

## State and Local Governments in International Affairs

State and Local Governments  
Go International

*John Kincaid*

States and Localities  
in the Global Marketplace

*Blaine Liner*

Going Global: A Governor's Response

*Tommy G. Thompson*

Building a National Export  
Development Alliance

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What the Framers Really Said  
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*Michael Shuman*

The Limits of Federalism  
in Foreign Policymaking

*Peter J. Spiro*

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How Much Does Federalism  
Matter in the U.S. Senate?

*A Conversation  
with Sen. Christopher Bond  
and Sen. Paul Sarbanes*



# A View from the Commission



In 1984-85, while I was Governor of Virginia, Senator Daniel J. Evans and I had the honor of co-chairing a commission of distinguished Americans in a thorough evaluation of federalism and national purpose. The commission concluded that: "Our system of federalism needs a thorough overhaul. For all its strengths, the system designed 'to form a more perfect union' has generated a complex of programs and regulations that too often defy common sense and frustrate the accomplishment of national purposes. The nation must find ways to 'get more mileage' out of all levels of government . . ."

Although the commission focused on domestic issues against the backdrop of massive federal budget deficits, it also recognized the growing dislocations in the American economy created by intensifying foreign competition and serious trade deficits. In the years since that report was issued, we have managed to "get more mileage" out of our governments. As is often the case, however, we have miles to go before we sleep because, in the area of international trade and commerce, our com-

petitors are not sleeping. We finally have recognized that we can no longer think in terms of a Virginia market, or a Texas market, or an Oregon market. Nor can we even think in terms of an American market, a British market, or a Korean market. There is only one market today—the global market. America's economic future depends on our ability, as cities, states, and as a nation, to compete in that market. Toward that end, as governor of Virginia, I made economic development and promotion of foreign trade a top priority, and my successor as governor made it a focal point of his administration. Today, the Old Dominion is among the leaders in developing improved trade relationships around the world; in just two years, the commonwealth's exports have jumped almost 40 percent. Virginia is not unique. As those most directly responsible for economic development, state and local government officials across the nation have become actively engaged in the worldwide search for markets and investment. A quick scan of state trade programs gives a good indication of this engagement. Forty-one states maintain offices in 27 countries. More states have offices in Japan than in Washington, DC. With competitive financing being such a problem for our exporters, 17 states have developed export finance programs. Dade County, Florida, runs a pioneering program of international education for elementary school students. Iowa has formed a sister-state relationship with Stavropol, USSR. Ohio looks for markets in Africa by opening an office in Nigeria, while Wisconsin seeks to take advantage of the emerging economy of Mexico. The list of examples alone would fill this issue of *Intergovernmental Perspective*.

Last year, under the leadership of my successor as governor of Virginia, Jerry Baliles, the National Governors' Association undertook an extensive examination of America's

effort to cross the international frontier. NGA's "America in Transition" initiative identified the need for a national attitude adjustment: greater appreciation for other cultures and economies; more emphasis on foreign language education; acceptance of the fact that other economies have caught up with ours; greater adaptability in the marketplace.

The governors also identified two significant areas where our investments need to be maintained or improved if we are going to be truly competitive: our transportation infrastructure and our children's education. Our international competitors are emphasizing these areas. Our state and local governments are determined, not just to catch up, but to lead.

The President's education summit, for example, was a step in the right direction; it is essential that we work together to establish and meet national goals and to build awareness of other cultures and languages if our children are to create the competitive workforce of tomorrow.

Our physical infrastructure needs to be updated. We cannot get goods and people to markets around the world if they are sitting in traffic, on a dock, or on a runway. What was once the most sophisticated communications system in the world now needs updating as well. These responsibilities are shared throughout our federal system, and the reauthorization of the highway and airport programs in the next two years will address those allocations of responsibility.

The 1988 trade bill recognized the initiative taken by our state and local governments. The federal government, as part of its commitment to encourage innovation throughout the federal system, has established a new clearinghouse in the Department of Commerce. In helping to design that clearinghouse, ACIR has drawn attention to the in-

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

**Staff**

John Kincaid

Executive Director

Joan A. Casey

Pamela L. Reynolds

Co-Editors

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

## On the ACIR Agenda

### ACIR to Study Intergovernmental Roles in Criminal Justice

ACIR is undertaking a major study of the roles of local, state, and federal legislators and chief executives in the administration of criminal justice.

Vivian E. Watts, former Secretary of Transportation and Public Safety for the Commonwealth of Virginia, is serving as project director.

In a resolution by NACO's Justice and Public Safety Steering Committee, passed by the association in 1989, NACO formally recommended that ACIR be commissioned to undertake this study. ACIR has entered into an Interagency Agreement with the National Institute of Justice in the U.S. Department of Justice for the primary funding of the 18-month study.

The key goals of the study will be to help state and local elected officials develop a better understanding of criminal justice, make better policy decisions, and develop better mechanisms for coordination and cooperation in administering the system.

ACIR's work on the criminal justice system goes back two decades, starting with *Making the Safe Streets Act Work: An Intergovernmental Challenge* (1970), followed by *State-Local Relations within the Criminal Justice System* (1971), model criminal justice legislation as part of the *State Legislative Program* (1975), *Safe Streets Reconsidered* (1977), and *Jails: Intergovernmental Dimensions of a Local Problem* (1984).

### Study of Local Spending in Maryland

ACIR staff recently completed a study of expenditures in FY 1988 by local governments in Maryland.

The report on the study presents estimates of representative expendi-

tures for the City of Baltimore and all local governments as a group in each of the state's 23 counties. The report includes a comparison of the estimates of relative needs for public services with actual spending patterns, an illustrative adjustment of the estimates for differences in unit input costs, and a discussion of the fiscal capacities of the counties combining the estimates of representative expenditures with the yield of a representative tax system calculated by the state's Department of Fiscal Services.

The study, performed under a contract with Maryland's Commission on State Taxes and Tax Structure, was directed by Robert W. Rafuse, Jr., Visiting Senior Fellow at ACIR. The other authors of the report are Laurence R. Marks and Carol E. Cohen.

### President Appoints New Commissioners

President George Bush appointed four new members of ACIR in May and June.

**Victor H. Ashe** is mayor of Knoxville, Tennessee. He is chairman of the Parks and Recreation Subcommittee of the U.S. Conference of Mayors.

**Booth Gardner** is governor of Washington.

**Joseph A. Leafe** is mayor of Norfolk, Virginia.

**Stan Stephens** is governor of Montana.

**John Ashcroft**, governor of Missouri, **Robert M. Isaac**, mayor of Colorado Springs, Colorado, and **David E. Nething**, Senator, North Dakota Senate, have been reappointed to the Commission.

### State Support for ACIR

The Commission would like to thank the following states for their recent financial support: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Indiana, Kansas, Kentucky, Maryland, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, South Carolina, Tennessee, Virginia, Washington, and Wisconsin.

### State ACIR's to Meet in September

Each year, a growing number of state ACIR's meet to compare notes and help each other to improve their programs. The next national meeting of these 27 state organizations will be hosted by the Rhode Island ACIR in Newport, Rhode Island, Monday and Tuesday, September 24-25, 1990, at the Sheraton Islander. Last year's meeting was in Ohio, and the 1991 meeting will be in New Orleans, Louisiana, in mid-September.

## **State and Local Governments in International Affairs**

On April 17, 1990, the U.S. Department of State convened a special briefing on Eastern Europe for representatives of the national organizations of state and local governments in Washington, DC, and representatives of the Washington offices of many states. This half-day session included an overview of the economies of Eastern European nations; a briefing on the loan and loan-guarantee operations of the Export-Import Bank, including EX-IM's innovative city-state program for multiplying its outreach to small American exporters; the foreign aid programs of the Agency for International Development; and the Visitors Services Program of the United States Information Agency. It was pointed out that the White House has designated an Eastern European initiatives coordinator at the U.S. Information Agency for all of the activities of the United States government within that region.

The State Department briefing illustrates a growing recognition that America's federal, state, and local governments need to increase the extent to which they work together in international endeavors. That point emerged strongly from ACIR's study of the roles of state and local governments in international affairs, now nearing completion.

This issue of *Intergovernmental Perspective* continues the dialogue on the growing internationalization of state and local government activities in the United States.

In the first article, John Kincaid, executive director of ACIR, outlines ten dimensions of state and local international activities. Next, Blaine Liner of the Urban Institute summarizes the rapidly accelerating activities of the states with respect to international investment and trade elements in their economic development programs. Significant comments on the growing roles of the state governments overseas are then offered by Governor Tommy Thompson of Wisconsin. Susan Schwab, Director General of the United States and Foreign Commercial Service, U.S. Department of Commerce, outlines the development of the service during its first ten years and its strategies of working with state and local governments as well as with American businesses. Finally, Michael Shuman and Peter Spiro take up the more general federalism debate: which governments—federal, state, or local—should and may do what in foreign affairs under our constitutional system?

The Commission expects to publish a major policy report on this international topic later this summer.

*Bruce D. McDowell is ACIR's director of Government Policy Research.*

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# State and Local Governments Go International

John Kincaid

**T**he growing involvement of state and local governments in international affairs, especially world commerce, is one of the remarkable changes occurring in our federal system. This change poses challenges and opportunities for both federalism and international relations. Indeed, the expanding international activities of constituent governments elsewhere—such as Canadian provinces, German *Länder*, Japanese prefectures, Soviet republics, and Swiss cantons—suggest that “international” relations may be a misnomer. Today, it might be more accurate to speak of global intergovernmental or interorganizational relations.

Some federations have constitutional provisions that expressly allow their constituent states to engage in international activities. In the United States, however, we have tended to think of foreign affairs as virtually an exclusive province of the U.S. government. Yet, states, counties, municipalities, townships, school districts, and many special districts are addressing global issues in many ways. These initiatives are generally compatible with our constitutional system and often beneficial for federalism and the national economy.

To see how this is so, we can look at the ten ways in which state and local governments are actually plugged into foreign affairs.

## 1. Partners in Foreign Policy Development

The U.S. Constitution makes states direct partners in foreign policymaking through their representation in the Congress, particularly the Senate. The framers of the Constitution viewed treaty-making as central to foreign policy. To protect the interests of the states, including their different economies and foreign-country sympathies (e.g., the Francophiles vs. the Anglophiles), especially since treaty law superseded conflicting state law, the Constitution requires treaties to be ratified by two-thirds of the Senators present. In addition, ambassadors must be appointed by the President with the advice and consent of the Senate.

Given that the Senate, according to James Madison, is the more confederal chamber than the House, which is the more national chamber, it is clear that federalism and state interests were uppermost in the framers' minds when they provided for the exercise of the union's normal foreign policy powers. Moreover, the framers of the Constitution provided that Senators be selected by their state legislatures, thus reinforcing the institutional base of state representation in foreign policymaking. The Senate, then, was to be the main arena for reconciling the interests of the union as a sovereign nation in world affairs with the interests of the states as co-sovereign partners in the federal union.

However, the most drastic foreign-policy action—a declaration of war—is reserved exclusively to the Congress, both houses. Here, the framers were unwilling to leave decisionmaking to the President and the Senate, neither of which was to be chosen directly by the people. The framers brought the House into the picture because its members were to be elected by the people directly, and at the youngest age permitted by the Constitution for elected U.S. offices, thus presumably putting House members more closely in touch with the sentiments of the young people called on to fight wars.

Local governments are not directly represented in the Congress, but they are indirectly represented in both houses, and more finely so in the House. Constitutionally, the House does not have much of a direct role in foreign affairs, but given that all revenue bills must originate in the House and that treaties require implementing legislation, the House in fact has a sizable role in foreign affairs. Thus, the House is another arena in which state and local governments can try to shape foreign policy.

Given that the President is chosen through the electoral college, the states, especially large states and big cities, have periodic electoral opportunities to influence presidential foreign policymaking. Recognizing that large

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states and big cities would be the economic powerhouses of the union, perhaps the framers wanted to give them a slightly enhanced voice in international relations through the presidency, especially since the framers wanted American foreign policy to be dominated by commercial concerns, not by wars and colonial empire-building.

Just how foreign policy is to be shared between the President and the Congress, especially the Senate, has been debated since 1789. Clearly, most of the framers wanted an energetic President, not a clerk. The constitutional provisions suggest that the President, not Congress, is empowered to speak officially for the nation in world affairs and to conduct foreign relations on a day-to-day basis, but that the President must do so within basic rules established by Congress through treaty and statutory law, over which the President also has influence through his authority to negotiate treaties and veto legislation. It is through this matrix of power, then, that the diverse interests of the states and their citizens must be melded into coherent foreign policies for the federal union as a sovereign nation.

## 2. Pressure Points in Foreign Policymaking

In addition to the formal avenues of representation in the Congress, state and local officials, like other pressure groups, lobby and supply information to the Congress, the White House, and executive branch agencies. There is no constitutional barrier to this kind of activity. Indeed, in *Garcia* (1985) and *South Carolina* (1988), the U.S. Supreme Court seemed to say that such activity is necessary and essential if states are to protect their interests in the federal government's policymaking process.

Forty-some years ago, when state and local elected officials first set out in earnest to address issues in Washington, DC, they had domestic policymaking, especially federal grants-in-aid, at the top of their agendas. Today, with declining federal aid and rising globalization, foreign policy is an added and increasingly important agenda item. Furthermore, the line between domestic and foreign policy becomes less clear everyday. State and local officials must, therefore, straddle both policy fields, much like their congressional counterparts. State and local officials, however, must be especially attentive to the impacts on their jurisdictions of decisions made in both the national and international arenas.

The experience acquired by state and local officials in being intergovernmental diplomats to Washington has no doubt helped them to become competent international diplomats for their jurisdictions as well. Now, more and more state and local officials have direct contact with both worlds, contacts that require and allow them to address issues of national and international significance to their constituents.

## 3. Self-Governing Political Communities

States and localities are self-governing political communities in their own right, having a full range of constitutional powers for domestic governance. Through their powers of taxation, regulation, service provision, and law enforcement, state and local governments create climates in their jurisdictions that encourage or discourage a wide range of internationally related activity, especially trade, tourism, and investment. As such, state and local governments have substantial

and direct influences on many matters of international significance. Furthermore, states enforce and implement many provisions of U.S. law, including treaty law. Thus, state and local governments are constitutionally well equipped to act in the global arena, although all are not fiscally or politically well equipped to do so.

It is in this area of direct state action, however, that we are likely to see heightened debate over federal and state powers. For example, one controversy over state and local powers has involved divestiture policies with respect to South Africa. Given the huge size of state and local pension funds and other investments, as well as the sizable purchases of state and local governments, state and local fiscal policies targeted at specific nations or sectors of the world economy can have very tangible consequences that can run counter to or parallel with U.S. policy. Small states that engage in this kind of activity perhaps can make a dent in foreign economic affairs, but a few large states acting at the same time can produce much more than an economic fender bender.

As co-sovereign partners in the federal union, then, just how far can state powers be extended into the global arena so that states can meet their domestic constitutional obligations to their citizens? In turn, how far can federal powers be extended into the state-local arena so that the federal government can meet its domestic and foreign constitutional obligations? Some observers argue, for example, that globalization and the emergence of such regional economic organizations as the European Community require significant preemptions of state and local authority in order to create a more open and uniform national market. Others argue that because of the diversity of state economies, needs, and preferences, and because of the diminishing ability of the federal government to insulate the national economy from international shocks, states need more, not less, power to maneuver in the global economy.

## 4. Promoters of Area Interests

Perhaps the international role for which state and local governments are best known is that of promoters of their own jurisdictions in foreign markets. Through aggressive advertising, trade missions, and foreign offices, state and local governments are seeking to promote exports of their constituents' products and to attract foreign investment and tourists. There has been a tremendous increase in these activities since the late 1970s, and there is every indication that they will continue to increase during the 1990s.

Controversies in this field are less likely to involve federal-state issues than interstate and intrastate issues. Although states and localities frequently cooperate on such matters as export promotion and tourism, the attraction of investment often involves keen competition. The public, moreover, is divided over the wisdom of attracting foreign investment ("the selling of America"), certain methods of attracting investment ("tax giveaways"), and state and local trade missions and foreign offices ("junkets and boondoggles"). One can expect, therefore, a certain amount of conflict between and within states as state and local governments expand and refine their promotional activities. The forging of equitable and efficient tools of interstate and interlocal competition in the global economy is an urgent challenge because every jurisdiction must compete with a growing number of very active and attractive jurisdictions around the world.

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## 5. Proxies for the Nation

Although state and local governments cannot officially represent the nation abroad, elected state and local officials do, in effect, represent, in the minds of others, what is best or worst about the United States. Sometimes state and local officials can also open doors in unofficial ways that would be awkward or impossible for the U.S. to do officially. In addition, state and local officials and their counterparts abroad can initiate discussions on issues of mutual concern, and then carry proposals back to their respective national governments. At times, state and local governments can also provide aid to equivalent governments in another country where it would be awkward for the U.S. to do so, or for the other national government to accept direct U.S. aid.

This role of state and local governments is not well developed, nor is it likely to be developed with much vigor—with two exceptions. First, if the democratization of authoritarian regimes continues to spread throughout the world, the federal government, as well as private foundations and international organizations, will be calling more frequently on state and local officials to lend their expertise to governmental reform in these countries. Second, as laboratories of experimentation, state and local governments are likely to serve increasingly as sources of ideas for national responses to globalization.

## 6. Parties to Agreements with Foreign Powers

The U.S. Constitution does not allow states to make treaties, join alliances, or enter confederations; however, states can make agreements and enter compacts “with a foreign power” with the consent of Congress and also without congressional approval so long as such agreements do not intrude on the federal government’s prerogatives or give states attributes of true sovereignty in international affairs. Today, there are thousands of formal and informal agreements between state and local governments and “foreign powers.” Most of these agreements, however, are with equivalent state or local governments abroad, such as Canadian provinces. Along the Canada-U.S. border, for example, many agreements involve housekeeping matters, such as roads and bridges, traffic, fire protection, and animal control. An occasionally hot issue is reciprocity in traffic-ticket enforcement.

As state and local governments’ international activities expand, so does the scope of agreement making, both substantively and territorially. Most sister-city and sister-county programs, for example, used to be polite cultural affairs involving minimal government commitment. Today they are taken more seriously, involve a wider range of activities and substantive issues, and are viewed increasingly in the context of overall economic development strategies. Similarly, in addition to bilateral agreements, there is a growing number of multilateral agreements involving several states and several equivalent foreign governments.

Surprisingly, perhaps, there has been hardly any federal-state conflict over these agreement making activities. Constitutionally, the federal government has broad and express authority to regulate these activities and to abrogate agreements not to its liking; however, state and local

governments have pretty much confined themselves to matters appropriate to their jurisdictional concerns.

## 7. Public Education and Opinion Forums

A major key to a successful economy today is a well educated workforce attuned to world events. Yet, it is local and state governments that have the primary responsibility for education. If Americans are to learn world geography, foreign languages, and international sensitivities, it will be largely through resources and encouragement provided by state and local institutions. Internationally relevant education, moreover, must go beyond the classroom. It must permeate the jurisdiction and be reflected in public and private sector activity so that children can see its importance and adults can use their knowledge.

At the same time, it is clear that states and localities also have emerged as public-opinion forums on foreign policy. City councils and state legislatures pass resolutions on foreign policy; mayors, county commissioners, and governors speak out on foreign affairs; and more and more foreign policy propositions appear on state and local ballots, some of which are hotly contested and attract supporters and opponents from out of state. Although many of these legislative resolutions and ballot propositions criticize U.S. foreign policies, and although many citizens regard these resolutions as improper, there is no U.S. constitutional barrier to such expressions of opinion, and there is no sign that such activities will decline in the near future.

## 8. Problem Solvers on the World Scene

“Think globally, act locally” has become an attractive slogan in this era of interdependence and rising concern about the global effects of local behavior, such as environmental pollution. Here, state and local governments can demonstrate one of the virtues of federalism, namely, the ability to experiment with different solutions to public problems and, at the same time, actually do something constructive. If a jurisdiction is concerned about global warming, for instance, it can (if not preempted by the federal government) reduce or eliminate its production of the offending pollutants. By itself, a small jurisdiction cannot have much of an impact, but the point is to lead the way and get the ball rolling while still making some contribution.

State and local governments also can make useful contributions to easing border tensions and resolving cross-border problems. In so doing, they can help prevent manageable problems from becoming less manageable international controversies. This is less of a problem for the United States than it is for many other countries where border issues can be intense, but still, there are important issues to be dealt with, and often are dealt with, by state and local governments that share a border with Canada or with Mexico or, in the case of Alaska, a narrow waterway with the USSR.

## 9. Patrons of Democracy

If state and local governments are to capture more markets for their constituents’ products, and if the Sunbelt states are to resolve their concerns about Latin America, then state and local governments will have to be attentive to the economic and democratic development needs of most countries around the world. State and local governments are uniquely qualified to help because they possess hands-on



expertise, and because economic development and democratization require competent local and regional institutions of government that can provide essential services, unleash entrepreneurial energy, and stimulate citizen participation.

In numerous and generally quiet ways, many state and local governments, usually in cooperation with private and nonprofit organizations, are providing technical assistance, equipment, and other aid to various communities around the world. Exchange programs also have taken on more importance, and there has been a quantum leap in information sharing among state and local governments all over the world. In turn, American state and local officials have become more interested in learning lessons from abroad that can be applied at home. Furthermore, state university systems, which include some of the best universities in the world, are excellent vehicles for contributing to economic and democratic development.

#### 10. Practitioners of Goodwill

Finally, but not last in importance, state and local governments have been playing significant roles in promoting goodwill abroad and improving cultural understanding between the United States and other nations. These activities are actually quite traditional for many state and local governments, and they predate the newer kinds of international involvements developed during the past two decades.

State and local governments are well suited for this role. Such activities are often best carried out on a small-scale, person-to-person basis so that participants can see how other people really live and think about things. State and local governments also can work closely with their private and nonprofit counterparts to build different kinds of bridges between peoples and assemble rich cultural and educational programs. State and local activities, moreover, are likely to show best the great cultural diversity of American life. In addition, state and local programs are less likely to be freighted with the ideological baggage and policy antagonisms that separate national governments, thus enabling state and local efforts to break through barriers that otherwise divide peoples.

#### Conclusion

The emergence of state and local governments as actors on the world scene can be characterized, thus far, as cooperative dual federalism. That is, state and local governments have, by and large, been carving out international niches for themselves, and by themselves, in the fashion of dual federalism. At the same time, the federal government has been largely tolerant and benignly cooperative, neither interfering in overt ways with state and local initiatives nor going out of its way to lend a helping hand. There are, of course, some direct points of cooperation as well as friction, but what is remarkable is that there has been so little federal-state conflict. The principal challenge is to continue carving out appropriate roles for the federal sector and the state-local sector so that each can do what it is best equipped to do, and the two sectors can coordinate and cooperate as necessary and appropriate

*John Kincaid is executive director of ACIR.*



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(see page 45 for order form)

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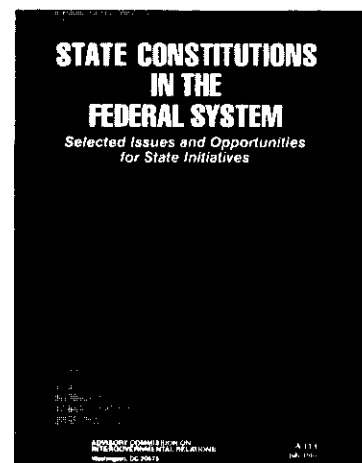
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A-113                      1989                      136 pages                      \$15



(see page 45 for order form)

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# States and Localities in the Global Marketplace

Blaine Liner

**A** little over 20 years ago, in May 1969, the head of Virginia's industrial development agency, Frank Alspaugh, decided that it would benefit the state to station employees in Brussels to assist with a full range of economic development services much like those offered from Richmond. In retrospect, this was not just a stroke of genius on Alspaugh's part, it was an historic and very lonely act. Few shared in the decision, and fewer shared the enthusiasm that anything would ever come of such an expensive and bold move by a state agency. A state government employee overseas? Indeed! U.S. interest in the overseas market was so low, in fact, that at that time there was only one person in the U.S. Department of Commerce assigned to foreign direct investment, Frank Schaeffer. One of his tasks was to convince other states that they should pay attention to overseas trade opportunities, also a somewhat lonely endeavor.

Other states were watching Alspaugh's boldness with great interest. Would he succeed or swing from the budget committee gallows in the next session of the legislature? New York and Illinois had assigned representatives to work on trade matters from Brussels, but no state had actually placed a state employee overseas to offer a full range of economic development services. Port authorities had been successful in the past with their overseas representatives, but somehow that was different, perhaps because it was tied more directly to the tangible day-to-day work of shipping contracts and booking space in ports.

It wasn't long before Alspaugh had proof of the wisdom of the Brussels decision. Mills Godwin, Virginia's governor from 1966-1970, had backed Alspaugh in the 1969 decision. Before he left office, Godwin was able to announce the first big coup from Brussels. ICI (Imperial Chemical Industries) had made the decision to locate in Chesterfield County, Virginia, in large part because Virginia's man in Brussels, Denis Rufin, had sold them on a Virginia location. After 21 years, and hundreds of subsequent coups, Rufin is still Virginia's on-site link to the European marketplace.

In 1973, the Southern Growth Policies Board held a three-day workshop on international trade in Columbia, South Carolina, probably the first gathering of state and local elected officials to discuss the topic, at least in this century. State and local legislators from 13 southern states came to hear experts discuss various aspects of foreign direct investment. (Exporting wasn't even on the agenda.) They listened attentively, with arched eyebrows and a deep-seated suspicion that somehow they were being roped into endorsing overseas junkets by their governors, junkets they were going to be asked to finance with public tax dollars. Enthusiasm and skepticism were reflected in about equal proportions by each of the 100 or so participants.

The arguments for going overseas to get industry to locate in the states fell on fairly receptive ears, however. The southerners had been pioneers in attracting firms from northern and western states, even occasionally from each other, and, in many ways, this idea of going overseas seemed to be a natural extension of their current industrial attraction programs. Of course, they first had to think through whether or not tax moratoria, direct cash incentives, and other tools of the trade used to induce domestic firms to relocate could be extended to foreign companies. A finding that this was possible unleashed fantasies about dozens of new factories, thousands of new jobs, and increased incomes for a struggling southern workforce.

The above background illustrates how far state and local governments have come in 20 years. The contrast between those early days and the present will be apparent from what follows. Between Alspaugh's gambit in 1969 and today, many things had to happen to set the stage for the current profile of state and local activism on the international front. The short version of the story is that the states, with representatives from their local governments and the private sector in tow, moved aggressively to help establish what presence we have

in the global marketplace, while the federal government toiled over macro-economic issues that were of great moment and concern only inside Washington's Beltway.

### States Lead the Way

William T. Archey, vice president-international of the U.S. Chamber of Commerce, recently stated that "states are probably more at the forefront on the issue of promoting and understanding what's going on in the world than the federal government in some ways."<sup>1</sup> This acknowledgement serves as much to challenge federal agencies as it does to complement two decades of hard work and planning by state and local trade officials.

Although the states were at "ground-zero" 20 years ago, they now offer a full range of trade-related services that were designed, tested, and redesigned, and now are fully functional in assisting U.S. businesses in the world marketplace. Additionally, each state has developed special trade relationships of long standing with several nations, with particular companies within those countries, and with key individuals who provide legal, financial, shipping, and other critical services.

The early approach to the international market was generally an expansion of domestic industrial relocation services, namely, a strong concentration on relocation or, in the international parlance, foreign direct investment (reverse investment). Clearly, it worked very well. Every state has been on the receiving end of foreign investments in plant and equipment. But, as the really big investments by auto makers and other multinational manufacturers were concluded, company by company and state by state, the few large deals left in the offing led states to reconsider other priorities. This reconsideration and redirection occurred almost simultaneously with the reversals that took place in the U.S. trade balance during the five-year period 1970-1975 (three years with surpluses and two with deficits). During this period, we were getting the message that exporting is important to our economic health. The immediate political rewards of exporting pale beside the rewards associated with reverse investment—no souvenir shovels or ribbon-cutting scissors are handed out to mark a new production contract for the overseas market—but new jobs for exporting count at 100 cents on the dollar with new jobs for domestic production. The U.S. Department of Commerce estimated that one in six manufacturing jobs during 1989 was tied directly or indirectly to exports.

U.S. trade accounts totaled \$837 billion in 1989, with exports of \$364 billion and imports of \$473 billion. Exports were only 7 percent of our GNP, compared to West Germany's 28 percent, Canada's 23 percent, and the United Kingdom's 18 percent. The U.S. finds itself not only running a trade deficit but also running well behind the level of exporting common to other industrialized countries. This is in contrast to a 79-year unbroken string of U.S. trade surpluses (1891-1970). Since 1975, the U.S. has developed a 14-year unbroken string of trade deficits.

What does a state government do to increase trade that cannot or is not being done by the federal government or the private sector?

### Most Common State Services in the International Market

Perhaps the most visible state government service in the international market is the trade mission. The National Governors' Association recently surveyed the governors and found that 41 of them had made 82 trips to 35 countries during 1989. But there's much more going on.

Each state has carved out a variety of programs and services that, over time, have appeared to work well. In addition to state efforts, there are nearly always private sector services available to help businesses penetrate foreign markets. No two states have identical or nearly identical international trade programs because, no matter how similar, they do not get implemented in the same ways. Most states have foreign direct-investment attraction programs, but they are targeted to different countries or different industrial sectors. Nonetheless, it is informative to list some of the services more commonly offered by the states.<sup>2</sup>

### Common International Trade Services among States

The most common services include:

- Overseas offices
- Trade missions
- Trade shows
- Catalog shows
- Foreign direct investment
- Staff counseling/technical assistance
- Trade leads
- Referrals for export services
- Seminars/workshops/conferences
- Other state services include:
  - Introductions to visiting buyers
  - Sector/country targeting
  - Foreign trade zones
  - Trade financing/insurance
  - Export trading companies
  - Exporter awards
  - Honorary attaches/ambassadors/sister-state relationships
  - Joint venture matching
  - Student internships
  - Language bank
  - Newsletters/how-to handbooks/other publications
  - Market studies/trade statistics
  - Directories of exporters
  - Directories of export products
  - Directories of agents or distributors

The table on the next page illustrates the range and frequency with which some of the above services are provided.

### Do the Services Really Work?

Economic development has not been evaluated by auditors and legislative committees nearly as thoroughly as most other government functions. One reason is that the amount of money spent on economic development services in past decades has not been significant compared to

Table 1  
Program Activities

State	Seminars/Conferences	One-on-One Counseling	Market Studies Prepared	Language Bank	Referrals to Local Export Services	International Newsletters	How-to Handbook	Sales Leads Disseminated	Trade Shows	Trade Missions	Number of Foreign Offices	Operational Financing Program	Governor's International Advisory Committee	International Joint Ventures
Alabama	•	•	•	•	•	•	•	•	•	•	5	•	•	•
Alaska	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Arizona	•	•	•	•	•	•	•	•	•	•	1	•	•	•
Arkansas	•	•	•	•	•	•	•	•	•	•	3	•	•	•
California	•	•	•	•	•	•	•	•	•	•	3	•	•	•
Colorado	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Connecticut	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Delaware	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Florida	•	•	•	•	•	•	•	•	•	•	4	•	•	•
Georgia	•	•	•	•	•	•	•	•	•	•	4	•	•	•
Hawaii	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Idaho	•	•	•	•	•	•	•	•	•	•	1	•	•	•
Illinois	•	•	•	•	•	•	•	•	•	•	7	•	•	•
Indiana	•	•	•	•	•	•	•	•	•	•	6	•	•	•
Iowa	•	•	•	•	•	•	•	•	•	•	3	•	•	•
Kansas	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Kentucky	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Louisiana	•	•	•	•	•	•	•	•	•	•	4	•	•	•
Maine	•	•	•	•	•	•	•	•	•	•	0	•	•	•
Maryland	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Massachusetts	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Michigan	•	•	•	•	•	•	•	•	•	•	4	•	•	•
Minnesota	•	•	•	•	•	•	•	•	•	•	8	•	•	•
Mississippi	•	•	•	•	•	•	•	•	•	•	4	•	•	•
Missouri	•	•	•	•	•	•	•	•	•	•	3	•	•	•
Montana	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Nebraska	•	•	•	•	•	•	•	•	•	•	0	•	•	•
Nevada	•	•	•	•	•	•	•	•	•	•	2	•	•	•
New Hampshire	•	•	•	•	•	•	•	•	•	•	0	•	•	•
New Jersey	•	•	•	•	•	•	•	•	•	•	2	•	•	•
New Mexico	•	•	•	•	•	•	•	•	•	•	0	•	•	•
New York	•	•	•	•	•	•	•	•	•	•	5	•	•	•
North Carolina	•	•	•	•	•	•	•	•	•	•	4	•	•	•
North Dakota	•	•	•	•	•	•	•	•	•	•	1	•	•	•
Ohio	•	•	•	•	•	•	•	•	•	•	4	•	•	•
Oklahoma	•	•	•	•	•	•	•	•	•	•	5	•	•	•
Oregon	•	•	•	•	•	•	•	•	•	•	3	•	•	•
Pennsylvania	•	•	•	•	•	•	•	•	•	•	3	•	•	•
Puerto Rico	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Rhode Island	•	•	•	•	•	•	•	•	•	•	2	•	•	•
South Carolina	•	•	•	•	•	•	•	•	•	•	2	•	•	•
South Dakota	•	•	•	•	•	•	•	•	•	•	0	•	•	•
Tennessee	•	•	•	•	•	•	•	•	•	•	0	•	•	•
Texas	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Utah	•	•	•	•	•	•	•	•	•	•	3	•	•	•
Vermont	•	•	•	•	•	•	•	•	•	•	2	•	•	•
Virginia	•	•	•	•	•	•	•	•	•	•	5	•	•	•
Washington	•	•	•	•	•	•	•	•	•	•	1	•	•	•
West Virginia	•	•	•	•	•	•	•	•	•	•	0	•	•	•
Wisconsin	•	•	•	•	•	•	•	•	•	•	4	•	•	•
Wyoming	•	•	•	•	•	•	•	•	•	•	2	•	•	•

NOTE: Information was not provided by American Samoa, Guam, the Northern Mariana Islands or the Virgin Islands.

Source: National Association of State Development Agencies, 1988, updated by the National Governors' Association, May 1989.

many other functions. Another important reason is that economic development is fraught with difficulties in establishing cause and effect, attribution, appropriate lag times for outcomes to occur, and with other uncertainties. The international spectrum of state economic development services is even more dangerous territory for the evaluator.

Legislative oversight committees are joined in their frustration by governors, development directors, the media, and the businesses considering using state services. All are interested in how effective these services are, but no one knows for sure. Controlled experiments to determine the answers to most of the unanswered questions are not possible. While it is too cynical, perhaps, to say that if no state had an economic development agency none would need one, the free market forces did work quite well before states and localities created their development agencies. Often, I suspect, some of the international programs are provided mostly because other states have them; not to offer the service is to be preempted from some aspects of the international marketplace. This same logic leads to tax moratoria and other business incentives. Yet, we still have difficulty in adopting evaluation systems that can be used to judge the efficacy of most economic development programs.

Each state has articulated some priorities for economic development. Experts generally agree that economic development services in a given state can be provided to only 1 percent or fewer of the state's businesses in a given year. Rationing or "targeting" the limited supply has become commonplace. Sectors are targeted (biomedical in Maryland), substate districts are singled out for special attention (corridors of opportunity in Illinois, rural areas in Colorado), size of firm often is a special criterion (small businesses in Minnesota), and experience of the firm (new exporter in Maryland) sometimes is a way to sort out state services. Most of these rationing decisions vary over time. Each incoming administration is prone to wipe the slate clean of previous priorities and to establish new ones in line with campaign platforms or planks. Discontinuities further frustrate attempts at evaluation.

At last count, 14 states had conducted evaluations of their economic development programs during the 1980s. Most were fairly cursory, indicating that the evaluators had backed away from the cause and effect, attribution, and lag-time problems mentioned above. In-depth evaluations are still rare.<sup>3</sup>

Back in the 1930s and 1940s, most astute observers had decided to ignore state governments. They were dead. Over. Through. None other than Luther Gulick proclaimed them at a desirable end. In 1965, Everett McKinley Dirksen was the reigning voice of the U.S. Senate. He echoed Gulick's sentiments: "In the future the only people interested in state government will be Rand McNally."<sup>4</sup>

By contrast, Susan and Martin Tolchin, after a thorough review of foreign investment in the United States in the 1980s, proclaimed that the states now lead the nation in shaping foreign investment policy.<sup>5</sup> In this, the states generally are unhampered by either executive branch leadership or congressional oversight. Others

have come to the same conclusion in export promotion as well as foreign direct investment. President George Bush, in a presentation to the National Governors' Association last year, said that governors "are becoming our economic envoys . . . restoring American international competitiveness and expanding world markets for American goods and services."

The governors do not routinely stop for guidance and permission at the U.S. embassies when conducting business overseas; they do not deliberately ignore or avoid the federal preeminence or presence.<sup>6</sup> It's just that it doesn't matter for the most part. Likewise, the United States and Foreign Commercial Service might be helpful to a state's international operations. Or it might be irrelevant to the mission at hand. In either case, few state leaders would let much stand in the way of their trade and investment promotion efforts, federal or otherwise. The sea change in the capability and performance of state governments over the past 25 years is easily observed in the international trade arena.

## Notes

<sup>1</sup> "Awareness of 1992 on the Way Up among States," *Europe* (April 1990): 19.

<sup>2</sup> Extensive descriptions of the functions of state international offices can be found in Stephen H. Archer and Steven M. Maser, "State Export Promotion for Economic Development," *Economic Development Quarterly* 3 (August 1989); Robert Thomas Kudrle and Cynthia Marie Kite, "The Evaluation of State Programs for International Business Development" *Economic Development Quarterly* 3 (November 1989); and John Kincaid, "State Offices in Europe," *Comparative State Politics Newsletter* 6 (August 1985):22-28.

<sup>3</sup> In 1988, the auditor general in Illinois undertook a comprehensive, in-depth evaluation of the state Department of Commerce and Community Affairs (DCCA). The Urban Institute was contracted to provide the audit of DCCA's international programs, which is the most recent in-depth evaluation available: E. Blaine Liner, Thomas O. Singer and Harry P. Hatry, *International Business Development and Marketing in Illinois: A Review of the State's Performance* (Washington, DC: The Urban Institute, February 1989).

<sup>4</sup> *New York Times*, August 8, 1965.

<sup>5</sup> Susan Tolchin and Martin Tolchin, *Buying Into America* (New York: Times Books, 1988).

<sup>6</sup> John Kline, *State Government Influence in U.S. International Economic Policy* (Lexington, Massachusetts: D.C. Heath, 1983) and John Kincaid, "The American Governors in International Affairs," *Publius: The Journal of Federalism* 14 (Fall 1984): 95-114.

*Blaine Liner is director of the State Policy Center at the Urban Institute.*

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# Going Global: A Governor's Perspective

Tommy G. Thompson

**A**merican governors consider two of their most vital tasks to be broadening their state's economic base and providing opportunities for their citizens. Thus, governors have led efforts to guide and stimulate economic development and job creation for more than 20 years. As the world has become smaller, so governors' economic development strategies have become more far-reaching. Now that economic opportunities are more international in scope, governors' efforts must extend beyond state and national borders.

One reason why governors have become more active in promoting trade and investment is that we are trying to cope with recent and ongoing changes in the economy. For most of our history, U.S. economic strength was based largely on access to natural resources, inexpensive transportation, large-scale production, a high-caliber workforce, and sheer size of market. In each of these areas, the United States had advantages over its competitors.

Today, however, the U.S. market accounts for only 25 percent of the world market, compared with nearly 60 percent in the late 1940s. No longer does the United States hold unchallenged leadership in technology, manufacturing, finance, and transportation. Today, more products require manufacturing know-how and specialized skills and services rather than plentiful natural resources.

Today, our competitors have thriving economies. Trading blocs of countries with consistent trade policies are being formed. World manufacturing output is shifting in nature and location. The pace of technological change is accelerating. Successful businesses will need to anticipate and adapt quickly to all of these changes.

Over the past two decades, there has been extraordinary growth and innovation in the states' international programs. State leadership can help shape and coordinate an effective trade strategy that responds to the diversity within the world marketplace.

States operate within a national economic and foreign policy framework provided at the federal level. Although the federal government sets the rules on trade, state governments are in a unique position to help companies develop and expand overseas markets. States can take initiatives at the microeconomic level that sheer size precludes from effective federal action.

## Governors' Policy Tools

Governors have a number of tools they can use in international development. They include: trade and investment promotion, education and workforce training, infrastructure, and promotion of research and technological innovation.

*Trade and Investment Promotion.* Increasingly, nearly all business is conducted on a global basis. Successful companies understand their industry internationally and implement strategic plans to establish and maintain a world market position. Like businesses, states can take a strategic view of world markets.

State programs promote joint ventures and seek foreign investment. States provide technical assistance, including seminars, individual counseling, and the dissemination of trade leads. States promote international tourism through state advertising campaigns and tourism-oriented trade missions. States have their own export finance programs or offer information on non-state sources of financing. Last year, 44 states maintained 158 offices in 27 different countries.

Governors are involved in these efforts personally, and they have been successful in opening doors to trade and improving relations with other countries. Governors made 82 trips abroad last year, which along with other state efforts have helped position their states in the world marketplace.

Thirty years ago, overseas trade missions led by governors were rare. Today, governors' overseas travel is an important part of state economic development programs to increase exports to other countries, encourage foreign investment, and induce tourists from other countries to visit their states. Because of the heavy involvement of government in business decisions in many countries, it frequently takes a governor to open doors and to obtain the leads for future business development opportunities.

*Education and Workforce Training.* When it comes to adapting the U.S. education system to respond to changes in the economy, governors have played the leading role. We have worked hard to help prepare our citizens for the workplace of tomorrow by giving greater attention to the education needs of our children today.

Governor Terry E. Branstad of Iowa, chairman of the National Governors' Association, has made education a key component of this year's NGA agenda, "Consensus for Change." Our two-day education summit with the Presi-

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dent last September received worldwide attention and was an historic gathering.

International education—emphasizing foreign languages, geography, and cultural awareness—has been a critical part of this reform. That is why most states are taking steps to improve cultural awareness, language training, and teacher training programs and are encouraging the private sector to work more closely with schools and universities to improve international education. Improvements in the education system at all levels also have focused on the fact that workers of tomorrow must be technologically literate, with a better grasp of mathematics, science, and computer skills.

**Infrastructure.** Another essential aspect of responding to changes in the economy is ensuring a safe and efficient infrastructure. This includes transportation, such as highways, bridges, ports, and airports, as well as other types of infrastructure, such as water supply, wastewater treatment, and telecommunications. A nation's economic performance is tied to the quality of its infrastructure facilities and services.

Providing and maintaining infrastructure is a key function of state governments. It is an expensive undertaking. Our infrastructure facilities are getting older, requiring greater attention to maintenance and rehabilitation. At the same time, rapid economic growth and changes in demographics and business practices have placed greater or at least different demands on many of these aging systems.

Governors often must grapple with funding difficulties while at the same time recognizing the importance of investing in the foundations of the future. Governors recognize they must work collectively and individually to forge new partnerships that will help meet the nation's future infrastructure needs.

**Encouraging Innovation.** Leadership in the global economy now is associated with the ability to translate the latest advances in research into products for consumer markets. State programs that promote research and commercial development of new technologies are aimed at helping Americans cope with the demands of the future.

In recent years, states have taken a more aggressive role in promoting the commercialization of new technologies. Programs are aimed at stimulating research, introducing technology into businesses, improving management techniques, and determining overall state technology policy. Governors can use their leadership and policymaking abilities to help the United States become more successful in developing new products and manufacturing techniques, and capturing the potential of emerging technologies. Armed with these and other policy tools, governors can help businesses shape their trade strategies and be more effective competitors in an increasingly global marketplace.

## A World of Opportunities

America's trading relationships span the globe. More than 200 countries and territories traded with the United States in 1988. Individually and collectively through the National Governors' Association, governors are pursuing a range of activities that reflects this rich diversity of relationships. In the following "trip around the world," it is evident that, in the face of fast-paced, unprecedented change, states are strengthening existing ties, forging new

partnerships with reforming economies, and playing an important part in multilateral trade negotiations.

**Canada.** The United States recently embarked on a major new relationship with its closest neighbor and largest single trading partner. The U.S.-Canada Free Trade Agreement phases out tariffs and many other trade barriers over the next ten years, and it surely will serve as a model for future bilateral and multilateral negotiations.

The governors were very active during the negotiation of that agreement. The NGA Task Force on U.S.-Canada Trade, which I chaired, worked closely with U.S. negotiators to provide a sounding board for various proposals affecting state laws and programs. We also established a closer relationship with Canadian premiers through a series of exchanges that is ongoing.

As implementation of the agreement proceeds, states are helping American companies gear up to take full advantage of the trade opportunities inherent in this new trade relationship with one of America's oldest trading partners. To do this more effectively, some states are teaming up. Pooling state resources saves dollars, enhances services available to businesses, and increases the impact that can be made in the international marketplace. The Council of Great Lakes Governors, which I also chair, recently established a joint liaison office in Canada to coordinate market research, collect trade leads, and provide assistance to companies in the Great Lakes states. Other groups of states are entering into cooperative arrangements to meet a range of international goals.

**European Community.** The European Community's effort aimed at a fully integrated market by 1992 could be one of the most important international economic events of this century. A streamlined, more efficient market in Europe means more commercial opportunities for American companies; it is essential that states help U.S. businesses keep abreast of changes there.

The National Governors' Association is working with the European Community to provide governors with information about the EC 1992 initiative. A delegation of nine governors traveled to Brussels last year to meet with top EC officials and discuss the climate for enhanced American business opportunities. Governors also engaged in comparative discussions about sorting out government roles and responsibilities, a topic of great interest to both governors and European leaders. A second visit is being planned. These ongoing contacts provide a forum for sharing ideas and information and addressing concerns.

**Central Europe.** In the last year, Americans have been following the unraveling of the Communist governments in Central Europe and the move to multiparty systems in these countries. More exciting times are ahead. Policymakers in all nations are scrambling to keep up with these events. We governors take a special interest. When President George Bush met with us in Chicago last summer, he called us America's "economic ambassadors" and encouraged us to go to Central Europe to promote trade and offer assistance to a Europe in transition. Many governors have traveled to the region to find out first hand what might be done. NGA is working with a number of federal agencies to determine how states might best respond to the needs of the countries in the region.



**Japan.** In recognition of the vast trade and investment opportunities available in Japan and throughout the Pacific Rim, 38 states have set up offices in Japan. Trading with Japan is not easy. We have learned over the years that governors can help open doors, give assurances, lend credibility, untangle bureaucratic red tape, and initiate special arrangements.

Official and cultural exchanges often must precede business relationships. NGA and the National Governors' Association of Japan have exchanged visits since 1962, long before trade with Japan reached today's level of significance. Last November, governors of seven American states and six Japanese prefectures met in Washington, DC. The meeting, which focused on "Coping with Change in the Economy and the Environment," was the 20th of its kind between U.S. and Japanese governors. Each time we meet, we learn from each other and renew our commitment to strengthening the bilateral relationship.

**Mexico.** The opportunities in Mexico are enormous. With Mexican President Carlos Salinas de Gortari's decision to privatize major industries and lower barriers to investment and trade, Mexico's modernizing economy of 85 million people presents tremendous trade potential.

Last November, I had the honor of leading a 31-member trade mission from Wisconsin to Mexico. Measured in dollars of sales per day, this unquestionably was the single most successful of the eight foreign trade missions I have led.

At the time, I initiated a sister-state relationship between the state of Wisconsin and the state of Jalisco. When this is established, perhaps by the end of this year, I am told this will be the first state-to-state agreement with Mexico (although city-to-city agreements are common). Jalisco, like Wisconsin, is a dairy state, with forestry, tourism, and high-tech manufacturing. Its capital, Guadalajara, is the second largest city in Mexico. Wisconsin's Department of Development also is considering setting up an office in Mexico that would cover trade with Latin America and the Caribbean. Wisconsin would be only the fourth U.S. state to open an office in Mexico, so there is a considerable amount of untapped potential there.

While in Mexico, I proposed that a North American Common Market comprising the United States, Canada, and Mexico be considered. With a combined population of more than 350 million, such a market not only would be an opportunity for American businesses but it also would help us compete with an economically integrated Europe and with Asia. This concept continues to be a subject of discussion and debate at the national level of the three countries, and many other factors beyond trade would need to be addressed. In the meantime, states can continue to pursue the emerging trade opportunities with our neighbor to the South.

### **Multilateral Trade Negotiations**

For more than 40 years, the General Agreement on Tariffs and Trade (GATT) has been the major institution responsible for reducing trade barriers around the world. Governors are interested in the Uruguay Round because we are concerned about the future of our states' farmers and bankers, our economic development programs, our regulatory schemes, and our state purchasing practices and procedures. These are just some of the areas that will be affected by the outcome of the GATT negotiations. In fact, the potential effects of a broad-reaching international agreement raise a number of questions.

For example:

**Agriculture.** What will be the future of U.S. farm price supports? How will the wheat, corn, soybean, dairy, and sugar farmers be affected by changes in domestic programs? How might they benefit from increased access to European and other markets? What about the effects on state economies of lowering barriers to trade in fisheries and forestry products?

**Services.** What will happen to traditional state regulation of banking, insurance, legal and accounting services, and telecommunications under a new multilateral system of rules? How might firms in our states benefit from greater access to emerging markets in Asia and Latin America that now block most imports of U.S. services?

**Government Procurement.** How will states' purchasing practices and contract bidding procedures be changed? Will state laws be summarily preempted by an international agreement?

**Government Subsidies.** How might state and local incentives to encourage economic development and attract investment be modified by a multilateral trade agreement?

**Foreign Investment.** On the other side of incentives, will state options to place performance requirements or other conditions on investors be curtailed by a GATT agreement?

The answers to these and many other questions will affect state governments in profound ways. As the negotiators get closer to a final agreement, it will be important for states to determine priorities and consult closely with U.S. negotiators to ensure that state interests are not severely compromised.

As chairman of Ambassador Carla Hill's Intergovernmental Policy Advisory Committee, I am trying to do just that. Together with the 14 other governors on the committee, I hope to be able to provide U.S. negotiators with specific information about state concerns, especially in five areas of interest: agriculture, services, subsidies, investment, and procurement.

An effective multilateral framework governing trade, along with the range of individual or regional initiatives under way, translates into tremendous opportunity for American companies to expand their business transactions with the rest of the world. Governors' trade strategies must be designed to respond to challenges and opportunities whatever the context, regional or global, bilateral or multilateral.

### **Conclusion**

As the 21st century dawns, change has become a way of life. Coping with change has become part of the definition of our jobs as governors. We have many tools at our disposal. Through promoting trade and investment, improving America's education system, enhancing the nation's basic infrastructure, encouraging innovation, and taking advantage of specific opportunities around the world, governors can shape an effective state response to changes in the state, national, and global economies.

*Tommy G. Thompson is governor of Wisconsin. He is chairman of the National Governors' Association Committee on International Trade and Foreign Relations. He also chairs U.S. Trade Representative Ambassador Carla Hill's Intergovernmental Policy Advisory Committee.*

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# Building a National Export Development Alliance

Susan C. Schwab

**T**he United States and Foreign Commercial Service (US&FCS) is a team of 1,200 professionals working to provide practical export information and quality export counseling to American businesses. It exists to learn about profitable export opportunities, help them evaluate their overseas market potential, and, through a variety of programs, lead the companies to overseas sales opportunities. Overseas, US&FCS commercial officers gather market intelligence and background information on foreign companies, find agents and distributors for U.S. products and services, identify key buyers and government officials, and represent companies adversely affected by trade barriers. Domestic and overseas offices also provide in-depth market development counseling to individual client firms. These services are provided through a worldwide network of 47 district offices and 21 branch offices in cities throughout the United States and Puerto Rico, and 129 foreign offices in 67 countries.

The US&FCS complements these professional services with trade shows; matchmaker events that bring small companies together with overseas buyers, agents, and distributors; the *Commercial News USA* magazine of U.S. exports distributed worldwide; custom market surveys, and other information, products, and services.

This year marks the US&FCS's 10th birthday. We are celebrating by opening posts in the world's newest emerging democracies and by strengthening our presence in major and growing markets. To make ourselves even more effective, we recognize the need to establish a solid institutional framework and management structure and to focus our efforts to meet the rapidly changing needs of a dynamic business environment.

## Strategic Review

In the past 12 months, we have submitted all of the US&FCS programs and services to an exhaustive strategic review to identify strengths and weaknesses, consider priorities, scrutinize the quality of our services, and recommend program and service modifications. Throughout the review, US&FCS consulted private sector experts, state and local government and private organizations, our domestic and overseas staff, and other professionals throughout the International Trade Administration. Focus groups, questionnaires, extensive literature surveys, and meetings with exporters contributed to our findings.

We wanted to have business and our state and local partners in export promotion tell us how to be more helpful to clients and potential clients. We wanted to determine the US&FCS comparative advantage and steer clear of areas best left to the private sector and others.

One of the five activities in the strategic review was an evaluation of past efforts to improve the coordination and impact of state, local, and private sector contributions to U.S. export expansion efforts. The other four activities looked at various U.S. firms' export assistance needs and compared them against US&FCS and alternative programs. We also examined management, staffing, office automation, and organization options to better position the US&FCS to meet firms' needs.

We learned a great deal by listening both to our "retail" clients—businesses, and to our "wholesale" clients—state and local government trade promotion offices, their national representatives, such as the National Association of State Development Agencies (NASDA) and the National Governors' Association (NGA), and other trade and industry associations.

We learned that there is a widespread belief that the US&FCS is not as effective as it could be. This is due largely to the fact that the service's efforts have been watered down by trying to be all things to all people. The demand for export assistance in the United States is so great and the range of information and services the US&FCS could provide to meet that demand is so wide that we were bound to face a problem establishing priorities: management priorities and program priorities for providing assistance to U.S. businesses as well as our state and local partners. We had to face the limits of our resources and make some decisions.

In a country as large and diverse as the United States, with a potential client base of hundreds of thousands of individual firms that can benefit from export development assistance, the US&FCS recognizes how important our

state and local partners in the federal system are. No matter how broad our field network of domestic offices is, there will always be more companies we cannot reach that are capable of expanding into foreign markets but don't know about the range of programs and services available to help them do so. By working together with the "wholesalers" or "multipliers" of our information and services, we increase our export development outreach to regions and companies that might not know about or have ready access to US&FCS's valuable information.

The findings of the strategic review provide us with a solid basis for reordering priorities in order to meet the most important needs of our business clients. We intend to focus our energies primarily on small and medium-size firms with limited export experience and capability—"infrequent" exporters—and established exporters that are trying to penetrate a new market.

We want to help the small and medium-size infrequent exporter become a more frequent exporter. To do so, the best use of our domestic staff is to provide focused, one-on-one counseling, ranging from helping a company assess its export capability to developing an export marketing plan. This kind of counseling is viewed as the most useful US&FCS domestic and overseas service by the business community, our multipliers, and our staff.

Overseas, we will spend more effort developing market insight information—not just trade statistics (although those are still important to US&FCS and its state and local partners) but product-specific and targeted market research that is most useful to businesses. The US&FCS headquarters will place a strong emphasis on quality control and field support, establishing minimum program standards and assigning product managers for essential services and improving communications with the field.

### **Intergovernmental Cooperation**

The strategic review found that the US&FCS should build on the growing state, local, and private-sector export-assistance capabilities and make more aggressive use of other federal agency programs and networks, such as the Small Business Administration, the Export-Import Bank of the United States, the Trade Development Program, and the Agency for International Development. These partners and wholesale clients can be especially helpful in the areas of export awareness building, general counseling and seminars, and special services, such as helping U.S. service companies bid on foreign technical assistance contracts, foreign government procurement and export financing.

Not only during the strategic review but over the past few years, the US&FCS state and local export development partners have reiterated their belief that the US&FCS cannot entirely abandon its general export outreach and other services not targeted by the strategic review recommendations. These partners are a supplement to US&FCS services, not a replacement. Our partners' programs and support vary from region to region. Their funding is inconsistent from year to year. They cannot enjoy the economies of scale necessary to collect and disseminate worldwide market information on a timely and regular basis.

The US&FCS regards its relationship with the states as special and mutually beneficial. We are developing a flexible strategy for cooperation and coordination between our domestic and overseas units and our state and local

partners. Ultimately, our objective is to develop stable local sources for general export assistance to complement and provide a broader distribution for US&FCS programs.

The US&FCS encourages and supports the emerging trend by states and local groups to establish local Export Development Centers, which serve as clearinghouses for business communities that might not otherwise have knowledge of or access to federal, state, or private sources of export assistance. In some states, the centers share access to an electronic bulletin board or export-assistance clearinghouses provided by the state trade office, thus forming a network where market information, programs, and training are shared and coordinated with the state trade office and the US&FCS, and sometimes a local world trade association.

The US&FCS is undertaking several pilot projects to experiment with techniques for delivering US&FCS training, services, and information to its multiplier partners so that they can expand US&FCS program outreach to more potential exporters and expand our qualified client base. The pilot programs are being implemented by select district offices across the country. US&FCS staff work with state and/or local multiplier groups to train them to identify current and potential exporters, screen clients for their readiness to export, refer those which are export-ready to US&FCS district offices for further counseling, and help pre-exporters with the initial phases of the export development process.

Since 1987, the US&FCS has worked with the National Association of State Development Agencies (NASDA) in a pilot program to encourage and facilitate closer cooperation between state trade offices and US&FCS district offices. The goal was to encourage and demonstrate the results of efforts states make (many initiated independently of the pilot) to build working partnerships with their federal counterparts. The state and district office partners were free to define their own mutually agreeable areas for cooperation.

The US&FCS recently completed a joint review of this project with NASDA and found that these state district office agreements led to joint seminars; an increase in referrals; shared data, market research, and trade leads; joint recruitment and planning for trade missions; joint counseling; joint literature preparation, publishing, and dissemination; joint creation, support, and training of statewide trade assistance networks; and joint target market initiatives. In a few instances, the partnership resulted in locating the federal and state trade staffs in closer proximity to each other, sometimes in world trade centers, sometimes in the same office. At the very least, the pilot served as an impetus for regular meetings and phone conversations, thus increasing the level of shared information, reducing duplication of programs, and expanding services when dialogue between the partners was regular and ongoing.

All the evidence shows that federal-state cooperation is too fundamental to the goal of increasing U.S. commercial success overseas to be treated as a pilot project. The US&FCS has the advantage of a network of domestic field operations, which allows us the flexibility to be active in federal-state cooperation. We can adjust our approach, within the framework of the basic priorities recommended by the strategic review, to the needs of our wholesale and retail clients.

Federal-state-local cooperation and coordination will be US&FCS standard operating procedure. Within those standard procedures we expect to incorporate an element

of dynamism. Our offices, as they continue to develop cooperative relationships with their partner organizations in the states and cities, should always explore innovative techniques and areas for cooperation, while seeking and implementing new export-promotion strategies.

New opportunities for expanded federal-state cooperation include: further development of intrastate and interstate networking of export-assistance programs; shared use of data, electronic databases, computers, client lists, and counseling software; joint efforts to identify and obtain additional resources to support export development programs; development of trade specialist and trade assistant training and certification programs (for states, cities, and other local export assistance providers such as Small Business Development Centers and chambers of commerce); and coordinated market development missions.

#### **Areas Needing Improvement**

There remain areas where federal, state, and local program coordination can be improved. One of the challenges facing the US&FCS is how to manage and respond to the increasing number of state and local trade, tourism, investment, and elected official-led "door opening" missions overseas. Last year alone, governors from 41 states and territories made 82 official trips to 35 countries. In fact, the governors have been "on the road" increasingly as economic envoys to expand markets for American goods and services.

According to a survey by the National Governors' Association, the number of overseas trade missions led by governors since 1986 has run between 45 and 82 per year. This does not include state trade missions not led by the governor, local missions led by mayors, missions led by state senators and representatives, and the numerous other state and local delegations going overseas to promote their region's economic development.

While the US&FCS has an official program to certify state organized trade missions and to provide them with adequate support and coordination through its domestic and foreign offices, very few states or cities follow these guidelines. Only 11 of these SOGA (State Organized Government Approved) missions are on the US&FCS calendar for fiscal year 1990. More often than not, states and localities show up on our doorstep overseas with little or no advance notice. While state and local trade programs are increasing in sophistication, and some have the highest level of professional expertise, others are still in the "adolescent" stage of development. Yet some of these unprepared groups undertake the extremely complex and ambitious task of leading overseas trade missions and heavily tax US&FCS staff and time resources.

The US&FCS recognizes that it cannot encourage states and cities to lead U.S. companies to the export markets with us while simultaneously discouraging them from taking the actual steps to introduce clients to buyers through trade missions. For this reason, we are revising our guidelines for assisting state and local trade missions, and developing planning guides and directories of in-country services, which state and local organizers can use to plan a more successful mission and make appropriate and efficient use of US&FCS commercial offices.

#### **Federalism Can Rise to the Challenge**

Dynamic developments in the global market present the United States with an unprecedented challenge to

change the way the majority of our companies do business. An international strategy must become a standard part of every business market plan if both large and small U.S. companies are to survive and grow.

The task of becoming a nation of global traders is a challenging one. But our institutions give us an advantage we have not yet fully exploited. The strength of the United States lies in its ability to mobilize a rapid yet coordinated response to national problems by enlisting the resources, innovation, and support of all the players in our federal system. We are just beginning to mobilize our export development capability.

The full and coordinated efforts of the US&FCS, states, local governments, trade associations, business groups, educational institutions, and individual service providers are all needed to fill the export assistance needs of American business. In export development and promotion, the sum of the federal system's parts can be greater than the whole, if we work together as partners.

*Susan C. Schwab is Assistant Secretary of Commerce and Director General, United States and Foreign Commercial Service.*



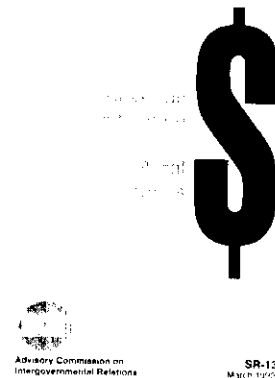
## **ACIR Forthcoming Reports**

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### Local Revenue Diversification: Rural Economies

This is the fourth study in ACIR's series on local revenue diversification (the others are on user charges, local income taxes, and local sales taxes). This report singles out a specific type of government rather than a type of revenue. Rural local governments (including nonmetropolitan counties, small towns and townships, and rural school districts and special districts) have been under pressure to diversify revenue sources, but they face unique challenges and formidable barriers, both economic and statutory.

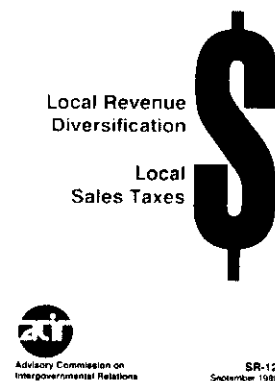
SR-13                      1990                      60 pages                      \$8



### Local Revenue Diversification: Local Sales Taxes

Local sales taxes are the second largest source of local tax revenue in the United States, used in approximately 7,000 jurisdictions in 30 states. The tax is particularly important to cities, where in 1987 it accounted for 10 percent of own-source revenues and 17 percent of local tax collections. This report updates two earlier ACIR reports on the sales tax (1961 and 1974), including data on its continued growth and the results of recent research. It describes the development and use of the local sales tax, discusses its rationales and effects, identifies design considerations, and outlines current issues.

SR-12                      1989                      56 pages                      \$8



(see page 45 for order form)

**Local Revenue Diversification:  
Local Income Taxes**

This study is one of a series on ways in which local governments can lessen their reliance on property taxes by diversifying their revenue bases. The local income tax 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. All states that authorize a local income tax also have a broad-based state income tax.

**SR-10**                      1988                      52 pages                      \$5

A STAFF REPORT

**Local Revenue  
Diversification  
Local  
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**Local Revenue Diversification:  
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Dramatic changes in fiscal federalism have renewed interest in charging for publicly provided goods and services. This report examines the theory and practice of user charges. The conditions under which user charges are feasible are examined, along with the advantages and disadvantages of substituting user charges for general revenue.

**SR-6**                              1987                              60 pages                              \$5

A STAFF REPORT

**Local Revenue  
Diversification  
User Charges**



**SR-6**  
October 1987

(see page 45 for order form)

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# Intergovernmental Digest

## Federal-State Balance Debated

At least three major bills being considered in the Congress have sparked debates on the proper balance between the federal and state governments.

In the bill to elevate the Environmental Protection Agency to full cabinet status, one provision would require federal agencies to comply with the same environmental protection standards applied to the states and to private industry. Another provision would require states to earmark for environmental purposes any fines and penalties collected through state enforcement activities.

A federal-aid highway bill also has sparked debate. The legislation would require each state to revoke the drivers license of anyone convicted of a drug offense or forfeit 5 or 10 percent of its federal highway funds. A substitute provision would allow the governor or the state legislature to reject this mandate without putting highway funds at risk.

The hazardous materials transportation amendments that may pass this year have sparked debate over unnecessary federal preemption, preservation of an appropriate balance between state and federal regulatory roles, and requirements for more open communication among governments concerning route designations.

## *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco*

In *McKesson*, the U.S. Supreme Court ruled unanimously that when a state collects taxes under a law that is subsequently found unconstitutional, the state must give taxpayers "meaningful relief." The ruling came in a challenge by an out-of-state taxpayer who paid a Florida excise tax that included a preference for beverages made with Florida products. The Court left it up to the state to determine whether it would refund the tax or devise a way to levy a retroactive tax on those who benefitted from preferential treatment. The Court further ruled that, in determining the remedy, a state can take into account the fiscal impact on the state. If a state chooses to refund taxes, then it may be able to spread payments out over time. The Multistate Tax Commission estimates that the decision could cost 30 states a total of \$6.5 billion. If, as several (but not all) observers argue, the requirements of *McKesson* apply to *Davis*, the states' potential refund claims could increase to \$3.0 billion. For FY 1989, state tax revenues totaled \$292 billion. (Tax revenues typically account for about four-fifths of state own-source general revenues.)

## Last Gasp of the Tax Revolt?

Twelve years ago, California voters approved Proposition 13, a property tax limitation that is conventionally said to mark the beginning of the state-local "tax revolt." On June 6, Californians narrowly approved two voter initiatives—one for a sharp increase in gas taxes, which were among the lowest in the nation, and another to ease the caps on state spending. These actions coincide with data showing that there has been a general rebound of property tax collections throughout the nation. Between 1980 and 1988, property tax revenues rose faster than personal income. In 1980, the tax stood at \$3.38 per \$100 of personal income. Eight years later, the comparable figure was \$3.51. Does this mean the tax revolt is over? Not necessarily. ACIR opinion polls report that about 32 percent of voters consider the local property tax to be the "worst" of all major general revenue taxes. This negative opinion is particularly strong among older citizens. In view of the fact that the baby-boom generation will turn 40 something during the 1990s and that property taxes are again rising, another tax revolt may not be so far away.

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**Davis Decision: One Year Later**

In March 1989, the U.S. Supreme Court found in *Davis v. Michigan* that states must accord retired federal employees the same tax treatment of their pension income as that granted state and local government employees. In order to establish the required equal treatment of the two retiree groups, states have enacted legislation to comply with *Davis* (Arkansas, Arizona, Colorado, Georgia, Iowa, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, Utah, Virginia, West Virginia, and Wisconsin). Whether a remedy is still needed in several other states is uncertain due to ongoing disagreements between certain retiree groups and state tax officials regarding the applicability of *Davis*.

**Governors Lose Veto over  
National Guard Training Missions**

In a unanimous decision handed down on June 11, 1990, the U.S. Supreme Court upheld the President's authority under the Montgomery Amendment to send State National Guard units on training missions abroad. Despite objections from several governors, who cited the militia clauses of the U.S. Constitution, which reserve to the states the right to train National Guard units, the Court found that the 1986 federal law prohibiting governors from vetoing U.S. orders to place National Guard troops on active duty for training purposes is consistent with federal constitutional authority over military affairs under the supremacy clause. The case is *Perpich v. Department of Defense*.

**Courts Study Proposes Better  
Federal-State Judicial Cooperation**

The Federal Courts Study Committee, which issued its report in April, has proposed more than 100 changes in the administration and operation of the federal court system. Among the recommendations are several that deal directly with state courts and federal-state court relations.

- Federal officials with authority to prosecute drug cases should not bring cases to federal courts that could be filed in state courts. Congress should provide additional drug-enforcement funds to help states handle more drug crime cases.
- Congress should limit federal jurisdiction based on diversity of citizenship to complex multistate litigation, interpleader suits, and suits involving aliens.
- Congress should amend the Employee Retirement Income Security Act (ERISA) to forbid removal from state to federal courts of cases involving amounts in controversy less than \$10,000.
- Congress should amend 42 U.S.C., Sec. 1997e to direct federal courts in state prisoner suits brought under 42 U.S.C. Sec. 1983 to require exhaustion of state institutional remedies for a period of 120 days, if the court or the Attorney General of the United States is satisfied that the remedies are fair and effective; Congress should delete Sec. 1997e(b)'s minimal standards for state institutional remedies.
- States should consider adopting federal voir dire rules.
- The Chief Justice and the chair of the Conference of Chief Justices should create a National State-Federal Judicial Council, composed of an equal number of federal and state judges, to recommend ways to improve cooperation and efficiency between the two court systems.

The study committee noted that more than 90 percent of the nation's judicial business is handled by state courts.



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**States and Localities Propose  
Tax-Exempt Bond Changes**

The national associations representing state and local governments have recommended changes in the *1986 Tax Reform Act* to moderate negative impacts on the municipal bond market. The proposals emphasize an increase for the small-issuer exception for interest deduction, removal of the private-activity bond interest exemption from the individual and corporate alternative minimum tax, easing of the arbitrage rebate requirement, placement of all government-owned facilities in the category of governmental bonds, an increase in the 10 percent threshold for private activity, and exemption from the volume caps of certain mortgage revenue bonds used for affordable multifamily housing.

**Will Delaware's New Banking Law  
Lead to Federal Intervention?**

A recent change in Delaware law may set the stage for an intergovernmental test of powers. In May, Delaware became the first state to enact legislation permitting banks chartered in the state to sell insurance nationwide. Until then, banks had been limited to selling credit insurance that would repay a mortgage or other loan if the borrower died or became disabled. The new Delaware law permits banks to sell all kinds of insurance across the nation and, if they choose, to set up separate subsidiaries to act as insurance underwriters. In order for a Delaware-based bank to operate in other states, the bank must be sure that it is licensed to sell insurance in the states, and it must obtain approval of the Federal Reserve Board. The National Association of Independent Insurance Agents has petitioned the board to disallow insurance sales by Bank Holding Companies (BHCs). The large BHCs, such as Citicorp and Chase Manhattan, have a ready list of potential customers from their credit card operations and thus represent the greatest competitive threat to insurance agents. The Federal Reserve Board has received the petition and has asked the BHCs for a reply. Under similar circumstances in the early 1980s, the board ruled against insurance sales by a Citicorp unit in South Dakota, even though the state had passed laws to allow the practice.

**Will Banking Industry Seek  
Preemption of State Tax Law?**

By enacting a new "excise tax" on the net earnings of financial institutions, Tennessee became the fourth state since 1985 to overhaul its state bank-tax laws. The three other states are New York, Minnesota, and Indiana. At the heart of these reforms is the decision by the states to bring their definitions of a "financial institution" and methods of taxing interstate banking more in line with the taxation of general business corporations. The changes have created much controversy between state tax officials and industry representatives, however, with the industry arguing that due to a lack of uniformity of apportionment rules among the states, banks are being subjected to overlapping or multiple taxation. Consequently, some industry representatives are arguing that if voluntary uniformity is not achievable it will be "appropriate and necessary" to enact federal legislation mandating uniformity among state laws. (See also ACIR's *State Taxation of Banks: Issues and Options, 1989*.)

**"Grass Tax" Grows**

Three more states—Georgia, Oklahoma, and Nebraska—have enacted stamp or other taxes on illegal drugs, bringing to 21 the number of states with such taxes. Dubbed the "grass tax" in 1986 by innovator Minnesota, drug dealers—people who illegally possess amounts exceeding specified minimums of marijuana and/or controlled substances—must pay a per unit excise tax based on the market value of the drug. For a pound of cocaine in Minnesota, for example, the tax amounts to \$90,000. Persons possessing such drugs who cannot show that the tax has been paid as evidenced by the state tax stamps are subject to felony tax-evasion charges. To date, Minnesota has collected nearly \$1.2 million from voluntary payments and seizures of assets.

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**Public Works Needs Highlighted**

In March 1990, the Congressional Office of Technology Assessment issued a report entitled *Rebuilding the Foundations: A Special Report on State and Local Public Works Financing and Management*. OTA came to many of the same conclusions reached by the National Council on Public Works Improvement in 1988. More needs to be spent on the nation's public works, and federal, state, and local governments, as well as the private sector, all need to pitch in. OTA makes a strong case for benefit charges and earmarked taxes to do this job. Among the intergovernmental issues raised are the need for greater flexibility in federal aid to accommodate local variations, better coordination among federal agencies, and more stable federal programs.

**State Aid for Local Corrections**

"State government aid for local corrections programs is one of the fastest growing categories of state aid to local governments," according to the National Conference of State Legislatures. From 1980 to 1987, this aid quadrupled. Overall, 61.3 percent of it goes for the support of correctional institutions, 20.7 percent for probation and parole programs, and the remainder for a variety of other programs. Of course, the composition of aid varies widely among the states. In 19 states, correctional institutions received the dominant portion of state aid, but probation and parole programs accounted for the largest share of aid in nine states.

**Real Work for County Prisoners?**

The National Association of Counties recently appointed a task force on jail industries to work with the business community, organized labor, and the Congress to remove the major obstacle to "real work" programs: the federal prohibition on the sale of inmate goods in interstate commerce. Noting that "the overwhelming majority of the 340,000 inmates confined in county jails each day are not engaged in any form of productive activity," NACo has begun meeting with members of Congress and the executive branch to resolve this issue. NACo also has established a data base with information on more than 600 interlocal agreements covering a wide range of service areas, including agreements for cooperative law enforcement and joint jail facilities.

**HUD Caseload on Fair Housing Rises**

Since the 1988 *Fair Housing Act* went into effect on March 13, 1989, 9,000 complaints have been filed with the U.S. Department of Housing and Urban Development. The Act expanded the federal law to include disabled persons and families with children, and made it more costly for state and local governments to maintain jurisdiction over these cases. The cases being filed address racial discrimination, sexual harassment, lack of facilities and services, violations of zoning regulations, and discrimination against the mentally retarded. HUD is expanding its staff and its ability to settle cases outside the court system. More cases are involving patterns of discrimination, rather than single acts.

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# What the Framers Really Said about Foreign Policy Powers

Michael Shuman

**T**oday, our 18th century Constitution is on a collision course with 21st century democracy. Despite regular pronouncements by modern courts and commentators that in matters of international affairs America must speak in one voice, more than a thousand U.S. municipalities have chosen to participate actively in foreign policy, and their impact has been profound.

More than 800 local governments passed nuclear-freeze resolutions and helped pressure President Ronald Reagan—the only modern U.S. president to enter office condemning arms control—to launch the START negotiations in Geneva.<sup>1</sup>

By refusing to cooperate with the Federal Emergency Management Agency's "crisis relocation planning" in the early 1980s, more than 120 cities helped convince the federal government to cancel its nuclear war civil defense program.<sup>2</sup>

After divesting more than \$20 billion in assets from firms doing business in South Africa, more than 65 cities and 19 states helped persuade the Congress to override a presidential veto and replace the Reagan Administration's policy of "constructive engagement" with limited economic sanctions in 1986.<sup>3</sup>

Despite nearly a decade of covert efforts to rout the Sandinista government from power in Nicaragua by force, 87 U.S.-Nicaraguan sister-cities, flanked by thousands of grassroots activists, helped keep American opinion firmly against military aid for the contras and overt U.S. military intervention.<sup>4</sup>

In 1989, while the Congress was dragging its feet on regulating chlorofluorocarbons (CFCs) and other chemicals threatening the physical integrity of earth's protective ozone layer, 24 American and Canadian cities gathered in Irvine, California, and resolved to begin banning these substances in their own backyards.<sup>5</sup>

Stunned by these progressive success stories on Main Street, conservative opponents have dusted off their copies of the U.S. Constitution and the *Federalist Papers* to condemn local initiatives as illegal. George Weigel, director of the James Madison Foundation, contends the municipal foreign policy movement is directly at odds with the views of the Founding Fathers: "Having some experience, on tax issues, with the chaos that came from state and local governments dealing with foreign countries, the Framers of the Constitution of 1787 gave the national government sole power over the design and conduct of foreign relations."<sup>6</sup> Writing about "Federalism and Foreign Relations," University of Virginia law professor John Norton Moore has argued that it is "abundantly evident in *The Federalist Papers* [that] one of the purposes of the union upon which our nation is based was to achieve control over the foreign relations of the individual states."<sup>7</sup> Peter Spiro, a student of Moore's, has repeatedly cited James Madison's words in *Federalist* 42: "If we are to be one nation in any respect, it clearly ought to be in respect to other nations."<sup>8</sup>

There is no question that the Founding Fathers wanted to strengthen national power over foreign relations. But *strengthening* national authority is a far cry from *excluding* local and state governments from the field. Yet a complete ban on municipal foreign policy is exactly what conservative legal scholars are now calling for in the name of protecting the original intent of the Constitution.

Hence, George Weigel talks about giving the federal government *sole* power over foreign policy. In a 1987 public television show, John Norton Moore pronounced: "The United States Constitution flatly, clearly, and *exclusively* entrusts foreign policy of the United States to the federal government. . . ."<sup>9</sup> And Peter Spiro contends, "As a general proposition, the federal government has enjoyed nearly ex-

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clusive powers over foreign policy and defense since the dawn of the Republic. Such was the intent of the Constitution.”<sup>10</sup>

A close examination of the historical record, however, reveals that the Founding Fathers never intended to grant the federal government a monopoly on foreign policy. This is apparent in the plain words of the Constitution, in the history of the document’s drafting, and in the *Federalist Papers*.

### Plain Words of the Constitution

The Constitution nowhere contains the terms “foreign relations,” “foreign policy,” or “international affairs.” Instead, it grants only a few narrowly defined powers concerning foreign policy to each of the three branches of the national government. Congress may regulate foreign commerce, declare war, set up national defenses, and define and punish violations of international law.

The President may command the military, negotiate treaties, and appoint ambassadors—but that’s it. In each of these areas, the Congress retains important oversight. Short of a national emergency, the President may not commit the military to a war without congressional support (a provision both the Congress and the President have largely ignored in modern times). Nor can the President complete a treaty or appoint ambassadors without two-thirds concurrence of the Senate.

The Constitution provides the federal courts with jurisdiction over just three kinds of foreign policy matters: cases arising under laws passed by the Congress or treaties ratified by the Senate; cases involving ambassadors, the high seas, or international law; or cases “between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.”

If the Founding Fathers really intended to eliminate all foreign policy activities from local and state governments, surely they would have said so. Instead, they enumerated a few limitations on state power. States cannot enter into “any Treaty, Alliance, or Confederation” with foreign powers. They also cannot, at least without the permission of the Congress, put duties on foreign goods, keep troops or ships for waging war, or enter “compacts” with each other or with other countries. And any direct conflict with federal laws or treaties is preempted under the Supremacy Clause.

None of these provisions, however, contravene what we today regard as municipal foreign policy. Cities remain free to educate, research, pass resolutions, and lobby on foreign policy questions. Provided there is no written federal law being frustrated, cities are free to decide with what countries or multinational companies they will enter contracts or in what entities they will invest their pension funds. Since prohibited “compacts” were later defined by the Supreme Court to be only the most egregious transgressions of national sovereignty (the last violation was found in 1840),<sup>11</sup> virtually all of the cultural exchanges, trade agreements, environmental pacts, and sister-city arrangements entered into by U.S. cities today are permissible.

In areas proscribed to the states, such as declaring and fighting wars, the Constitution’s words are clear and unambiguous. If the Framers’ intentions were so clear with regard to local involvement in international investment, purchasing, communications, and debate, why were they not as explicit?

The Constitution gave states numerous powers that underscored from the outset that they too have some role in national foreign policy: The First Amendment guaranteed the right of all citizens, including governors and mayors, to speak out on foreign policy. The Compact Clause anticipated that state and local governments would meet and negotiate with foreign jurisdictions, even without congressional approval. Likewise, federal courts were granted jurisdiction over controversies between states and foreign countries precisely because communications, relations, and dealmaking between the two entities were expected. And Article I, Section 8, and the Second Amendment gave states the right to keep and train state militias.

Whatever doubt remains about how to allocate various foreign relations powers was resolved by the Tenth Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” There is no exception for matters of foreign policy.

### Original Intent of the Framers

Even if the plain words of the Constitution do not grant the federal government a monopoly on foreign policy, might this still have been the intent of the Founding Fathers? Recall George Weigel’s statement that the Framers gave the federal government “sole power over the design and conduct of foreign relations” because of the “the chaos that came from state and local governments dealing with foreign countries” during the period of the Articles of Confederation. This view, repeated by many historians, is facile and wrong.

There is no question that the states were a weak, vulnerable lot under the Articles of Confederation. Lacking the power to take coordinated military or diplomatic actions, to enforce treaties, or to prevent interstate trade wars, the national government had difficulty coping with threats posed by England, France, Spain, and the Indian nations. But the central defect of the Articles was not that the federal government lacked a coherent set of foreign policy powers but that it lacked any coherent power whatsoever.

The Articles were such a wholesale repudiation of central control that they failed to create a workable central government. There was no president or executive branch. There was no federal court system to enforce laws. The only authority was a Congress that looked more like a United Nations General Assembly than a real lawmaking body. In foreign and military affairs, the Congress usually required more than a two-thirds vote to act.

Profound as the weaknesses in the Articles were, advocates still believed in states’ rights. Determined never to have another King George III tyrannizing their lives, few sought to monopolize federal power, even in the area of foreign policy. This is why the foreign policy powers enumerated in the Constitution were actually quite similar to those in the Articles. As James Madison explained in *Federalist* 45, the Constitution “consists much less in the addition of *NEW POWERS* to the Union, than in the invigoration of its *ORIGINAL POWERS*.”<sup>12</sup> He elaborated: “The regulation of commerce, it is true, is a newpower; but that seems to be an addition which few oppose. . . . The powers relating to war and peace, armies

and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing Congress by the articles of Confederation. *The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them.*"<sup>13</sup>

The history of the Constitutional Convention also provides little support for the proposition that the Framers had a burning desire to strip states of any role in international affairs. Before and during the convention, the primary discussion item was strengthening federal control of trade, both interstate and foreign. The initial Virginia Plan, which was the starting point for the convention, said nothing about enlarging federal foreign policy powers. James Madison's unofficial notes, the most detailed record of the convention available, reveal that discussions over foreign policy were minor parts of the entire record.

For example, the first debate on foreign policy provisions did not occur until June 8, nearly two weeks into the

convention. According to Madison's notes, Charles Pinckney of South Carolina called for stronger congressional powers to preempt state actions by arguing "that if the States were left to act of themselves in any case, it would be impossible to defend the national prerogatives, however extensive they might be on paper; that the acts of Congress had been defeated by this means; nor had foreign treaties escaped repeated violations; that this universal negative was in fact the corner stone of an efficient national Government. . . ." <sup>14</sup> Elbridge Gerry of Massachusetts responded that giving the national government so much power, especially over state the militia, would "enslave the States."<sup>15</sup> By the end of the day, the proposition for granting the national government unlimited preemption power was *defeated* by a vote of eight to four.<sup>16</sup>

Ultimately there emerged a consensus that the defects of the articles—uneven trade regulations, unenforced treaty obligations, a useless national militia, and an incoherent government—needed to be remedied. But these changes hardly added up to a sweeping grant of exclusive federal powers over all matters of foreign policy.

### The Federalists on Foreign Policymaking

After the Constitutional Convention, three of the most articulate supporters of the new document—Alexander Hamilton, John Jay, and James Madison—defended it in series of letter-essays that became known as *The Federalist Papers*. They argued for strong national foreign policy powers because America needed "uniformity and concert in the plans and measures" to secure "common safety,"<sup>17</sup> because national foreign policy experts "will best understand the extent and urgency of the dangers that threaten,"<sup>18</sup> and because "perfect *secrecy* and *dispatch* [by these experts] are sometime requisite."<sup>19</sup> These arguments only underscored the importance of lodging some foreign policy powers in the federal government, some of the time.

Hamilton and Madison argued explicitly for giving the national government only a few, very special powers in international affairs. In *Federalist 17*, while discussing the appropriate distribution of legal powers between the states and the federal government, Hamilton wrote that "commerce, finance, negotiation and war seem to comprehend *all* the objects . . . [that] ought in the first instance to be lodged in the national depository."<sup>20</sup> In other words, Hamilton believed that the only legitimate areas of federal foreign policy power were international trade, investment, treaty making, and war making. These four categories warranted federal involvement "in the first instance," not necessarily in all instances.

In *Federalist 23*, Hamilton reiterated the limited "purposes to be answered by the Union": "The common defence of the members—the preservation of the public peace as well against internal convulsions as external attacks—the regulation of commerce with other nations and between the states—the superintendence of our intercourse, political and commercial, with foreign countries."<sup>21</sup> The term "superintendence" suggests that Hamilton wanted national supervision over our political and economic relations abroad, not national autonomy or monopoly.

In *Federalist 41*, Madison broadened Hamilton's categories of legitimate foreign policymaking, but only slightly.

### Conference Scheduled on "The Economic Consequences of American Education"

The U.S. Advisory Commission on Intergovernmental Relations (ACIR), Lehigh University's Martindale Center and Department of Economics, and the Lee Iacocca Institute will sponsor a conference, October 19-20, 1990, at Lehigh University, Bethlehem, PA, that will focus on the problems of the economic consequences of American education. Conference topics and speakers include:

- o Toward More Effective K-12 Education: Intergovernmental Barriers and Benefits—*Robert B. Hawkins, Jr., ACIR*
- o Educational Output and Economic Output—*John Bishop, Cornell University*
- o The Economic Consequences of Undereducation—*Henry M. Levin, Stanford University*
- o Evaluating Current Proposals—*Gary Burtless, The Brookings Institution*
- o European School Systems and Financing: Lessons for the United States—*Nicholas Barr and Howard Glennester, London School of Economics*
- o The Willingness to Reorganize: Labor Contract Implications—*Samuel Bachrach and David Lipsky, Cornell University*
- o The Implications of the American System of Financing Education—*Vincent Munley, Lehigh University*
- o Financing Education in Canada—*Judith McDonald, SUNY, Binghamton*
- o The American System of Education: A Status Report—*Raymond Bell, Lehigh University*

Please contact the Martindale Center for registration information and hotel accommodations c/o Rosemary Krauss, Drown Hall 35, Lehigh University, Bethlehem, PA 18015-3144, phone: (215) 758-4771.

Among the important "objects" for greater federal control were "security against foreign danger," "regulation of the intercourse with foreign nations," and "restraint of the States from certain injurious acts."<sup>22</sup> Like Hamilton, Madison talked about intercourse with foreign nations being regulated, not being dictated.

Thus, when Madison wrote his oft quoted line in *Federalist* 42, "If we are to be one nation in any respect, it clearly ought to be in respect to other nations,"<sup>23</sup> he was pleading for federal supervision of foreign relations, not for federal autonomy. And he was specifically referring to powers "to regulate the intercourse with foreign nations, to wit, to make treaties; to send and receive Ambassadors, other public Ministers and Consuls; to define and punish piracies and felonies committed on the high seas, and offences against the law of nations; to regulate foreign commerce. . . ."<sup>24</sup> His list was as narrow as the plain words in the Constitution.

Madison's categories of legitimate federal foreign policy powers bear little relationship to what states and cities are doing today. Many cities have agreements with jurisdictions abroad, but none rise to the level of a formal "treaty." Cities may send representatives abroad and talk with foreign representatives coming to the United States, providing that there is no pretense that they are representing the U.S. government. It is up to the national government to define piracies, maritime felonies, and international law; few states or cities have attempted to do this. And cities can engage in foreign commerce, as long as they follow duly legislated national regulations.

Nowhere in the *Federalist Papers* can one find arguments for granting the federal government broad, sweeping foreign policy powers with words like *monopoly*, *sole*, or *exclusive*.

### Contemporary Meaning and Judicial Distortion

For most of U.S. history, the judicial branch respected the division of powers laid out by the Founding Fathers. While many courts waxed passionately about preserving national foreign policy powers, it was understood that, absent a federal law to the contrary or an infringement on commerce, states and localities were free to do whatever they wished in international affairs. Until 1968, states and localities took advantage of this freedom, often with policies more challenging to national authority than today's municipal foreign policies.<sup>25</sup> If the federal government disliked any particular state or municipal initiative, there were two constitutionally prescribed ways it could stop it: enforcing an existing law or passing a new law.

In the 1947 case of *Clark v. Allen*, the U.S. Supreme Court was asked to assert a new power and strike down a piece of California legislation affecting international affairs that did not contravene a specific national law.<sup>26</sup> Upholding the statute in question, the justices dismissed the argument that the national government possessed some unwritten foreign policy power as "farfetched."<sup>27</sup> In 1968, however, the Court reversed course in the case of *Zschernig v. Miller* and declared for itself the power to invalidate any municipal foreign policies with "a direct impact upon foreign relations [that] may well adversely affect that power of the central government to deal with [foreign relations] problems."<sup>28</sup> Moreover, the Court declared that it would exercise this power even when the U.S. Department of State was willing to tolerate local initiatives (as was true in the *Zschernig* case).

Like many, Columbia University international law expert Louis Henkin strongly criticized the ruling: "What the Constitution says about foreign affairs provides little basis for the Court's doctrine. . . . Nor is there support for *Zschernig* in the history of the Constitution in practice."<sup>29</sup>

For more than two decades, courts have tried to apply *Zschernig*, and the result has been a judicial mess. In 1969, a California court struck down the state's buy-American statute because it intruded on U.S. foreign policy, while a New Jersey court upheld a similar statute eight years later.<sup>30</sup> In 1989, the Maryland Court of Appeals upheld Baltimore's anti-apartheid divestment statute because its effect "on South Africa is minimal and indirect," while this April a federal court in California struck down Oakland's nuclear-free-zone ordinance because it "cannot help but conflict with the federal government and Constitution."<sup>31</sup>

State-federal relations in international affairs have thus become a crapshoot turning not on any defensible principles of democratic decisionmaking but on the whims of judges. In this sense, *Zschernig* unleashed judicial activism at its worst. It substantially expanded the power of courts in an area that the Framers intended to leave to the political branches of government. What business does a judge, typically having no experience in foreign policy, have telling local, state, and national governments how to run their international affairs?

Were Hamilton, Madison, Jay, or any of the other Framers alive today, they would recognize the folly of what conservative judges and commentators are trying to do. For despite all their talk about centralizing power the Federalists respected states' rights. And they were political realists. They would have recognized how many of today's international affairs are inextricably enmeshed in local affairs: runaway military budgets mean cuts in federal revenue sharing; poverty in Mexico means continued illegal immigration; global warming means more deadly hurricanes and tornadoes; and Japanese trade policies mean more local factory closings. The Framers would have appreciated how profoundly undemocratic and unwise it would be to banish creative local efforts to address these international problems.<sup>32</sup>

If the nine justices of the Supreme Court are truly faithful to the "original intent" of the Founding Fathers, as many of them claim to be, they should consider rescinding *Zschernig* and returning the job of setting guidelines for proper state actions to where it belongs—the Congress. If a local initiative is so threatening to national security that it cannot await congressional action, the President can always issue an executive order. But if neither the Congress nor the President can muster the political support to pass laws banning certain kinds of municipal foreign policies, courts should no longer arrogate to themselves the right to overrule them. At a time when nations around the world are rejecting the tenets of totalitarianism and giving local authorities new freedoms to cope with ever more complex global problems, it would be tragic if American democracy moved in the opposite direction.

*Michael Shuman, an attorney, is president of the California-based Center for Innovative Diplomacy and currently writing a book on The Legality of Municipal Foreign Policy.*

## Notes

- <sup>1</sup> Strobe Talbott, "Buildup and Breakdown," *Foreign Affairs*, 62:3, Chronology 1983, p. 605.
- <sup>2</sup> "Civil Defense Plan on Relocation Out," *New York Times*, March 4, 1985.
- <sup>3</sup> Peter J. Spiro, "State and Local Anti-South Africa Action as an Intrusion upon the Federal Power in Foreign Affairs," *Virginia Law Review* 72 (May 1986): 824-27.
- <sup>4</sup> Liz Chilsen and Sheldon Rampton, *Friends in Deed: The Story of the US-Nicaraguan Sister Cities Movement* (Madison: Wisconsin Coordinating Council on Nicaragua).
- <sup>5</sup> Carla Rivera, "24 Cities Create Group to Protect Ozone Layer," *Los Angeles Times*, July 23, 1989.
- <sup>6</sup> George Weigel, "Calhoun's Heirs," *Bulletin of Municipal Foreign Policy* 2 (Winter 1987-88): 7.
- <sup>7</sup> John Norton Moore, "Federalism and Foreign Relations," *Duke Law Journal* 248 (1965): 248.
- <sup>8</sup> Peter J. Spiro, "Taking Foreign Policy Away from the Feds," *Bulletin of Municipal Foreign Policy* 2 (Spring 1988): 18.
- <sup>9</sup> "Municipal Foreign Policies Make Prime Time," *Bulletin of Municipal Foreign Policy* 1 (Summer/Autumn 1987): 10.
- <sup>10</sup> Spiro, "Taking Foreign Policy Away from the Feds," p. 18.
- <sup>11</sup> *Holmes v. Jennison*, 14 Pet. 540 (1840).
- <sup>12</sup> Jacob E. Cook, *The Federalist* (Middletown, Connecticut: Wesleyan University Press, 1961), p. 314 (emphasis in original).
- <sup>13</sup> *Ibid.* (emphasis added).
- <sup>14</sup> Page Smith, *The Constitution: A Documentary and Narrative History* (New York: Morrow Quill, 1980), p. 135.
- <sup>15</sup> *Ibid.*, p. 136.
- <sup>16</sup> *Ibid.*, p. 137.
- <sup>17</sup> Cook, pp. 149-50 (Hamilton).
- <sup>18</sup> *Ibid.*, p. 149.
- <sup>19</sup> *Ibid.*, p. 434 (Jay).
- <sup>20</sup> Smith, pp. 105-06 (emphasis added).
- <sup>21</sup> *Ibid.*, pp. 146-47.
- <sup>22</sup> *Ibid.*, p. 269.
- <sup>23</sup> *Ibid.*, p. 279.
- <sup>24</sup> *Ibid.*
- <sup>25</sup> For example, in 1794 the Senate ratified the widely criticized Jay Treaty because several states, including New Jersey, had threatened to secede if it was not ratified. This and other incidents are documented in Richard J. Barnet, *The Rockets' Red Glare: When America Goes to War* (New York: Simon & Schuster, 1990).
- <sup>26</sup> 331 U.S. 503 (1947).
- <sup>27</sup> *Ibid.*, p. 517.
- <sup>28</sup> 389 U.S. 429, p. 441 (1968).
- <sup>29</sup> Louis Henkin, *Foreign Affairs and the Constitution* (Mineola, New York: Foundation Press, 1972), p. 476 (note 51).
- <sup>30</sup> Compare *Bethlehem Steel Corp. v. Board*, 276 C.A. 2d 221 (1969) with *K.S.B. Technical Sales v. North Jersey District Water Supply Commission of the State of New Jersey*, 75 N.J. 272 (1977).
- <sup>31</sup> *Board of Trustees v. Mayor and City Council of Baltimore*, 562 A2d 720 (1989); and "Court Rules U.S. Outweigh City's," *San Francisco Chronicle*, April 27, 1990.
- <sup>32</sup> For a fuller argument about the policy rationales for the federal government not to suppress municipal foreign policy, see: Michael H. Shuman, "Dateline Main Street: Local Foreign Policies," *Foreign Policy* 65 (Winter 1986-87): 154-74; and Shuman, "Spiro's Impossible Quest against Democracy," *Bulletin of Municipal Foreign Policy* 2 (Spring 1988): 7-13.

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# The Limits of Federalism in Foreign Policymaking

Peter J. Spiro

**N**ever before has this country witnessed such an explosion of state and local involvement in international affairs as during the last decade. Local efforts directed toward cultural or commercial purposes are to be welcomed, as the natural result of increased exposure to things foreign in all areas of American life. To the extent that local and state activism is motivated by unhappiness with foreign policy positions taken by the federal government, however, the example of the 1980s is a dangerous one that threatens the institutional integrity of our foreign policymaking process. The federal government has been slow to protect its primacy in the area. It would be well advised to launch a coordinated defense against those local authorities that have exceeded the constitutional bounds of their authority.

## Economic Benefits of Constituent Diplomacy

The upsurge of local interest and action in international affairs has been sparked in large part by the coming of the global village, a concept long heralded but only recently realized. While the 1960s and 1970s brought foreign lands and conflicts into the American living room through television, the 1980s brought vastly expanded opportunities for contact with other peoples. Few communities can still be described as truly isolated. Americans lost much of their shyness or fear or hatred of the outside world, and with the heightened exposure came corresponding needs for increased understanding and institutionalizing some grass-roots, "people to people" relationships with other countries. Hence 868 municipalities and counties have established "sister-city" ties with some 1,509 of their foreign counterparts.

The outreach also has had an important, perhaps primary, economic component, both in terms of cause and purpose. Direct foreign investment in and management of production facilities in the country's hinterland was almost unknown in the days of American economic hegemony. It is now commonplace. This brought intercultural interaction to America's backyard; indeed, the feature article about Japanese managers and American workers in small midwestern towns has become almost journalistic cliché. The tremendous potential in jobs and other economic benefits posed by such foreign investment—especially as America's manufacturing sector has moved to retrenchment—has also fostered a vigorous competition among cities and states for investment. Governors and mayors now routinely venture overseas in search of foreign dollars. Most states and many cities have established permanent trade offices in other countries.

These cultural and economic forms of local involvement on the international scene are essentially benign. They may suffer from occasional misdirection, as when sister-city relationships are established to pursue purely political ends, and when, for foreign investment, U.S. localities outbid each other with tax incentives and other subsidies to the point that the benefits are outweighed by concessions. But the abuses have been marginal. America should be trying to attract foreign capital, and who better to do it than the would-be local hosts. On the cultural side, activities that tend to increase awareness of the world—never a particularly strong suit for Americans as a whole—is a net positive.

## Disruptive Effects of Constituent Foreign Policymaking

It is when local authorities try their hand at policymaking that things get out of hand. Popular subservience to Washington's will in foreign affairs may have been broken by the Vietnam war. But those who opposed that conflict—or, traditionally, any other federal stance on a foreign policy matter—sought to prevail in Washington, through protest or lobbying or the old-fashioned weapon of the ballot box. New to the 1980s was the use of city halls and state capitols to win what would be more difficult to capture at the federal level. Activist groups recognized for the first time that the tremendous purchasing and investment power of local governments could be brought to bear in shaping the foreign policy agenda, despite the complete previous absence of these authorities from the foreign policy scene. The Washington Beltway could be bypassed.



The strategy was pursued with brilliant success by the anti-apartheid movement. Impatient with Washington's hesitancy to take dramatic action, cities and states around the country passed their own sanctions laws long before the Congress passed the *Comprehensive Anti-Apartheid Act* over President Ronald Reagan's veto in 1986. It was these local measures that spurred the initial corporate exodus from South Africa. In fact, to the extent that federal legislation is less restrictive of American corporate ties to South Africa than many local anti-apartheid laws, Washington has continued to play second fiddle on the issue. More direct federal sanctions aside, the prospect of losing billions of investment dollars from divesting pension funds and hundreds of millions in state and local procurement contracts, hardly made profitable, but small, South African operations worth the effort to U.S. firms.

It is not only our policy toward South Africa that threatens to be hobbled. Seeking to repeat the success of the anti-apartheid movement, groups pushing other single-item agendas have, understandably, followed suit. At least 12 states have enacted laws that aim to restrict dealings with U.S. companies in Northern Ireland (despite full-court, on-the-scene lobbying by the British government). Chicago and Oakland, among others, have declared themselves "nuclear-free zones," banning the transshipment, deployment, or production of nuclear military products within their city limits. A bill was recently introduced in the California Assembly that would restrict investment in companies doing business in post-Tiananmen China.

#### **Pitfalls and Shortcomings of Local Activism**

This brand of local activism distorts the foreign policymaking process in several ways:

1. *It is power without responsibility.* If Los Angeles or Cambridge acts on a foreign policy issue, it does so without considering the consequences of its action on the rest of the nation. These consequences are potentially catastrophic. Imagine if Michigan, swept up in anti-import hysteria, banned all state procurement from firms doing business in Japan. It is inconceivable that Japan would not take some retaliation. Say it stopped all purchases of textiles. North Carolina would hardly be pleased, and yet it would have no recourse (except in the Congress or the courts) against its sister-state's restrictions. Local leaders are more likely to act in response to the politics of the moment, unbridled by any consideration of what is best for the country or for the future.

2. *It is power of the minority imposed on the majority.* Local activism may result in de facto overrepresentation of groups able to harness the financial might of major city and state governments. Wherever corporate behavior can be targeted as the means to the policy end, as a New York City or California goes, so goes the nation. Add academic communities (and impressive university portfolios) and you have already created a "hassle factor" for companies that far transcends the investment or purchasing dollars at risk. Voters in those cities and states that have shown an inclination to interfere in the foreign policy realm (on the South Africa issue, those in the Northeast and West) thus prevail over those who are more cautious or conservative (those, for instance, in the South), which they would not be able to do in Congress or the White House. Turning the tables, pit a liberal

administration in Washington against reactionary local hold-outs, and the opposite may come to pass. This in fact happened on a smaller scale during the 1960s, when a handful of smaller southern and midwestern communities enacted licensing laws aimed at blocking the sale of East Bloc goods.

3. *It is power based on incomplete information.* Cities and states (as yet) have no embassies in foreign countries; unlike Congress or the White House, they cannot tap into the sort of complete analysis that comes only with a fully developed apparatus for diplomatic reporting (i.e., the U.S. Department of State). The objects and results of local foreign policies are likely to suffer correspondingly. State and local authorities, for instance, might not be able to gauge the likelihood of retaliation by a foreign country subjected to some sort of disadvantage. Nor are they necessarily capable of assessing political realities in the country concerned. Even if localities enjoyed perfect access to public information and expert foreign policy advice (after all, they still have genuinely local responsibilities to attend to), by no stretch of the political imagination could such data flows be extended to cover the classified forms of analysis and intelligence that often provide the foundation for decisionmaking in the area.

4. *It is power without flexibility.* As the endgame of apartheid plays itself out, there will come a time at which sanctions should be loosened or lifted by way of rewarding the white regime for its own dismantlement and putting the country back on its economic feet for the future. A bold stroke in this respect would be possible were Washington still running the show. As it is, the process will be slow and painful, involving the dozens of cities and states that have anti-apartheid measures on their books, thus diminishing the potential for U.S. influence over South Africa. Corporations will not return to South Africa until a substantial majority of these measures has been repealed, of which there is no immediate prospect. (Purists have in fact been demanding the tightening of local sanctions even as the Pretoria government makes evident its commitment to a new order.) Local activism is potentially disruptive even where the local and federal positions on any given issue are identical.

#### **Drawing the Constitutional Line**

At some level of local action, these points are irrefutable. The only question is where the line should be drawn between acceptable and unacceptable local foreign policies, and how those actions which cross it can be prevented. The U.S. Constitution sets the line. It is Washington's responsibility to enforce it.

First among many, the Founding Fathers were highly conscious of the threat posed by a foreign policy fragmented among the states. As John Jay wrote in *Federalist* 4, only the national government "can harmonize, assimilate, and protect the several parts and members, and extend the benefit of its foresight and precautions to each. . . . It will regard the interest of the whole, and the particular interests of the parts as connected with that of the whole." If foreign powers "find us . . . destitute of an effectual Government, each State doing right or wrong as to its rulers may seem convenient," he went on, "what a poor pitiful figure will America make in their eyes!" This view was echoed by Madison ("If we are to be one nation in any respect, it clearly ought to be in respect to other nations.") and Hamilton ("The peace of the whole ought not to be left at the disposal of a part."). These views are reflected

in express constitutional prohibitions on state action in the fields of defense and foreign commerce. The Constitution drafter's failure to provide for every contingency—how could they have predicted the divestiture movement?—does not mean that they intended to set forever in stone the powers of the federal government. Under Michael Shuman's originalist approach to constitutional law, the New Deal should never have survived judicial scrutiny.

The U.S. Supreme Court has stayed true to the Founders' essential intentions on foreign policymaking, and has consistently rebuffed state governments where they have acted against the national purpose on foreign policy matters. "In respect of our foreign relations generally, state lines disappear," it concluded in a 1936 decision. "As to such purposes the State of New York does not exist." In the 1968 ruling in *Zschernig v. Miller*, state laws having more than "some incidental or indirect" effect on foreign relations were deemed invalid in the face of exclusive federal powers in the area. *Zschernig* remains good law. There can be little doubt that local anti-apartheid measures long ago failed this test.

### Protecting Federal Prerogatives

These measures stand virtually without challenge. Despite its antipathy to their policy content, the Reagan Administration failed to move against them. A primary obstacle to such action—an almost religious adherence to the principle of states' rights by the Reagan-era Justice Department—has now been removed. The White House would be well advised to take the following steps in response to those local activities which offend the constitutional division of foreign policymaking powers.

*Establish an interagency task force to formulate an integrated approach to the problem.* Local activism has been considered on an issue-specific basis, with little or no coordination among interested executive branch agencies (Justice, State, and Defense, along with the National Security Council), or with relevant congressional committees. Africa policymakers have dealt with anti-apartheid measures, officials responsible for European affairs with the Northern Ireland laws, and the Defense Department with nuclear-free zone legislation. Few are aware of the breadth of the problem, making improbable an effective institutional response.

*Give the State Department lead responsibility for directing Washington's response to local activities that interfere with federal foreign policymaking.* The State Department has designated a coordinator for intergovernmental affairs, in the public affairs bureau, essentially to improve communications between the State Department and local governments. This is a "good cop"; a bad one is also necessary. An additional post should be created (or duties added to an existing one) to monitor foreign policy-related activities by local governments, with powers to sound the alarm as necessary.

*Encourage private parties whose interests have been compromised to take local authorities to court when they have crossed the line, and offer assistance to the parties that do.* Such assistance has not been forthcoming. This is an important reason why so few suits have been filed, and why those that have been filed have fizzled. Affidavits from federal officials to the effect that local action has had more than "some incidental or indirect effect" is evidence hard

to refute. The failure to make such representations allowed the highest court in Maryland to uphold Baltimore's divestment ordinance against constitutional challenge in a ruling should not be allowed to stand alone as precedent.

*Where private parties do not respond to such encouragement, institute legal action on the part of the federal government.* Companies may be slow to the draw, even when their interests are substantially affected and the legal case is strong, for fear of being identified with unpopular political causes. (What corporation would want to be identified in the public mind as "pro-apartheid"?) The Bush Administration should be congratulated for its challenge to Oakland's nuclear-free-zone ordinance, which resulted in the law being invalidated by a federal district court in California. (The case is now on appeal.) But this is taking on only the easiest case.

Take steps to educate local officials and the public at large as to the potential dangers of local interference in foreign policy and the reasons why foreign policymaking should remain federal. To the extent that the executive branch lacks the resources to undertake such a campaign, members of Congress could pick up the slack, exploiting established ties to nonfederal authorities in their districts. Many local officials would rather not embroil themselves in matters so far from their traditional responsibilities; an ACIR poll found that constituents are uncomfortable with the role that their state and local representatives have assumed in foreign affairs. Strongly presented institutional arguments against local activism may tip the scales back to the traditional balance. At the same time, federal emissaries should encourage state and local authorities to channel their efforts into beneficial forms of local participation in international affairs.

Local activists would no doubt condemn such an aggressive but long-overdue strategy as smacking of a "Politburo" mentality, and elsewhere on these pages Michael Shuman, the leading proponent of local activism, condemns the prospect of renewed judicial attention to the issue. But a similar response is heard whenever the federal government takes steps to restrict the powers of state and local authorities, as was the case when Washington forced desegregation in southern schools. There are some instances in which the federal government must assert itself, and this is one of them. The issue is an important one for the nation's future, and that purpose should transcend all others.

*Peter Spiro, formerly special assistant to the Legal Adviser, U.S. Department of State, serves as law clerk to a federal appeals court judge.*

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# How Much Does Federalism Matter in the U.S. Senate?

## A Conversation with Sen. Christopher Bond of Missouri and Sen. Paul Sarbanes of Maryland

**T**he following dialogue, which took place on March 6, 1990, was organized by John C. Pittenger, professor and former dean of the Law School at Rutgers University, Camden, with assistance from Carl Van Horn, director of policy for New Jersey Governor James Florio and professor of political science at Rutgers University, New Brunswick, and John Kincaid, executive director of the Advisory Commission on Intergovernmental Relations (ACIR). This dialogue is part of a project on constitutional federalism developed by Professor Pittenger for *Publius: The Journal of Federalism*, with assistance from the Earhart Foundation. The transcript has been edited by John Kincaid. The views expressed herein are those of the participants and not necessarily those of the associated institutions.

**Pittenger:** We want to explore the relationship between federal and state power with two United States Senators, both of whom have experience in state government. The political science literature and, to some extent, court cases, tell us that the Senate is one of the main defenses of federalism because senators represent entire states.

**Bond:** That is a sad commentary.

**Pittenger:** Let me ask you to reflect on your experiences as a governor and as a state legislator. What were some of your views about the federal government then? To what extent did the Congress write your agenda, and how did you respond?

**Bond:** As governor, I dealt with many matters that were partly federal, at least to the extent that the federal government, either by legislation or by administrative action or inaction, affected our ability to deliver programs. When you deal with federal matters, it is usually because they have negative impacts. Many of the congressional mandates did not make sense as they applied to Missouri.

In other instances, such as our battle with Dioxin, which became a career for me in 1982 and into 1984, a failure of federal agencies to act required me to devote better than half of my time, and a very substantial amount of my resources, to solving a problem that was federal, state, and local.

**Sarbanes:** My experience in the state legislature goes back to 1967-1971. I chaired the intergovernmental relations committee, a joint committee of the legislature. We tried to work closely with the Maryland congressional delegation on federal issues with clear impact on the state. Those were the years of Lyndon Johnson's Great Society programs, and there was a lot of federal activity in domestic programs involving the state governments. Most of those programs had matching requirements; hence, much of our concern was to work out the state budget requirements.

The problem was somewhat different then because federal resources were flowing in. It wasn't as though the federal government was giving us a requirement without anything to back it up. The states and localities were being called on to play their part and to marshal their resources to get things moving. Much of our concern was trying to anticipate that and to see how we could provide for it.

Some of the sharper issues that have emerged in the federal-state relationship in recent years have been aggravated by resource constraints. There is still an effort to accomplish things, but there are no federal fiscal resources to help do it.

**Pittenger:** As secretary of education in Pennsylvania some years ago, I had to implement the Education for All Handicapped Children Act of 1975. In the years since 1975, the federal share of the cost of that mandate has been going down. It peaked at about 12 percent in the last year of President Carter's administration; it is now about 9 percent. In

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effect, the Congress is writing all of the rules about how we educate handicapped children, but footing 9 percent of the cost. Many people in the states wonder whether that is a sensible policy.

**Bond:** I have strong thoughts on that because one of our major legislative accomplishments in 1974 was the passage of what we thought was landmark legislation, which established a Missouri program for the needs of developmentally impaired or otherwise learning disabled persons. The imposition of federal process-oriented mandates on top of that act really affected our ability to carry out what our legislature had adopted and what we thought was a responsible and reasonable program for meeting the needs of our special children in Missouri. The federal rules became a headache because the amount of money given to us did not compensate for the process requirements and the paperwork that came with them.

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*. . . senators do not take an essentially anti-state stand or only a federal perspective. Senators reflect a mixed federal-state perspective, regardless of where they are in the political spectrum or party alignment.*

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**Pittenger:** A similar and yet different issue is emerging in the child-care legislation now before the Congress. One feature of that bill, which is not atypical, says that if you take federal money under the bill, then every public dollar you spend on child care, day care, and early childhood education must be spent according to the terms of the bill. Is that fair from the state point of view?

**Sarbanes:** One problem is that you're just looking at the dynamics of federal-state and perhaps federal-state-local relations. There also is a dynamic of the affected people—the constituency groups seeking coverage, programs, protection, or services. They get it where they can find it. If they can get it from the state under Kit Bond, they will do so. If not, they come to the federal government to try to get it.

Invariably, when these things are debated in the Congress, the focus is on the substance of the program, not on the institutional arrangements. I am something of an institutionalist. Structure is important for all of us. Even so, it is the substance of the issue that commands attention. The hearing is focused on disabled children who need help and are not getting it. The intergovernmental issue gets framed in terms of people who want the services pointing to states that are not providing anything, or very little. People who want to protect their state role point to the states that already have a good program. So, you get those two perspectives at work, and one ought not to be surprised about it. But helping the disabled is an extreme case because you get a heavy set of mandates and very little support. I don't think the gap in most cases is that great.

State governments do this to local governments, too. It is not as though it is an unusual development. The government also does it to the private sector. In my view, it is a

matter of degree, not a matter of kind. You must have some common sense about all of it, but if you are trying to draw neat little boxes that clearly separate institutions, that will not work.

Child care is a case in which we will establish some requirements that will throw burdens on other people, in both the private sector and the public sector. We are now talking about doing health care that way. One of the proposals that just came out of the Pepper Commission on Comprehensive Health Care is that the private sector be required to provide health insurance coverage as part of the incidence of employment.

**Pittenger:** Your comment about institutional concerns interests me because most of the political science studies that have constructed a federalism index from voting by members of Congress find that there aren't many members of Congress who consistently take a state point of view. Voting depends on whose ox is being gored; consequently, you get a clustering of federalism scores around the median, with little differentiation between Democrats, Republicans, liberals, or conservatives.

This suggests that there are not many people in Congress who are saying that we have to protect the institutional concern. That doesn't surprise me. It is the way the members of Congress probably ought to behave. But it suggests that there are not too many people who are worrying about the impact of legislation on the states.

**Sarbanes:** I don't agree, the cluster in the middle shows that members of Congress give some attention to it, but not an absolute or an ideological kind of attention. They weigh it against other considerations. Whether they are liberal or conservative, senators do not take an essentially anti-state stand or only a federal perspective. Senators reflect a mixed federal-state perspective, regardless of where they are in the political spectrum or party alignment. They give some attention to state concerns, but they balance those concerns with the substantive considerations.

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*. . .when Congress tells a state legislature how to exercise its judgment, the Congress is off base. . .  
When you talk about imposing your judgment on a state legislature, why don't you run for the legislature and represent those views in that body?*

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**Bond:** I am a radical federalist. There are about 16 former governors in the Senate. When it comes down to a clear-cut issue of the Congress overreaching or encroaching on legitimate state responsibilities, I can usually muster 11 or 12 votes out of that group. You pick up a few others who happen to be philosophically engaged in the issue.

There is a very important institutional point here. The United States Congress has many important matters to handle, but we don't do a good job of dealing with the things that we should—handling defense and international affairs and other national priorities of the judiciary, commerce, banking, and so on. I feel that when Congress tells a

state legislature how to exercise its judgment, the Congress is off base.

I surprised my Republican colleagues when I strongly opposed an amendment providing for mandates on homosexuality and child pornography. I opposed it because it said that the Congress should cut out the money to states if they don't comply with these mandates. I said to my colleagues that it is not our money we are generously sharing with the states. It is money raised from taxpayers in those states. When you talk about imposing your judgment on a state legislature, why don't you run for the legislature and represent those views in that body?

I took the lead when the Administration's anti-drug program started off proposing that, to get federal drug money, states would have to implement drug testing for all inmates and arrestees in prisons, which Senators Biden and Hatch pointed out would probably cost states \$800 million. I was relieved to be able to gut the proposal by offering the amendment to substitute a \$5 million testing program to apply in federal prisons. That was a classic example of the federal government being way off base.

But, to jump back to child care, the federal SSBG and other dollars that go into child-care in Missouri have built a very good program. When the ABC (Act for Better Child-care) bill came up, I went back to consult with the child-care providers, child-care consumers, and state regulatory agencies. I developed what I thought was a responsible proposal—essentially a block grant which, in Missouri, would be used to feather out the current cutoff for eligibility for child care. That is, if you go over a minimum dollar amount, you don't lose all child care, but you give up one child-care dollar, say, for every three or four dollars of additional income. That is a way to encourage the provision of more child-care services. Senators Dodd and Hatch accepted the main part of the proposal, which we drafted on the basis of state experience and state input. Much to the surprise again of my colleagues on the Republican side, I fought for the ABC bill because it is now set up so that programs will benefit from federal assistance for child care. The states will attempt perhaps different approaches to meeting child-care needs, and there may well be different requirements, but the states can demonstrate the successes or the failures of programs in their 50 laboratories.

**Pittenger:** You mention, Senator Bond, the 16 senators who were governors.

**Bond:** What is the actual number?

**Pittenger:** Sixteen, plus three former lieutenant governors.

**Bond:** Most people forget Hatfield and Thurmond.

**Pittenger:** That is about half of the number who were ex-governors as of 30 or 40 years ago.

**Bond:** Bad trend.

**Pittenger:** There also has been a decline in the number of former state legislators. New Jersey is perhaps not atypical. We have one U.S. Senator who is a former professional basketball player, and another who is a self-made millionaire. Neither has had any experience in state government. Do you think that fact affects the way the Senate looks at issues?

**Sarbanes:** The Senate is more sensitive to state concerns than the tenor of your question would suggest. The two examples that Kit has just given show that a state point of view prevailed, and without too much difficulty.

**Bond:** The ABC bill has been, obviously was very iffy, but the drug bill got blown away because it was a dumb proposal.

**Sarbanes:** Of course, both of us have been in state government and have some sensitivity to the state view. In the case of a colleague who has none of that experience, I don't know how sensitive he or she might be. But the state position is often put very well and very strongly.

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*Many state delegations can't get together very well. There are too many divisions.*

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It also depends on how delegations are oriented. I chair the Maryland delegation in the Congress simply because, of the ten members (two Senators and eight Congressmen), I have been around the longest. When I first came to the Congress, I was critical of the seniority system, but the longer I stick around, the more virtue I see in it.

We have an intense working relationship with our state government. We consult closely with them. The delegation works as a unit. We've been able to overcome parti-

**State and Local Office Backgrounds of U.S. Senators**

	Congress*			
	71st 1929-1930	81st 1949-1950	91st 1969-1970	101st 1989-1990
Governor	23%	26%	16%	16%
Other State Executive	10	14	16	17
State Legislator	42	36	42	34
State Judge	8	8	5	2
Local Official	42	34	27	23
No State or Local Office	27	29	32	38

\* Percentages do not add to 100 because some Senators held more than one state or local office. The table, therefore, shows the percentage of Senators who held the indicated state or local office prior to service in the U.S. Senate.

Source: ACIR Staff Compilation, May 1990.

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san and regional differences, as well as protocol differences between the two houses. All ten of us meet regularly. We meet with the governor on a regular basis. We meet with the governor's cabinet people as issues arise. We have a very close, constant working relationship with our leading local elected officials. So there is a tremendous input that comes to us about the state and local point of view on matters pending in the Congress. That is probably unusual.

**Bond:** Yes, I think so.

**Sarbanes:** Many state delegations can't get together very well. There are too many divisions. Ten members is a fairly workable group, but we try very hard.

**Pittenger:** Do you have a similar relationship, Senator Bond, with the governor and other state officials?

**Bond:** My relationship with the state officials is better than that of our congressional delegation, as Paul has outlined in Maryland. My senior colleague is a former attorney general. Four of our nine House members are former members of the Missouri General Assembly. So we do share some common experiences.

But I think I have been unique, at least in recent history in Missouri, as being one who regularly initiates contacts with state officials. I am deeply involved in continuing economic development activities for Missouri. We have relied very heavily on our state Department of Natural Resources for information on the Clear Air bill. I have already mentioned the Child Care bill. At least once a year, early in the winter, when the legislature is in session, I meet in Jefferson City with the state legislature. I have been honored to be asked to address the Missouri Senate three times, which is unheard of. It was almost an ironclad rule that no governor, current or former, ever darkened the doorstep of the Missouri Senate. But I have a relationship wherein leaders of the Senate of both parties call about things they feel are important federal-state issues.

And we call them when the state is not taking advantage, for example, of incentives provided by the federal government. We initiate 95 percent of those efforts because it is something that begins personally with me and goes down through my Washington legislative staff and my in-state constituency staff. We regard the state government, the elected officials there, as a very important part of our constituency. They have been a tremendous help in defining and refining for us the impacts of proposed federal legislation, or existing federal programs, on the people who are supposedly served by the federal programs.

**Sarbanes:** Our governor will be in here on Thursday. The delegation will have a private lunch with him; then we will have an open meeting in which the governor and members of his cabinet will outline their agenda of federal-state issues. There is a Maryland state office here with which we all work very closely.

We will constantly talk to the governor over the course of the year, and these various cabinet people come back frequently.

Part of this is trying to get the delegation to help convince the secretary of some federal department to approve something important to the state. If state officials want discretionary highway funds to support a good project, they ask if

we can help. We are now working on housing legislation, and we have been in constant touch with the head of the state housing department so that we get her perspective on the bill.

**Pittenger:** Carl Van Horn, who is with us, has just gone to work for Governor Florio in New Jersey. Among other things, he supervises the governor's Washington office. What advice would you give him and the governor about how to represent a state point of view in Washington?

**Bond:** Provide good, solid information on the impact of proposed federal programs in New Jersey. No House staff, no Senate staff has the capacity to view, on a daily basis, the impacts in Trenton or Elizabeth or Rahway of legislation that is coming down the pike. Get them the numbers, get them the impacts. Draw from the governor's departments their assessment of the needs. Provide that to your congressional delegation.

Now, we have some city councils in Missouri that routinely fire off resolutions to us dealing with international affairs.

**Van Horn:**  
Nuclear-free zones?

**Bond:** When cities advise us on foreign relations, we treat them as we would any other constituent, noting their concerns. But if they tell us that the housing program in St. Louis is not working because of the way HUD is administering it, then we get right into it.

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*One problem is that the federal mandates are so process oriented. If you want to have some state accountability, make that accountability results oriented.*

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Where state government is affected, build your brief on the basis of: what is the impact, what are the needs, what is the experience in administering the program? How can federal legislation be changed, be loosened, be more targeted to help the governor and the legislature accomplish good goals? Most of the stuff we pass out of Congress has—setting aside the sense-of-the-Senate resolutions—legitimate purposes, with objectives we would all like to see accomplished.

I might add another thing, something I was discussing with my staff. They said, can't we do something about housing programs and their administration? We have so many strings in some areas. One problem is that the federal mandates are so process oriented. If you want to have some state accountability, make that accountability results oriented.

There is no accounting system required in a public housing authority. The St. Louis Public Housing Authority cannot tell you how much it costs to run one of their housing developments. They cannot tell you, or they want to keep from telling you, what the vacancy rate is, because some developments work very well while others work very poorly. I'm going to propose that HUD have increased authority either to appoint a receiver or to contract out to private not-for-profit or for-profit firms to manage any hous-

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ing development that is operating very poorly. Right now, our only tool, if they really mess up, is to cut off CIAP funding. But when you cut off CIAP funding to a project that is poorly managed by local public housing authorities, all you're doing is putting additional hurt and burdens on the residents. Give HUD the authority, when they absolutely mess up, to say, okay, PHA, instead of giving you the money and the administrative overhead for that, we are either applying for a court receivership or are going to subcontract that out to a private management group to see if they can improve the quality and use those funds better.

To the extent that the Congress must apply standards—and I believe in measuring performance—it ought to be, are you doing the job? Are you maintaining the units? Are you doing a credible job of collecting the rents? Are you keeping it full? Not, do you get HUD approval for everything you want to do? That is where a lot of the waste and inefficiency comes in.

**Van Horn:** Alexis de Tocqueville said that the beauty of American democracy is that we have centralized government and decentralized administration. Much of the rub in intergovernmental relations has to do with centralized administration, particularly the specific process-oriented requirements that are responses to the interest-group politics that Senator Sarbanes talked about. They want to say, this is how to educate a child, these are the things you have to do. Is there a trend toward focusing more on outcomes?

To some extent, we have this in the environmental area. For instance, with air quality, the federal government says to the states: you come up with the state plan, but we will whack you if you don't make it. You can figure out how to get there, but this is your objective in quantifiable terms. Yet, in many human service areas, we say, no, this is a process you have to go through as opposed to the outcomes, perhaps because we cannot define the outcome.

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**Pittenger:** One difficulty is that you often have a highly specific process—due process all the way up through the federal courts—united to a substantive requirement that nobody understands. For example, the Congress has said that states must provide an appropriate education for disabled children. What does that mean?

**Bond:** You have that in the Americans with Disabilities Act, which will cause problems.

**Pittenger:** We have a very elaborate procedural mechanism tied to a substantive mandate. Is an appropriate education for a deaf child an education with other deaf children, or is it an education in a hearing environment? There is enormous controversy about that.

**Van Horn:** In the recent round of welfare reform, we had some positive movement toward saying what welfare is about. It is about achieving economic independence. There is a way to measure that, as opposed to trying to count how much money goes to people who shouldn't get money. In part, this is why the governors supported the reform.

**Pittenger:** Paul, I didn't give you a chance to comment on what advice Carl should give Governor Florio. It may be superfluous in his case, since he spent 16 years in Washington, but if you were giving advice to a new governor about maximizing the influence of his state on the congressional process, what would it be?

**Sarbanes:** The delegation needs to work as a unit with the state, and to be responsive to the state's concerns. Does the New Jersey delegation meet with the governor on a regular basis?

**Van Horn:** They have met once since he entered office six weeks ago.

**Sarbanes:** Did they meet regularly with the previous governor?

**Van Horn:** They met every couple of months.

**Sarbanes:** It takes a lot of work to get where the Maryland delegation is, because you have to be very careful about where you draw the line on what is a statewide issue, namely, one on which the delegation can work together regardless of other differences.

You also have to work out a very careful recognition or sharing of accomplishments so that no one claims credit for something the delegation did together. The governor recognizes that this is a cooperative effort. This is very important; otherwise, everyone ends up working separately. Our state office here helps to keep us together. I have a person on my staff for whom this kind of coordination is a very important part of his job.

**Pittenger:** How are your staffs organized to deal with intergovernmental issues? I take it, Paul, that there's someone on your staff for whom liaison with the governor and the delegation is a central responsibility.

**Sarbanes:** Yes, we have meetings, not only of the delegation, but also more frequent meetings of the delegation staff. Staff members meet weekly and go over an agenda. Then they meet with the state people. We try to anticipate issues that are coming up so that we know the state's point of view well ahead of time. Things can move through the legislative process before you realize the impact. It is all over and done with, but all of a sudden, the state shows up and says, we have a big problem with this legislation. At that point, it may be too late to do much about it, or to do anything very effective. So you have to be in the process early on, when there is much more room to have an impact, and you have many more options.

**Bond:** We have an absolute rule that everyone who has a substantive responsibility in my office is in communication with a state counterpart. Thus, my legislative assistant for agriculture talks to the state director of agriculture at least a couple times a week, plus the head of the College of Agriculture and the dean of the Veterinary Medicine School. They are great resources. I view the university as a vitally

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important part of the state constituency. When someone comes in with a bright new idea, I ask, how would that work in Missouri? After we explain it to our state counterparts, they may shoot it down for very good reasons.

Even our constituency service operation is linked closely with state government. We've become a service arm for state representatives and senators. They get their casework involving federal issues done through my constituency service operation. They know the people headquartered in Jefferson City, and the flow of information is constant at all levels.

**Sarbanes:** A lot depends on the history of your state legislature. In the U.S. House of Representatives, we have a former president of the Maryland Senate. We have a former speaker of the House of Delegates. In their time, both of them were recognized as among the best state legislators nationwide. Speaker Ben Cardin was clearly one of the best, and so was Senate President Steny Hoyer. A clear majority of the delegation has had state or local government experience, and they continue to maintain those ties. I spent a fair amount of time in Annapolis visiting with the legislature during the course of its 90-day session.

**Kincaid:** Turning to another matter, how effective is CBO's fiscal-note process in alerting members of Congress to the costs of pending legislation for state and local governments? What effect does that information have on your decisions about particular bills?

**Sarbanes:** It is there to be a factor in those instances in which it seems appropriate. It has not gained any independent constraint of its own, but it is important information, which is used on occasion.

**Bond:** Paul, I'm trying to think of when anybody has ever said, outside of this prison drug-testing thing, which was an obvious hooah, where CBO. . .

**Sarbanes:** It's in committees. I've seen it raised in committee.

**Bond:** I am hard-pressed to come up with good evidence. I think it is a very important consideration.

**Sarbanes:** If you want to put in a bill and marshal sponsors for it, and if you hope to move the bill, then you have to consider that there will be a fiscal note estimating the cost impact on state and local governments. This fact may help to shape how bills are presented, so as not to raise a red flag that can be used against the bill. The fiscal notes may have an impact that you don't perceive early on.

**Van Horn:** Are there instances when members have felt the sting of public criticism for passing legislation and having people in the localities say, my God, they just increased our state budget, or we're going to have to pay more for this in property taxes? By and large, there is no accountability. If you pass legislation that has a great fiscal impact on local government, there isn't much consequence. That's why everybody does it to everybody. That's why the state does it to localities.

**Bond:** It is a problem we have tried to address in state government. I admit that it is as serious as federal mandates. However, the relationship between the state and local governments is somewhat different. The state really is, in many instances, particularly education, the generator of the revenues, and we turn them back to the localities to a much greater extent.

I am not sure that federal burdens on state government bring people out in an uproar like the catastrophic health-care premium did, for example. That was a case in which the perceived error of our ways was explained to us very clearly.

**Kincaid:** I guess it is less visible. But Michigan, for example, just released a report estimating that the cost to the state government of current unfunded federal mandates and program funding reductions will go from \$64 million this fiscal year to \$127 million next fiscal year.

**Sarbanes:** I would say, wait a second. If the state is getting, let's say, \$12 million from the federal government to help it out, and it is required to spend an extra \$124 million to get that \$12 million, then that's one thing. If you say that \$586 million comes in, and to get the \$586 million, we end up with mandates for another \$124 million, then that's another thing. But the end result is that we're all working for our constituents out there. There is not some dynamic between the states and federal government that is unrelated to the individual citizen whose particular problem or social purpose is being addressed by government.

In the revenue sharing days, I would go to meetings with local officials, and I would get berated, on one hand, because the federal government was running a deficit. On the other hand, I would get hit with resolutions to increase the revenue sharing program. They would go at me about the federal government not balancing the budget and about spending too much money. I would listen to all of this, and then they'd say, now we want to give you this resolution, which was just passed unanimously, urging you to increase revenue sharing.

**Kincaid:** How do you deal with the question of accountability and responsibility, when one body is making a decision, while the cost, or a substantial cost, of that decision is being passed to another body? Shouldn't people who make the policy decision experience the pain of raising the revenue to pay for it?

**Sarbanes:** Suppose you have a program in which the federal government is putting in 90 percent of the money, such as transportation, and then a lot of requirements come with it. Is that unreasonable? If the money gets abused, people immediately say, how come you laid out all this money without having any control over how it was expended?

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*If you think it is a national priority, then you have to ask, do you have the authority under the Constitution to write that as a federal law?*

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**Pittenger:** On that point, a good example comes to mind: the raising of the drinking age to 21 as a condition of getting full federal highway money. Is that a reasonable limitation? That is an area that historically had been governed by the states.

**Bond:** You can make a good case for something like that, but when you look at the underlying principle, you see that money is being raised from gasoline taxes paid in the states. It is not as if there is some greater wisdom in the federal government about administering gasoline tax money. We're in an unusual situation in Missouri because our highway commission allocates that money. Back in the 1930s, we decided to take transportation decisions out of the political arena; so the money is allocated by an independent commission.



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To establish a qualification for funds, such as raising the drinking age, is tough to swallow. Overall safety policy is better left to the states. If you think it is a national priority, then you have to ask, do you have the authority under the Constitution to write that as a federal law?

If there is federal constitutional authority, then I would prefer to see a federal law do it than have Congress say to the states: Aha! You have to vote to change your policy the way we want to see it changed. Otherwise, we will hold back from you the money that your taxpayers have sent to Washington.

**Sarbanes:** I am interested in the premise of this question. Is it your premise that the federal government should impose a tax that is going to return a lot of money to the states for a shared public purpose, but that Congress should do that without any concern about how the money is spent or without some requirements attached to it?

**Pittenger:** That is not the premise.

**Sarbanes:** Should we build the highways ourselves? The highway program is interesting because it is an example of the federal government using a taxing power, which is national in scope, because we have a national economy. Although states add on to it, they have to work within limits because of what surrounding states do. So the federal government creates a uniform national approach, at least up to a certain level. Large monies are returned to the states to pay for very large shares of those programs. In effect, the federal government also helps through the planning process to build an interstate network so that a road doesn't end at a state border.

**Bond:** There's a dysfunction. We could take that case as an example of letting the state highway departments bid the projects, but they have to meet certain quality standards. They have to plug in on the ends. However, the states are given some discretion as to whether the priority for those funds should be building a four-lane highway from the Lake of the Ozarks to Jefferson City, or putting a beltway around St. Louis or Kansas City. Some judgments are made by the state, but the state must meet objective standards.

This is what I was suggesting earlier. As in environmental matters, you can establish priorities to come up with the result that is consistent with national goals, so that when you move from one state to another, you don't find that the highways are of much poorer quality or that they don't connect in the right way.

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*You cannot govern a nation continental in  
expanse from Washington, DC.*

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**Sarbanes:** There has been a lot of delegation from the federal to the state governments in the environmental area. The way it works is that the states say to the federal government, you should make a judgment as to how adequate our program is before you delegate us the authority.

This approach has much to be said for it, and it is an effort again to bring some common sense into this matter. If we perceive that a state has put into place a program that can meet the standard, we are prepared to delegate it. Now, there will be some friction. The state may say that it has achieved the standard, but a federal bureaucrat says

that it has not. The congressional delegation gets brought in to broker it out. However, some states do not make the grade. The immediate state interest may be such that there is no great inducement to set a high standard because their profit may be going elsewhere.

There are no state lines on air and water pollution. How do you come to terms with something like this? I want to make the system work. You cannot govern a nation continental in expanse from Washington, DC. You cannot even govern a much smaller country from the center. We have this federal system, and it has worked pretty well over our history. But we don't get very far by having a lot of "who struck John" going on between the federal and state governments. Those kinds of debates are pretty sterile. We need to figure out how to make this process work.

You also have to think ahead. For example, the states ought to be very worried about how to solve the federal fiscal situation because one of the proposals being put forth to solve it in a sweeping way is the value-added tax (VAT). There is some reason to think that, in terms of international competitiveness, since other nations, particularly the European Community, use VATs, we should do so here. But a value-added tax is, in a sense, a sales tax. The states depend heavily on the sales tax as a prime revenue source.

If I were a state official helping to write an agenda, I would say that we had better anticipate this situation because, all of a sudden, the federal government is going to move in that direction to resolve its problem. Will a VAT create a major revenue problem for us? The federal government will have compressed a very important revenue source for us.

**Bond:** That argument is being made, but I wonder if it has much impact. The cost of all goods would go up. There would be an increased cost to purchasers of everything to which the VAT applies. There would still be sales taxes, and you could argue whether they would be taxes on the VAT, but I doubt that people would feel an impact from state and/or local sales taxes as a result of a VAT. Were one to be imposed, it would be translated into higher prices. People would find their purchasing power squeezed, but it would not hurt the state and local taxing entities so much as it might shift the patterns of demand or have an impact on the producers of goods, as well as services if they are included.

**Sarbanes:** Perhaps, but the states should look carefully at whether a federal VAT would constrain their ability to utilize the sales tax, which, after all, is prime revenue.

**Bond:** I wonder if it is in fact a problem for the states and localities.

**Kincaid:** In the context of the other revenue squeezes they feel, such as limitations on tax-exempt bonds, many states and localities are looking at any federal fiscal proposal as possibly constraining their revenue-raising ability.

But there is another interesting statistic. ACIR has been counting federal statutes explicitly preempting state/local authority. Thus far, we have discovered that in our 200-year history, Congress has enacted about 354 explicit preemption statutes. Some 190 of those have been enacted since 1969, which means that 53 percent of all preemption statutes have been enacted in 10 percent of our history.

**Sarbanes:** Where does the motive force come for those preemptions?

**Kincaid:** That's one thing we have to look into.

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**Sarbanes:** That is very interesting. Often the motive for us is conservative business interests. We had a big fight in the Senate on oil-spill liability. Should the states be allowed to have a standard higher than that of the federal government? Who was pressuring us the most against states having that authority? The big oil companies.

**Bond:** Sure.

**Pittenger:** Is there anything unsaid that you feel an urgent need to say?

**Bond:** The discussion has opened up so many areas. I have been thinking about gripes, too. One of them is the limitation on the ability of states to issue tax-exempt bonds for housing and industrial development, which hit our state and other states at the same time that federal revenue sharing was cut off. Our state was in a recession, so that one was particularly galling. I fought the battle as the lead governor on that matter, but I went down in flames. If I was not a radical federalist prior to that time, I was after that.

**Van Horn:** When Ronald Reagan got into federalism, whether you agree precisely with what he was talking about, there was a great deal of excitement about reordering responsibilities. Is that same window opening now as we begin to reduce defense spending and to think again about how to address domestic priorities? Is there a possibility that President Bush might push such an agenda?

**Sarbanes:** I doubt it. The President has ruled out revenues, and the Congress will not go down the revenue path as long as it is confronted with the prospect of a presidential veto. I don't think that is an adequate marshalling of our resources to address the problems at hand, but that is the President's view. It is the view of enough members of Congress to sustain a veto.

Of course, the Pentagon is redefining the threat in order to slice away at the peace dividend. Perhaps we will be told that Mali is a major danger to the U.S. Even if we get a peace dividend, we have to reduce the budget deficit. There also is a direct correlation between shifting money out of the defense budget and putting it into Eastern Europe because developments in Eastern Europe will make it possible to reduce defense spending in the long run.

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*No one in the Congress wants to take away the tax-exempt status of state and local bonds. But if localities allow them to be used for purposes that have no public benefit, as one perceives it, then people will complain about it.*

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**Bond:** Don't forget Latin America. There are tremendous needs, but the real problem is that we will be lucky to get enough out of the peace dividend to reach our budget deficit reduction requirements. As one who has traditionally been a strong supporter of defense, I came up with a half dozen weapon systems that ought to be cut out, two of which were McDonnell Douglas programs.

**Sarbanes:** That's pretty courageous.

**Bond:** I mean . . .

**Sarbanes:** It was the little ones rather than the big ones.

**Bond:** One is the ATF attack fighter, which is under development. Another is the LHX helicopter, which the Army wants because they want a new toy. The St. Louis newspaper is very much against all military expenditures, but the paper took me to task because I was going to be cutting jobs in St. Louis. It put me in an odd situation, but even with that, we have a long way to go.

**Sarbanes:** We have fallen short on some of the domestic demands that call for direct federal expenditure, such as research and development, and infrastructure, which is a federal state matter. But there are some interesting approaches. We are working on housing. One proposal is for a \$3 billion federal investment in housing to be put out on a matching basis to states and localities, with a great deal of delegation of what is to be done by them. In other words, they would have to work out a plan and agree on it. It is a little bit like being results oriented rather than process oriented.

I would like to deemphasize the ideological content of the federal state issue. No one in the Congress wants to take away the tax-exempt status of state and local bonds. But if localities allow them to be used for purposes that have no public benefit, as one perceives it, then people will complain about it. The answer is not to assert that these state and local activities ought to be allowed to continue. The answer is to get together and draw a line in the proper place.

I was bothered about the minimum federal income tax because the states and localities said, look, we're not for this minimum tax because, in effect, it will undercut our exemption for state and local bonds. Very wealthy people put all of their portfolio in these bonds because they pay no taxes. Well, here is the issue. We are seeking tax equity among members of the public. Some working stiff is paying his income taxes. They are being withheld from him. The big guy who lives up on the hill has millions of dollars in income, but he's paying no taxes because, let's say, his income is all from state and local tax-free bonds. There's your issue. Is the principle of state and local tax-free bonds to be so absolute that you allow what appears to ordinary taxpaying citizens to be a gross inequity, which leads them to question the validity of the taxing system? You can argue it both ways. It is not a clear-cut issue; there are competing considerations.

**Bond:** But those are the issues that inevitably become results oriented. The vote is about 84 to 16 because there are lots of issues in which the Senate and the House see a higher national need. Paul makes a very compelling case, but there are many gradations of those compelling cases that result in further restrictions on what states and localities can do. Now they pay more because there has been a continuing federal encroachment, which has deprived state and local governments of resources.

**Sarbanes:** I don't think you can make those gradations. You ought to fight the battles at the demarcation line, that is, where it makes sense, not at an extreme, which is very hard to sustain.

**Pittenger:** I don't think the states always ought to win their lobbying battles. In the nature of things, it is not going to happen, and probably wouldn't even be healthy if it did. The question, as both of you have said, is where do you draw the line?

# Books, etc. —

## Education

WINNING THE BRAIN RACE: *A Bold Plan to Make Our Schools Competitive*. By David T. Kearns and Denis P. Doyle. ICS Press, Institute for Contemporary Studies, 243 Kearny Street, San Francisco, CA 94108, 1989. 147 pp.

The authors offer a challenge to business leaders, policymakers, and citizens to support a complete restructuring of the education system. Drawing on the lessons of the marketplace—competition, market discipline, accountability, and performance—they present a six-point reform program that they believe would allow the public schools to produce the educated workforce we need to keep America competitive. The six points are: *choice* (public schools should compete with each other, and students and teachers should be able to choose where they go); *restructuring* (schools should be magnet schools, be open all year, and be run by teachers and principals); *professionalism* (teachers should set their own curriculums and raise standards); *standards* (academic standards must be raised and children held accountable—no promotion without performance); *values* (children should understand the great documents of American citizenship and the ethical, religious, and moral underpinnings of their creation); and *federal responsibility* (the federal role should remain limited, but it should fully fund Head Start and Chapter One programs and invest additional funds for research).

## Environment

PUBLIC-PRIVATE PARTNERSHIP CASE STUDIES: *Profiles of Success in Providing Environmental Services*. Administration and Resources Management, U.S. Environmental Protection Agency, Washington, DC 20460, September 1989 (Report PM-225). vi, 118 pp.

This report examines 23 case studies

of public-private partnerships organized by three environmental service areas: solid waste, wastewater treatment, and drinking water. The types and benefits of partnerships are explained and attributes of successful programs are listed. Each case study provides information on how the partnership was formed and implemented, as well as the characteristics of the community. The profiles include income, population, time frame and project cost; the decisionmaking process for selecting the private partner; financing responsibilities of each partner; procurement arrangements; division of implementation responsibilities; evaluation; lessons learned and their applicability to other situations; and contacts.

## Federalism

AMERICAN FEDERALISM: *The Third Century*. Edited by John Kincaid. *The Annals of the American Academy of Political and Social Science*. Sage Publications, 2111 West Hillcrest Drive, Newbury Park, CA 91320, May 1990. 206 pp. \$12.

This is the fourth volume of *The Annals* since 1940 to be devoted to developments in American federalism and intergovernmental relations. The volume appears in the midst of tremendous changes in the federal system. A variety of fiscal, economic, social, and political indicators suggest that 1978 can be taken as the benchmark year for the latest sea change in modern American federalism: federal aid to state and local governments peaked; the U.S. Supreme Court flip-flopped from *NLC v. Usery* (1976) to *Garcia* (1985); more than 50 percent of all federal statutes preempting state and local authority were enacted in the last 20 years; and there has been a dramatic resurgence of state governments.

The volume contains articles by Timothy Conlan, Daniel J. Elazar, Earl H. Fry, Eugene Hickok, John Kincaid, Susan MacManus, Richard Nathan and John Lago, Michael Pagano, Mavis

Mann Reeves, Robert Thomas, Deil Wright, and Joseph Zimmerman.

JUDICIAL FEDERALISM AND RELATED DEVELOPMENTS: *A Decade of Change in New Jersey*. Edited by Stanley H. Friedelbaum. 1990. 71 pp.

STATE CONSTITUTIONAL COMMENTARIES AND NOTES: *A Quarterly Review*. Edited by Stanley H. Friedelbaum.

Edward McNall Burns Center for State Constitutional Studies, Rutgers, Hickman Hall, Douglass Campus, New Brunswick, NJ 08903.

American federalism once again has become the center of intense interest, if not controversy. During the last half-century, the states have effected a revival that has assured their continuation as viable governments. The adoption of a succession of revised state constitutions following World War II provided a positive image. The states have come to be regarded as important in addressing essential needs best left to local resolution. Within this revitalized framework, an interplay between state and federal courts is discernible. The emerging array of doctrines and ideas, often resulting in creative judicial decisionmaking, ranks among the most impressive by-products of contemporary federalism. A reawakening of interest in state constitutions, largely a development of the 1970s and 1980s, has resulted in a transfer of litigation strategies. State courts and state constitutions must be given serious consideration.

The essays in *Judicial Federalism and Related Developments* illustrate particular cases and events in New Jersey. They are not intended to be a systematic account of state patterns or definitive or conclusive of constitutional models.

The new periodical *State Constitutional Commentaries and Notes* states that “. . . apart from the source or sources and despite doubts regarding motivations, the vibrancy of state constitutional law and its potential for continued growth seem assured.” Inceas-

ingly, the propensity of state courts to opt for independent and expansive interpretations of state constitutional language is spreading. The issues that will be examined in the journal underscore these observations.

#### Highways

**ROAD WORK: A New Highway Pricing and Investment Policy.** By Kenneth A. Small, Clifford Winston, and Carol A. Evans. The Brookings Institution, 1775 Massachusetts Avenue, NW, Washington, DC 20036, 1989. xii, 128 pp. \$22.95.

The authors address fundamental efficiency concerns about how the road system is priced and how investments are made. Are user taxes set efficiently and will they improve the condition of the highways? Is the mix of expenditures on road maintenance, capacity, and durability appropriate? Could and should these expenditures be financed fully by user taxes? Improving the highway system and its financing will not be easy. Federal, state, and local governments; the driving public; highway contractors; and the railroad, trucking, and mass transit industries all have strong and conflicting interests in the road system. The authors propose a comprehensive policy to meet the goals of efficiency, equity, and financial stability.

#### Intergovernmental Relations

**STRATEGIES FOR MANAGING INTERGOVERNMENTAL POLICIES AND NETWORKS.** Edited by Robert W. Gage and Myrna P. Mandell. Praeger Publishers, Division of Greenwood Press, 88 Post Road West, Box 5007, Westport, CT 06881, 1990. \$39.95.

This volume is a response to the growing need for information on the development and use of strategies for intergovernmental management. In the study, experts outline the strategies and skills needed to build and maintain networks essential to the implementation of complex public programs. They introduce several innovative theoretical concepts and models. Four themes run through the book: a shift in emphasis from intergovernmental relations to intergovernmental management; the view of networks as a separate and distinct level of analysis requiring revised terminology, concepts, and emphasis; a re-

vised view of strategic management for use in the public sector that moves away from a "rational-logical approach"; and an emphasis on the individual and the importance of behavioral processes.

#### Public Administration

**MANAGING LOCAL GOVERNMENT: Cases in Decision Making.** International City Management Association, 777 North Capitol Street, NE, Suite 500, Washington, DC 20002, 1990. 244 pp.

This book contains 20 cases covering a broad range of local government management problems. Intended for use in teaching public administration, each case is based on a real decision faced by an administrator. The cases highlight the fact that local problems in the 1990s are multifaceted, and that fundamental changes have transformed local governments over the past 25 years. Elected officials, managers, and administrative staffs have to cope with three major kinds of change: heightened complexity, interdependence, and expectations. The book is divided into seven substantive parts—the role of professional administrators, community politics, intergovernmental relations, analysis and evaluation, personnel and labor relations, finance and budgeting, and ethics.

**PUBLIC ADMINISTRATION DESK BOOK.** By James R. Coleman and Robert E. Dugan. Government Research Publications, Inc., Box 122, Newton, MA 02159, 1990. xv, 270 pp. \$38 (plus \$3 s&h).

The desk book is an annotated guide to reference sources in public administration and is intended for practitioners, researchers, and students. It includes sections on governmental and non-governmental directories, statistics, research methods and publishing, periodicals, on-line services, law and regulatory reporter services, and associations and research institutes. There are subject, title, and name indexes. An introduction for each section describes the tools and the organization of that section. Also included is a "basic survival library"—a list of references that the authors regard as the minimum essential in any public administration library.



#### State Regulation of Banks in an Era of Deregulation

This policy report examines the key intergovernmental regulatory issues arising from the changing economic and institutional structure of the banking and financial services industry. It reviews the history of bank regulation and analyzes current issues, focusing on the purpose and scope of regulation and the effects of deregulation on the operation of the American system of dual federal-state banking regulation. The report also evaluates and makes recommendations on regulatory proposals.

A-110 1988 36 pages \$10

#### State and Federal Regulation of Banking: A Roundtable Discussion

At the June 1988 Commission meeting, this roundtable discussion was held to offer differing points of view on current legislative proposals concerning bank regulation. The participants were James Chessen, American Bankers Association; David T. Halvorson, New York State Banking Department; Sandra B. McCray, ACIR; Kathleen O'Day, Federal Reserve Board; and Keith Scarborough, Independent Bankers Association of America.

M-162 1988 32 pages \$5

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# The Chairman's View



Three great challenges facing America came together last April in an important U.S. Supreme Court ruling in *Missouri v. Jenkins*: (1) desegregation, (2) education, and (3) federal-state powers. For each challenge, the Court gave us intensified versions of conventional wisdom. As a result, citizens of Missouri's Kansas City particularly, have less authority to govern themselves, and they will pay more for what will surely be less of what we should all want—more desegregation, better education, and vigorous local self-government.

*Jenkins* involved the question of whether a U.S. district court can levy a property tax increase—in this case, from \$2.05 to \$4 per \$100 of assessed valuation for FY 1991-1992—to help pay some \$260 million in further court-ordered capital improvements and an expanding magnet-school district plan costing an additional \$200 million. The Supreme Court ruled unanimously that a district court cannot levy a local tax directly. However, the Court did rule, by a 5-4 vote, that a U.S. district court can waive state tax-limitation laws so as to order a school board to levy a tax increase.

The difference between levying a tax and ordering a school board to do so “is far more than a matter of form,” wrote Justice Byron White. “Authoriz-

ing and directing local government institutions to devise and implement remedies . . . protects the function of those institutions” and shows “proper respect for the integrity and function of local government institutions.”

Writing for the dissenters, however, Justice Anthony Kennedy said: “Absent a change in state law, no increase in property taxes could take place. . . without a federal court order. . . the tax is imposed by federal authority under a federal decree.” The problem is that: “The power of taxation is one that the federal judiciary does not possess.”

The dissenters seem to have the better argument. Legislative bodies can tax, and Congress could conceivably mandate a state or local tax under the Fourteenth Amendment, but the U.S. Constitution does not even hint that U.S. courts can levy a tax, let alone a state or local tax, or require another government body to do so because a court cannot do so itself.

To justify its decision, the Court majority had to dig up an obscure 1867 precedent. In that case, a city had approved a tax levy to support a bond obligation, but then limited the tax levy, thus impairing the bond obligation. The Supreme Court ruled that the local tax limit violated the contracts clause of the U.S. Constitution. This 1867 case is not, as the dissenters noted, similar or applicable to the Kansas City situation.

*Jenkins* was not a case of a court ordering a recalcitrant institution to do its duty. On the contrary, the school district was eager to raise taxes. It could not do so, however, because it could not muster enough voter support. The Supreme Court, therefore, allowed the district court to waive the state law requiring two-thirds of the voters to approve a tax increase of the magnitude desired by the court.

This waiver is very odd because neither the district court, appeals court, nor Supreme Court found the law to be unconstitutional, or to have been enacted to obstruct desegregation. On the contrary, Missouri's tax-limitation provisions are similar to those of other states. Whether wise

or not, these laws are basic rules of government behavior enacted by the people exercising their sovereign democratic prerogative. In *Jenkins*, the state law happened to stand in the way of the district court's objectives; so the court brushed the law aside.

Furthermore, as the Supreme Court has said in the past, local governments are not sovereign. They cannot override state law, or enact any law they like. The school district, therefore, needed an outside sovereign to do what the school district could not do itself, and the district court needed the school district to do what the court could not do itself.

No evidence was presented that voter resistance to increased school taxes was motivated by discriminatory intentions. The real issue for voters, no doubt, is getting some bang for the buck. In 1988-1989, per pupil spending in Kansas City—\$7,069 compared to the statewide average of \$3,916—was the second highest among Missouri's 545 regular school districts. Yet, student achievement in the city is no better than average for an urban school district. After five years of constructing, under court orders, 25-acre farm and wildlife areas, Olympic-size swimming pools, a 2,000-square-foot planetarium, a model UN wired for language translation, and many other facilities—with more to come—the Urban League reported that the court's magnet-school district plan has met with “a limited and disappointing response.” The district even hired PR consultants to help sell the court's plan. No wonder voters are wary of a tax increase.

I do not agree with those who say that Americans have become selfish and, therefore, less willing to support taxes that don't benefit them directly. Americans have always been generous, at home and abroad. Other observers argue that Americans have become hypocritical, too. We want more services, but we don't want to pay for them. Not so. The real issue is the unwillingness of voters to support taxes that do not seem to have visibly productive benefits. Citizens also are less willing to trust government's spending judgments; consequently, voters are

more supportive of earmarked taxes, especially taxes for which they have some reasonable expectation of getting a tangible pay-off, such as pothole repair. If voters were really convinced that an 80 percent increase in school spending would produce even a 50 percent increase in student achievement, they would probably support the kind of tax increase mandated by the U.S. district court in Kansas City.

*Jenkins* also could throw a monkey wrench into state and local finances. If U.S. courts start ordering tax increases for particular school districts while state supreme courts order more equalized spending among districts, school spending could skyrocket. Public officials and private citizens may also try to use *Jenkins* to challenge state and local tax limits that block more funding for their institutional preferences, thus escalating costs for state and local governments. When the Kansas City remedial process ends, nearly \$1 billion of additional funding will have been poured into the school district.

*Jenkins* is a classic case of intergovernmental collusion to produce government by remote control. It was primarily the school district that designed the U.S. district court's magnet-school district plan. This is why the plan looks like an educator's dream, with such amenities as smaller class sizes, greenhouses and vivariums, 15 computers per classroom, broadcast capable radio and television studios with editing and animation labs, movie editing and screening rooms, a temperature-controlled art gallery, a 3,500-square-foot dust-free diesel mechanics room, cosmetology and robotics instruction, and a \$30 million classical Greek athletic academy. It's a wonder anyone learned anything in school in the days when high-tech education was a movie projector with a lamp that burned out halfway through the year.

We need desperately to improve education and even more desperately to equalize opportunities for minorities. But is this really the way to go?

**Robert B. Hawkins, Jr.**

### **View from the Commission** *from page 2*

increasingly intergovernmental dimension of our search for foreign markets and investments. We should continue to expand cooperation and information exchanges between the local, state, and federal governments on these issues.

As a former governor, one of the questions that most interests me about my new job is defining exactly what the appropriate federal role is in a number of areas. Foreign trade and affairs traditionally have been the purview of the federal government, but the productive activities undertaken by the states in the last decade make it clear that the traditional line is no longer so definite.

There are many things that the federal government can do most effectively in the trade arena. Governors, mayors, and county commissioners may be our best salespeople, but they cannot negotiate rules for trade and investment, they cannot work toward favorable exchange rates, they cannot work toward stable political situations in potential markets, and they cannot resolve the federal budget crisis, although they will be dramatically affected by the solution.

The federal government also has a special role in these days of change in Eastern Europe and the Soviet Union. The dramatic political changes in those countries are being followed by ambitious, market-oriented economic programs. Our federal policies should be directed at helping to stabilize these fledgling democracies and ensuring access for our goods and services to their economies. Federally sponsored academic and cultural exchanges also will help to plant deep roots for long-term relationships with future leaders in these countries.

The federal government should address the issues it is best suited to handle, especially the macro issues that deal with maintaining, and in some cases creating, a level playing field for our states and localities, for our companies and scientists. In addressing those issues, in creating a strong foundation for active and successful international trade, we will need close cooperation among all our governments. As GATT is

expanded to include services and investment, as regulations and subsidies for agriculture and other sectors are negotiated through GATT and in bilateral agreements, and as the United States commits to fundamental policy changes in a wide range of world forums, intergovernmental consultation and collaboration will be critical.

The international challenge is going to get tougher. It is going to bring new tests to our federal system. The United States can compete successfully if our federal, state, and local governments work together to do what each does best and if we do not assume that the way we've always done business is the way we should continue to do business. Our trade deficit is testimony to how foolish that would be.

**Charles S. Robb**  
U.S. Senate, Virginia

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**State-Local Government Finance Data.** The diskettes developed by ACIR provide access to Census finance data in a format not previously available, and are designed for easy use. State-by-state data for 129 revenue and 200 expenditure classifications, population, and personal income are included for state and local governments combined, state government only, or all local governments, aggregated at the state level.

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

Price:

\$195—five-year set

\$90—FY 1987

\$50—FY 1986

\$25 each—FY 1985, 1984, 1983

A demonstration disk for the State-Local Finance Data is available for \$5.

**State Government Tax Revenue Data, FY 1983-87.** This diskette makes the state tax portion of the state-local government finance series available six months earlier than the full series. Four years of tax revenue data (FY 1983-87) are included on a single diskette. The revenue fields are basically the same as for the state-local series. The state government tax diskette does not contain any information on local governments, nor does it contain any expenditure data.

Price: \$60 (for FY 83-87 inclusive)

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