

PERSPECTIVE

Changing Patterns of Finance and Governance

Direct Residential Property Tax Relief

Robert D. Ebel and James Ortbal

State Fiscal Capacity and Effort: An Update

Carol E. Cohen

Metropolitan Governance: Reviving International and Market Analogies

John Kincaid

Federal or State Court: Should Diversity Jurisdiction Be Abolished?

Russell Chapin

A View from the Commission



Once thought to be the sole domain of the federal government, immigration has become an issue with increasingly intergovernmental impacts. In recent years, state and local governments, particularly in California, the Southwest, and Florida, have had to deal with a myriad of social and fiscal problems stemming from the tremendous influx of immigrants—legal and illegal—often without federal oversight or assistance. Just as often, it is either federal action or inaction that has generated the problems in the first place.

For more than 30 years, Metropolitan Dade County has been a beacon for immigrants from the Caribbean and most recently from Central America. It is estimated that one out of every nine residents of the county today has come from Cuba, Haiti, or

Nicaragua since 1980. During the past year, there has been a considerable increase in migration from Central American countries, particularly Nicaragua, and all indicators point to a continuation of this pattern.

Of the estimated 125,000 Nicaraguans in Dade County, approximately 75,000 have arrived since 1982. They are, therefore, ineligible for residency under the *Immigration Reform and Control Act*. In addition to Nicaraguans, the county has made a conservative estimate of 75,000 residents from other Central American countries. This undocumented population is ineligible for any type of federal assistance; consequently, the county's social service delivery system bears a tremendous burden.

In 1988, the county spent \$3.5 million for inpatient and outpatient health services for approximately 7,000 of these immigrants. The county departments of Human Resources and Youth and Family Development, and the Community Action Agency collectively spent \$500,000 for such critical services as food, clothing, shelter, and crisis counseling. It is projected that in 1989 approximately \$1 million will be spent for emergency social services to this population.

Another area of concern is criminal justice. In 1988, 1,200 Nicaraguans were arrested in the Greater Miami area. The costs related to incarceration and other services amounted to \$150,000. A significant increase in the number of arrests is projected for this undocumented or asylum-pending population in 1989, an increase that can be attributed at least in part to their growing frustrations over their precarious legal status.

One other major area of impact is the Dade County school system, which

is the fourth largest in the United States with an enrollment of 290,000. Since October 1987, more than 8,000 Nicaraguans have been enrolled, at a cost of \$5.7 million.

The financial impact is enormous. Overall, the estimated local outlay for accommodating these undocumented populations will be from \$10 million to \$14 million for the period 1988-89. It is obviously unfair for local taxpayers to bear the major burden of coping with the results of federal policy in Central America and the consequences of the federal government's inability to curb illegal immigration.

The diversity and energies we as a nation receive from an orderly flow of immigration are critical to our future. We need to establish a federal/state/local partnership to address the inequities, deal with the negative impacts of illegal immigration, and plan for the future. There is a broad range of issues here that present serious challenges for our intergovernmental structure in the remaining decade of this century.

It is estimated that some 48 percent of the population of South and Central America is under age 15. We can expect in the next few years an explosion in the size of the working age population in that region—and in the numbers of hungry families with no jobs. And, as Neil Diamond's song says, "They're Comin' to America."

Although a few states and large cities may have the biggest immigration problems today, if left unresolved, these concerns will eventually be on government agendas in all 50 states.

Harvey Ruvin
Commissioner
Dade County, Florida

PERSPECTIVE

2 A View from the Commission

Harvey Ruvin

4 ACIR News

6 Intergovernmental Focus

Spotlight on the State and Local Government
Commission of Ohio

9 Direct Residential Property Tax Relief

Robert D. Ebel and James Ortbal

**15 State Fiscal Capacity and Effort:
An Update**

Carol E. Cohen

**23 Metropolitan Governance:
Reviving International
and Market Analogies**

John Kincaid

**29 Federal or State Court:
Should Diversity Jurisdiction
Be Abolished?**

Russell Chapin

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MAY 24 1989

34 ACIR Preview

Disability Rights Mandates:
Does the Federal Government Practice
What It Preaches?

GOVT DOCUMENTS 50B

35 The Chairman's View

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On the ACIR Agenda

The last meeting of the Advisory Commission on Intergovernmental Relations was held in Washington, DC, on March 10. Following are highlights from the agenda and Commission actions.

Federal and State Compliance with Disability Rights Mandates

The Commission approved a report on federal and state compliance with disability rights mandates, including findings and recommendations. The report will be published in April.

The report addresses the question of whether the federal government "practices what it preaches" with respect to compliance with national mandates that apply to federal agencies as well as to state and local governments. The policies examined are employment opportunities and architectural barrier removal for persons with disabilities (see also page 34).

State Constitutional Law in the Federal System

The Commission approved a report on state constitutional law in the American federal system, including findings and recommendations. The report will be published in May.

The renewed interest in state constitutional law is a significant development in American federalism. The topics covered in the report include federal doctrines allowing substantial scope for state constitutional jurisdiction, as well as the development of state constitutional law in the fields of governmental structures and functions, civil liberties, criminal procedures, economic rights, workers' compensation, and education policy.

Commission Positions on Local Home Rule

At the December Commission meeting, questions were raised as to whether ACIR should undertake additional work on local home rule. This is

a topic that the commission has addressed for more than 25 years. In 1961, ACIR endorsed "maximum flexibility and freedom of action for local units in meeting the needs of their citizens." Over the years, the Commission has developed a comprehensive view of local home rule—a topic also often referred to as "local discretionary authority." The constitutional rather than the statutory route was recommended in 1962, but only for the functional powers of local government. Subsequent ACIR studies pointed out that discretion in exercising financial, organizational, and personnel powers is equally necessary for effective local home rule. In a 1981 study, the Commission found that the states range widely in the amount of such authority granted to local governments generally and among the various types of local governments.

Present ACIR home rule policy is stated in "Recommendation 7: Improving Local Discretionary Authority," in the 1982 report *State and Local Roles in the Federal System*. This policy calls for a self-executing grant of broad structural, functional, and fiscal powers by state constitutional amendment, with instructions to the courts to interpret broadly. The question of whether additional projects will be undertaken is being referred to the Commission's research program review committee.

The Clearinghouse: An Update

ACIR is assisting the U.S. Department of Commerce in designing a national clearinghouse of state and local initiatives on productivity, technology, and innovation. The clearinghouse was authorized in the *Omnibus Trade and Competitiveness Act of 1988*. ACIR organized a series of roundtables to dis-

ACIR will hold its next meeting on June 9, 1989, in Colorado Springs, Colorado

State Support for ACIR

ACIR would like to thank the following states for their recent financial support: California, Colorado, Connecticut, Hawaii, Kansas, Kentucky, Maryland, Michigan, Minnesota, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, and Wisconsin.

Discuss an appropriate scope and role for the clearinghouse and to develop an approach for implementing the design. The meetings convened, separately, (1) representatives of large and small technology-based companies, industry associations, and others concerned with private sector activities; (2) state, local, and university based providers of technical and financial assistance to businesses; (3) public interest group representatives, congressional staff, and members of organizations concerned with competitiveness as a matter of public policy; and (4) federal agency representatives involved in efforts to assist states, localities, and businesses. On March 8, Executive Director John Kincaid presented testimony on ACIR's role in the clearinghouse before the House Subcommittee on Science, Research, and Technology.

Conference on School Finance

The Commission has begun planning a two-day conference on school finance for 1990. ACIR plans to cosponsor the conference with the National Tax Association and the Martindale Center of Lehigh University. ACIR will have the major responsibility for organization and content of the meeting.

The conference will address fiscal issues of importance to state legislators and staff, state and federal education department officials, and local school board members and administrators. Topics to be examined include: the institutional nature of the intergovernmental partnership in providing financial support for K-12 education, the response of these institutions to state court decisions pertaining to fiscal equalization, equity as a governance issue, fiscal implications of such structural changes as choice programs, and financing concerns relating to special places (e.g., inner city vs. rural) and needs (e.g., mathematics, science, and literacy).

ACIR/CSG Hearings on Federal System

ACIR chairman Robert B. Hawkins, Jr., and Council of State Governments Chairman Arnold Christensen have announced a series of four regional joint hearings on "Restoring Balance in the Federal System: Constitutional, Legislative and Educational Options." The schedule of hearings is: Lake Buena Vista, Florida, April 21; Federal Hall, New York City, May 18; Colorado Springs, Colorado (in conjunction with the ACIR meeting), June 9; and Cincinnati, Ohio (date to be set).

New Research Committee

ACIR Chairman Robert B. Hawkins, Jr., has appointed a Research Committee to review the agenda. The members are: Harvey Ruvin (chairman), John T. Bragg, Dave Durenberger, Daniel J. Elazar, Donald M. Fraser, Robert M. Isaac, David E. Nething, George A. Sinner, Sandra R. Smoley, and Ted Weiss.

Geography and Policy

On March 17, ACIR hosted a conference of the Commission on Geography and Public Policy of the International Geographical Union.



Hawkins Meets with Sununu

Robert B. Hawkins, Jr. (right), chairman of the Advisory Commission on Intergovernmental Relations, met with President George Bush's Chief of Staff John H. Sununu at the White House on March 9. The two met to discuss future initiatives in intergovernmental relations and the role of ACIR in improving the intergovernmental system. Former New Hampshire Governor Sununu was vice chairman of ACIR before he joined the Bush Administration. The Commission congratulates Governor Sununu on his appointment as White House Chief of Staff.

Intergovernmental Focus

Spotlight on the State and Local Government Commission of Ohio

Craig Zimmers
Executive Director

The State and Local Government Commission (SLGC) of Ohio was created in 1978 by the Ohio General Assembly as a governmental research and advisory agency in the executive branch of the state government. The same legislation provided that the governor and lieutenant governor run for election as a team. Prior to passage of the legislation, the lieutenant governor presided over the state senate. Now, the lieutenant governor serves as chairman of the SLGC.

The bipartisan SLGC has 13 members: two members of the public appointed by the lieutenant governor; two state senators appointed by the president of the senate; two state representatives appointed by the speaker of the house; and two county commissioners, two mayors, and two township officials appointed by the governor from nominations by the state associations of local governments. The non-legislative members serve four-year overlapping terms; the legislative members serve two-year terms concurrent with the legislative session.

The SLGC's mandates include:

Serving as a forum for the discussion and resolution of problems between the state and local governments and among the various forms of local government;

Studying the structural, organizational, and fiscal matters of local government;

Reviewing the controls and conditions of state and federal grant programs for local governments;

Collecting and disseminating information on local governments;

Encouraging and coordinating studies on the relationship between levels of government; and

Recommending legislation and constitutional amendments.

The SLGC presently has four staff members—a director, an administrative assistant, and two research specialists. Consultants are utilized occasionally, and other state agencies provide some staff support. Funding for the SLGC has come solely from the state's general revenue fund. The commission may, however, also receive contracts, appropriations, gifts, or grants from any level of government or any other public or private source, and it intends to pursue these alternative sources.

The Early Record

The SLGC began operation in early 1979 under the leadership of then Lieutenant Governor George Voinovich. In the summer of that year the commission developed its first work plan and created committees to study such issues as intergovernmental relations, local government structure, modernization of laws, fiscal and personnel administration, urban policy, and emergency medical services.

During the remainder of 1979, the SLGC worked on a number of projects. To a large extent, the SLGC members eased themselves into various networks that affected local governments. A number of things were accomplished during those few months. A study was made of Ohio's use of federal surplus property, and several suggestions were made to the U.S. General Services Administration, including one to establish a second warehouse in northern Ohio. Another study was made to determine the state's housing policy, in which a revenue bond system was suggested that would enable the state to initiate a housing rehabilitation program.

In 1980 and part of 1981, the SLGC continued to be active. Reports were issued on cooperative purchasing, reduction of outside millage levied, and the state's "rainy day" fund.

Hearings were held on civil service reform, governance in urban areas and developing townships, the CETA and CDBG programs, and the model procurement code.

In 1981, the commission was, in effect, disbanded. There were several reasons for this. Lieutenant Governor Voinovich had resigned on his election as mayor of Cleveland in 1980. Without the high profile and status of the lieutenant governor, the commission's proposals were not being considered as seriously as they had been. Furthermore, the governor was failing to support what were termed as "progressive" policies coming from the SLGC. Finally, and perhaps most importantly, the SLGC lost its annual appropriation due to the state's fiscal problems.

SLGC Reactivated

The SLGC remained inactive until April 1984. At that time, Governor Richard F. Celeste reinstated the commission with Lieutenant Governor Myrl Shoemaker as chairman. With only two carryover members from the former SLGC, the new group had to reestablish itself in the networks that deal with local governments in Ohio. With the death of Lieutenant Governor Shoemaker in 1985, the commission came under the guidance of the vice chairman, Charles A. Calhoun.

During Mr. Calhoun's tenure as chairman, two pieces of legislation that stemmed from SLGC efforts were enacted by the 116th General Assembly. One was the cooperative purchasing law, which allows local governments to piggyback on state purchasing contracts. The other law gives local governments preference in disposing of state surplus property.

Also during this period, the SLGC published two major reports. The first report was on the undivided Local Government Fund, Ohio's program of

state revenue sharing with local governments. The study resulted in the introduction and passage by the 117th General Assembly of H.B. 95, which modified the method of generating revenues for the Local Government Fund and changed the distribution formula to try to achieve a more equal per capita amount for all counties.

The SLGC's other major report studied the impact on local governments of the cuts in federal funds to the states and localities. Additionally, the SLGC provided periodic reports on such issues as insurance availability and affordability for local governments, the fiscal crises of some counties, state surplus property, and E-911 telephone systems.

New Leadership

In January 1987, Lieutenant Governor Paul R. Leonard assumed the chairmanship of the SLGC. Following a commission retreat, he established two committees to study and report on state mandates to local governments and on cooperative efforts among local governments. These committees worked throughout 1987 and 1988, issuing interim reports in December 1987, and final reports and recommendations in December 1988.

The mandate committee recommended that the commission:

- Develop a catalog of state mandates to local governments to serve as a baseline document;

- Establish a mandate review committee to report at least biennially on new mandates enacted by the General Assembly;

- Form a fiscal note network of cities, villages, townships, and counties to work with the Legislative Services Commission to provide more thorough, accurate, and timely information for the fiscal impact statements on legislation proposing mandates; and

- Introduce and support legislation to require that:

- the state pay the cost of mandates or provide a means of funding for the local governments,

- no bill be voted on by the General Assembly unless there is a complete and accurate fiscal note attached, and

- fiscal notes be prepared before administrative rules and regula-

tions affecting local governments are promulgated.

Efforts to implement these recommendations are under way.

The SLGC Cooperative Ventures Committee report, *Cooperative Ventures: Strategy for the Future*, concluded that as long as local government resources are scarce and service demands are increasing, local governments should consider pooling their resources in order to provide services more effectively and efficiently. The committee also recommended that the SLGC should:

- Advocate and encourage the state to use financial and other incentives to promote voluntary cooperative ventures among local governments;

- Encourage the development and sharing of expertise on how to initiate and maintain cooperative efforts; and

- Study areawide tax base sharing programs and other more complicated cooperative ventures to determine their desirability and applicability to Ohio's local governments.

Steps to accomplish these recommendations have been incorporated into the SLGC's 1989 work plan and the 1990-91 budget request.

New Directions

Under the leadership of Lieutenant Governor Leonard, the SLGC has developed into a more service-oriented agency than it had been. During 1988, the commission published and distributed a directory of state services to local governments to the more than 2,000 cities, villages, townships, and counties. For the first time, the commission sponsored a series of seminars for local officials. The seminars featured professionals from the private sector who provided an overview of public financing. This project proved such a success that a conference is planned for May to focus on infrastructure reconstruction and solid waste management, again utilizing private sector expertise.

The SLGC has gradually developed the role of liaison between local government officials and state agencies during emergency and disaster situations. Agency staff have responded in the aftermath of tornadoes,

floods, and hazardous materials spills to assure that state assistance was sufficient and coordinated with the local governments. In 1988, when Lieutenant Governor Leonard served as the chairman of the Drought Assessment and Relief Team, the SLGC was involved in helping to fashion the state's responses to the challenges created by the drought.

Assessment

Although the State and Local Government Commission of Ohio has had its ups and downs during its ten-year history, it can claim its full measure of accomplishments. As it continues to evolve and mature, the SLGC is likely to grow in influence and stature in the state government and among local governments. As the full impact of the "New Federalism" comes to bear on state and local governments, the importance of commissions like the SLGC will become more evident.

State and Local Government Commission 1989 Roster

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Commissioner
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Richard Schafrath

Ohio Senate

Ron Amstutz

Ohio House of Representatives

Jerry W. Krupinski

Ohio House of Representatives

Craig Zimmers

Executive Director

Local Revenue Diversification: Local Income Taxes

SR-10 1988 52 pages \$5.00

This study is one of a series by ACIR on ways in which local governments can lessen their reliance on property taxes by diversifying their revenue bases. Among the most potentially important nonproperty taxes suitable for use by local governments is the local income tax. It is presently a modest source of revenue, but is important for a number of large cities. In most cases, local income taxes must be authorized by the state legislature, and they are most often used by general purpose local governments. Typically, the local income tax is an alternative rather than a complement to a local sales tax, and all states that authorize a local income tax also have a broad-based state income tax.

A STAFF REPORT

Local Revenue
Diversification

Local
Income Taxes



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SR-10
August 1988

Devolution of Federal Aid Highway Programs: Cases in State-Local Relations and Issues in State Law

M-160 1988 60 pages \$5.00

This report addresses questions in state law arising from a March 1987 ACIR recommendation on devolving non-Interstate federal aid highway programs and revenue bases to the states. Presented here are the results of a survey of state code and statute revision offices in the 50 state legislatures and of case studies in six states—California, Florida, Illinois, Kansas, Maryland, and Ohio. The survey and case studies assessed state-local relations in highway policymaking and identified issues that would have to be addressed in implementing a devolution proposal.

DEVOLUTION OF
FEDERAL AID
HIGHWAY PROGRAMS:
CASES IN
STATE-LOCAL RELATIONS
AND
ISSUES IN STATE LAW

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M-160
November 1988

(see page 22 for order form)

Direct Residential Property Tax Relief

Robert D. Ebel and James Ortbal

Perhaps no single issue in state and local public finance has created as much scholarly controversy and political consternation as relief for low-income families from the real property tax. The 1973 ACIR report *Financing Schools and Property Tax Relief—A State Responsibility* made the case “for” relief by stating that “no other major tax in public finance bears down so harshly on low-income households, is so capriciously related to the ability to pay” and is as much “a growing threat to homeownership.”¹

Why such strong words? There are two reasons. The first stems from the generally accepted view that the property tax tends to be regressive (the tax burden increases as income decreases) for low-income people. If one accepts the view that current income is the best measure of ability to pay taxes and that those taxes are actually paid out of that income, the ACIR’s case for relief has stood the test of most research. This is true even if one places the Commission’s findings in the context of the “new view” of property tax incidence, which holds that under certain circumstances part of the tax may be borne disproportionately by the owners of capital, and, therefore, is progressively distributed across income classes.

A second justification given for providing property tax relief is that some mechanism is needed to cushion the cash flow impact of a property tax bill that may place a special hardship on homeowners whose property wealth is high relative to their current income. This is the source of most complaints about the property tax by the elderly. In retirement, the ratio of property wealth to income tends to rise as income falls, so the burden of the property tax increases.²

Despite these concerns regarding its distributional effects, the property tax nevertheless continues to be the mainstay of the U.S. system of local finance. The tax is, at present, the major local tax in 48 states. The exceptions are Alabama and Louisiana, which rely more heavily on a combination of general sales and gross receipts taxes, and the District of Columbia, which relies more heavily on the income tax. For the United States as a whole, the property tax accounts for 73.7 percent of total local own source tax revenue.³

Moreover, the real property tax will continue to retain its central role in local finance. This is true for at least four reasons.

First, it is levied on a tax base of land and improvements, which is immovable in the short run. For local governments, which operate in the most “open” of economies, this insures continued taxation of that base.

Second, for most local governments, the property tax is the only broad-based levy for which administrative bureaucracies have been well developed.

Third, from the viewpoint of the local treasury, the tax base—real property—exhibits the twin characteristics of relative fiscal stability in times of general economic slowdown and automatic tax-growth responsiveness in periods of economic growth and/or inflation. This is a particularly attractive feature for general purpose local governments, many of which cope with the long-run tendency toward fiscal imbalance.

Fourth, as the remainder of this article will discuss, in recent years local and, especially, state governments have been aggressive in instituting policies designed to minimize the sting of the regressivity of the tax on low-income families.

Approaches to Residential Property Tax Relief

As a result of the political concern regarding the harshness of the property tax on certain classes of taxpayers combined with the practical reality that the tax will re-

Table 1
Direct Residential Property Tax Relief

States	Classification			Circuit Breakers	Homestead Exemption or Credit	Residential Deferral
	Number of Classes	High/Low	Differential By			
Alabama	3	3:1	Value			
Alaska					EHR,W	E
Arizona	9*	20:1	Value	AR,EH		
Arkansas				EH		
California	2		Value	EHR	AH,DV	LIE
Colorado	2	1.38:1	Value	DHR,EHR	LIED	E
Connecticut				EHR	D,DV	D
DC (Washington)	4	1.67:1	Rate	EHR	AH	AH
Delaware					E,LI	LIE
Florida					AH	AH
Georgia					AH,LIE,V	LIE
Hawaii	8	*	Rate	AR	AH,B,D,DV,E	
Idaho				D,EH	AH	
Illinois	*			D,EHR	AH,E,V	LIE
Indiana					AH,DV,LIE	
Iowa	4		Value	DHR,EHR	AH,DV	
Kansas	4*	2.5:1	Value	B,D,EHR		
Kentucky					E,D	
Louisiana	4*	2.5:1	Value		AH	
Maine				AHR	B,V	V
Maryland				AH,D,ER	B,DV	DV
Massachusetts	*				AH,EV,LI	LIE
Michigan				AHR	DV	LIE
Minnesota	34*	27.5:1	Value, Credit	AHR	AH	
Mississippi	2	2:1	Value		AH,D,EH	
Missouri	3	2.67:1	Value	EHR		
Montana	6*	10:1	Value	EHR	DV,LI	
Nebraska					D,DV,EH	
Nevada				EHR	B,DV,O,V,W	
New Hampshire					B,DV,E	E
New Jersey					AH,D,DV,E	AH,DV,E
New Mexico				EHR	AH,V	
New York	4,2*		Value	AHR		
North Carolina					DV,LIE,D	
North Dakota	4*	1.11:1	Value	DHR,EHR	B,E,D	
Ohio	2		Rate, Credit	D,EH	AH	
Oklahoma				D,EH	AH,V	
Oregon	2		Value	AHR	DV	LIE
Pennsylvania				D,EHR	B,D,DV	D
Rhode Island	*			EHR		V

main an important source of local revenues, many states have implemented various tax relief measures to soften the property tax burden.

Property tax relief can be defined quite broadly to include policies that reduce the relative reliance on property taxation for public revenue. This definition includes not only homestead exemptions, circuit breakers, deferrals, and classification—the traditional property tax relief programs—but also various nonproperty taxes (e.g., sales and income), local nontax revenue sources, intergovernmental aid programs, and tax limitation laws.

The policies in the first group are referred to as direct property tax relief; they reduce tax bills directly for individuals and/or specific parcels of property even though they may not affect total property levies of governments.

The second group constitutes alternative sources of revenue, which are intended to permit local governments to lower property tax levies, thereby providing indirect relief. Thus, indirect relief results from change external to the property tax.

This article will review current approaches to direct property tax relief for homeowners and renters. This is not to minimize the importance of indirect relief, excellent discussions of which may be found elsewhere.⁴

The characteristics of the four most common direct residential property tax relief programs are summarized in Table 1. Each of these programs works within the property tax framework to reduce or modify the tax or tax base amount. The classification, homestead exemption and credit, and deferral methods modify the calculation of in-

Table 1 (cont.)
Direct Residential Property Tax Relief

States	Classification			Circuit Breakers	Homestead Exemption or Credit	Residential Deferral
	Number of Classes	High/Low	Differential By			
South Carolina	5*	2.63:1	Value	DHR,EHR	B,D,DV,E	
South Dakota						
Tennessee						
Texas	3	2.2:1	Value	EHR	AH,D,EH	LIE
Utah						E
Vermont	3	1.67:1	Value	AHR	B	LIE
Virginia						*
Washington						D,EH
West Virginia	4	4:1	Rate	EHR	D,E	LIE
Wisconsin						AHR*
Wyoming						D,EHR

Notes:

- Arizona: Uses two different measures of value for each classification.
- Hawaii: Hawaii counties may classify by differential rates both on the basis of use (4 counties) and land vs. improvement (2 counties).
- Illinois: Applicable only in Cook County.
- Kansas: Two percentages for four classes.
- Louisiana: Three percentages for four classes.
- Massachusetts: Local option as to the distribution of the tax levy across classes.
- Minnesota: Number of classes is unclear due to a mixing of defined classes and sub-classes combined with differing percentages applied.
- Montana: Eight percentages for six classes.
- New York: Four classes mandated in NYC and Nassau County; two optional elsewhere.
- North Dakota: Two percentages and four classes.
- Rhode Island: Local option in three cities.
- South Carolina: Four percentages for five classes.
- Virginia: Local option programs for the low-income elderly and disabled homeowners and to achieve agricultural use-value assessment.
- Wisconsin: A circuit breaker rather than use value assessment is used.

Key:

- AHR—all homeowners and renters
- AH—all homeowners
- AR—all renters
- B—blind
- D—disabled homeowners
- DV—disabled veterans
- DHR—disabled homeowners and renters
- E—elderly
- EDH—elderly disabled homeowners
- EH—elderly homeowners
- EHR—elderly homeowners and renters
- ER—elderly renters
- EV—elderly veterans
- LI—low income
- LIE—low-income elderly
- LIED—low-income elderly disabled
- O—orphans
- V—veteran homesteaders
- W—widows or widowers
- AV—assessed value
- NA—not available

Sources:

Classification and deferral programs are from John H. Bowman, "Real Property Classification: The States March to Different Drummers," *Annual Proceedings of the National Tax Association, 1986*, pp. 288-296, and John H. Bowman and John L. Mikesell, *Local Government Tax Authority and Use* (Washington, D.C.: National League of Cities, August 1987). Circuit breaker and homestead exemption programs are based on ACIR surveys; Commerce Clearinghouse, *State Tax Guide, 1989*; Corina Eckl, *State Tax Relief for the Poor* (Denver: National Conference of State Legislatures, forthcoming).

dividual property tax bills. Circuit breakers typically provide refunds after property tax bills have been calculated and paid.⁵

Classification

At present, 19 states plus the District of Columbia legislate some form of de jure tax classification of the real property tax.⁶ Five other states—Hawaii, Illinois, Massachusetts, New York, and Rhode Island—provide a limited local option to classify. The basic goal of a classified tax system is to tax residential real estate at a lower effective rate than real estate used for other (e.g., commercial) purposes.⁷

The most common approach to establishing effective rate differentials is the application of uniform nominal

rates to differential assessment levels. This is the practice in most of the classifying states (see Table 1, column 3). West Virginia and the District of Columbia classify by applying differential nominal rates to supposedly uniform assessed values. Hawaii and New York authorize local adoption of such an approach. Either approach can be effective, although, as ACIR previously argued, the practice of establishing different assessment levels is inferior because it (a) makes it harder for taxpayers to evaluate the appropriateness of their assessed values, (2) increases the potential for abuse of the assessment process and appears to make the assessor part of the tax-setting process, and (3) affects debt limits and other policies tied into assessed figures.⁸

Other differences among classification systems include the number of classes defined, the degree of differ-

ence among classes, and the constitutional or statutory placement of these details. These are important policy questions to which states have provided very different answers. The number of classes, for example, ranges from two to probably 34. The word "probably" is used appropriately here because there is no objective way to determine the right pattern for property tax classification or, for that matter, the precise number of classes. Thus, a recent study of Minnesota taxes found no agreement on the number of classifications—estimates range from 20 to more than 70. For purposes of Table 1, we follow Bowman and put the number at 34 classes.

One final comment on the potential complexity of classification warrants mention. Despite legislative intentions to effect a lower rate for residential property versus commercial real estate, the interplay between the dynamics of the market and the method of tax classification can lead to the opposite outcome. In Ohio, for example, the main piece of a two-part classification system freezes the tax shares of the two classes (residential and agricultural, and all other real property) from one tax period to the next when considering only those properties that existed in an unchanged form in both periods. This is accomplished by calculating for each taxing district certain tax reduction factors that lower the applicable tax rate below the nominally voted rate for the class of the market value that has grown more rapidly. In some localities, this can result in a situation (when residential property value grows more slowly than the other classes) whereby residential property is taxed at a higher effective rate than other property.⁹

Circuit Breakers

A circuit breaker is a form of property tax relief in which benefits are based on a schedule relating a taxpayer's income and property tax bill. Compared to its electrical namesake, the circuit breaker is designed to shield the family from a tax "overload."

In its classic form, an applicant files a supplemental statement to the state income tax return, listing all forms of money income (wages and salaries, plus all other sources, including interest, dividends, pensions, and social security). The taxpayer may either compute directly the amount of the credit to be taken against the state income tax, or wait for a refund amount to be computed and mailed by the state tax department.

Although most circuit breaker states have income taxes, this is not a prerequisite to the adoption of a circuit breaker. In fact, some states administer the circuit breaker program separately from the income tax and send cash refunds to qualified recipients.

A third variant is to work through the local property tax collection process. Under this approach the initial tax bill is reduced by the amount of the circuit breaker, and the locality then bills the state for that amount.

The first circuit breaker (Wisconsin, 1964) was a program for elderly homeowners and renters, with "excess" taxes rebated through a state income tax credit. Since that time, however, the circuit breaker has taken on so many forms that generalization regarding their details is diffi-

cult. As Table 1 summarizes, there is quite a diversity among the states.¹⁰

Among the 32 states that use some form of circuit breaker, relief is granted to homeowners in all states but Hawaii¹¹ and to renters in 28 states. There is a mix of programs for targeting relief to the elderly (24 states) and/or the disabled (12 states). From the taxpayer's view, the amounts can be significant. In four states, the average benefit level exceeds \$400, with the average for all states \$157. The impact for the tax collector varies considerably—from a high per capita cost of \$60 in Michigan, for which all homeowners and renters are eligible, to a negligible amount in West Virginia, where the total cost to the state is \$392.

This range in the characteristics and impact of circuit breaker programs serves to point out both a merit and a shortcoming of the approach. On the plus side, the circuit breaker gives policymakers a great deal of flexibility. A potential problem, however, is that flexibility can make the system overly complex. As a result the relief package may be poorly targeted and/or not effectively targeted to the persons for whom it is intended. In Minnesota, for example, state revenue officials found that due to the complexity of the circuit breaker the state made \$17 million in overpayments to homeowners and renters. These errors were attributed to "honest mistakes," stemming from the use of several benefit schedules and taxpayer underestimation of household income.¹²

Homestead Exemptions and Credits

The most common residential property tax relief program is the homestead exemption or credit, which is utilized in 41 states. This relief can be either general (for all homeowners) or specific (directed only to certain homeowner groups, such as veterans), and can be structured as a partial exemption or as a credit against the property tax bill.

Under the exemption approach, a dollar amount is subtracted from the assessed taxable base of the qualifying homeowner after the total (gross) assessed value has been determined for all taxpayers in some uniform manner. The tax rate is then applied to this reduced assessed value to determine the actual tax due. Because the relief is achieved by reducing the tax base directly, the cost of an exemption is typically borne by the local taxing jurisdiction. In some states, however, the state government reimburses the locality for part or all of the lost revenue. One way to accomplish this is with a homestead credit, whereby the local government calculates the value of the exemption (specific dollar exemption times the rate) and then reduces the taxpayer's gross tax bill through a credit. The credit amount is then billed to the state.

Perhaps the most notable feature of the homestead exemption and credit approach is how many different non-income or wealth related "needs" it is used to address. Of the many different types of program recipients identified in ACIR's 1989 edition of *Significant Features of Fiscal Federalism*, only a fifth of the 41 homestead exemption states have some explicit income and/or wealth limitations such as those found in circuit breaker programs.

Other features of note are: Only 18 states provide relief to all homesteads. In terms of number of programs, the primary beneficiaries are the elderly (20 states), disabled (13), veterans and/or disabled veterans (24). Some programs are very narrowly targeted, e.g., those having Hansen's disease (Hawaii), various categories of surviving spouses (Massachusetts, New Mexico), nonservice veterans' disabilities (Nebraska), and five-year resident veterans with a Congressional Medal of Honor (Minnesota). For many states there is a significant degree of overlapping of programs.

As was noted above, many homestead exemptions are financed by the local taxing authority. As a result it is even more difficult than in the case of the largely state-financed circuit breaker to determine some minimum of direct revenue loss from these programs.

Tax Deferral

A property tax deferral program extends the time in which the property tax must be paid. The deferral approach allows the taxpayer the option of deferring all or a portion of the property tax, which the government then treats as a loan, placing a lien against the property. The loan becomes due when the property changes hands or when some other circumstances (e.g., income levels) change. If the full amount of the deferred tax plus interest at a market rate must ultimately be paid, then the deferral—unlike the other relief programs discussed above—does not constitute a subsidy to the taxpayer.

As Table 1 (column 6) reveals, 23 states plus the District of Columbia offer some form of deferral program. Because the deferral minimizes government interference with the private housing decision, preserves equity by requiring that all taxes be paid, and, over time, minimizes the loss of government revenues, it is a program that many policy analysts argue should be included as one tool in a comprehensive property tax relief program. Indeed, the idea is slowly catching on. In 1979 only nine states, including D.C., had deferral programs, and all were limited to elderly homeowners. Now, as indicated in Table 1, the number of deferral states has more than doubled and the range of those qualifying has expanded.

Despite these merits, deferral programs generally have few participants. Two factors may explain this. First, many states have not publicized their programs aggressively. One reason for this is that some tax administrators are not eager to be placed in a situation of having to take foreclosure action if the amount of a deferral approaches or exceeds the amount of equity in a home. Second, homeowners are simply reluctant to place liens on their homes. This suggests that one of the original justifications for tax relief—the threat to homeownership—may not outweigh the costs of taking out a loan on one's home to pay the property tax.

Final Comment

This article has reviewed the current features of the major direct residential property tax relief programs in the 50 states and the District of Columbia. In view of the key role of the property tax in the U.S. state and local tax sys-

tem and the economic and political case for providing some measure of property tax relief, this is an important exercise. But, useful as this review is, it represents only a first step in addressing a wide variety of questions. These questions range from the efficiency and effectiveness of the existing array of property tax relief programs (are they structured to target the limited dollars available for relief to those who are most in need?), to those related to the rationale for property tax relief programs (is the tax burden really a threat to homeownership, and, if so, is the property tax system the appropriate vehicle for addressing that concern?).

Although some excellent work has been done recently on these questions, most of it is in the context of specific state studies. There has been no comprehensive review of how the property tax relief programs are functioning within the context of an overall intergovernmental fiscal strategy. The best, in fact the only, such policy analysis on this topic is now ten years old.¹³ Given the growing importance of state and local governments in the fiscal affairs of the nation during this same ten-year period, the issues of property tax relief and design merit closer attention by policymakers and analysts.

Notes

¹ACIR, *Financing Schools and Property Tax Relief—A State Responsibility*, Report A-40 (Washington, DC: ACIR, 1973), p. 30.

²This topic is treated thoroughly by Mitchell A. Zahn and Steven D. Gold, *State Tax Policy & Senior Citizens*, Sharon Bjorkman, ed. (Denver: National Conference of State Legislatures, 1985).

³The personal property tax component accounts for approximately 15 percent of the aggregate property tax base among the states. See John H. Bowman, "Recent Changes in Property Taxation and Their Implications for Balance in State-Local Revenue Systems," in Frederick D. Stocker, ed., *The Quest for Balance in State-Local Revenue Structures* (Cambridge, MA: Lincoln Institute of Land Policy, 1987), pp. 71-105. As Bowman notes, the distinction between real and personal property is not precise. In some states, machinery, equipment, and fixtures are considered real property if they are attached to buildings in any way, but in other states they may be classed as tangible personal property.

⁴See Bell and Bowman reference under suggestions for further reading.

⁵The distinction between a circuit breaker and homestead relief is often difficult to make. Several states (e.g., Ohio, Tennessee, Washington) combine elements of both programs into a single package. The legislative intent of the Tennessee program, for example, is for circuit breaker relief, yet, by following the guidelines here, the program is considered homestead relief.

⁶This section is based largely on John H. Bowman, "Real Property Classification: The States March to Different Drummers," *Annual Proceedings of the National Tax Association, 1986*, pp. 288-296.

⁷Also, lands in agricultural, conservation, and/or open space use often receive preferential treatment.

⁸ACIR, *The Property Tax: Reform or Relief? A Legislator's Guide* (Washington, DC: ACIR, 1973).

⁹Bowman, "Real Property Classification."

¹⁰For details on key features of circuit breaker and homestead exemption and credit programs, updated through 1988, see ACIR, *Significant Features of Fiscal Federalism, 1989 Edition, Volume 1*, Report M-163 (Washington, DC: ACIR, 1989), Tables 35 and 36.

¹¹In its place, Hawaii grants all residents a liberal consumer tax credit.

¹²Dane Smith, "Property Tax Refund Program Overpaid Recipients \$17 Million," Minneapolis *Star Tribune*, February 22, 1989.

¹³Steven D. Gold, *Property Tax Relief* (Lexington, MA: D.C. Heath & Company, 1979).

For Further Reading

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State Fiscal Capacity and Effort: An Update

Carol E. Cohen

The extent of differences among state and local governments' abilities to raise revenues relative to the cost of their public service responsibilities—their fiscal capacities—has long been of interest to ACIR and others. Because the ability of a government to raise revenue depends largely on its underlying economy, and because state and local economies differ, states vary considerably in their revenue-raising abilities. Likewise, the cost of providing services varies across states and localities in relation to the scope of services that are needed and the price differentials governments face. Such variations contribute to differences in the range and level of services provided across states and in the degree to which citizens must tax themselves to finance comparable levels of service.

Measuring Fiscal Capacity: The ACIR Approach

ACIR has just released *1986 State Fiscal Capacity and Effort*,¹ with estimates of fiscal capacity using the ACIR-developed Representative Tax System (RTS) and Representative Revenue System (RRS). The report also describes the two systems, details the methods and data used, and analyzes the 1986 estimates.

To date, ACIR's work on fiscal capacity has focused on developing improved measures for quantifying the revenue-raising aspect of state fiscal capacity. As previous ACIR reports have explained, although per capita personal income is the most widely used indicator of fiscal capacity, this measure does not accurately reflect a state or local government's ability to raise revenues. Personal income is a poor indicator of revenue-raising ability because not all taxes or nontax revenue sources used by state and local governments are levied on income or are even closely related to personal income. Furthermore, it does not capture the ability of governments to "export" taxes by collecting some, such as hotel room taxes and some business taxes, from nonresidents; it thus understates the capacity of states with exceptional tax exportation potential, such as mineral-rich Alaska and tourist-rich Nevada.

ACIR developed alternative measures of revenue-raising ability that are based on the tax bases (RTS) and other revenue sources (RRS) actually used by state and local governments. The RTS approximates a "representative" state-local system of tax rates and bases for a particular year, using national average tax rates and typical tax bases. The RTS thereby abstracts from the tax policy of any one state, but is grounded in the average behavior of the states in aggregate. The RRS is a parallel measure that includes additional nontax revenues, such as user charges. By applying these systems in every state and estimating the revenue yields, the ACIR approach measures the relative ability of each state to raise revenues. The calculated yields, or relative revenue-raising abilities, of the states vary with the magnitude of the underlying tax bases, such as retail sales or mineral production. Thus, they implicitly capture the tax exportation opportunities that are ignored by personal income.

The RTS and RRS also provide measures of fiscal effort, namely, the burden that each state places on each tax or revenue base relative to the national average. Using the RTS or RRS, any state's actual revenue raised from a particular tax or set of taxes can be compared with the estimate of revenue that could be raised using the representative tax or revenue systems; these tax utilization measures can then be compared with those of other states or the national average. The RTS and RRS are the only indicators of revenue-raising ability that allow for this standardized, disaggregated analysis of capacity and effort. For this reason, they are extremely useful to state and local tax policymakers and analysts.

Uses of Fiscal Capacity Indicators

Indicators of state revenue-raising ability and fiscal capacity are used at both the state and federal level. State policymakers and analysts use measures of revenue-raising ability to compare the relative revenue potential of state tax systems as a whole and of specific types of revenue sources. Measures of revenue capacity and effort are also commonly used to compare the level, mix, and utilization

tion of tax and other revenue sources used by states. It should be noted that indicators of revenue raising ability, such as the RTS and RRS, are descriptive rather than prescriptive. They are not meant to imply that a state should or should not, for example, have a particular tax effort or revenue mix. Furthermore, state rankings in fiscal capacity do not imply better or worse services or revenue systems, or more or less efficiency in taxation.

At the federal level, fiscal capacity measures are used in grant formulas that are designed to provide greater assistance to those states with lesser ability to raise revenues to support their service needs or with specified tax effort levels. To date, per capita income and another fiscal capacity measure, Total Taxable Resources, have been incorporated in such formulas; the RTS has been proposed in legislation; and still other measures have been researched and developed. In Canada, a measure akin to the RTS and RRS is used in the formula that distributes federal equalization aid to the provinces. Measures of fiscal capacity are also used to monitor and analyze state and regional variations in economies and revenue systems.

The 1986 Estimates

Table 1 shows the states ranked by their 1986 overall indices of RTS fiscal capacity. (The capacity indices and rankings by the RRS, which are not included in the table, show the same general patterns among states.) The overall indices are based on the per capita tax yields of the RTS compared with a national average set equal to 100. For example, California's index of 118 means that in 1986 the state had the capacity to generate an amount of tax revenues 18 percent above that of the average U.S. state. Pennsylvania's index of 90 means that its revenue raising potential as measured by the RTS was 10 percent below the U.S. average.

The disparities in fiscal capacities among states are immediately apparent, as the indices range from 177 in Alaska to 65 in Mississippi. On the other hand, most states fall within 20 percent of the national average; only 8 states are higher and 8 states lower. The range of fiscal capacity at the upper end, however, is much larger than that at the lower end of the scale.

Table 1 also shows each state's 1986 per capita income index. In general, the per capita income and RTS indices are similar, especially at the lower end of the scale, but the RTS shows a much wider range of capacity than does per capita income. Specifically, per capita income does not capture the high fiscal capacities of states with significant tax exportation opportunities, including Alaska, Wyoming, and Nevada.

The last two columns of Table 1 show the state indices in total RTS and RRS effort. The effort indices are the ratio of a state's actual revenues for the taxes or revenues included in the measure to the estimated yield of the representative systems in that state, multiplied by 100. A state's effort index indicates its actual collections compared with those it could gain with a national average system and thus provides a measure of the utilization of each tax base relative to the national average. For example, New York's overall RTS effort index of 152 means that, in aggregate, its state and local governments place a burden 52 percent higher than average on their tax bases, while Nevada's

RTS effort index of 65 means that its bases are taxed at an overall rate 35 percent below the national average.

Regional Patterns in Revenue-Raising Ability and Effort

The 1986 RTS fiscal capacity and effort indices strongly suggest some regional patterns. To the extent that states within a region have similar economic bases and/or tax policies, the fiscal capacity and effort indicators of those states should be around the same level.

Capacity. The map on page 18 shows that the ranges of capacity for states in a region do tend to be close. In general, the states in New England, the Mideast, and the Far West, along with certain mineral-rich states in other regions, have the highest fiscal capacities, while the Southeast states and some agriculture-dependent states in other regions have the lowest capacities.

Eight of the 11 states in the New England and Mideast regions have above-average fiscal capacity, and 4 of these states (Connecticut, Massachusetts, Delaware, and New Jersey), as well as the District of Columbia, have capacities more than 20 percent above the national average. Of the four states below the national average (Maine, Rhode Island, Vermont, and Pennsylvania), all are within 10 percent of the average.

The other region of the country with generally high fiscal capacity is the Far West, where California, Nevada, Alaska, and Hawaii all have capacity at least 10 percent above the national average. Alaska and Nevada are two of the three highest-ranking states in the country, the other being Wyoming. The other two states in the region, Oregon and Washington, have capacities no more than 10 percent below average.

At the opposite end of the spectrum, the Southeast contains the most states with low capacities. Six states (Alabama, Arkansas, Kentucky, Mississippi, South Carolina, and West Virginia) have capacities below 80 percent of the national average, and another two (North Carolina and Tennessee) are below 90 percent of average. The other four states range from 10 percent below average (Louisiana) to 5 percent above (Florida).

In the Great Lakes, Plains, Southwest, and Rocky Mountain regions, the states with capacities well above average are Colorado (117) and Wyoming (151), both with significant amounts of mineral resources. The states with capacities well below average are South Dakota (78) and Idaho (77), whose economies are largely agriculture based. With the exceptions of Indiana, Wisconsin, Iowa, Montana, and Utah on the low end (between 80 and 90 percent of average) and Minnesota and Texas on the high end (just over 100 percent of average), all of the states in these regions have capacities that are below average, but by less than 10 percent.

Effort. Several observations can be made about regional patterns in tax effort. First, there is no necessary relationship between the capacity and effort levels for a particular state. States exhibit a wide range of tax policy regardless of their level of fiscal capacity.

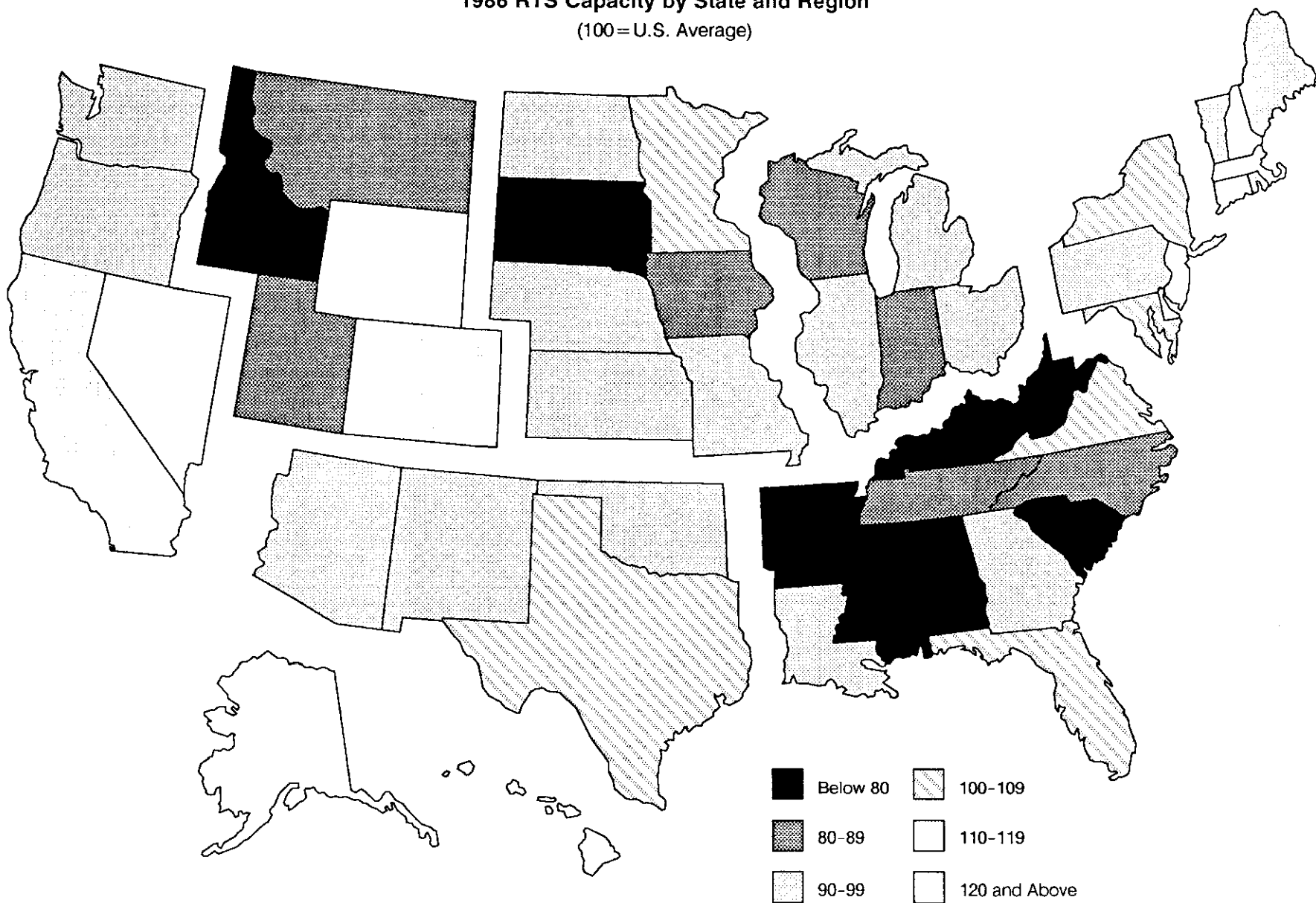
States with above-average capacity, however, tend to have a wider range of tax effort than states with below average capacity. In 1986, for example, some of the states with the highest capacity, namely Alaska and Wyoming, along with the District of Columbia, were also some of the

Table 1
1986 Fiscal Capacity and Effort Indices
 (100=U.S. Average)

	Fiscal Capacity Indices		Fiscal Effort Indices	
	Representative Tax System	Per Capita Personal Income	Representative Tax System	Representative Revenue System
1. Alaska	177	122	168	139
2. Wyoming	151	87	117	119
3. Nevada	147	105	65	76
4. Connecticut	135	134	94	86
5. Massachusetts	124	121	103	96
6. DC (Washington)	122	132	143	129
7. Delaware	121	103	81	98
8. New Jersey	121	127	103	94
9. New Hampshire	119	109	62	68
10. California	118	115	95	96
11. Colorado	117	104	83	88
12. Hawaii	113	102	105	102
13. Maryland	108	115	99	98
14. New York	107	117	152	141
15. Florida	105	100	77	84
16. Texas	104	92	79	84
17. Minnesota	102	102	108	113
18. Virginia	101	105	85	89
19. Vermont	99	91	91	97
20. Arizona	99	92	99	96
21. Oklahoma	98	84	85	92
22. Washington	98	103	103	106
23. Michigan	96	101	118	114
24. Illinois	96	106	106	97
25. Kansas	96	100	96	95
26. Maine	95	87	99	94
27. Georgia	94	92	89	98
28. North Dakota	94	85	89	103
29. Oregon	93	91	98	103
30. Missouri	93	94	82	82
31. Rhode Island	92	100	111	102
32. New Mexico	91	78	88	94
33. Nebraska	91	94	96	104
34. Ohio	91	95	103	100
35. Louisiana	90	76	91	99
36. Pennsylvania	90	97	101	98
37. North Carolina	88	85	92	90
38. Montana	88	81	103	101
39. Indiana	87	90	94	97
40. Wisconsin	86	95	134	128
41. Iowa	84	91	113	114
42. Tennessee	84	82	84	90
43. Utah	80	75	107	108
44. South Carolina	79	77	94	101
45. South Dakota	78	81	95	96
46. Idaho	77	77	90	94
47. West Virginia	76	72	98	103
48. Kentucky	76	77	89	94
49. Alabama	74	77	86	102
50. Arkansas	73	76	91	91
51. Mississippi	65	66	97	109

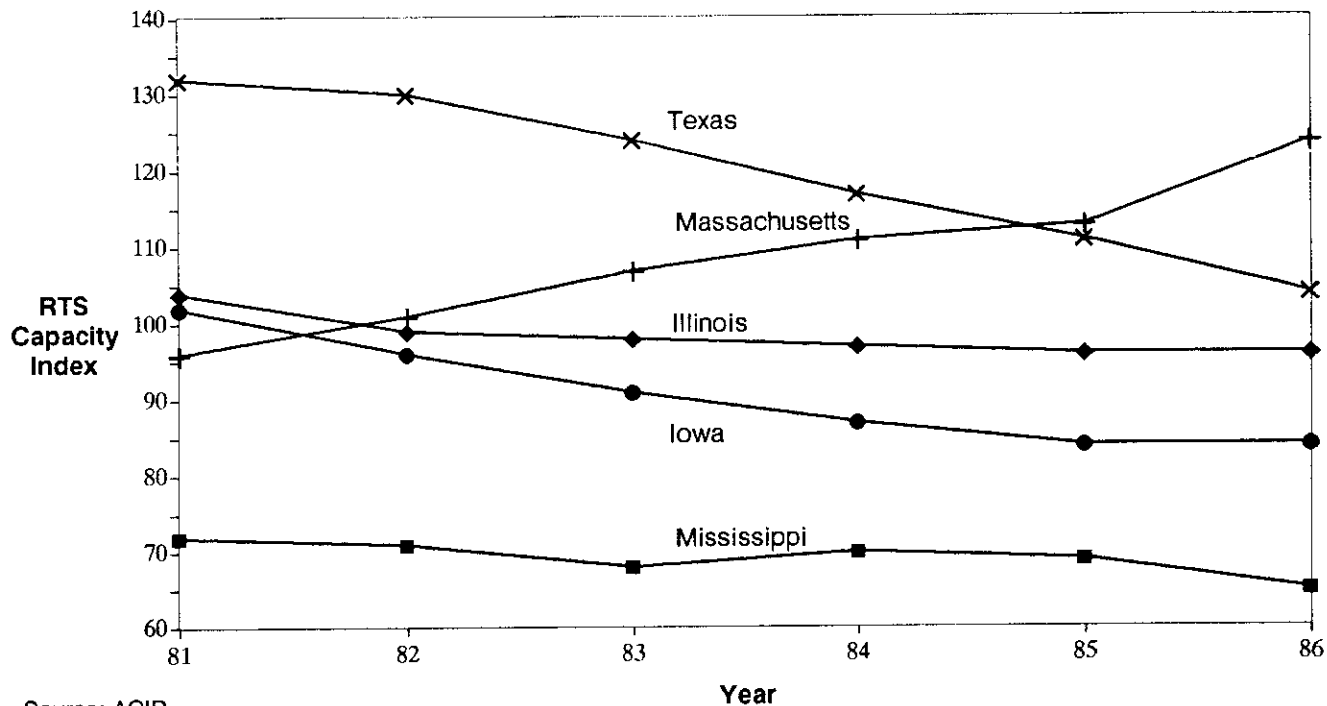
Source: ACIR compilation.

Map
1986 RTS Capacity by State and Region
(100=U.S. Average)



Source: ACIR.

Figure 1
State Fiscal Capacity Trends, 1981-86



Source: ACIR.

ones with the highest effort, while other states with high capacity, including Nevada and New Hampshire, had some of the lowest effort indices among the states.

Another pattern apparent from the 1986 data is the below average tax effort of the Southeast states when measured by the RTS. By this measure, all 12 of the states in the region have tax effort below the national average, and half have tax effort below 90 percent of the average. However, the RTS measure does not include user charges, which are generally used more heavily than average by these states. When effort is measured by the RRS, which includes revenues raised through user charges, all Southeast states except Florida and Virginia have effort indices within 10 percent above or below the national average.

Relationship of Capacity and Effort. The combination of tax capacity and effort gives some indication of the governmental service expenditures in each state. In general, those states with the lowest capacity and effort have the lowest levels of governmental expenditures, and those with high capacity and high effort have the highest level of expenditures. However, because the capacity and effort measures are linked (most importantly, effort is measured relative to capacity), changes in a state's effort may reflect changes not only in its tax policy but in its capacity as well.

Changes in Capacity over Time

ACIR publishes annual estimates of fiscal capacity using the RTS and RRS, thus providing a longitudinal series of data on each state's capacity. These series point up strong trends in fiscal and economic well-being throughout the country. Figure 1 graphs the RTS capacity indices for

five states from 1981 to 1986. These states illustrate several of the trends occurring over this period. Trend data for all 50 states and the District of Columbia are graphed in the full report.

Texas and other major oil and gas producing states, including Alaska, Wyoming, Oklahoma, and Louisiana, experienced sharp declines in revenue-raising ability between 1981 and 1986. The declines were particularly dramatic for Alaska and Wyoming, whose RTS capacity indices fell from 324 to 177 and 216 to 151, respectively. This pattern reflects the fall in energy prices over this period that directly reduced the value of the mineral tax bases in those states, as well as a general downturn in these states' economies due to the decline in their energy sectors.

Massachusetts is typical of most Northeast and Midwest states, whose economies were hurt by the recession of 1981-82 but have since rebounded. Connecticut, Delaware, Maryland, New Hampshire, New Jersey, New York, Rhode Island, and the District of Columbia have all shared in this recent economic growth.

Illinois is an example of the older industrial states whose capacities declined during the recession and have remained below their 1981 levels. Some of these states, including Ohio, Wisconsin, and, particularly, Michigan, have shown improvements in their fiscal capacity since 1984.

The Plains states, with the exceptions of Minnesota and Missouri, have experienced fiscal declines of varying degrees since 1981, reflecting conditions in their agricultural and manufacturing sectors. While Iowa's 18-point decline was among the largest of these states, Kansas' fiscal capacity fell by 13 index points over this period. South

Dakota's by 8, and Nebraska's by 6. North Dakota was hit by declines in both its energy and agricultural sectors; its capacity fell by 30 points between 1981 and 1986.

Mississippi is representative of those states that, from 1981 to 1986, have consistently had the lowest fiscal capacities. The relative capacities of some of these states, including Arkansas, Kentucky, and Mississippi, have actually declined since 1981. The capacities of other of the lowest ranking states have either remained about constant (Alabama) or increased slightly (South Carolina).

Directions for Future Research in Fiscal Capacity

A number of interesting areas for research regarding the measurement and analysis of fiscal capacity remain. For example, the development of state fiscal capacity measures has sparked interest among state and local officials in developing local fiscal capacity measures. While the RTS has been extended to some local governments in earlier ACIR efforts and the approach has been used by several states in developing their own measures, more work needs to be done on the special technical problems involved in measuring local fiscal capacity.²

Another new direction in fiscal capacity research is the effort to measure the relative service needs of the states and costs of providing those services. A paper published by the U.S. Department of the Treasury in 1986 set out an approach to the measurement of the relative cost of public services in the states.³ Robert W. Rafuse, Jr., the author of that paper and currently a Visiting Senior Fellow at ACIR, is extending and updating that work. A report on the results of this effort is scheduled to be considered by the Commission at its June meeting.

There are a number of questions regarding the reasons for the pattern of fiscal capacity among the states that warrant research. For example, what are the political, economic, historic, and other factors associated with the level of fiscal capacity and effort in each state? Why do states respond differently to regional or national economic trends? What policies are linked to higher or lower fiscal capacities?

These and other directions for further research demonstrate the continuing evolution of the fiscal capacity debate. Since ACIR began its pioneering work in this field, several fiscal capacity measures have been developed and refined, and this process is ongoing. In today's intergovernmental fiscal environment, it is increasingly important for the federal government to have the tools to target its aid to state and local governments, and for state and local governments to have the information that will enable them to make informed tax and economic development policy decisions. These concerns ensure that the measurement and analysis of fiscal capacity will continue to be of considerable interest in the future.

Notes

¹ ACIR, *1986 State Fiscal Capacity and Effort*, M-165 (Washington, DC: ACIR, March 1989).

² For the ACIR efforts, see *Measuring the Fiscal Capacity and Effort of State and Local Areas*, M-58, March 1971; and *Measuring Metropolitan Fiscal Capacity and Effort: 1967-1980*, Working Paper 1, July 1983. For a review of local government fiscal

capacity studies conducted by states, see Texas Advisory Commission on Intergovernmental Relations, "Local Government Fiscal Capacity Measures: A Profile of State Studies," in U.S. Department of the Treasury, Office of State and Local Finance, *Federal-State-Local Fiscal Relations, Technical Papers, Volume I* (Washington, DC: Treasury, September 1986), pp. 263-295.

³ Robert W. Rafuse, Jr., "A Representative-Expenditure Approach to the Measurement of the Cost of the Service Responsibilities of States," in Treasury, *Federal-State-Local Fiscal Relations*, pp. 133-186.

Carol E. Cohen is a senior analyst at ACIR.



I congratulate you most enthusiastically upon your "State Constitutional Law." I'd been hoping for some time that a casebook would be published. With the growing interest in reliance by state courts on their own constitutions, it's been very badly needed. I shall certainly encourage any deans I run into to follow the lead of the other law schools already using it.

William J. Brennan, Jr.
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Metropolitan Governance: Reviving International and Market Analogies

John Kincaid

From time to time, observers of urban America have noted that the multiplicity of local governments in metropolitan areas resembles the multiplicity of nations in the world arena. More than 30 years ago, Victor Jones suggested that similarities between metropolitan politics and international relations "can serve to remind us that we are dealing with local units of government that are tough organizations with many political and legal protections against annihilation or absorption by another government."¹

Somewhat like nations, local governments seek to maintain legal autonomy and territorial integrity. "They compete with one another for scarce resources (taxes, industry); they bargain for needed supplies and facilities (water, sewers); they seek to expand their sphere of control (through annexation and consolidation); and they form coalitions for defensive purposes (such as suburban leagues of municipalities)."²

Local governments also engage in "diplomatic" relations.³ As Jones put it: "If local governments in metropolitan areas act toward each other as if they are national states, we should not be surprised to recognize among proposals for reorganizing them counterparts of world government, world federation, functional organization, and bilateral and multilateral compacts."⁴

Of course, like any analogy, the international model has limits. Local governments are not nation-states; they are subject to the laws of superordinate governments—state and nation. States, moreover, can create or abolish local governments. Another limit to the analogy is that Americans are generally quite free to move from one community to another. This is not true internationally. Most nations accept few if any immigrants, and some even refuse their inhabitants a free right to emigrate and to give up citizenship.

Partly because of limits to the international analogy, other observers have suggested that a market analogy is more appropriate for understanding metropolitan politics. In this analogy, local governments behave somewhat like entrepreneurial firms that compete to provide services at costs that will attract customers.⁵ Usually, each locality targets a segment of the market, so to speak. To some extent, local communities even experience their own versions of corporate mergers, hostile takeovers, plant closings, and branch selloffs.

There are limits to this analogy, too. Local governments are not created and disbanded with the frequency found among private firms. Shopping for municipal goods is not the same as shopping for private goods in supermarkets. Also, state and federal laws sometimes require local governments to service or even subsidize customers they do not wish to serve. In the case of communities, moreover, consumers often display considerable "product loyalty" even when services are not cost effective or of high quality.

The Question of Fragmentation

For these and other reasons, many observers have been reluctant or unwilling to pursue the international and market analogies in analyzing metropolitan politics. Underlying this reluctance, however, has been another concern: both the international analogy and the market analogy accept as a matter of fact, and implicitly endorse, what has been called metropolitan "fragmentation." The market analogy is said to embody the evils of laissez-faire capitalism. The international analogy is said to embody the evils of the anarchic world arena in which war and power politics govern relations between nations. In other words, both analogies seem to envision a multiplicity of fairly autonomous actors operating in a competitive environ-

ment which, even in the absence of overt war, still seems to have the character of a war of all against all.

These analogies, therefore, contradict a substantial body of modern reform opinion that has sought to impose rules of law and administrative rationality on all seemingly anarchic situations. Such goals have considerable appeal because everyone ordinarily prefers peace and prosperity over war and penury. However, the range of means proposed to achieve these goals has been quite broad. The means have included the kind of government regulation of capitalism that we have in the United States, as well as the nationalization of key industries, the syndicalism of fascism, and the public ownership of all means of production under socialism. In the case of international politics, they have included the minimalist approach represented by the United Nations, as well as proposals for a world government. In the case of metropolitan areas, the means have included voluntary councils of governments and full metropolitan consolidation—the latter being preferred by many reformers.

One of the problems in the debate over metropolitan governance is that we have two general schools of thought seeking to achieve roughly the same goal: an ordered rule of law that will promote peace, prosperity, efficiency, and equity. At the risk of oversimplifying a complex story, both schools of thought have their roots in three wings of the 17th-century covenantal origins of modern democracy. The basic idea of covenantal politics is that all human associations should be based on the voluntary consent of their members, whether these be individuals, families, corporate bodies, or government jurisdictions.

Another problem is that circumstances affecting the debate have been changing rapidly. Indeed, a pattern seems to be emerging, not only in U.S. metropolitan areas, but also around the world, in which units of government that are small in comparison to larger jurisdictions are seeking to maintain or establish significant degrees of autonomy for local self-government while also opening their borders for the penetration of outside market forces and linking with other jurisdictions, large and small, to address problems that cannot be resolved on a purely local basis.

The Consolidation School

The school of thought associated with metropolitan consolidation has its initial roots in the ideas of Thomas Hobbes, the English political philosopher (1588-1679) who argued that the only way to end the brutal war of all against all in the state of nature is for rational individuals to covenant together to create an absolute sovereign—a leviathan—who will impose a firm rule of law. Individuals must give up substantial rights of autonomy and find freedom in the interstices of the law. In making his seemingly draconian proposals, Hobbes was not a totalitarian. Instead, he was driven by what he saw as the necessities of nature, much like reformers who argue that interlocal disparities, economic competition, environmental spillovers, and other problems require metropolitan consolidation.

Today, of course, no advocate of consolidation would follow Hobbes in proposing an absolute monarchy; how-

ever, this school does tend to support short ballots, at-large elections (at least before the *Voting Rights Act*), strong executives, and unified administration. In a metropolitan area of 91 governments, let us say, it is better to have one mayor and 7 or 9 council members presiding over a unified administration that governs the region than to have 91 mayors and perhaps 730 council members governing pieces of the region. Unlike Hobbes, moreover, advocates of democratic consolidation accept the broad range of individual private and social freedoms we enjoy today. Thus, this school has benefited from the development of mellowed democratic ideas. Nevertheless, the underlying theme has endured, namely, that the human propensity for anarchy and injustice requires strong government and, as much as possible, a consolidation of autonomous units of small government.

This school was reinforced by the ideas of Jean Jacques Rousseau and Karl Marx and by the 19th-century development of social science and public administration. For American reformers, the latter two developments opened the prospect of democratic government being able to understand society and human needs objectively and, thus, to administer society rationally and equitably, largely free from the normal errors of human passion as well as the dangers of Hobbesian tyranny. Further reinforcement for this school has come from the recognition that many policy problems crosscut political boundaries, thereby making existing jurisdictional arrangements appear to be irrational.

The great, though mixed, historic accomplishment of the consolidation school is the sovereign nation-state. Most nations are unitary in form, and possess a command-and-control center, whether elected or self-appointed, that seeks to govern both the jurisdictions within its territorial domain and the details of public and private life. Subnationally, this school has been a strong force in seeking to curb fragmentation within nation-states, whether that be along territorial or functional policy lines. Internationally, this school has been a strong force for world order based on international law enforceable ultimately by some form of world government.

The consolidation school has not, therefore, been especially friendly to federalism, although proponents often accept federalism as a necessary compromise or interim arrangement on the road to something more rational. Instead, like Hobbes, this school has generally held that local, regional, and even national governments must give up substantial rights of autonomy and find freedom in the interstices of regional, national, and/or international law.

This is not to say that proponents of metropolitan consolidation are proponents of world government. Unlike schools of fish, human beings do not swim in neat formations, even when dictated by logical consistency. Nevertheless, proponents of consolidation do confront the problem of where to draw lines. This is all the more problematic now because, in today's global environment, many social, economic, and environmental problems crosscut all national boundaries. Indeed, one has to ask whether metropolitan consolidation is being rendered less relevant by globalization.

The Diversity School

The second school of thought, which I would call "metropolitan diversity," has its initial roots in two other wings of early modern covenantal politics: that of John Locke and of Anglo-American congregationalism.

Like Hobbes, Locke believed that the only way to end the war of all against all in the state of nature is for individuals to covenant together to create a civil society. Unlike Hobbes, however, Locke emphasized a more social view of humanity. He did not see a need for people to consent to be ruled by a leviathan; instead, he emphasized more limited government that would allow individuals to retain significant rights of autonomy while channeling their selfish passions toward socially beneficial ends. Like Aristotle, who criticized the organic unity of Plato's republic, Locke criticized the monolithic unity of Hobbes' commonwealth.

Holding private property to be a fundamental natural right, Locke also formulated many of the basic concepts of modern capitalism, especially the idea that the pursuit of private profit expands society's economy. Consistent with his covenantal view of civil society, Locke further emphasized the right of emigration. Although Locke said little about federalism and nothing about metropolitan government in the 1680s, he did, in effect, lay the first intellectual foundations for the market analogy of metropolitan politics.

In doing so, however, Locke expressed some ideas that offend many people today. For example, under the emerging capitalism of his time, said Locke, a day laborer in England was better off than the "king of a large and fruitful territory" in North America. Locke was not bothered by income inequality so long as everyone's boat was lifted by a rising economic tide and majority rule prevailed in society. Over the centuries, however, this wing of the diversity school has, like the consolidation school, benefited from mellowed democratic ideas—in this case, principles of equity.

Early Anglo-American congregationalism, which was rooted in Judaic and Reformed Protestant teachings, strongly emphasized the covenanted civil society. In this tradition, the state of nature is not so much one of violence as it is of immorality. Only by covenanting together to bind themselves to God's law can persons become moral, social beings. Congregationalism saw society as a federated system of covenants, from individual covenants with God to marriage covenants, congregational covenants, town covenants, regional and national covenants, and even, potentially, international covenants. Indeed, unlike Hobbes and Locke, early modern congregationalists had an international vision of godly commonwealths linked across lands and oceans.

Although we often associate certain forms of congregationalism, especially Puritanism, with authoritarianism, the Puritans generally practiced territorial pluralism. Persons believing that the law of their congregation or community violated their conscience were free to break off and form their own congregation or community. Not being especially tolerant of theological diversity within communi-

ties, the Puritans were generally tolerant of diversity between communities. Thus, this tradition has differed from the Lockean wing of the diversity school, which is generally tolerant of diversity both between and within communities.

One is tempted to say that the Puritans were North America's first public choice theorists, but they were not motivated by efficiency or economies-of-scale objectives. They were concerned about protecting conscience, consent, and equity against the mere imposition of external law. While public choice theorists tend to view local communities as service packages, congregationalists tend to view local communities as moral statements. Even today, the regional and national organization of governance in most American denominations sacrifices fiscal and procedural efficiency for local self-government. In turn, many congregations are small, poor, and quite unwilling to merge with others, even with a better-off congregation of the same denomination two blocks away. Members of small congregations often pay very high "taxes," so to speak, to keep them going. The congregational tradition, therefore, has emphasized the autonomy of local communities against the rule of "higher" authorities, just as it has emphasized the autonomy of local congregations against the rule of ecclesiastical authorities.

At the same time, this tradition has never been reluctant to establish governance over larger jurisdictions, so long as the power of larger governments is kept limited to the ends that require communities to covenant together to address common concerns. The rule of thumb has been: the larger the jurisdiction, the more limited its power. Keeping the powers of large jurisdictions limited to what the diverse people and places within the jurisdictions can agree upon has been viewed as essential for protecting the rights of individual conscience and consent. In this way, people can disagree on the many other details of life while still coexisting in diverse communities.

The congregational tradition is thoroughly federal or, as is often the case, confederal. Starting with the autonomy of the individual, the mutual consent of spousal partners is required for marriage, the mutual consent of individuals and families is required for congregational life, and so on outward to international covenants. In principle, as one moves out on the line of covenants, territorial jurisdictions become larger but powers become narrower (or more functionally specific), relations more confederal, and jurisdictions less politically autonomous. As one moves inward, territorial jurisdictions become smaller, but powers become more comprehensive, relations more tightly federal, and jurisdictions more politically autonomous.

The Contest of Schools

The founding of the American republic and its later history can be read, in part, as the story of contests and uneasy compromises between these three schools of thought. Under the Articles of Confederation, the congregational tradition predominated, but was unable to elicit enough nationwide cooperation to sustain itself. Under the U.S. Constitution, the consolidation school and Lockean wing

of the diversity school gained considerable ground, while the congregational tradition lost ground.

The consolidation school has brought about a substantial nationalization of power. This development, along with the rise of big business, has even won over some elements of the diversity school. One can speak of Lockean consolidationists as being those who, for example, seek to concentrate the power of economic regulation in the federal government and to preempt state and local regulatory powers so as to promote free enterprise nationwide, or at least make regulation nationally uniform. One can speak of congregational consolidationists as being those who seek to strengthen federal regulatory power precisely to enhance the autonomy of local communities against forces beyond their control.

The consolidation school also has enjoyed considerable intellectual currency, not only because of its appeal to ambitious elites who wish to expand their power and prestige, but also because of its appeal to majoritarian democracy, equity, efficiency, harmony, rationality, and cosmopolitanism. Yet, in recent years, the positive claims of consolidation have come under criticism, in part because of the negative behavior of elites in charge of large systems and, in part, because some of the outcomes of consolidation contradict its claims. Indeed, the very rationality of consolidation has been called into question by the recognition of the value of diversity, flattened hierarchies, and localized autonomy for innovation, creativity, and adaptability to socioeconomic and technological change.

New approaches to governance are already evident in the private sector where the old-style industrial behemoths are going the way of the dinosaurs, leaving behind more than a few economically shattered communities. Seeds of change also can be found in the public sector, especially where national governments cannot deliver on their promises, thus leaving behind (or never having assisted) more than a few struggling communities. Indeed, just as communities should not depend on one big industry for economic well-being, so, too, are they ill advised to depend on a large government for their general well-being. Consequently, there is renewed interest in regional and local autonomy around the world even while there continues to be interest in areawide governance, including global governance. The term "governance" is used deliberately here because there appears to be little interest anywhere in a world government.

Toward Multijurisdictional Governance

One of the remarkable developments of our time is the growing pressure to deconsolidate the nation-state from below and above, so to speak.

Within nations, there is pressure to decentralize power so as to enable local and regional communities to meet their needs and institutionalize their preferences. In many countries, this pressure comes from local communities that have had little or no autonomy since the formation of the nation-state. In a number of nations, such as China and the USSR, some territorial communities wish to become independent nations.

Indeed, if there were a free global referendum allowing every person to choose his or her own nation, the number of nation-states would increase substantially. How many national elites would dare to consent to such a referendum? Most national governments would not participate because many of their citizens would vote with their feet, in part because the history of the unification of almost every nation-state has been a story of extraordinary violence. The existing nation-state system entails, for many people, a considerable suppression of freedom.

Yet the nation-state idea is not dead. What many people seem to want instead are nation-states that conform more closely to their voluntary preferences for mutual affiliations. Then within nation-states, there seems to be a growing desire for federated arrangements that allow national, regional, and local governments to perform functions appropriate to their areal jurisdictions. Such arrangements would deconsolidate but not destroy the nation-state.

Fewer people seem enamored by such proclamations as that of the French Revolution, which helped to give birth to nationalism: "The nation exists before all, it is the origin of everything, it is the law itself." No wonder the Revolution rejected federalism. Such nationalism inhibits the federalization of politics within nations as well as the covenantalization of relations between nations. Nationalist fanaticism still exists, but, as the emergence of the European Economic Community seems to suggest, more people are now willing to view the nation-state as a community of pride psychologically, but, pragmatically, as simply one of several forms of territorial organization able to perform useful governance functions.

This more pragmatic view, which recognizes the limits of the nation-state, also is reflected in the growing number of regional governments (e.g., states, provinces, and cantons) and local governments that are forging their own links with subnational governments around the world. In some cases, state and local governments are even establishing their own mechanisms of economic exchange and regional governance for territorial areas, such as the U.S.-Canada border and the Upper Rhine Valley, that straddle the boundaries of two or more nations.

Above and below the nation-state, then, there is growing pressure to establish multinational organizations and rules of law capable of addressing problems and meeting needs that transcend national boundaries. Despite the absence of world government, there is no dearth of functional instruments of world governance. Indeed, the organizational and legal makeup of world politics is becoming increasingly complex.

This complexity consists of many multijurisdictional agreements involving not only national governments but also subnational governments, multinational entities, and nongovernmental organizations. Agreement making is being driven by rising interdependence and desires to cooperate as well as by fears of nuclear war and environmental degradation. Perhaps for the first time in history, we cannot afford not to cooperate.

At the same time, the prospect of a global leviathan lying on the other side of the state of nature, plus desires for

local autonomy, give this agreement making a congregational flavor. Agreements among many nations dispersed about the globe usually address specific issues. Among neighboring nations within some regions, agreements are more numerous and comprehensive, as in Western Europe. Where formal agreements are difficult to conclude, informal agreements may achieve what some observers have called "soft law." Although the world is a long way from peace and prosperity, interdependence is quickly making historic conceptions of national boundaries about as useful castle moats and walls.

The forces pulling at the nation-state from within and without have fostered another remarkable development: the spread of market ideas and activities. Interdependence is making the world look more like a marketplace. Furthermore, a number of small and resource-poor jurisdictions, such as Japan, Taiwan, South Korea, Hong Kong, and Switzerland, compete very well in this market, while some large, resource-rich jurisdictions, such as the USSR, compete very poorly, thus confounding the idea that consolidated jurisdictions are better able to coordinate policies and compete for goods. Within nations, entrepreneurship has broken out whenever centralized regimes have loosened economic controls. In turn, entrepreneurship has generally stimulated demands for more social and political freedom for both individuals and communities. In the Baltic republics of the USSR, for example, entrepreneurial opportunity, individual freedom, and local autonomy are being promoted by reformers as an inseparable package.

Interestingly, one factor behind the drive for autonomy in many of the Soviet republics is environmental degradation. Lacking self-government and a strong voice in national decisionmaking, the republics could not protect themselves against the central planners who ignored pollution. In the U.S., federalism is often said to inhibit environmental protection; in the USSR, federalism would enhance environmental protection.

We are not, however, confronted with an either/or choice. Instead, the question is: how do we combine local autonomy with areawide governance in those matters that require multijurisdictional cooperation? This is not a new question; it is the classic question of federalism.

The Metropolitan Region as International Marketplace

These subnational and international developments with respect to the organization of the nation-state suggest that it would be useful to revive the international and market analogies of metropolitan politics. Rather than seeing these analogies as separate or competing models, however, we might consider how metropolitan areas display characteristics of both analogies, thus making each region look somewhat like an international marketplace.

This approach would not begin with the assumption that diversity is fragmentation and then conclude that comprehensive metropolitan government is necessary. Instead, drawing on the Lockean and congregational schools of thought, it would assume that diversity is a value that

merits protection even while we establish mechanisms of interlocal cooperation and multijurisdictional governance. Given that nearly three-fourths of the American people live in places having fewer than 100,000 residents, such an approach also would work with rather than against the public's congregationalist leanings. In so doing, we could draw on lessons from around the world while also providing lessons from metropolitan experiences.

The international marketplace analogy also suggests that process rather than structure is the key element in successful approaches to areawide issues. We have perhaps spent too much time thinking about general structural forms of government rather than processes of governance in metropolitan areas. The tendency in structural thinking, moreover, is to move toward organizational simplicity when, in fact, the complexity of environments often calls for multiple processes of governance.

Instead of posing the prospect of another large jurisdiction coming into being and presenting an additional threat to local government, an approach that builds on concerns for local autonomy and congregational diversity could facilitate interlocal cooperation and multijurisdictional governance on policy matters requiring such mechanisms. This approach also would allow us to identify specific problems, such as negative externalities, disparities between communities, and barriers to mobility, and to explore alternative approaches to resolving them so as to move step by step toward arrangements that accommodate people's diverse needs and preferences.

In short, if the actual behavior of people around the word is something that democratic principles require us to respect, then we need theories of governance that accommodate the desires for individual freedom and local self-government along with the need for mechanisms of multijurisdictional government. Indeed, the former may be necessary for the latter because, as classical covenantal theory suggests, individuals and communities will, and should, resist rules of law that will destroy their fundamental liberties.

Notes

- ¹ Victor Jones, "The Organization of a Metropolitan Region," *University of Pennsylvania Law Review* 105 (February 1957): 539.
- ² John C. Bollens and Henry J. Schmandt. *The Metropolis: Its People, Politics, and Economic Life*, 3rd. ed. (New York: Harper & Row, 1975), p. 35.
- ³ Matthew Holden, "The Governance of the Metropolis as a Problem in Diplomacy," *Journal of Politics* 26 (August 1964): 627-647.
- ⁴ Jones, "The Organization of a Metropolitan Region," 539.
- ⁵ Charles M. Tiebout, "A Pure Theory of Local Expenditures," *Journal of Political Economy* 64 (October 1956): 416-424; and Vincent Ostrom, Robert Bish, and Elinor Ostrom, *Local Government in the United States* (San Francisco: Institute for Contemporary Studies, 1988).

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Federal or State Court: Should Diversity Jurisdiction Be Abolished?

Russell Chapin

The constitutional grant of diversity of citizenship jurisdiction, subject to the will of the Congress, was tepidly supported and vigorously opposed during the debates over the ratification of the United States Constitution. Time has only exacerbated the controversy surrounding diversity jurisdiction, which refers to the jurisdiction of the federal courts to hear matters that do not involve federal law questions when the opposing parties are citizens of different states.

Diversity Jurisdiction Established

Early Supreme Court justices identified fear of state-based prejudice as the reason for the grant of diversity jurisdiction. Chief Justice John Marshall cited only the possible fears of litigants as the basis for this grant. Justice Joseph Story, writing for the Court in 1816, noted that the Constitution, whether rightly or wrongly, presumed that state attachments, prejudices, jealousies and interests might obstruct civil justice for alien and out-of-state parties. This was also James Madison's view.

A study of the first *Judiciary Act*, which granted only a part of the diversity jurisdiction permitted by the Constitution in Art. III, Sec.2, shows that the reason for the grant was to provide a tribunal in which foreign citizens and citizens of another state could be free from state-based prejudice.

Exclusions from Diversity Jurisdiction

The first Congress did not authorize the exercise of all of the diversity jurisdiction permitted by the Constitution. The Supreme Court and subsequent Congresses have withdrawn still more of the diversity jurisdiction.

The initial congressional authorization excluded cases that did not exceed \$500, exclusive of costs. In addition, no such jurisdiction was provided if neither party was a citizen of the state in which suit was brought. The Supreme Court construed the initial grant of diversity jurisdiction to require complete diversity, that is, no defendant could be a citizen of the same state as any plaintiff.

The jurisdictional minimum was raised to \$2,000 in 1887 in a statute that also confined the right to remove a case to federal court to nonresident defendants. The jurisdictional minimum was raised to \$3,000 in 1911. The minimum was raised again in 1958 to \$10,000, and a new subsection was added to the statute allowing the federal courts to tax costs against those who overstate the amount involved. These and related changes made in the same amendment were clearly intended to adjust for inflation and reduce the burden of cases on the federal courts. If there was any residual fear of state-based prejudice by 1958, it was outweighed by the need to reduce the caseload of the federal courts.

The Administrative Office of the U.S. Courts, speaking for the federal judges, recently recommended the abolition of diversity of citizenship jurisdiction, a position influenced partly by limited federal funds to deal with mounting caseloads, and the need to concentrate resources on the cases that have a higher claim on federal court time than do diversity cases involving state law questions. As an alternative, in 1988, in the *Judicial Improvements and Access to Justice Act* (P.L. 100-702), which amends 28 U.S.C. 1332, the jurisdictional minimum was raised to \$50,000. Again, the Congress was not deterred by any concern for state-based prejudice. Another significant change in the 1988 law makes a fiduciary's residence for purposes of diversity litigation the same as that of the decedent, infant, or incompetent represented by the fiduciary. It has been estimated by some that these changes should reduce the diversity caseload in the federal courts by as much as 40 percent.

The Supreme Court has created exclusions. For example, in 1859, the Court disclaimed any jurisdiction in the courts of the United States on divorce or the allowance of alimony. The exclusion was extended to child custody in 1890, and later to probate cases. The Court may have been influenced by the need to ease the burden of litigation on federal courts. It was not deterred by any apprehension of state-based prejudice.

In order to forestall attempts by litigants to manufacture diversity of citizenship, the Congress provided that suits to recover on an assigned promissory note or an assigned cause in action were excluded from diversity jurisdiction unless the suit might have been prosecuted in federal court if no assignment had been made. Foreign bills of exchange were omitted from this exclusion. In 1875 the Congress withdrew jurisdiction as to cases not really or substantially involving a controversy within the diversity jurisdiction or in which parties were "improperly or collusively" joined. These two statutes were melded together in abbreviated form in 1948.

In 1910 the Congress provided that cases filed in state courts under the *Federal Employers' Liability Act* could not be removed to the federal courts, followed in 1920 by seamen's suits for personal injury under the *Jones Act* and actions for their death, and in 1958 by suits over workmen's compensation benefits. A proliferation of direct action suits against insurers led the Congress to exclude these cases from the federal courts.

Retaining Diversity Jurisdiction

The major study of federal jurisdiction undertaken by the American Law Institute in 1968 at the request of Chief Justice Earl Warren concluded that diversity jurisdiction could be retained only if prejudice against out-of-state citizens continued to be a factor in litigation. Is there sufficient state-based prejudice today to justify continuance of diversity jurisdiction?

One way to answer this question is to consider whether, putting aside all other arguments bearing on a preference for federal courts, being in federal court is likely to make a difference in the outcome of a trial. Today, juries for state and federal courts are drawn from the same registration or voters' lists. Although federal jurors may be drawn from a wider geographical area, they are all drawn from the state in which the respective courts sit, and it is state-based prejudice that is at issue, not prejudice as between northern and southern California, for example. In fact, federal jurors may be drawn from a division of the court, which may encompass as few as one or two counties. Thus, there should be no significant difference in state-based prejudice in cases tried to a jury. What of cases tried to a judge only? Federal judges are drawn from the same environment as those who serve on the state bench. Such judges are likely to represent the same leanings as the members of Congress and party officials who recommend them to the President. Many federal judges are former state judges. Differences in tenure and pay are unlikely to mask differences in prejudice. Tenure and pay do not guarantee against prejudices in federal judges. Furthermore, almost all diversity cases are either tort or contract cases.

There is little reason for a state court judge to fear inflaming local passions or alienating the state legislature in such cases.

Some scholars have attempted to structure surveys to elicit lawyers' reasons for choosing a particular forum—federal or state court. All of the opinion surveys have been criticized. Most speak of local bias as distinguished from state-based bias. In a survey of Wisconsin lawyers, local bias was cited by only 4.3 percent of the respondents as a reason for choosing federal court, with nine reasons cited as more important than that. A survey conducted in the Chicago area found fear of local bias to be more prominent than the Wisconsin survey, but seven other factors were considered more important reasons for choosing a federal forum. The report of that survey cautions that it would be unwise to generalize its findings to other areas. A U.S. General Accounting Office survey of a small number of lawyers in the Twin Cities area found little evidence of prejudice as a basis for choosing federal court.

Charles Alan Wright, a recognized expert on federal practice and procedure, has testified that it is doubtful that prejudice against a person because he or she is from another state is a significant factor any longer. In any event, according to Wright, we cannot afford to maintain an elaborate mechanism that brings thousands of cases into federal court each year merely because, in isolated instances, it offers an escape from a condition in a particular local court. If there is prejudice, the solution should be found in the state appellate tribunal and, when due process is denied, in the U.S. Supreme Court.

Following are some additional reasons put forward by those who advocate retaining diversity jurisdiction.

A Higher Standard of Civil Justice in the Federal Courts. This argument is hard to sustain today. State and federal judges come from the same types of background. Jurors are drawn from comparable lists. Most states have adopted important features of the Federal Rules of Civil Procedure. Federal judges have no special expertise in trying the types of cases involved in diversity jurisdiction, and the states have made great strides in improving their court systems. Some states, moreover, are better able to discipline errant judges and remove those who are incompetent or venal.

Some State Courts Are Heavily Backlogged. Actually, some federal courts are heavily backlogged on the civil side. The *Speedy Trial Act* forces federal judges to give criminal cases priority; diversity cases necessarily take a lower priority. With thousands more state judges than federal judges, state courts should be able to assist backlogged districts.

Diversity Cases Permit the Cross Pollination of Ideas. With the vast increase in the number of federal question cases, lawyers have ample opportunity to gain experience in both court systems, quite aside from diversity cases. There are also federal-state councils of judges that provide adequate opportunity for sharing ideas.

Diversity Prevents Federal Judges from Becoming Narrow Technicians. A review of the federal reporter system will quickly convince anyone that federal judges have an extremely broad range of work. They will still have ex-

posure to state law in *Federal Tort Claims Act* suits, which are governed primarily by state law.

It Works. Why Change It? Federal judges, it is asserted by those who advocate retention of diversity jurisdiction, dispose of a large number of these cases each year to the general satisfaction of litigants. Why change this arrangement? State court judges also dispose satisfactorily of all similar cases under \$10,000 and many above the minimum that are not or cannot be lodged with the federal courts. So, there is no gain in leaving diversity cases in the federal courts.

Federal Courts Allow More Liberal Discovery. Actually, most states have adopted more liberal discovery rules, often patterned after the federal rules.

Diversity Cases Allow Local Lawyers to Improve Their Skills. If there is any advantage to be gained from experience in federal courts, there is ample opportunity for this experience in federal question cases. Any marginal benefit from trying diversity cases in a federal forum does not justify the commitment of federal resources required to hear the cases.

Abolishing Diversity Jurisdiction

It is clear that fear of state-based prejudice is minimal. Changes in the economy, communications, education, growth of a national spirit, and the mobility of the population have substantially eliminated isolation and state-based prejudice. There may be prejudice in a particular jury against wealth, corporations, or insurance firms; however, these are not the types of prejudice that the Constitution sought to counter by providing for diversity jurisdiction.

Relieving the Federal Courts. Today, the federal trial courts need relief from diversity cases so they can devote time to the cases that should be their primary concern. The number of civil cases commenced in the U.S. district courts jumped from 87,300 in 1970 to 245,828 in 1986, of which 63,672 were diversity cases. In addition, these courts had to contend with 40,427 criminal cases entitled to priority under the *Speedy Trial Act*. There were 24,291 civil appeals taken in 1986, and 3,834 of these were appeals from the disposition of diversity cases. The U.S. courts of appeal also had to contend with appeals in 5,134 criminal proceedings. The most recent amendment will still leave the federal courts with a major burden of state law cases.

Inconsistencies, Unresolved Conflicts, and Unfairness. The law books are filled with cases involving devices by which some parties seek to create diversity of citizenship and get into the federal courts, and with the comparable efforts of others to prevent diversity and keep cases in the state courts. Court decisions are often conflicting, and serious judicial conflicts remain unresolved for years. Thus, litigants do not enjoy equal treatment under the law. The law's incoherence is reason enough to scrap diversity jurisdiction.

Assignment or Partial Assignment of Claims to Create Diversity. Although the first *Judiciary Act* sought to preclude the use of assignments to invoke the diversity

jurisdiction, the very existence of diversity jurisdiction and the possibility of tactical advantage provides a constant temptation to manufacture diversity of citizenship.

Determining Controlling Law in Diversity Cases. In *Swift v. Tyson* (1842) the Supreme Court held that in matters of general jurisprudence it would not apply the states' nonstatutory law in diversity cases. Rather, federal courts would be free to create common law in this area. Of course, it was soon apparent that in similar cases the state courts did not follow the law as pronounced in the federal courts. This created disparate treatment of litigants in cases presenting identical issues of law. Forum shopping was encouraged. In *Erie R.R. Co. v. Tompkins* (1938), the court sought to end forum shopping by overruling *Swift v. Tyson*, but *Erie* only changed the reasons to search for the most favorable forum.

Federal court determination of the state law that should be applied in deciding diversity cases remains a serious problem. A federal court may be comforted if the highest court of a state has spoken on the controlling issue of law. Often, that issue of law has not been finally resolved in the state courts. The federal courts are then forced to guess at what the law may be. These predictions are often disappointed when state courts overrule the law that federal judges thought they had made in this context. This is happening more and more frequently.

Federal judges tend to cite precedents from federal court decisions rather than state court opinions. These situations are pregnant with the possibility of injustice. Unsuccessful litigants in federal court, who would have been successful if they had been able to wait for the subsequently announced state rule, particularly those who wanted to stay in state court, have every right to condemn the diversity jurisdiction. It has been pointed out also that the possibility of litigation in the federal courts in these cases, and with lawyers probing for advantage in using that forum, means that authoritative decisions on open points of law by the state courts are postponed.

Clearly, the post-*Erie* state of diversity of citizenship law leaves substantial uncertainty in the application of controlling law and adds to the incoherence of the law. One judge has suggested that the problem of legal uncertainty and federal judicial usurpation that characterized the era of *Swift v. Tyson* may be returning as federal and state courts grow further apart in their decisions on controlling state law. Abolition of diversity jurisdiction would return all state law questions to the state courts and avoid the continuing resentments spawned between federal and state jurists by diversity jurisdiction.

Corporations and Diversity. The diversity statute ties qualification for diversity jurisdiction to certain citizenship requirements, but nowhere did the original statute define citizen. In time, as corporations came to be regarded as jural entities for diversity purposes, the state of incorporation became the state of citizenship. A corporation may choose a particular state of incorporation, without any thought of what the choice does to its citizenship for diversity purposes. Individuals, of course, cannot avail them-

selves of a distant state as their state of citizenship in quite this manner.

A corporation can reincorporate in another state and gain the ability to employ diversity jurisdiction in litigation with a citizen of the first state. A 1958 federal law denies diversity jurisdiction to a corporation in the state that is its principal place of business. This still leaves the corporation with the privilege of diversity in 48 states (or 49 if it has its principal place of business in the state in which it is incorporated).

While a domestic corporation has "dual citizenship," the courts are divided on whether the statute [28 U.S.C. 1332(c)] applies to alien corporations. At least 14 cases have wrestled with the issue, and legislative clarification is desirable to avoid further uncertainty, disparate treatment of litigants, and continued incoherence in the law.

It has been proposed that domestic corporations be denied the benefit of diversity jurisdiction in a larger number of states (i.e., the states in which the corporations do business if the litigation stemmed from that activity). This approach accepts the principle that a corporation is unlikely to suffer from state-based prejudice if it is a "citizen" of the state in the sense that it is doing business there. It can also be said that there is probably little risk of state-based prejudice when two corporations are the litigants. Jurors rarely know the state of incorporation. Corporations are likely to be treated as being on an equal footing.

Diversity and Unincorporated Associations. If a corporation may be thought of as having too few states of citizenship for diversity purposes, consider the case of the unincorporated association. The association is not a jural person, and the general rule is that its citizenship is that of each of its members. The more widespread the association's membership, the less chance it has to invoke the diversity jurisdiction and the greater are its chances of defeating diversity jurisdiction, absent the use of the class action device. Venue in a suit against the association may be lodged where a member resides even though the association's business is conducted elsewhere. Abolition of diversity jurisdiction would remove these anomalies from the federal courts, unless another basis for jurisdiction is employed.

Diversity and Class Actions. The plaintiff employing the class action device may choose the defendants that will be sued, omitting those whose presence may defeat diversity. The court looks only to the named representatives of the class. The intervention of other members of the class who reside in the forum state will not thereafter defeat diversity jurisdiction.

Diversity and Partnerships. Since all partners in a general partnership are responsible for its liabilities, a person suing on those liabilities may sue only the partners with diverse citizenship, thus assuring access to a federal court. Similarly, one of the several general partners may be chosen to sue on claims owed the partnership because of diverse citizenship as related to the debtors. These are now perfectly legal means of invoking diversity jurisdiction.

Limited partnerships present another story. Here, the courts differ on the rule to be applied, and there are conflicts among the circuits.

Effect of Doe Pleading. In some states, pleading practice permits the naming of an unknown defendant (John Doe) or defendants (for example, Does 1 through 10). Some courts construe the diversity of citizenship requirement strictly and will not assume that an unknown Doe defendant is of diverse citizenship. In the Ninth Circuit, however, it is generally the practice to disregard the fictitious parties in determining diversity. Lack of consensus on the handling of Doe pleadings for the purposes of diversity jurisdiction is another illustration of the inconsistencies in the treatment of litigants that make diversity a sea of incoherence.

Diversity Jurisdiction Is Not Logically and Consistently Available. The diversity statute offers constant temptations to new abuses. In addition to the anomalies cited above, a plaintiff can avoid diversity by reducing the claim to just under the jurisdictional minimum set in the statute. A litigant from another state can invoke the diversity jurisdiction and then move into the forum state without destroying diversity. Plaintiffs may join nondiverse defendants to other out-of-state parties and avoid removal to federal court. Similarly, a plaintiff may omit a party whose presence would destroy diversity and thus take advantage of federal jurisdiction.

Wastefulness of Threshold Litigation

A vast amount of threshold litigation has taken place over whether cases have been properly lodged in the federal courts under diversity of citizenship. If litigants have misaligned parties in an attempt to create or defeat diversity jurisdiction, the courts have the burden of realigning the parties to see which interests are adverse.

Actual data on case dispositions suggest that threshold litigation over whether cases are properly lodged with the federal courts is essentially a waste of time and resources. This litigation imposes a major burden on the federal courts. Lifting that burden by abolishing diversity of citizenship jurisdiction would produce even greater savings in time and expense for the litigants involved than it would for the federal courts. In addition, these cases would likely be reached for trial at an earlier date.

Conclusion

Several alternatives have been proposed for dealing with the cases that make up the burden of diversity jurisdiction. These proposals include: retaining diversity jurisdiction but adding more judges, raising the jurisdictional minimum, banning plaintiff use of diversity in the forum state, making corporations citizens of the states in which they do business, abolishing diversity jurisdiction but retaining alienage jurisdiction, and abolishing diversity jurisdiction except for interpleader cases. While these alternatives may have some merit, they are insufficient.

Diversity jurisdiction is no longer needed, the arguments for its retention do not carry substantial weight, and the federal courts clearly need relief from a category of cases in which state law is controlling. Abolishing diversity would eliminate the constant invitation to abuse. It would

remove from the federal courts a jurisdictional head that has produced inconsistencies, anomalies, and incoherence in the law.

Professor Thomas D. Rowe, Jr., points out that the very existence of diversity jurisdiction does a great deal to complicate federal practice and procedure. Its abolition would help reduce or would eliminate a number of thorny problems and facilitate rethinking of some areas of federal procedure and ancillary jurisdiction that have often been confused by diversity problems.

Eliminating diversity jurisdiction is clearly the first option for dealing with the caseload problem of the federal courts. All other federal jurisdictional heads have a much stronger claim on the time of the federal judiciary. The need to constrain federal expenditures and Gramm-Rudman-Hollings have placed the federal courts in a vise from which they cannot escape except by the elimination of a very substantial block of cases. The federal courts have no control at the district court and court of appeals levels over the number of cases with which they must deal. Abolishing diversity jurisdiction would make room for anticipated increased filings of cases that have a higher claim on federal court time.

Abolishing diversity of citizenship jurisdiction would restore the better balance between federal and state courts that Chief Justice Earl Warren spoke of when he asked the American Law Institute to undertake a major study of federal jurisdiction. It would greatly improve, as well, relations between federal and state judges. Federal judges would no longer be trapped into guessing what state law will be when finally announced by the highest courts of the states, and state court judges would no longer be miffed by the arrogance of federal judges trying to steer the state judges into deciding state law issues the way federal judges want them decided. The current violation of the principle stated in *The Federalist* No. 80, that the judicial authority should be coextensive with the legislative authority, would be ended, and state courts would decide state law questions and federal courts would decide issues of federal law.

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Disability Rights Mandates: Does the Federal Government Practice What It Preaches?

By the mid-1970s, the pattern of intergovernmental relationships had shifted from the use of federal subsidies to stimulate state and local government action in certain policy areas toward greater use of regulatory mandates as a means of pursuing federal objectives and priorities in states and localities.

The shift from subsidy to mandate has generated several political consequences, which, while frequently discussed, have not received empirical examination. One political consequence concerns the costs imposed on state and local governments by federal regulatory mandates. The common wisdom, at least among state and local officials, is that these federal mandates have generated high costs for their governments. A second and equally important political issue is whether the different governments in the federal system are equal and effective partners in the pursuit of the goals of regulatory mandates. At the national level, it is not uncommon for leaders to criticize the speed and effectiveness of state and local implementation of mandates. This type of concern also runs in the opposite direction, with state and local leaders questioning the commitment of the national government.

ACIR's new report on disability rights mandates, available in May, examines the question of whether the federal government practices what it preaches with regard to effective implementation of regulatory mandates. Recognizing that concerns and accusations about compliance abound in the intergovernmental system, the Commission decided that it would be useful to examine systematically the comparative performance of the federal and state governments. Merely by enacting a mandate, the federal government gains considerable credit for advancing a cause. Yet, in looking at state and local compliance, observers often neglect to examine federal agencies.

After reviewing several possibilities for study, ACIR chose the policy area of disability rights mandates because it is one in which the federal government has placed similar mandates on its own operations and on state and local governments. Two aspects of the disability rights mandate were studied: (1) removal of architectural barriers that impede access by physically handicapped persons to public buildings and (2) employment protections for disabled persons.

The report examines the fundamental issues associated with the imposition of federal regulatory mandates in

the system of intergovernmental relations. The report also describes and compares federal and state laws that mandate rights for persons with disabilities, examines and contrasts national and state government compliance with these regulations, and offers an assessment of the extent of intragovernmental and intergovernmental cooperation and partnership.

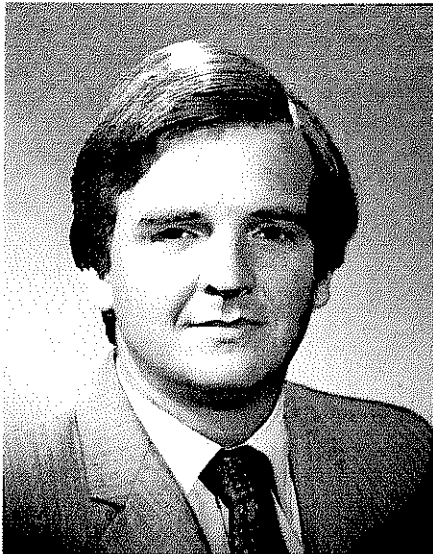
Overall, the study found that compliance among federal agencies is about as variable as compliance among states and state agencies, and the reasons are often the same. Furthermore, despite the applicability of the disability mandates to federal and state governments, there appears to be little coordination of compliance efforts.

The enactment of a federal mandate produces a uniform national policy, but it may result in patterns of intragovernmental compliance that are not substantially different from patterns of intergovernmental compliance. The study also found that problems of policy implementation that often are attributed to intergovernmental obstacles may be as much or more due to intragovernmental obstacles.

What are the potential implications of these findings? One way to promote intergovernmental change and cooperation with respect to national standards is for the federal government to be exemplary in word and deed. This is especially important in the field of disability rights. It is also important given that the federal government, with its limited scope of service delivery, is often in the position of not having to practice what it preaches. Not complying with its own mandates when it is called on to do so creates perceptions of unfairness that can spill over into state and local compliance efforts. States and local government, of course, should not use federal laxity as an excuse for similar behavior.

What needs to be explored is how intergovernmental policymaking may be, under many circumstances, a more effective way to achieve essential national objectives than purely national policymaking in which compliance requirements are more prominent than alliance incentives. The study suggests that there is a continuing need to build consensus in the intergovernmental system in order to implement policy nationwide. It is not enough to enact mandates more or less unilaterally and to expect compliance to flow swiftly in their wake.

The Chairman's View



There is considerable discussion among state and local officials these days about what the new presidential administration will do in the area of federalism. What will be the character of federal-state-local relations in the post-Reagan era? The question is again being asked by the political sages who read Washington tea leaves. We should pause for a minute, however, and ask ourselves whether this is the right question.

It is my judgment that the Bush Administration will take a number of positive initiatives in the area of state and local relationships. This is particularly true with Governor John Sununu as White House chief-of-staff. He has a fundamental understanding of federalism as well as the practical experience to translate that understanding into important policy initiatives. Yet these initiatives will all take place within a set of very stringent constraints. The unlikelihood of massive tax increases, the mounting political pressure to reduce the federal deficit, and the increasing tendency to transfer federal money to individuals rather than to state and local jurisdictions suggest that federalism initiatives will have to take a very different tack than traditional grant programs.

A second constraint is the increasing tendency of the U.S. Supreme Court and the Congress to restrict state and local government authority and to dictate national policy. We now have enough Court decisions to see a trend. In *Garcia*, the Court said that the Congress can regulate the terms of employment of state and local employ-

ees; in *Baker*, it said that the Congress can regulate tax-exempt bonds; and in the *Richmond* case, the Court took it upon itself to limit the right of municipalities to contract, striking down many state and local government programs to set aside part of their contracts for minority firms.

If this trend continues, we will see the steady nationalization of state and local governments. Congress and the courts increasingly will limit state and local governments' authority and require them to comply with national standards, policies, and regulations.

This is a state of affairs that none of us in the intergovernmental community want. For those committed to federalism, support for federalism has always been a matter of commitment to principle rather than to any particular ideological preference—left or right. While we might disagree, for example, with the policies of a particular state or local government, the commitment to honor the right of those governments to make policy outweighs our disagreement over policy itself.

State and local governments are already taking steps to address these problems. On the constitutional front, the National Conference of State Legislatures and the Council of State Governments have started serious efforts to draft remedies that will require the Supreme Court to protect the powers of state and local governments. Likewise, the National Association of Counties and the National League of Cities have developed a strategy of getting the Congress to come to grips with the implications of *Garcia* and to deal with local governments as full partners in the federal system.

We are in the midst of a constitutional crisis. The fundamental political consensus regarding the roles that federal, state, and local governments should play in our federal system has broken down. The Supreme Court has brought these issues to a head. The Congress will accelerate the crisis by

moving more monies to individuals and by regulations requiring state and local governments to do indirectly what the federal government cannot do directly through cash grants. They will elevate the principle of shift and shaft that state and local governments experienced in block grants to a high art form through the regulatory process.

I for one agree with the strategies adopted by state and local groups. We must amend the Constitution to guarantee the future of strong and independent state and local governments. We also must focus on the roles these units, especially local governments, will play in the delivery of services. The two strategies are sides of the same coin. To have a productive partnership for efficient service delivery, we must have strong partners. Dependent state and local governments to the federal bargain is no bargain at all. As a nation we will all be worse off.

We need to start a national debate on these issues. We need to take these fundamental issues to citizens. I am going to ask my fellow Commissioners to make it a top priority of the ACIR to start a national discussion on the fundamental issues facing the federal system, and to undertake incisive studies and educational efforts to inform citizens about the important reforms that must take place to protect their local and state institutions. In addition, the national associations of state and local governments must forge a consensus and coalition to make constitutional and congressional reform a possibility.

We must frame the issues ourselves, and we must take our message to the citizens so that we can make it easy for the Congress and the administration to make federalism reform a reality. There is little federal officials alone can do to enhance the authority of local institutions. The question, then, is how do state and local institutions bring about reform of the federal system? The answer is that we must do it ourselves.

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