and state political systems; (3) the weakened position of the U.S. economy in the world; (4) changes in the composition and character of American families; and (5) changes in public conceptions of welfare which have led to greater emphasis on work incentives and requirements rather than simply income maintenance.

The Commission's original 1969 recommendation was adopted when federal means-tested income support programs consisted chiefly of AFDC, old age assistance, aid to the blind, and aid to the permanently and totally disabled. Since then the last three have been consolidated as the SSI program. AFDC remains a federal-state program, and has been joined by the much expanded Medicaid and Food Stamps programs. General Assistance remains a state-local program.

The original Commission recommendation rested essentially on eight premises, which were based on a considerable body of research on the fiscal conditions of state and local governments, including their revenue capacity and expenditure needs, and on a "sorting out" notion of the proper division of responsibilities for domestic tasks between federal, state, and local governments. These original premises can be posed as questions, as follows:

1. Given their limited jurisdictional reach and fiscal capacities, can state and local governments provide necessary public assistance to needy and medically indigent people?

Part of the impetus behind the premise of limited state and local capacity was the perception of a burgeoning growth of the federal government after World War II. By 1969, an imbalance appeared to have developed in the federal system. Revenue was flowing into the national

treasury at higher levels than before, while state and local revenues appeared to be well-nigh anemic in comparison to the revenue wealth of the federal government. As a result, the federal government appeared to be much better equipped to shoulder responsibilities for public assistance expenditures.

The original fiscal context of the Commission's recommendation, therefore, contrasts sharply with the current situation. Extraordinary budget deficits in the national government have led to at least as much concern with national fiscal discipline as with the aggregate fiscal capacity of the state and local governments. Furthermore, the federal government's share of total public spending has remained virtually constant at about 70% since 1949. In this respect, an intergovernmental sharing of financial responsibility continues to be appropriate.

2. Do tax and expenditure differentials and public assistance benefits differentials encourage migration between states and localities?

The mobility of the poor and the nonpoor remains a problem for public assistance policy in a federal system. The Commission described this problem by pointing to the regional movement of the poor, the increasing concentration of the poor in central cities, and the movement of middle and upper income taxpayers to the suburbs. A key issue is whether migration has the effect of depressing benefit levels for the poor. Some empirical studies have found evidence of a positive relationship between migration of the poor and the magnitude of the states' welfare benefits. There is, however, disagreement as to the size of the effect and if the research is recent and conclusive enough to say whether migration should be an important policy consideration. Three state-specific studies (Michigan, Minnesota, and Wisconsin) of applications for welfare by new residents from out of state suggest that migration for the purpose of seeking higher welfare benefits is not a significant problem. A nationwide study found the migration patterns of the poor to be similar to those of the population as a whole.

3. Do jurisdictions with an abundance of poor people have a dearth of taxable resources?

It remains the case that some jurisdictions with many poor people have chronically low fiscal capacity relative to other jurisdictions. Does this support the proposal for full national financing of public assistance programs? Arguing for the positive, national financing has the effect of raising the level of effort in the worst-off states and is thus a form of fiscal equalization. On the negative side, it could be argued that federal programs aimed at "leveraging" particular types of spending in the states constitute an inappropriate intrusion on state and local political priorities. A more efficient approach might be targeted assistance to states with low fiscal capacity.

4. Do differences in program benefits and eligibility requirements maintain inequities and inequalities for the poor?

If one believes that government should guarantee every poor person an equivalent or equal standard of living regardless of residence, then full federal funding of public assistance could reduce inequalities. Similarly, uniform eligibility rules and requirements could reduce inequities. If full federal funding were truly designed to promote equality, some recipients could be made worse off because it is unlikely that the federal government would peg nationwide benefits to the level of the most generous state. If states were permitted to supplement the minimum benefits, which would most likely be the case, this would perpetuate inequality as well as some of the other problems that led to the recommendation of full federal funding in the first place. Furthermore, to achieve equality, cost-of-living adjustments would have to be made not only between states but also within states. Reductions in inequities that may arise from state and local eligibility rules and administration of public assistance programs could require federal preemption or at least tighter federal control and closer oversight. Given the low level of political support for full federal funding, the desire for greater equity and equality could encourage the federal government to impose additional, unfunded mandates on the states.

5. Are state and local governments, especially large cities, under tremendous pressure to provide other services not directly related to poverty?

The answer is yes, and full federal funding of public assistance programs would presumably free up some state and local revenues for other uses. This is as true today as it was in 1969. However, the political and fiscal context has changed considerably. The way could be cleared for full federal funding simply by increasing federal taxes. This could, however, make it difficult for state and local governments to maintain or raise their own tax rates, thus leaving them in no better position to provide other public services. Furthermore, the federal government is now also under tremendous pressure to provide financial support for a wide range of services.

Politically, local governments in particular have taken the position that full federal funding should not come as part of a "swap." The federal government seems unwilling to assume full fiscal responsibility for public assistance while continuing federal aid in all other fields of interest to state and local governments. Consequently, the prospects for full federal funding are dim, no matter what the merits on either side of the funding debate.

6. Has federal interference, especially federal court interference, deprived states and localities of effective control over public assistance programs?

Again, the answer is yes, although these adverse effects were somewhat offset in the 1970s by significantly higher levels of federal funding for public assistance and in the early 1980s by stricter eligibility rules. Furthermore, federal interference is not in itself an argument for full federal funding of all basic human needs programs. The states still have considerable freedom to raise or lower benefits or impose even stricter rules, and states are not even required by the federal government to operate AFDC or Medicaid programs. Of continuing relevance, however, is the Commission's concern that the federal government not interfere in ways that undermine the effectiveness of state and local public assistance efforts or impose excessive costs on states and localities.

7. Do shortages of job opportunities for the less well educated and unskilled result ultimately from national forces that have transformed the economy—forces beyond the control of state and local governments?

State and local officials no longer believe this proposition to the degree they did in the 1960s. Instead, they are engaged in many economic development activities, some of which produce significant results. No state or locality can literally control its economic destiny, but neither is it true that they are helpless in the face of national economic forces. Furthermore, given the internationalization of the U.S. economy, it is no longer clear that the federal government can manage the economic destiny of the nation as easily as seemed possible in the recent past. What also seems to have developed in policy debates during the last ten years has been a pessimism about government's ability to create jobs or secure full employment without dangerous inflationary consequences.

The contemporary economic situation would seem to call for an intergovernmental approach to job creation, training and placement, and full employment—not an either/or approach. Both the federal government and state and local governments can facilitate economic development or redevelopment, but not if their respective policies undercut each other or the ability of the private sector to create new jobs.

An important issue is how to cope with the continuing concentration of the poor in urban centers where there are few job opportunities for them. Furthermore, the question for the poor is not always one of simple availability of job opportunities. It is also a question of jobs that pay enough to make it worthwhile to get off public assistance. It is also a question of location of job opportunities.

In and of itself, full federal funding of public assistance would not solve these problems. Nationwide benefits set at too high a level could encourage dependence on public assistance. It might be possible, however, to establish full federal funding of selected public assistance programs at benefit levels that would serve as a foundation

on which the federal government and state and local governments could build other policies and programs designed to reduce poverty through self-sufficiency.

8. Are the states less progressive than the federal government and less willing to make an adequate commitment to end poverty?

This premise was articulated against the background of the rights and equality revolutions of the 1960s when the federal government appeared to be a powerful engine for social reform while many states appeared to be not only unwilling to respond to the needs of the poor but also, in some instances, resistant to the very idea of aiding the poor in any significant way. Today, however, this premise has to be evaluated against the question of whether the federal government itself has demonstrated an adequate commitment to end poverty. Furthermore, some states are generally regarded to be more progressive than the federal government, some less so, and some equally progressive. Of greater importance however, is whether levels of spending accurately measure a commitment to end poverty as opposed to efforts to improve program effectiveness.

Clearly, the terms of the debate over public assistance have changed since the 1960s. In previous years, public assistance was viewed primarily as an income transfer program—a check writing service—that would support people for relatively short periods of time until they became self-sufficient. In part because of the persistence of poverty, and questions about the wisdom of simply increasing public assistance funding without also reconsidering the design of programs, public assistance today is viewed increasingly as a work-related program. Insofar as public assistance is viewed as an income transfer program, it can be argued that such income redistribution can best be accomplished by the nation's "top" government. Insofar as public assistance is viewed as a work incentive program, it can be argued that work preparation and participation programs can best be handled by the nation's on-site governments—the states and their localities.

Debates over public assistance have, for the most part, shifted from questions of program legitimacy to questions of efficacy. In earlier years, the Commission played an important role in helping to establish the legitimacy of public antipoverty programs, particularly of a federal role in a "war against poverty." The public is concerned now with the targeting of benefits, the workability of program methods, the relations between program costs and outcomes, the effects of public assistance programs on the poor and the social fabric of poor communities, the ability of the economy to preserve and create jobs, the ability of public assistance to promote economic self-sufficiency among the poor, and the effective exploitation of potential state, local, and private sector contributions in ending poverty.

The following findings are the result of ACIR's reevaluation of the welfare system and of its earlier recommendations.

Infrastructure Investment and Program Diversity

Welfare reform must include a major focus on the development of community infrastructure to support the objectives of self-reliance and income opportunity for needy Americans. Infrastructure development depends on linking community initiative with external funding. The best policy instrument for doing this is a diversified grants economy, supported by both private and public agencies, including various agencies of federal, state, and local governments. Mechanisms should include small project-grant programs administered by a variety of agencies responsive to somewhat different concerns and utilizing somewhat different criteria of selection and evaluation. Grants such as these should be understood primarily as providing "seed money" as assistance in getting program initiatives under way, not as long-term support. Private voluntary organizations should be encouraged to cultivate constituent and other local support, thus bringing greater resources to bear on problems requiring public assistance.

In terms of the allocation of resources, infrastructure development must not be shortchanged in the rush to get immediate results from new service programs. Crash programs to train welfare recipients for jobs are unlikely to have long-term effects on rates of welfare dependence. Successful welfare reform will necessarily be a long-term process. The required infrastructure for training welfare recipients needs to be developed. The process of development is best served by a diverse program of support that employs a range of mechanisms—grants-in-aid, contracting, interlocal service agreements, and vouchers. State public assistance agencies should concentrate on stimulating and monitoring community efforts and delivering key professional support services, mainly in the form of case management.

State Innovation and National Forbearance

The national welfare reform process now under way is in large part a product of state innovations. This "laboratory of federalism" dimension of welfare reform is also essential to its continued progress. The critical and distinguishing feature of state innovation is a policy linkage between rules governing the distribution of benefits and services designed to help welfare recipients become self-supporting. Public assistance programs are a combination of rules and services. State experimentation has to do with various ways to combine these two basic elements. Most program rules, however, have a basis in federal law and/or regulation. State experimentation, therefore, frequently requires a waiver of federal laws and regulations in order to proceed. Congress has provided for waivers such as these in order to allow states to try new approaches to program design.

If rules and regulations are to be taken seriously, however, no permanent system of regulation can be based on a regular waiver of rules. Waivers should be used only to adjust the application of rules in relation to unforeseen and unforeseeable exigencies. A waiver process should become the basis for a reformulation of rules and regulations taking into account the experience of federal and state agencies with waivers and their consequences. In this manner, a limited number of possible waivers can cumulatively serve the purpose of welfare reform in both state and federal governments.

State experimentation with various combinations of rules and services should also be accompanied by systematic efforts to evaluate alternative program designs. Federal support for evaluation is appropriate, but should be provided for and conducted outside of federal agencies charged with administering major public assistance programs, sponsoring program innovations, or granting program waivers. In this way, evaluation is less likely to be contaminated by a desire for program success. Systematic monitoring in a program of independent evaluation is an essential policy instrument for realizing the full benefit of the "laboratory of federalism."

Cost Sharing in the Federal System

A simple rule of thumb provides guidance as to how the costs of intergovernmental programs ought to be distributed between the federal government and the states: the nation, states, and local communities ought to bear a share of the costs in proportion to their fiscal abilities and to the benefits they enjoy.

The basic case for national programs in the domestic field rests on a judgment that the benefits of a successful program in one jurisdiction "spill over" to other localities and states. In this context, if persons in one state are concerned with the poor in other states, there is a case for federal finance. Antipoverty programs in each state, from this perspective, benefit persons in all states to some extent, though programs in each jurisdiction may benefit residents there to a greater extent. From this perspective, benefits from many programs are interwoven throughout the federal system.

Another argument for federal support pertains to the fiscal capacity of states relative to each other and to the federal government. States differ in their ability to finance public services, and all states do not have the same ability as the federal government to collect revenue; if the ability of the weaker states or the states as a whole is of concern to residents of other states, this also points to a federal financial role.

By the same token, since almost every program also yields disproportionate benefits in the states where they are implemented, the state itself has a proper financial role. Thus, there is a reasoned basis for cost sharing between the federal government and the states.

In recent years, however, the Congress has sought to mandate changes in state policies without providing accompanying financing. Given that antipoverty policy is

at least partly a national problem implying a role for the federal government, unfunded mandates are especially untenable devices for federal policy. Mandates with respect to antipoverty policy in such areas as child support, participation levels in work and training programs, benefit levels, and broadened eligibility should not be unfunded, and open-ended mandates should not be supported with closed-end financing.

State Discretion in the Design and Administration of Antipoverty Programs

Two types of basic tasks are pursued in antipoverty programs: income maintenance and investment in what is called "human capital." Income maintenance takes different forms, from outright cash assistance to Food Stamps to housing vouchers to reimbursement of providers of medical services, etc. Efforts to invest in people, to help them help themselves, has also taken a myriad of forms.

The programmatic complexity of income maintenance in no way approaches that of helping people change their personal behavior so that they can succeed economically. Income is income; everybody needs it. The complexity of income support programs, which is considerable, lies in the rules for determination of eligibility and benefit levels. These have come to be specified largely in federal law.

The new focus on welfare reform is on the second task: helping people achieve self-sufficiency. The complexity of this task is intimately related to the diverse character of welfare recipients and the communities in which they live. It is especially appropriate, therefore, that state and local governments be given greater scope for tailoring the design and administration of antipoverty programs to the unique character of their impoverished populations. Federal administrators are directed to follow national, standardized regulations and procedures; this tends to limit their ability to adapt policy profitably to diverse individual problems and local conditions.

The current mixture of federal and state discretion needs further openings in which the states can pursue initiatives in combating welfare dependence. These openings can include the availability of waivers of certain provisions of the Social Security Act, expanding the class of welfare recipients who can be required to register for work and training, providing funds for work and training on flexible terms, and stimulating the proliferation of community organizations dedicated to helping poor people become economically independent.

The Obligations of the Poor and the Public Sector

The benefits of citizenship are tied to obligations. Unfulfilled obligations tend to erode the status of a citizen, to the detriment of everyone. The opportunity to meet obligations confers self-respect and is a necessary condition of community.

Currently, the poor are afforded little opportunity to meet obligations that enhance their own well being and

social status. They are either cast into society to make their own way, or, where obstacles to self-sufficiency prove insuperable, maintained with subsistence income transfers. Society expects more than this from antipov-erty programs, and the poor expect more of themselves.

States administering public assistance programs of income support should be empowered to engage welfare recipients in activities aimed at helping them to become more self-sufficient. This is now possible for adult recipi-ents of AFDC with children age six or over, with no inca-pacitated adult for whom to care. The nonexempt class can be expanded, at state option, to include families with younger children. Mothers of such children can be re-quired to attain literacy and finish their secondary edu-cation. Fathers can be required to support their children. Family heads can be required to qualify themselves for jobs, to seek such employment, and to maintain it. These are the elements of the welfare recipient's obligations, which derive from the general obligations of all citizens to one another in society.

Recognizing that the struggle for self-sufficiency en-counters obstacles, it is the obligation of others in society to help the poor overcome these obstacles, through the use of a variety of tools, such as assistance with child care and health care, remedial education, job counseling, job search assistance, and training in technical skills in-tended to develop self-sufficiency and thereby reduce the need for public support. The goal of state-based "sys-tems" providing such services should be to enhance the well being of the poor, and especially their dependent children, by expanding their opportunities and enhanc-ing their ability to earn and increase income through pro-ductive employment.

Welfare Reform: Focusing on the Children

Donald M. Fraser

Children represent our future. They must be given full opportunity to develop into productive, self-sufficient adults. It has been apparent for some time that for many families current welfare policies have done little to improve children's prospects. In fact, many of us would argue that welfare programs have done just the opposite. I am referring primarily to Aid to Families with Dependent Children (AFDC), the program that has had the greatest impact on families and has stimulated the most controversy.

What Are We Trying to Accomplish?

In spite of widespread concern about welfare, we have not been able to make much positive change for lack of agreement on what we are trying to accomplish. A central theme is that we need to save taxpayers' money, primarily by mandating work. Although welfare was originally developed to respond to the needs of families with children, the current debate on reform centers more on adult outcomes than on outcomes for children. We need to reestablish children as the central focus of help for families. We need to improve the life chances for children.

What Are the Needs of Children?

How do we begin to design a welfare program that will meet these criteria?

The first objective of such a program must be to reduce the number of children living in poverty. Poverty is a damaging legacy for children. It too often perpetuates itself from one generation to the next. Its roots take hold during childhood. Poverty is a leading cause of putting a child "at risk" for developmental delays, child abuse, school failure, and, ultimately, unemployment and criminal delinquency. It is frightening to note that one in four children under the age of six in this country is poor and that poverty among children has risen steadily since 1970.

If children are to become self-sufficient and productive adults, they must grow up in an environment where work and productivity are valued, and they need models to follow. Therefore, any new program must include job training and placement for parents.

To thwart long-term dependency of families on government support, we must separate aid to children from aid to adults, reiterating the principle that children are rightfully dependent whereas adults are not.

Without proper nurturing and stimulation, children simply fail to thrive. When this possibility threatens, it becomes the legitimate role of government to step in and support families to ensure that adequate nurturing and development of dependent children does take place.

AFDC: Modify or Replace It?

Most welfare reform proposals to date recommend modest changes in AFDC. Progress toward even minor reform has been minimal and slow. What I am suggesting is far more radical, because AFDC, in my opinion, is fatally flawed.

AFDC is a program of contradictions. It supports families financially, but at such a minimal level that its beneficiaries remain in poverty. It was designed to provide financial aid to parents and children with unexpected needs due to divorce, desertion, death, or lack of a job by the primary breadwinner. But today, half of AFDC recipients are long-term users, many of whom look to welfare as a means of support as they acquire a family. While its goal is to support the transition to work, the limits that welfare imposes on earned income, child care,

and medical care serve as disincentives to parents seeking employment. The program enables young, single mothers to live independently but fails to deal with the consequences of their social isolation and their deficiencies in parenting skills. AFDC encourages fathers to contribute to their children's support but penalizes the family for the added income.

A New Program

I propose that we replace AFDC with a new program that separates aid to children from aid to parents and establishes neighborhood parent/child centers where families can learn, socialize and work. The program would include the following provisions:

A Children's Supplement. Dependent children whose parents are income eligible would be entitled to a children's supplement. For purposes of this discussion, it might be set at \$125 for the first child, \$100 for the second, and \$75 for each additional child. The establishment of a higher "standard of need"—\$906 for a single parent with three children—would allow a parent to earn up to the equivalent of 40 hours per week at \$4.00 per hour in a private sector job without penalty. When the family's income rose above the standard of need, the gradual loss in the children's supplement would be \$1.00 for every \$2.00 earned up to a limit of \$1,500, thus maintaining the incentive to increase employment income.

The children's supplement would shift the burden of adult support from the public to the private sector and would make use of minimum wage jobs that are available in the community but pay less than is required to support a family. The supplement plus wages would lift the family's income considerably above current AFDC levels and ensure that it would always be more profitable to work than not to work.

Day Care and Health Care. Sliding-fee medical care as long as children are under the age of 18, and sliding-fee child care, including latchkey, would be provided to income-eligible families. Fee schedules would be designed to accurately reflect the family's ability to pay.

Parent/Child Centers. Parent/child centers would be established in each neighborhood to provide a number of services: child care, pre-school developmental screening, parent education, career counseling, basic education, referral to health services and to pre-school programs, and individualized case management services. Parents who are unable to obtain employment in the private sector would be guaranteed up to 25 hours a week of training or of supervised work at \$4.00 per hour, either in the center itself or in the child care program.

Transitional Aid to Adults. Short-term financial help (normally six months) would be available to parents in school or job training and to parents of newborns. Long-term financial support would be the exception and would be offered only to foster children and to parents who would not be able to hold a job because they are non-

English speaking, chemically dependent, or chronically dysfunctional.

Support Payments. Every effort would be made to establish paternity at the birth of a child and to obtain support payments from an absent parent through payroll deductions. So long as the family's income remained below the standard of need, such payments would augment the family's income dollar for dollar; and, when above, with a loss of \$1.00 for every \$2.00 gained.

The Next Step

I do not underestimate the difficulties of gaining acceptance for this new approach. In Minneapolis, we are working with the Minnesota Department of Human Services to develop a pilot project embodying some of these concepts. Entry into this pilot program would be voluntary to begin with and would become mandatory only when its success in developing client self-sufficiency and its financial viability had been documented.

This pilot project could very well be stymied by the obstacles we face, including the challenge of obtaining state and federal waivers and finding the necessary child care funds. If we do nothing, however, we will continue to pay a heavy price for government policies that institutionalize poverty, create dependency, ravage families, and too often deprive children of a decent chance to develop their potential.

When we refocus the welfare reform debate on the needs of children, then and only then will we ask the right questions, find the right answers, and create a system that works for all of us, our children, families, and the community. In the end we may not save much money, but we may save our children.

Donald M. Fraser is mayor of Minneapolis, and a member of the Advisory Commission on Intergovernmental Relations.

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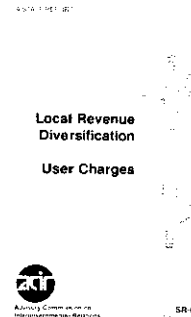
Report SR-6 \$5 October 1987

Dramatic changes in fiscal federalism have renewed interest in charging for publicly provided goods and services.

ACIR's report *Local Revenue Diversification: User Charges* tells you why and how these changes came about, when and how to substitute user-charge financing in place of general taxes, and what kinds of services lend themselves best to user fees.

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Report A-109 \$5 December 1987

This report explores the far-reaching implications for interlocal organization and governance of distinguishing the *provision* of local public goods—activities expressing public preferences and raising revenues—from their *production* or delivery. Distinguishing provision and production allows for a more differentiated local public economy—often viewed as “fragmentation”—in which both provision and production functions are distributed among a variety of local governments and private organizations, functioning at different scales of operation. The report includes Commission recommendations.



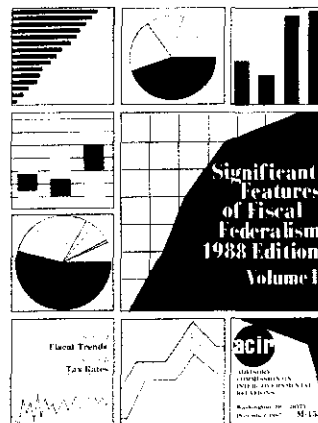
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Report M-155 \$10 December 1987

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Measuring State Fiscal Capacity 1987 Edition

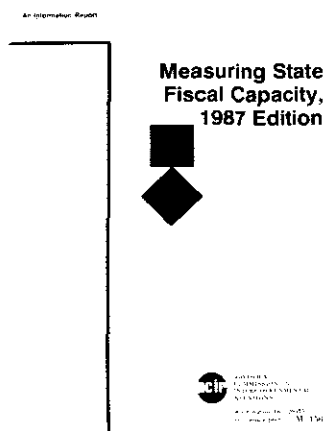
Report M-156 \$10 December 1987

ACIR's *Measuring State Fiscal Capacity, 1987 Edition*, its latest report on the fiscal capacity of the 50 states, contains the 1985 Representative Tax System (RTS) estimates and alternative fiscal capacity indexes.

ACIR developed the RTS in 1962, as a means of measuring the tax base or "tax capacity" of each state. This method of measuring tax capacity examines the ability of the states to raise revenues by applying a uniform set of tax rates to some 26 tax bases including, for example, sales, personal income, and corporate income. Thus, tax capacity would comprise the amount of revenue that each state would realize if a uniform set of rates was applied nationally. RTS also measures "tax effort," or a state's actual tax revenues in relation to its hypothetical tax capacity. In essence, the report endeavors to answer the question: What would be the total revenue and relative rankings of each of the 50 states if every state applied identical tax rates to a number of commonly used taxes?

As in past editions, the report gives graphic representations of state-by-state indices of tax capacity and tax effort based on the RTS method, showing trends for each state and breakdowns on capacity and revenues for seven major categories of state and local taxes.

(see page 13 for order form)



During the last two years, 28 states have passed some type of legislation to protect local corporations by prohibiting or limiting so-called hostile takeovers by corporate raiders. From a survey conducted last fall, the National Conference of State Legislatures found that this anti-takeover legislation falls into four broad categories: control share acquisition laws which limit acquisition and voting rights on a specified percentage of shares; "fair price" laws which give all shareholders the right to sell their shares to the potential acquirer for a fair price after that person has reached a certain ownership level; "cash out" laws which set standards under which an acquirer must redeem the shares of dissenting shareholders at a fair price; and "freeze out" laws which focus on the merger of corporations and may require prior approval by the target company's board of directors or may mandate a cooling off period. Below are the opinions of two state legislators on the anti-takeover issue.

Point

Anti-Corporate Takeover Laws Are Sound Public Policy

Robert D. Garton, President Pro Tempore, Indiana Senate

Do hostile corporate takeovers create chaos or confidence? The question has been raised by the rapid spread of hostile takeovers during this decade. In 1986, for the first time, the total cost of acquisitions (\$177 billion) exceeded plant and equipment spending by American manufacturers (\$140 billion), according to Stakeholders in America, a coalition created in Minneapolis.

In my opinion, hostile takeovers are a drain on resources. They result in stock prices reacting to a process, not performance, generating value based on market activity, not on achievement. Emphasis is on stock price manipulation rather than effective management.

Evidence indicates that hostile takeovers increase debt, demoralize workers, delay long-term corporate projects, divert energies and efforts, and are destructive to communities. As Peter Drucker observed, they have "twisted free enterprise into frightened enterprise." *U.S. News & World Report*, in its February 2, 1987, issue, noted that "with raiders loose on Wall Street, managers of every company are forced to worry even more about quarterly earnings reports rather than a long-range . . . strategy." And Harvard Professor Robert Reisch has found "absolutely no evidence that the great takeover wave of recent years has improved economic performance."

In 1986, the Indiana legislature passed an *Anti-Corporate Takeover Law* that was challenged constitutionally and upheld by the U.S. Supreme Court on April 21, 1987, in *CTS Corporation v. Dynamics Corporation of America, et al.* (107 S.Ct. 1637). Why was this law passed?

In 1985, the legislature created a General Corporation Law Study Commission to review and revise the state corporation law, which had not been updated in almost 60 years. The commission was chaired by then Secretary of State Edwin J. Simcox and was composed of three legal practitioners, three members of the business community, and four state legislators (two from each house and political party). The commission's report was introduced in the House of Representatives in 1986 in the form of House Bill 1275. Included in the report was a section governing corporate takeover procedures.

Approximately ten days before the start of the 30-day 1986 legislative session, a corporation in the Senate district I represent was faced by a hostile takeover by the Belzburg brothers from Canada. Within a few hours of learning of this takeover threat, I requested our Legislative Services Agency to excise the section governing takeover procedures from H.B. 1275 and create a new bill which I designated Senate Bill 1. I then sought sponsors for the bill.

My first contact was Senator Joe Harrison, the Majority Floor Leader and a former vice president with a family-owned steel foundry in Attica, Indiana. He agreed readily. We then contacted Senator James Monk, a lawyer from Sullivan, who was appointed to represent Senate Democrats on the General Corporation Law Study Commission. He was intimately familiar with the provisions of H.B. 1275, specifically with its takeover provisions.

Senate Bill 1 was introduced on the opening day of the session in January and was assigned immediately to the Commerce Committee. A meeting was held two days later, the minimum time notice under Senate rules, and the bill was reported unanimously to the Senate floor. Within a few days, the bill was approved by unanimous vote of the full Senate.

Working with the Senate sponsors, we agreed that the bill should be cosponsored in the House by Representative Mike Phillips, an attorney and Minority Floor Leader from Boonville, and Representative Gene Leeuw, a Republican from Indianapolis, who was knowledgeable in corporate law. Through their collective efforts, the House approved unanimously, without amendment.

The bill was sent to the governor

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Counterpoint

Anti-Corporate Takeover Laws Are Unsound Public Policy

Peter Kay, State Senator, Arizona

Many believe that the future of corporate America is threatened by "corporate raiders" descending on innocent domiciled corporations, taking them over, spinning off divisions, moving corporate headquarters, and recklessly selling off corporate assets. This invasion of corporate raiders is portrayed as both inimical to shareholder interests and severely disruptive of the socioeconomic balance of industry, employment, and revenue within the state of the victimized corporation.

Numerous states have reacted to the takeover phenomenon by rushing to respond with legislation protecting their companies and communities from hostile takeovers and thwarting this perceived threat to the state's economy. This was certainly the case in the Arizona legislation requested by the Phoenix-based Greyhound Corporation.

State governments may be legitimately concerned when faced with the potential loss of a company, but is it necessarily a wise response by state legislatures to impair a potential investor from making a legitimate move for a publicly held company? In the case of corporate America, as well as Arizona, the sounder approach to perceived threats is better management.

In Greyhound's case the ability of management to provide strong, aggressive leadership would be a more effective means to deter a takeover than a shield of security for a management team on the defensive and perhaps not operating with a mindset to secure the best interest of the company or the best interest of the state. In an arena where performance counts and provides the impetus for all other activity of a company, the fact that we legislatively provided an artificial sense of comfort may prove

not to be in the best interest of Greyhound or the state.

The reality is that anti-corporate takeover laws do not concern themselves with sound business practices, competition, and shareholder vitality but rather with an entrenchment and protection of current management. Granted, the term raiders may not have the best connotation, but the concepts of "golden parachutes," "poison pills," and "white knights" have their own sets of problems. Throughout the course of our deliberations, we in Arizona really failed to look at the big picture.

In August 1987, Arizona succumbed to the pressures of special interests and responded to a hectic appeal by the corporate leadership of the Greyhound Corporation, nervous about recent acquisitions by notable stock raider Irwin Jacobs, who allegedly assembled nearly 2 million shares of stock in nearly two months. The legislature and Greyhound felt compelled to respond, and rushed forward to pass one of the most comprehensive anti-takeover bills in the country.

In the guise of protecting one member of our corporate family, we ignored the more basic issues of shareholder rights, corporate governance, and accountability of a company for its own performance. In our instance, we may have done more for the protection of an entrenched management than we did for the people of Arizona. In today's business climate, the truth of the matter is that if a raider wants in, he's going to find a way in. I do not mean to suggest that Greyhound has not been a positive contributor to the state of Arizona, but I do wish to assert that the legislature did nothing to suggest that our corporations perform in such a manner as to provide a real hindrance to a

potentially hostile investor. I contend that the fact that a takeover is possible will improve corporate governance, competition, and productivity, and clearly seems to be in the best interest of the stockholder who rides the pulse of the market.

To that end, the attention given by the corporation to the legislature ought to have been channeled into a strategy of raider avoidance. There are methods of avoiding attention during periods of stock fluctuation that are and would have been just as effective as an unproven legislative strategy. The argument for restricting attempted takeovers or tender offers is, I believe, an argument against the increase of national wealth, the increase of stockholder wealth, the increase of productivity, and the increase in corporate efficiency. In fact, a merger transaction or management assault on an existing management team could even help in the recapitalization of a firm.

The state's public policy should not have entered into or been based on the outcome or projected transaction of one firm. In fact, if and when we can maximize shareholder wealth, we can contribute to the economy as a whole. The issues requiring resolution are most effectively dealt with when the decisionmaking process is close to both the shareholders and the management of a company. To date the perceived threat against Greyhound has failed to materialize, and the effectiveness of our legislative efforts is untested.

The irony of the protection argument is exemplified in Arizona, where the reality is that Greyhound's domicile here has not resulted in more jobs. In fact, other business decisions freely made by Greyhound

Continued on page 19

within two hours of its adoption by the House, and he signed it immediately. The entire process took 13 calendar days, which may have set a record for passing a bill through the Indiana legislature. It was done without suspending any rules. Later in the session, S.B. 1 was folded back into H.B. 1275 and reapproved as a chapter in that bill.

With an effective date of February 1, the new law cooled the hostile takeover activity, and it was eventually terminated. Although S.B. 1 was overturned by a federal district court and the Court of Appeals, it was upheld by the U.S. Supreme Court on a vote of 6-3.

The U.S. Supreme Court observed that the Indiana act did not give either management or the offeror an advantage in communicating with shareholders, did not impose an indefinite delay on offers, and did not allow state government to interpose its views of fairness between willing buyers and sellers. The majority opinion stated that the act's limited effect on interstate commerce was justified by the state's interest in defining attributes of its corporations' shares and in protecting shareholders. Further, it allowed shareholders to evaluate the fairness of an offer collectively.

In a concurring opinion, Justice Antonin Scalia observed: "I do not share the court's apparent high estimation of the beneficence of the state's statute at issue here. But a law can be both economic folly and constitutional. The Indiana Control Shares Acquisition Chapter is at least the latter."

In essence, the Supreme Court ruled that states can retain their traditional responsibility for establishing rules for corporate governments. It reaffirmed the dissent of Justice Louis D. Brandeis in *New York State Ice Company v. Liebman*, 285 U.S. 262 (1932), when he noted: "It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and

economic experiments without risk to the rest of the country."

In *CTS Corporation v. Dynamics*, the court ruled that a state has a legitimate interest in promoting stable relationships among parties involved in its corporations and in ensuring that investors have an effective voice in corporate affairs. Under the Control Shares Acquisitions Chapter, an entity acquires "control shares" whenever enough shares are purchased to bring its voting power to or above any of three thresholds: 20 percent, 33 1/3 percent, or 50 percent.

An entity acquiring control shares does not necessarily acquire voting rights unless shareholders agree to confer those rights. Only preexisting, disinterested shareholders can vote to reinstate or deny voting rights for the control shares. An acquirer can require corporate management to hold a special meeting to consider voting rights within 50 days if it agrees to pay the meeting expenses.

The statute applies to corporations with 100 or more shareholders that have their principal place of business in Indiana. Either 10 percent of the shareholders must live in Indiana and own 10 percent of the shares, or 10,000 of the shareholders must live in Indiana. The law does not prohibit hostile takeovers or tender offers. It merely provides a regulatory procedure designed to protect shareholder interests.

A corporation is not merely an organization producing a product or service. It is an organization that serves various publics including customers, co-owners, coworkers, and communities. The state does have a right and responsibility to protect the collective and often conflicting interests of these various publics by establishing procedures governing corporate organization and actions.

To argue that hostile takeover legislation is reserved only for Congress is to argue that the states should not have the right to govern any corporate activity, including incorporation. Such an argument is in-

herently contradictory. It denies a legal tradition that has existed in this country for over two centuries.

Finally, proponents opposed to hostile anti-takeover legislation argue that incompetent management needs to be replaced and shareholder interests advanced. This argument did not hold in the case of Arvin Industries, the company under attack by the Belzburg brothers in 1986. By mid-1987 the corporation reached \$1 billion in sales, a record for the firm. Earnings for the first six months of 1987 set a new record, rising by 24 percent.

If those who want to take over companies have altruistic motives, why do they seek companies with good track records? They cloak their actions with the argument that it is good for somebody else rather than for those who will benefit directly.

The Indiana law does not prohibit hostile takeovers; it simply makes certain that all sides are treated evenly. In my opinion, it is sound public policy. At least 28 other state legislatures agree, having followed Indiana by passing state laws governing corporate acquisitions.

Counterpoint, from page 17

management, such as the sale of its bus division and the subsequent move of that division to Texas, have resulted in a loss of jobs for Arizona. I would also assert that any measure designed to provide a level of security for management, as appears to be the case in Arizona's takeover statute, seriously undermines a traditional impetus for aggressive, sound, and ambitious business leadership. The public marketplace is the best judge of the value of securities and should not be interfered with simply because a threatened takeover is labeled "hostile" by existing corporate managers.

While "corporate raiders" have to some degree earned their reputation, the simple reality is that they enter the takeover market when assets are undervalued and they perceive avenues for increasing the profitability of a corporation through improved management. The shareholder has clearly been the beneficiary when these entrepreneurial raiders accomplish their ends. An apparent problem seems to be the proper identification of what a raider is. At what point is a raider a raider, and not an honest purchaser of stock who has no intention of mounting a hostile takeover? In fact, what is seen as "hostile" to the management of a corporation may not be hostile at all to the owners of stock. Moreover, the public policy requiring stockholders to make subjective determinations about future holders and their voting rights is somewhat obtrusive, if not presumptuous.

Of course, the existence of corporate raiders in the marketplace is no panacea or cure-all for imperfections in the corporate arena. The results achieved by raiders are not uniformly beneficial, and in some instances cannot be condoned. However, absolutely prohibiting a potential investor from seeking control of a publicly offered company can, in the long run fail to protect the company and may be contrary to the aggregate interest of the public.

It is extremely interesting that

not a single constituent testified in favor of the bill overwhelmingly approved in Arizona last year in a two-day special session. Nonetheless, Arizona responded in haste to serve the best interest of the management of Greyhound and failed to explore adequately the empirical data suggesting anything contrary to the protectionist, anti-shareholder approach preferred by entrenched managers.

James Madison and the Breakthrough to the “Extensive Republic”: 1787-1987

Neal Riemer

With the nation beset by the troubles of our day, it is heartening as the Bicentennial continues to turn to a key founder, James Madison, for inspiration about the values, understanding, and judgments that might wisely guide us in the future. Although by no means immune to the shortcomings of his age—with regard to Native Americans, blacks, and women—on a crucial range of issues involving the principles, organization, and conduct of free and popular government in a large country he demonstrated a commitment to: (1) such prophetic values as freedom, justice, and constitutional order; (2) criticism of threats to such values; (3) constitutional action to bridge, or at least narrow, the gap between republican aspirations and existential realities; (4) continuous scrutiny and futuristic projection to safeguard the more perfect Union that was created in 1787. Madison was one of the keenest thinkers in the tradition of prophetic politics because he proposed a creative breakthrough on a seemingly insoluble problem, a deeply troubling problem for Americans in 1787.

Republican Government in a Large Nation?

The problem facing Madison and thoughtful Americans in 1787 was this: Is just republican government possible in a large nation? Republican thinkers in America were struggling to avoid being impaled on either horn of a dilemma: either a despotic empire as a necessity of government in a large nation or faction, injustice, and weakness as the inevitable outcome in a confederate republic with major power residing in the 13 states. What Americans wanted—just and strong republican government in a large nation—seemed to contradict historical realities and theory. The conventional wisdom held that republican government was possible only in a small political community, for example, a city-state such as Athens or Venice or Genoa. Moreover, the conventional wisdom affirmed that a large political society could be governed only under the authority of a monarch or despot and within the framework of an empire incompatible with self-government and liberty.

The problem was not only theoretical but also practical. Patrick Henry and the other Anti-Federalists, arguing that republican government is possible only in a small political community, opposed the new Constitution of 1787 and the stronger government it created. They could not lift

their sights beyond the loose political union of the Articles of Confederation. Alexander Hamilton and John Adams and other advocates of "high toned" government maintained that only an empire, or a strong central government on the British model, could hold together a political community as large as the new American nation. Confederations, they insisted, were notoriously weak and unstable, plagued by faction, and detrimental to the interests of justice and the common good. Madison's great contribution was to demonstrate that the conventional wisdom—the testimony of history and previous political theory—was wrong.

Nationalist, Federalist, Political Scientist, Republican

Madison's response to the problem articulated above required him to deal with four interrelated difficulties: disunion, large size, faction, and the antirepublican danger. The potent forces of disunion were strongly entrenched in the 13 jealously "sovereign" states. The large geographic size of the United States increased the threat to free and effective government. It did so, ironically, by encouraging both those who favored almost complete autonomy for each state and those who favored great centralization of power in the new Union's government. Selfish factional interest groups opposed to the nation's common interest operated within each of the states and obstructed the central government. Men and movements unsympathetic to republicanism were also potentially dangerous. They were hostile to popular government in theory and disgusted with the weakness and degradation of republican government in practice.

Madison's response to the problem of reconciling liberty and large size required him to be simultaneously a nationalist, a federalist, an empirical political scientist, and a republican. He was a nationalist who saw in a greatly strengthened, more perfect federal Union the instrument to cope with the danger of disunion. He was a federalist defending the new principle of federalism as the republican answer to the problem of large size. He was an empirical political scientist who articulated an explanation of how faction, the disease of liberty-loving republics, might be brought under control in an extensive, representative, federal republic. Finally, Madison was a republican passionately concerned in 1787 with the antirepublican danger who in the 1790s worked his way toward a theory of democratic politics, a theory based on the significance of civil liberties, bold political opposition, and a loyal republican opposition party. In each of these capacities, Madison was attempting to demonstrate that the conventional wisdom was wrong, that strengthened, liberty-loving republican government in a large nation was not only desirable but also feasible.

The New Federalism

We need not detail Madison's full argument here. We need only emphasize the highlights. A strengthened federal republic would enable the nation to cope with matters of national concern and yet would leave ample powers and freedom to the people in the several states. The new federalism would thus affirm: a unique division of powers be-

tween nation and states; key constitutional prohibitions on both the nation and the states; the direct operation of federal law on individuals; a pragmatic and experimental federal system relying for its success on a national consensus, a representative system, separation of powers, a resourceful presidency, and such organs as the Supreme Court.

Madison argued decisively (and here we come to the heart of his empirical theory of the extensive republic) that the multiplicity, diversity, and conflict of factional interests, plus their larger sphere of operations, would diminish the possibility of factional agreement and unified factional action. Federalism would limit the spread of factional mischief and make it difficult for a factional majority to achieve power. What we today call pluralism would facilitate, not hinder, the pursuit of the common good. Madison sought in 1787, then in 1789, in the 1790s, and finally in the 1820s and 1830s, to make his theory relevant to the central challenge of reconciling liberty and large size. His approach called for a keen analysis of the danger facing republican government, political debate, popular or party protest, and a willingness to use radical constitutional means to secure necessary change.

Vision and Values for the Republic

Ethically, Madison's theory embodies a breakthrough to a broadened conception of how Americans ought to live: enjoying liberty, self-government, pluralist democracy, and the good political life in a strengthened and more perfect Union. He extols the vision of religious and political liberty. He endorses the vision of just popular rule, operating through republican representation and resistant to factional dominance. He accepts the value of the multiplicity and diversity of interests, of an informed and vigilant public opinion, and of competing political parties, including a loyal opposition. He fights for a republican Union and nation, operating under a more powerful but still limited constitution.

Empirically, Madison's theory of the extensive federal republic constitutes another breakthrough. This theory involves a new empirical hypothesis designed to explain how Americans could enjoy the very best (and escape the worst) of two worlds: How they could enjoy liberty without fear of anarchy and the adverse effects of faction, and how they could enjoy authority without fear of tyranny and the adverse effects of an overpowerful central government. The large size of the new federal republic, plus the multiplicity and diversity of interests within it, would inhibit or defeat the operation of factions and thus ensure greater success for the public good. The federal division of power would keep local government close to the people yet give to the national government authority in matters of common national concern. Representation would operate to filter the evil effects of faction. Constitutional limitations on power and separation of powers are additional "auxiliary precautions" that would help to ensure the successful reconciliation of liberty and authority in the new republic. Moreover, a loyal republican and constitutional opposition party would guard against tyranny at the center. Several other features would protect against the evils of monarchy, plu-

tocracy, and tyranny in the national government and against antirepublicanism and anarchy in the states. Among them were the constitutional operation of majority rule; a sound public opinion; a free press; a healthy two-party system; the federal judiciary; and wise statesmanship that could distinguish between a usurpation, an abuse, and an unwise use of constitutional power. In brief, just republican government in a federal republic is feasible.

Reconciling Liberty and Authority

Prudentially, Madison's theory and political judgments illustrate a number of practical breakthroughs in politics. In 1787 Madison saw the need to strengthen the powers of the national government. He wisely insisted on the possibility and feasibility of a new federal republic that could reconcile liberty and authority. He wisely rejected the counsel of those who denied the possibility of republican government in such an extensive domain as America. He was willing in 1787 to settle for a national government not as strong as he had originally wanted because he perceived correctly that the new Constitution was a major step in the right direction. Guided by his political theory, he articulated key features of the new federal republic in Philadelphia, explained the new Constitution brilliantly and effectively in *The Federalist* and in the important Virginia Ratifying Convention, worked to establish the new Constitution on a firm foundation with a Bill of Rights and other supporting legislation in the first Congress, exercised leadership on behalf of a republican constitutional opposition party in the 1790s, and defended the Union against nullification and secession at the end of his long life.

Madison's theory constitutes an illuminating guide to generally successful action throughout his lifetime effort to demonstrate that Americans could reconcile liberty and authority in a large republic. His role in brain-trusting and in securing the adoption of the Constitution, and then the Bill of Rights, is perhaps his outstanding prudential success. Still to be recognized is his contribution to a theory of democratic politics. Despite Madison's inability in the last decades of his life to stop the movement that would lead to the Civil War, his argument against John C. Calhoun and the southern fire-eaters pointed toward the wise statesmanship that might have prevented the disaster.

Weaknesses in the Extensive Republic

There are certainly some weaknesses in Madison's political philosophy of the extensive republic. One disturbing weakness is Madison's failure to think through more clearly the relationship between necessary strength at the center and control of faction. Madison's political philosophy may explain how faction may be controlled in the states and why it would be difficult for faction to unite and dominate the central government. But in the absence of a "Neutral Sovereign" pursuing the common good (his early unrealized hope), Madison's logic also explains why good government by the right people may be obstructed. Ironically, Madison, the strong nationalist of 1787, contributed somewhat to the

philosophy of a weaker national government by his limited interpretation of the Necessary and Proper and General Welfare clauses of the U.S. Constitution in his partisan struggles with Alexander Hamilton and other Federalists in the 1790s. Knowing how to strike the balance between liberty and authority is no easy matter.

Other weaknesses are also apparent: the difficulty, for example, of defining the faction whose unjust actions are to be controlled; the dubious assumption that somehow the public interest will emerge from the clash of contending interests; the sometimes questionable refinement of the popular will that takes place through representation and indirect elections; and Madison's failure in his later political battles to clarify the meaning of "interposition."

Madison's Federalism in the 20th Century

Other problems plague us today and require us to ask troublesome questions about the historic Madisonian model. Can it be adapted successfully to the changing conditions of 20th-century—or 21st-century—America? To the decreased size of America brought about by science and technology? To the great facility with which factions can unite and dominate? Is Madison's theory too negative to do justice to the "least free" in society—to the poor, blacks, Native Americans, Hispanic Americans, women?

When all is said and done, however, we must conclude that Madison's political philosophy has worked reasonably well when followed. Certainly, the possibility of just republican government—via federalism—in a large nation has been demonstrated. The pessimistic prophecies of classical political thought have not been fulfilled. Moreover, federalism has demonstrated reasonably well its openness to republican experiments: if successful, these experiments can be emulated; if failures, they can be contained. Moreover, Madison's theory of democratic politics—featuring the importance of civil liberties, a loyal opposition party, keen criticism of the party in power, the primacy of peaceful constitutional change—has demonstrated its worth in ensuring just republican government in a large nation.

What, finally, of the future of the paradigm of the federal, constitutional republic? The paradigm of federalism holds out hope for use as a model at the transnational level and (less confidently) at the global level. Similarly, it holds out hope for organization and decisionmaking at very local levels through new patterns of participatory democracy. Here we have intimations of what the future will hold.

In a time when many people are afflicted by intellectual gloom and doom, if not existential fear and trembling, it is indeed heartening to call to mind a great creative breakthrough in politics, one that suggests that we are not the inevitable victims of accident and force. Such breakthroughs as Madison's at the end of the 18th century can inspire us to move up to new levels of political creativity as we face the problems of the end of the 20th century.

Neal Riemer is a professor of political science at Drew University.

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