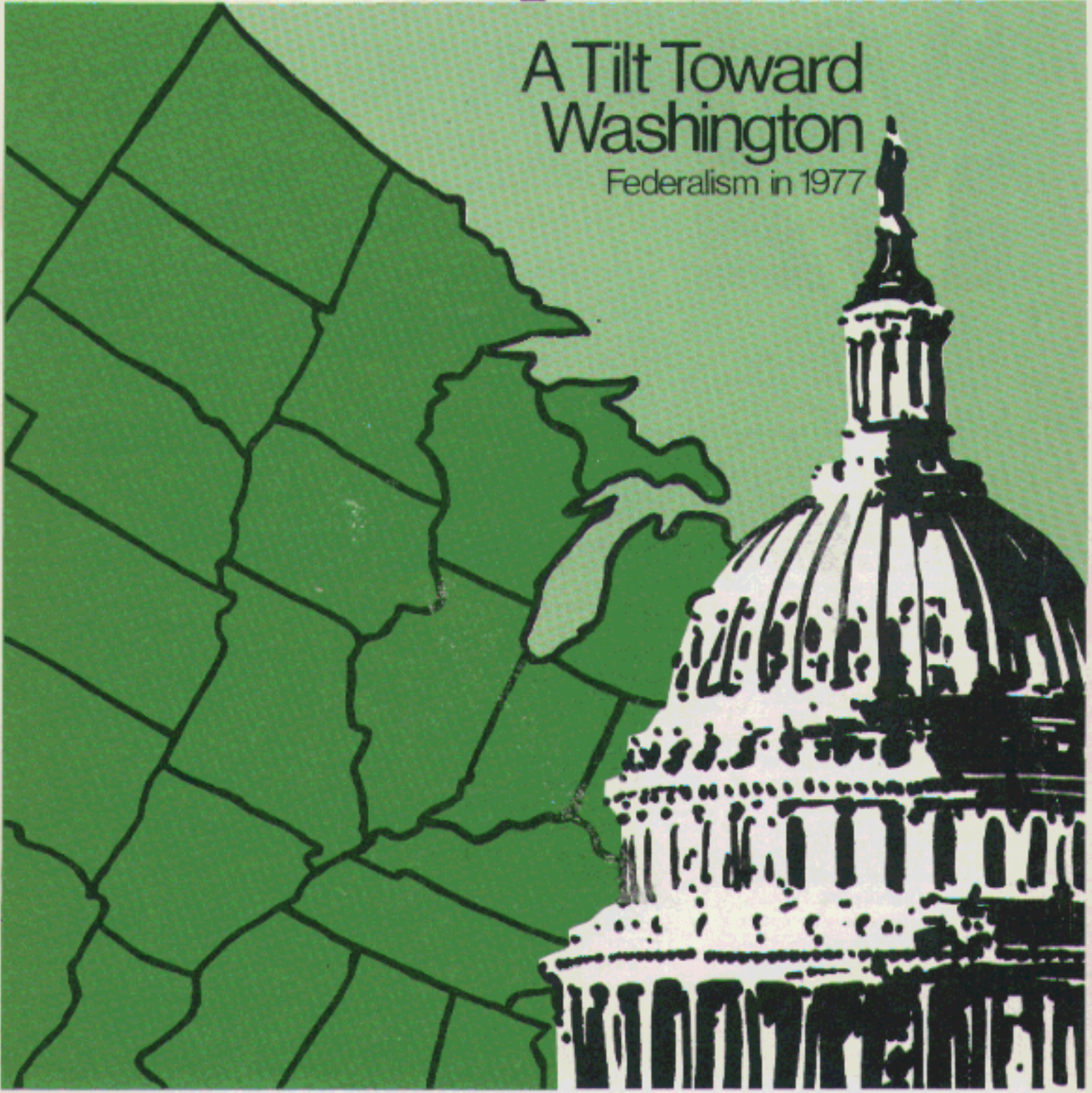


Ad 9/8:

Intergovernmental
PERSPECTIVE

A Tilt Toward
Washington
Federalism in 1977



ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

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View From The Commission



Dear Reader:

As has been our custom, in the following pages the Advisory Commission on Intergovernmental Relations has summarized one view of American intergovernmental highlights in 1977. To place these comments in longer term perspective, my remarks will highlight the 18 years since ACIR was formed, with particular reference to the last eight years during which I have been privileged to serve as its Chairman.

I.

I start with a global perspective, having recently returned from a six-week government-sponsored mission to India, Pakistan and Afghanistan. In India, the world's largest democracy, I was struck by the remorse with which academicians, lawyers and newspaper people in particular, viewed their recent passive acceptance of martial law as it was clamped upon them. They discovered that democracy could not be taken for granted; state and local Indian officials once again were even rediscovering that they had a federal system which had been all but forgotten.

In Pakistan, that sorely wracked country still striving to develop a governmental rationale, martial law had been imposed just before our arrival and the vision of democratic decisions was shattered. The headlines one day while we were there, for example, announced that the martial law administrator had "ordered" the press to be free.

Afghanistan, an oligarchy struggling to reach the 19th Century by erecting the trappings of a democracy on top of the prevailing tribal structure, had some form but no substance.

II.

Nothing in the above comments, most likely, is new or startling, but to live and feel these situations served as a vivid reminder that we cannot take for granted our own unique democratic institutions. Nor should we view ourselves as the model for the developing world. In fact, the most frequently asked questions from people on the sub-continent related to Vietnam, the riots of the late 1960s, and, of course, Watergate. The looting which accompanied last summer's New York City blackout ranked close behind.

These troubled people—not very subtly—were suggesting that we had some problems too. And how right they were! I freely admitted to them that the twin issues of Vietnam (in all its ramifications) and Watergate drastically had altered our concept of ourselves and how we conducted our public business. I further noted that since 1960, one President had been assassinated, the next almost literally driven from office by antiwar

sentiment, the next resigned in disgrace, and his successor defeated by a then relatively unknown state political leader named Carter. This series of events represented, I noted, the most serious series of constitutional crises of our Republic, save the Civil War, and were indeed a grim prelude to our Bicentennial celebration. The Imperial Presidency, which evolved during this period and was the root cause of our crises, has been repudiated (for the time being at least), but many of our basic problems of power relationships remain.

In these same years, the Congress has struggled—and is continuing to struggle—to reform itself to enable it to cope not only with itself, but more importantly with emerging, complex issues like energy which defy traditional Congressional organizational habits. At one hearing last year I was struck by the plaintive query of a freshman Senator: "Why can't we deal with problems instead of programs," he asked. The *Congressional Budget Reform Act* and related attempts to harness the unilateral powers of the President have, as we are fond of saying, redressed the imbalance somewhat, but the serious student of government must ask himself (or herself) whether the changes are more than cosmetic. Some might even suggest that with over 20,000 employees in all, Congress itself has become a major bureaucracy with all the dangers that entails.

III.

ACIR is not the answer to all of these problems; but it is

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A Tilt Toward Washington: Federalism in 1977

The evolution of the American federal system has been accompanied by significant shifts in the distribution of governmental powers and functions. While these changes often have been products of a pluralistic and pragmatic society, they also are outgrowths of the philosophy of our Nation's political leadership. As a result, the debate over the nature and extent of the federal government's role vis-a-vis the states that was initiated in the *Federalist Papers* has persisted to the present time, will continue in the future, and does affect the course of events.

With the inauguration of Jimmy Carter as the Nation's 39th President, the designation of new Congressional leaders, and the election of new Governors and legislators in several states, another chapter in the history of American intergovernmental relations has begun to unfold. In the wake of Vietnam, Watergate, the recession, and the energy crisis, candidates for office in the 1976 elections representing both the major parties talked of a "new spirit" in American politics. Rejecting the traditional slogans, they campaigned for more efficient and effective government operations, better conservation and management of scarce resources, balanced budgets and fiscal austerity, more equitable taxation and expenditure policies, and greater openness in, and accountability of, public decisionmaking. Critical of "Big Government" and skeptical of the "program politics" and "interest group liberalism" of the 1960s, they sought to inject an element of realism in the political debate—that resources were not unlimited, that government could not solve all of society's problems, that the spending commitments of today had long-term consequences, and that more services and less taxes were incompatible policies. They also called for basic reforms in the institutions and processes of government.

Many of these candidates were elected. In their own ways, they have attempted to lay the groundwork for better government. In so doing, they again have raised certain fundamental issues of federalism—centralization versus decentralization of power, states' rights and responsibilities, the role of local governments, and the position of the courts—which initially were addressed by the Founding Fathers, and have surfaced periodically in the evolution of the Republic.

This is the story of their initiatives and impact on one vital component of our political system—intergovernmental relations—during 1977. It is neither a complete nor an in-depth treatment, but rather one that focuses on the major structural, functional and fiscal shifts which are underway; that reflects on the uncertainties which normally accompany change; and that raises questions about the longer term implications of these developments for the federal system.

The Unresolved Questions

From the standpoint of intergovernmental relations, 1977 will be remembered as a year of bold beginnings, unfinished work, and lingering uncertainties. After weathering a series of foreign and domestic crises, the federal system was put to a different test—dealing with a period of relative political stability and economic recovery. To be sure, critical problems existed—energy, environmental quality, and urban fiscal conditions—but they did not overwhelm the political agenda. Instead of being preoccupied with responding to various crises, the Nation's political leaders had the interest and time to consider reforms in basic governmental institutions and processes.

The initiatives taken during 1977 were largely in response to the high level of public expectations generated during the election campaigns the previous year. Particularly at the national level, the defeat of the incumbent President was considered by many observers to be a signal that citizens were no longer satisfied with "politics as usual," and that it was time for major change. The spotlight was turned on Washington, DC.

Many of the changes which were launched during the year—reorganization, zero-based budgeting, sunset legislation, and merit system reform—went to the essential "nuts and bolts" of public management. Others—such as the Carter Administration's emerging urban policy and the fiscal 1981 balanced budget goal—sought to substitute systematic and coordinated policy development and implementation for "quick fix" solutions to the Nation's problems. These were significant actions, having potentially significant consequences.

While the President scored some successes on the budgeting, grant management, reorganization, and intergovernmental consultation fronts, expeditious action did not occur on many major domestic policy issues. Even where there was general agreement within the executive and legislative branches on what basically needed to be done to respond to certain national problems, there was little consensus on how to do it—and, in the process, "whose ox should be gored."

These differences, coupled with an absence of a severe crisis as a catalyst for decisionmaking, took a toll. The President's popularity rating in the polls dropped. The Congress as an institution was thought by many to be ineffective, even though in the view of others it has been the chief molder of the intergovernmental system for at least two years. The political parties remained practically invisible. And, the media expressed concern that the sheer abundance of Presidential initiatives had clogged the policy pipeline, and reflected on its earlier apprehensions about domination of the decisionmaking processes by a Congress and President of the same party.

In the absence of significant actions on proposals to make major changes in the status quo, uncertainties developed. Citizens wondered if the Social Security System would survive; whether income taxes would be raised or lowered; and if they would have to wait in lines at the gas pump, or would have adequate supplies of energy for home heating. Local government officials wondered what would happen if "temporary," federally funded employment, training, and public works programs were not extended; and if grants for other purposes would decline as federal deficits mount and the Administration seeks to achieve its balanced budget goal during the next two years. State government officials also wondered about the future of federal aid, and especially whether the recent growth in direct federal-local grants would continue to undermine their position as the overseers of local government. The Congress wondered why the President was not more willing to communicate, cooperate and compromise. The President wondered why the Congress was unable to move on his domestic legislative proposals in a timely manner. And, public employees wondered about the effects of proposed changes on the organizational, budgeting and personnel fronts on their tenure and turf.

These uncertainties are not inconsequential. Taken together, they indicate doubts in many quarters as to where the federal system is heading. Four basic questions which were raised in 1977, but not resolved, highlight these concerns.

Is Authority Being Decentralized or Recentralized?

Unlike the previous three national administrations, the first year of the Carter Administration did not reveal a clear preference or shift toward decentralization or centralization of decisionmaking authority. Instead, mixed signals were given. The President's memorandum urging departments and agencies to consult regularly with state and local governments in their policy, management and financial decisionmaking suggested that the decentralization thrust of the Nixon and Ford Administrations, would continue. Statements by Jack Watson, the head of the White House Intergovernmental Affairs Office, underscored this apparent commitment on the part of the Administration to genuine communication, consultation and coordination with state and local representatives. The fact that the President was a former Governor lent additional credence to this position.

On the other hand, actions taken by the Administration during the year raised some basic doubts about these developments. Soon after President Carter took office, an assessment of the Federal Regional Councils (FRCs) was launched; while the results indicated the need for some form of regional "presence" and FRCs were given an additional "probationary" year, neither state or local officials nor federal administrators were clear as to whether FRCs ultimately would be continued and, if so, what role they would play in federal aid administration. Of even greater concern to some observers was the action by the Secretaries of HEW, HUD and Labor to strip their regional offices of any real authority over grant decisions, and the moves by the Attorney General to close the LEAA regional offices and by the Secretary of the Interior to abolish the regional representative offices. These decisions, which for the most part were made without consultation with state or local officials, suggested a recentralization of authority at the national level.

The attachment of various across-the-board requirements to grant programs such as antidiscrimination, citizen participation, environmental quality, prevailing wage rates, uniform relocation, merit principles, A-95 review and comment, historic site preservation, and freedom of information also has complicated intergovernmental relationships. While, taken individually, some of these requirements may be desirable, their cumulative effect often has been to delay the implementation of programs, raise administrative costs, or force jurisdictions out of the federal aid business. These procedural strings represent further centralization of decisionmaking at the national level and, to some observers, reveal a basic distrust on the part of the federal government regarding the motivations and capabilities of state and local officials.

Are Local Governments Becoming Too Dependent on Federal Aid?

One of the major ironies of the 1970s is that despite avowed efforts to curb governmental growth at the national level, the number of federal programs and the dollar amounts of grants-in-aid have burgeoned. Although the grant system has been growing rapidly since the mid-1960s, it has taken a quantum leap in the past few years, largely in response to economic crises triggered by the recession and rising energy costs. As a result of this development, federal aid now accounts for a substantial portion of

the revenues of many governmental units. The intergovernmental "partnership" has been expanded greatly by the newer forms of assistance, especially general revenue sharing and countercyclical aid, so that virtually all states and localities now receive some federal financial assistance. And, the gap between the pleasure of spending and the pain of taxing has been widened considerably.

Particularly due to the Carter Administration's "stimulus package" programs, federal aid now accounts for about half of the own-source revenue of the large central cities of the country. To some, these jurisdictions increasingly are becoming the "creatures of the state and the fiscal wards of the federal government." In view of the political clout of these units in the Congress, there is ample reason to question whether the "temporary" stimulus programs can be phased out. If indeed this is the case, further doubts may be cast on the President's desire to achieve a balanced budget. Moreover, the direct dealings between Washington and city hall have placed the states in an awkward "odd man out" position. To some students of federalism, this phenomenon has stood traditional federal theory on its head.

Has the Recent Increase in Federal Aid Eroded The States' Power Position in the Federal System?

The states traditionally have occupied a pivotal position in the grant system; approximately 70% of all federal aid currently flows through the states, and state agencies have significant planning, fund disbursement, and administrative responsibilities in many federally assisted programs. While bypassing can be traced back to the 1930s, the "direct federalism" of 1977 has a number of distinctive features. First, substantial amounts of funds go directly to local governments—almost 30% of the FY 1976 aid total. Secondly, most of these monies are discretionary and highly fungible in nature, in the sense that recipients enjoy wide latitude in determining how they are to be used, both on paper and in practice. These two factors create management, as well as policy, headaches for the states, as coordination of plans and projects, monitoring of expenditures, development of statewide strategies, and accountability for the use of funds are greatly impeded.

Perhaps most troublesome—and ironic—is the fact that bypassing has accelerated at precisely the time that most states have modernized their executive and legislative branches along the lines advocated by reformers over the years. Even more frustrating is the fact that many of the innovative federal management approaches which command national headlines—reorganization, zero-based budgeting, and sunset legislation—were pioneered by the states.

One major outcome of this reform movement is a state government that is presumably more able to assist local governments—particularly in urban areas—in solving their problems. The record shows that a number of states have made significant strides to unshackle local governments, increase financial aid, establish departments of community affairs, and formulate urban development and conservation programs. Yet, these state actions seemingly have gone unnoticed by many in the Congress, the Carter Administration, and local government. Once again, the states appear to be on the defensive when it is time to justify their role as recipients and administrators of federal aid, and as the middlemen of the federal system.

Will the Courts Step In and Maintain "Balance" In the Federal System?

Over the years, the courts increasingly have become involved in the intergovernmental "political thicket." Re-apportionment, school finance, service equity, land use, employment conditions, and other cases have underscored the growing role of an "activist" judiciary in policymaking and administration. This particularly has been true with respect to trial, district and appellate courts. At the same time, the U.S. Supreme Court under Chief Justice Warren Burger, has moved to reassert the judiciary's more traditional roles of arbiter and controller of conflict within, as well as between, the federal, state and local governments. In this capacity, some of the Court's recent decisions have taken on a landmark significance for the federal system. The 1976 *National League of Cities vs. Usery* case is the foremost recent example. Here, the U.S. Supreme Court prohibited the extension of the *Fair Labor Standards Act* to cover state and local employees on the grounds that such action would impose extraordinary costs on these jurisdictions and would be a form of federal mandating that was incompatible with the Tenth Amendment of the U.S. Constitution. On the other hand, in December, a federal judge refused to block implementation of the *Unemployment Insurance Amendments of 1976*, which extended federal unemployment compensation to state and local employees, even though it was contended that this law was an unwarranted and costly intrusion on state sovereignty and would likely lead to curtailments in services and dismissals of employees.

Whether subsequent decisions will strengthen the states' position or undercut it remains to be seen. Although there has been a marked trend toward judicial activism, partly in response to the tendency of policymakers to rely on the courts to resolve tough policy and political issues, the courts still remain the arbiters of the system. Recent developments regarding federal aid conditions, preemptive legislation and regulations, and mandating actions indicate that the dockets will be filled with cases of significance to the future of federalism.

A Tilt Toward Washington

Our federal system never has been completely decentralized or completely centralized. Federalism, after all, involves a dynamic and delicate balance between these forces. This balance shifts in response to changing social, economic and political conditions and the philosophies of the Nation's political leaders.

Many observers of federalism believe that during the first half of the 1970s, power in the intergovernmental system seemed to shift more in the direction of decentralization than centralization. To be sure, there were major examples of action of the latter nature—such as the 55-mile-per-hour speed limit, air and water pollution standards, occupational safety and health regulations, and various energy conservation programs. But during these years, policymakers at all levels were concerned about how the system could be wound down—how power, funds and responsibility could be returned to states and localities. General revenue sharing, block grants, and the Federal Regional Councils illustrate this desire to decentralize.

Today, there is evidence that a different intergovernmental balance is being sought. The increasing tendency to define "national interest" to include virtually any activity

that was at one time the exclusive domain of state or local governments, the explosion of federal aid and attendant conditions, the leapfrogging of state governments, the recalling of authority from federal agency field offices, the involvement of a variety of new local participants in the grant system, and the tightening of strings associated with general revenue sharing, all have raised concerns about this development. While most of these trends began to emerge years ago, 1977 was the year in which their broader implications began to be recognized and understood.

Unquestionably, the role of the federal government in the day-to-day lives of most citizens and most state and local governments has grown. Fiscally and functionally, the federal government is becoming more and more the senior partner in intergovernmental relations, and grants-in-aid have become the cornerstone of the system. There is still a tremendous amount of interaction within and between the levels, and states and localities still play major roles in public service delivery. But there are clear signs of recentralization. While it is too early to determine how far it will go, the flow of intergovernmental power, funds and responsibility has begun to move in a different direction.

Federal Initiatives and Impacts

Despite a decline in the public sector growth rate in 1977, the trend during the past quarter century has been toward an unparalleled expansion of government. State and local governments in particular have grown rapidly, as demonstrated by the nearly threefold increase in their work forces from about 4.1 million to 12.2 million between 1953 and 1976, and the nearly tenfold increase in their own revenues during the same period, from about \$27 billion to approximately \$200 billion. The roles of these governments also have expanded and diversified greatly, supported in part by federal aid.

But while the size and scope of state and local responsibilities have grown, policy initiatives, allocational decisions, and administrative authority increasingly have been centralized at the national level. Paradoxically, this shift began to accelerate at a time when two national administrations were proposing policies designed to facilitate decentralization.

The Dollars and the Sense

The expansion of the federal government's role has taken a variety of forms. Recent trends in aid programs, regulations and supersessive laws illustrate the dimensions of this phenomenon:

- In 1950, federal grants-in-aid to state and local governments amounted to about \$2.3 billion; but by 1977, the total has risen to over \$70 billion. The forms of federal assistance also have changed, with general revenue sharing and block grants now comprising almost one-fourth of what was once an entirely categorical system. These newer grant forms also have expanded greatly the contemporary intergovernmental partnership, as virtually all state and local units are recipients of federal aid and are, therefore, bound by the accompanying conditions and controls.
- As the modified version of the golden rule goes, "he who supplies the gold makes the rule," and federal aid is no exception. At least 33 crosscutting regulations routinely are attached to most aid programs. These deal with such subjects as environmental protection, relocation, citizen participation, prevailing wages, and affirmative action, and they are in addition to specific programmatic requirements.
- And, federal supersessive laws—which in various ways remove jurisdiction from the states—have enlarged the sphere of federal influence and decisionmaking. Over 40 such laws have been enacted by the Congress in such diverse areas as the environment, occupational health and safety, consumer protection, civil rights, and horse protection.

These developments in federal assistance, regulations and law have increased the interdependence of federal, state and local governments. They also have raised concerns about the degree of dependence of states and localities on the federal partner. Federal aid as a percent of state and local own-source general revenue rose from 11% in 1957, to 28% in 1976. Large cities have registered the most dramatic increases. Direct federal aid as a percent of municipal own-source revenue has virtually doubled every five years over the last two decades—rising from about 1% in 1957 to over 23% by 1976. It is estimated that federal aid to cities over 500,000 population will zoom from 28% of their own-source revenues in 1976, to about 50% in fiscal 1978 (see *Table 1*).

Several major factors have contributed to this dramatic growth in direct federal assistance: general revenue sharing, the manpower and community development programs, and the Carter Administration's economic stimulus package. Others include:

- the economic and fiscal plight of the older central cities, and the basic political fact of life that in order to win sufficient Congressional support for aid to these jurisdictions, it is usually necessary to extend federal assistance to a wide range of local governments;
- the development of strong "urban" lobbies in Washington;
- the relatively poor performance of the states in facilitating and assisting urban problem-solving; and
- the growing hope that direct federal aid to poor cities also will help poor people.

In 1977, with a new President in the White House (whose public career has included service at both the state and local levels) and the 95th Congress convening on Capitol Hill (with new leadership and members in both chambers),

Table 1
**Direct Federal Aid as a Percent of Own-Source
 General Revenue, Selected Cities and Fiscal Years
 1957-78**

City	Fiscal Years				Exhibit: Per Capita Federal Aid ²	
	1957	1967	1976	1978 Est.	1976	1978 Est.
St. Louis	0.6%	1.0%	23.6%	56.1%	\$86	\$228
Newark	0.2	1.7	11.4	64.2	47	291
Buffalo	1.3	2.1	55.6	75.9	163	239
Cleveland	2.0	8.3	22.8	60.3	65	190
Boston	*	10.0	31.5	30.2	204	219
Unweighted Averages	0.8	4.6	29.0	57.3	113	233
Baltimore	1.7	3.8	38.9	46.4	167	225
Philadelphia	0.4	8.8	37.7	53.8	129	204
Detroit	1.3	13.1	50.2	76.8	161	274
Chicago	1.4	10.9	19.2 ¹	42.1	47	117
Atlanta	4.3	2.0	15.1	40.0	52	167
Unweighted Averages	1.8	7.7	32.2	51.8	111	197
Denver	0.6	1.2	21.2	25.9	90	150
Los Angeles	0.7	0.7	19.3	39.8	54	134
Dallas	0	*	20.0	17.8	51	54
Houston	0.2	3.1	19.4	23.8	44	71
Phoenix	1.1	10.6	35.0	58.7	57	117
Unweighted Averages	0.5	3.1	23.0	33.2	61	105
Unweighted Average of 15 Cities	1.1	5.2	28.1	47.5	95	179

* Less than .05%.

¹Percentage based on federal aid excluding general revenue sharing. Funds withheld pending judicial determination.

²Based on 1975 population.

Source: ACIR staff computations based on U.S. Bureau of the Census, *City Government Finances in 1957, 1967, and 1976*. Estimated city own-source general revenue for 1978 based on annual average increase between 1971 and 1976. Direct federal grants to each city for fiscal 1978 based on (a) ACIR staff estimates of the federal stimulus programs for 1978 and (b) Richard Nathan's estimates for all other federal aid in fiscal 1978 as set forth in his testimony before the Joint Economic Committee on July 28, 1977.

these and other dynamics of the federal system were the focal point of attention by citizens and public officials alike.

A NEW ADMINISTRATION

A top priority of this first Carter year has been the reorganization of the federal bureaucracy, its budgeting system, and the procedures for evaluating the government's programs and operations. Three themes appeared to emerge: recentralization, consultation and effectiveness.

Reorganization or Recentralization?

One of the first Presidential acts of the year was to request the Congress to re-establish the Chief Executive's authority to reorganize the Executive Branch. After considerable debate, a procedure was approved in April, enabling the President to submit plans to create, abolish, consolidate and shift agencies in various departments (within certain limitations) unless either the Senate or the House rejects the plan within 60 days after submission.

In July, the President transmitted his first reorganization plan to Congress—dealing with the Executive Office of the President. Among its features were a reduction in staff levels, consolidation of administrative service functions, elimination of some units, and the creation of a new policy management system.

The plan discontinued the Domestic Council because, in the President's judgment, it "has rarely functioned as a Council, because it is too large, and its membership is too diverse to make decisions efficiently." A domestic policy staff, under the direction of an Assistant to the President for Domestic Affairs and Policy, was proposed as a replacement. This staff now coordinates a system which is designed to improve decisionmaking in the formation of domestic and economic policy. Policy agendas are recommended by a committee of Presidential advisers under the chairmanship of the Vice President, and the role of Cabinet departments in policy development has been strengthened. The President earlier had appointed a senior aide to serve a dual function as secretary to the Cabinet and as Assistant to the President for Intergovernmental Affairs.

The first reorganization plan took effect in September. A second plan, focusing on international cultural, information and education activities, went into effect in mid-December.

Reorganization Plans Underway

These two plans, as well as future ones, are products of the President's Reorganization Project, located in the Office of Management and Budget (OMB). This staff is organized into special study teams for developing reorganization recommendations over a four-year period. There are 31

reorganization initiatives underway. The following projects are representative of the work which could have significant impact on state and local government:

- community and local development*—to review the organization and structure of the major federal programs for local and community development;
- civil rights*—to strengthen enforcement of civil rights legislation and reduce the burden of formal compliance activity;
- intergovernmental management circulars*—to improve the procedures covered by OMB Circulars A-85 (regulation review), A-95 (clearinghouses), and A-111 (joint funding);
- federal planning requirements*—to review federal requirements for state and local planning, to promote coordination, and to minimize the burden on state and local governments;
- human services*—to improve the federal organization and delivery of human services to needy families and individuals;
- paperwork reduction*—to reduce federal government reporting burdens and implement the Federal Paperwork Commission's policy recommendations; and
- federal field structure*—to review field coordination of interagency and intergovernmental operations.

Much of the preliminary work of the reorganization study teams is to be completed in 1978. These groups also are working in conjunction with ongoing internal department reorganizations. The degree to which some of these efforts are being coordinated, however, is not completely clear. An example here is the apparent confusion over a plan to reorganize the Law Enforcement Assistance Administration (LEAA). In early December, it was reported that the Department of Justice had urged the President to scrap the LEAA program, and replace it with a "National Institute of Justice" to conduct research and to target federal funds to high crime areas. A White House spokesman described the recommendation as "very useful," but added that the reorganization project also was preparing a report for the President. According to the spokesman, the reorganization project staff recommended that a decision on LEAA reorganization be deferred until its recommendations are submitted and reviewed.

The Civil Service Component

Federal personnel management practices are being reviewed as well. While the vast majority of work pertains strictly to federal personnel, the Task Force on Federal, State and Local Interaction in Personnel Management also was established and substantially has completed its work. This task force has been addressing questions concerning the appropriate and inappropriate roles of the federal government in improving state and local personnel management; in mandating state and local personnel practices in such areas as collective bargaining, pensions, and unemployment insurance; and in prescribing personnel requirements as conditions to grant programs. It also is considering whether the *Intergovernmental Personnel Act* programs should be revised and the capacity building component expanded to encompass more of state-local general management.

Field Office Recentralizations

Of particular interest to state and local governments were the field office reorganizations in several federal de-

partments in 1977. The LEAA regional offices were closed in September, with personnel reassigned to the central office in Washington or to one of five regional audit offices. The Secretary of the Interior's regional representative offices were abolished, and the Labor Department's regional director positions were eliminated. The number of Housing and Urban Development field offices was reduced, and the Secretary's representatives in HEW regional offices lost their program responsibilities.

These centralizing organizational realignments not only affect individual agency relations with state and local governments, they also have given rise to concerns about the White House position that the Administration is "committed to a Federal regional presence." As noted by Washington columnists Rowland Evans and Robert Novak: "Judging from his campaign emphasizing his non-Washington base and extolling government closer to the people, voters expected that one distinctive Carter label on the federal leviathan would be less, not more centralization."

Related questions have been raised regarding the continuation of the ten Federal Regional Councils (FRCs). The FRCs, which are intended to coordinate federal programs in their regions, have had a mixed record at best, and currently are on "one-year's probation" to improve their performance. The President has designated a chairman for each FRC, and the Under Secretaries Group has been reactivated to oversee their work. A decision on continuing FRCs probably will be made in late 1978. As a White House aide put it, the President "doesn't want to change the coordinating mechanism until we know what is to be coordinated."

“There are 31 reorganization initiatives underway.”

Intergovernmental Consultation Initiatives

According to Jack H. Watson, Jr., Assistant to the President for Intergovernmental Affairs, "there is virtually nothing that the Federal Government does, domestically certainly, that does not involve the immediate participation and partnership of state and local governments." Within five weeks of assuming office, the President directed the heads of all executive agencies and departments to make provisions for a "genuine and timely" consultative process with state and local officials, noting that:

- "State and local sectors constitute the delivery mechanisms for *most* of the actual services the federal government provides;
- State and local concerns, as well as their expertise, should be considered as programs are being developed in order to ensure the practicality and effectiveness of the programs;
- Such early participation by state and local officials in our planning process will help ensure broad-based support for the proposals that are eventually developed; and
- It will ensure that priorities developed at the federal level will work in conjunction with, and not at cross purposes to, priorities at the state and local level."

By mid-September, the President also had directed the heads of all agencies having extensive contact with state

and local officials to designate a senior staff person for liaison with those officials in the development of policy. These officials have been named, and their names published in the *Federal Register* and disseminated to state and local officials. As a further extension of the President's directive, Commerce Secretary Juanita Kreps not only designated a key aide to act in the "liaison" capacity, but also established the Office of State and Local Government Assistance to help facilitate state and local contact with the various activities and programs of her department.

In November, a draft Executive Order was published in the *Federal Register* focusing on state and local participation in the development and promulgation of federal regulations with significant intergovernmental impact. The draft order stated that "regulations should be as simple and clear as possible," should "achieve legislative goals effectively and efficiently," and "should not impose unnecessary burdens for the economy, on individuals, on public or private organizations, or on state and local governments."

The Effectiveness Quest

Closely associated with reorganization efforts are various Administration initiatives to increase the effectiveness of the federal government's programs and operations.

Budgeting. "Zero-based" budgeting (ZBB) is one of the most heralded of these initiatives, and is being utilized during the preparation of the first "Carter budget" for FY 1979. ZBB techniques have been used by businesses for several years, and first were applied to government in Georgia during the first term of then Governor Jimmy Carter. While it is too early to rate the success of ZBB, Administration spokesmen do say that "an honest try" was made during this first year and that the process fulfilled its promise in some agencies.

Critics of ZBB, however, argue that this approach may be inappropriate. Robert W. Hartman of the Brookings Institution, for example, has contended that it "makes no sense" to rank the food stamp program against research within the Department of Agriculture, when it is not ranked against HEW's welfare programs. Hartman maintains that ZBB concentrates attention on the budget for the coming year, which largely is "locked in place," at the expense of a focus on multiyear budgeting—another Carter goal. He suggests that the best method for identifying budget reductions "should be specially designed approaches in different areas."

The first year's experience of ZBB will be evaluated during the months ahead. One concern is state and local involvement in the ZBB process for future fiscal years, since some believe that in view of the substantial amount of the budget that is considered "uncontrollable," grant programs to states and localities may be the most susceptible to change.

In addition to ZBB, three other features characterize the Carter Administration approach to the federal budget:

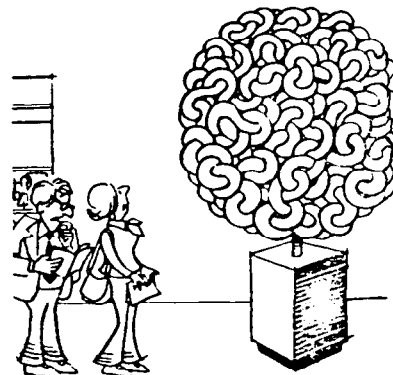
- multiyear budgeting*—the goal is to move to a two to three-year budget focus in an attempt to evaluate the "out-year" implications of "close-year" decisions;
- better use of existing programs*—the view is that unless the existing program base is sound, additions to that base will be ineffective and a waste of resources; and a
- balanced budget by 1981*—according to Administration spokesmen, the President "understands the implications—both economic and political" of working toward a balanced budget by 1981; however, he is still com-

mitted to it, "and will do nothing now to jeopardize that goal."

Achievement of a balanced budget by the end of the President's term is easily the most controversial of the budget goals. It is of particular concern to local and state officials who are calling for an increase in domestic aid programs. In an appearance before the Joint Economic Committee in early December, Congressional Budget Office (CBO) Director Alice Rivlin cautioned that continuing attempts to reduce unemployment through economic growth would preclude balancing the budget by 1981.

The Grant System. The grant system is the second area in which greater effectiveness is being sought. In early September, the President announced plans for what he termed "a concentrated attack on red tape and confusion in the Federal grant-in-aid system."

Several actions were initiated to simplify planning, application and reporting requirements. Agencies were directed to ensure that standard application forms are used and are widely available, that grantees be required to submit only an original and two copies of applications or reporting forms, that reports be combined or eliminated where possible, and that federal agencies share information among themselves rather than requiring grantees to provide the same data more than once. Earlier, a July directive had focused on a "zero-based review" of all federally imposed planning requirements, with the intent of substantially reducing them by the end of the year.



It's either "Gordian Knot" or "Government Regulations."

The cartoon is reprinted with the permission of *Update*, the Westchester County government employee newsletter.

In the area of financial management, the President directed OMB to review "advance funding" for five programs. In December, OMB announced that it would recommend advance funding for three of the programs—maternal and child health care, aging, and vocational rehabilitation—in the FY 1979 budget. The Treasury Department also expanded its use of letters-of-credit, and is identifying additional programs which could benefit from electronic fund transfers.

Growing financial interdependence has led to stepped-up audit activity at all government levels. Federal agencies have been directed by the President to make their audit schedules systematically available to grantees and to public and private auditors; to conduct single audits wherever possible; and to increase their reliance on state and local audits.

Improvement of federal administrative regulations—long the bane of state and local officials—is another component of the grant system reform package. In addition to being written in clearer and simpler language, state and

local officials are to be consulted during the drafting process. Regulations are to be changed less frequently and made less complex. Uniformity of administrative requirements for all grant programs administered by a single department remains an objective.

The final area of administrative reform of the grant system concerns those crosscutting requirements designed to achieve specific national goals. At the President's request, an effort has been launched by the Community Services Administration, the Equal Employment Opportunity Commission, and the Council on Environmental Quality to bring order out of the chaos of regulations dealing with citizen participation, civil rights, and environmental protection. These agencies are charged with identifying redundancies and gaps so that more uniform and simpler requirements may be developed.

The President also has asked ACIR to "suggest appropriate ways to further streamline federal aid administrative practices." In one area, ACIR has recommended the consolidation of categorical grant programs, and preliminarily has identified 172 programs which could be merged into 24 functional areas. ACIR also has urged that the President be authorized to submit consolidation plans to Congress in a manner similar to that now used for Executive Branch reorganization plans. In addition, ACIR will undertake a federal aid monitoring project, an idea that was conceived by the White House Intergovernmental Affairs Office during its survey of federal aid administration earlier in the year. The one-year experiment will provide a mechanism to obtain information from state and local officials about federal aid administration problems, and will serve as an "early warning system" for identifying friction points and as a feedback mechanism to federal agencies.

THE "URBAN CONNECTION"

One of the most publicized—and at times criticized—initiatives during the first Carter year was the development of an urban policy. To be sure, there is an abundance of urban policies being carried out by federal departments and agencies. These policies, however, often are disjointed and inconsistent with one another. The tension between programs aimed at rebuilding central cities and those stimulating suburban growth is the classic example.

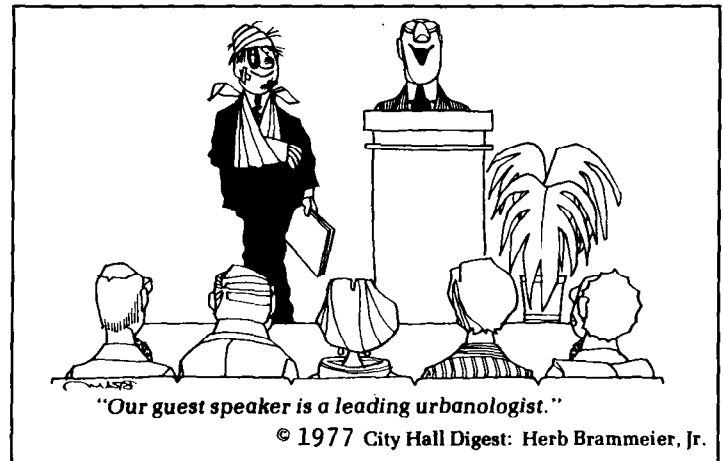
In March, the President formed a Cabinet-level Urban and Regional Policy Group (URPG), chaired by HUD Secretary Patricia Harris. The charge to the group was to prepare an "urban strategy," with its first task being the formulation of an urban program that would be incorporated into the President's State of the Union Message in January 1978. However, the pace and character of the group's work have come under attack from such groups as the National Urban League, the AFL-CIO, the Congressional Black Caucus, and the National League of Cities.

On the one hand, black leadership and labor groups contended that too much time was being devoted to research and not enough emphasis was being given to "action-oriented results." It has been speculated that pressure from these groups—particularly from the National Urban League—contributed to a reorientation of the URPG's work, and to White House encouragement for a speedier process and greater involvement in the project. On the other hand, the National League of Cities (NLC) cautioned that more time would be necessary to do a credible job. The NLC also criticized the "narrow scope" of the group's focus, noting that such issues as crime, education and energy which will not be addressed by the URPG are inte-

gral parts of the urban scene and must be considered as part of an overall policy or strategy.

Questions also have been raised about some of the group's specific proposals, such as the use of tax incentives and the establishment of an urban development bank ("urbank") to promote development in distressed cities. Proponents contend that tax incentives would be the most effective tool in aiding urban development. However, critics maintain that new tax incentives would add loopholes to the tax code at the very time the President wants to reduce them. Concomitantly, the urbank proposal, a decades-old concept, has been termed a "slogan in search of a program." George Sternlieb, a noted urban analyst, recently observed: "If we are truly serious about revitalizing the central city in a market context, the limited range of functions of financing mechanisms that I have heard addressed under the title 'urbank' are nonsense. And they will be very costly nonsense."

These developments are indicative of the frustrations surrounding the formulation of an urban policy which must not only address the fiscal and physical deterioration of cities, but the security and well-being of their citizens as well.



The first draft of the URPG's report was released in November and described urban problems and possible solutions only in general terms. A second draft was submitted to the White House in early December. However, it was rejected by the President on the basis that it was only a "laundry list" of policy proposals and programs and that it failed to establish priorities or set forth bold ideas. He requested that consideration be given to redesigning existing programs rather than simply expanding them or creating new ones; and that provisions be made for a stronger state role, including federal funding to implement comprehensive state growth strategies, the earmarking of general revenue sharing funds, and incentives to coordinate federal and state aid now directed to major urban areas. A third draft is to be prepared by the URPG and White House staff. It now is anticipated that the President's National Urban Policy Report, scheduled for March, will contain broad statements of principle, with a more detailed program to follow later in the year.

Urban policy issues also have been basic to the planning for the 1978 White House Conference on Balanced National Growth and Economic Development. The conference has been organized around six broad themes focusing on economic development, government structure, and fiscal capacity and service delivery problems. ACIR participated in the development of the "streamlining government"

theme by preparing background papers, a discussion guide, and reports on the workshops.

Without waiting for these longer range policy efforts, however, the Federal Home Loan Bank Board, working with the White House, proposed new regulations to prohibit mortgage credit practices which discriminate against older neighborhoods, commonly referred to as "redlining." Specifically, the proposed regulations—applicable to savings and loan institutions, which make more than half of all mortgage loans—prohibit unjustified discrimination in mortgage lending based upon the age of the dwelling or neighborhood in which it is located; require written non-discriminatory underwriting standards and periodic review of advertising and marketing practices; and prohibit discrimination based on the marital status or age of a loan applicant, or the fact that an applicant receives public assistance. It is anticipated that the proposed regulations will meet with serious opposition from the savings and loan community.

Several committees of Congress also have brought attention to the urban dilemma. A report issued by the House Subcommittee on the City, chaired by Rep. Henry Reuss (WI), termed the federal budget as probably being "the single most important document affecting the well-being of American cities." The report urged the House Budget Committee's Task Force on State and Local Government to "press for active OMB participation in a cooperative effort to improve analysis of budget decisions affecting cities."

The report also noted that neither the Executive Branch nor the Congress systematically considers the impact of the budget on cities, especially central cities, as part of the budgetmaking process. The study continued that OMB appears "reluctant" to expand the special analysis of how much money goes to state and local units, and called for a breakdown of federal dollars flowing into cities of different sizes, suburban communities, and nonmetropolitan areas. The report also urged that the Urban and Regional Policy Group give high priority to the development of a budget impact statement for cities. The Administration now does intend to prepare an "urban budget" for FY 1979. This budget analysis is to include the programs and activities of those agencies with an urban orientation—HUD, DOT, DOL, HEW and Commerce—in an attempt to "more readily identify the substance, quality and quantity of federal aid allocated to major urban areas."

The House Subcommittee on Housing and Community Development (also of the Committee on Banking, Currency and Housing) has shown similar interest. In February, its Chairman, Rep. Thomas Ashley (OH), established five urban affairs task forces to develop policy and legislation. These groups are addressing home ownership and the role of the federal government, neighborhood preservation and rehabilitation, community development, fiscal problems and disparities, and housing subsidies and income maintenance programs.

In August, the CBO released a report entitled *Troubled Local Economies and the Distribution of Federal Dollars*. The report responded to a request from Representatives Elizabeth Holtzman (NY) and Louis Stokes (OH) for an analysis of federal spending, with an emphasis on geographic distribution and the relative well-being of recipient local economies. The study categorized local economic problems into two general areas: those related to low income and those resulting from low economic growth. While the characteristics of individual localities vary, two paradoxical patterns emerged:

- *low income* appears to be concentrated in the south and southwest regions, despite fairly high growth rates in recent years, and
- *low economic growth* is a condition in the northern regions (New England, Great Lakes, and mid-Atlantic), but personal incomes are relatively high.

These two patterns highlight yet another concern which has expanded—regionalism. The diverse economic trends in various parts of the country have led some pundits to coin phrases such as "the Second War Between the States" and "Sunbelt vs. Frostbelt." The controversy implied by these terms has tended to center on the role that federal aid and direct outlays, and national policy play in regional economic disparities.

Regionalism has spawned at least a dozen regional organizations of state and local public officials in the past few years—including the Coalition of Northeast Governors, the Council for Northeast Economic Action, and the Southern Growth Policies Board. ACIR also is researching the influence of federal policy on regional economic trends, and the potential role of federal policy in ameliorating or reversing undesirable implications of regional economic trends.

“The federal budget is probably the single most important document affecting the well-being of American cities.”

THE VIEW FROM THE HILL

The 1977 Congressional year was dominated by the increasing concern over an uncertain economy, and by long-standing environmental and energy issues. While Congress did approve the President's proposal for the Department of Energy—the first new Cabinet department in over ten years—much of the Congressional agenda was, in the end, side-tracked by the preoccupation with the President's proposed energy policy.

Enactments, Deferrals and Disagreements

Several program initiatives of particular significance to state and local governments were approved by Congress during 1977:

- The "Economic Stimulus Package" was approved and funded at a \$20 billion level. It consisted of a three-pronged attack on the recession involving local public works, public service jobs, and countercyclical general revenue sharing. A one-year extension of the *Comprehensive Employment and Training Act of 1977* (CETA) was approved, and funded at a level of \$7.98 billion as part of the economic stimulus package. The appropriation more than doubled the number of job slots previously funded.

The Youth Employment and Demonstration Projects Act of 1977 authorized four new programs under CETA: youth incentive entitlement pilot projects, youth community conservation and improvement projects, youth employment and training programs, and the young adult conservation corps. The legislation initially will provide for about 200,000 jobs and train-

ing slots, and will be funded at a level of \$1 billion, earmarked from the economic stimulus package.

- The new *Housing and Community Development Act of 1977* increased funding for the existing community development block grant program, and for rental assistance and public housing. The act also created a new initiative to aid the most hard-pressed urban areas—the Urban Development Action Grant Program, authorized at \$400 million for each of three years.
- The fiscal year 1978 appropriation for the *Intergovernmental Personnel Act (IPA)* was approved at a \$20 million level, an increase of \$5 million.
- A *National Commission on Neighborhoods* was established to study the factors contributing to the decline of neighborhoods. The 20-member commission will work over the next two years to analyze the effect of government policies on neighborhoods; identify the administrative, legal and fiscal obstacles to neighborhood growth; and analyze the impacts of private and public investment.
- The *Federal Program Information Act* will set up a computerized information system within OMB to disseminate more reliable data on domestic assistance programs to state and local officials in a more timely manner.

Congress did not complete its deliberations on a number of other proposals which would alter the fiscal and functional roles of all three governmental levels. These include:

- A key part of the Carter Administration's proposed *welfare reform* is the creation of up to 1.4 million public service jobs. Of major interest to states and localities is a provision for \$2.1 billion in fiscal relief grants during the first year. Half of the relief would go to New York and California; eight states would get \$1 million or less. States would be required to pass through this fiscal relief to local governments in proportion to the localities' contributions.
- The *Program Evaluation Act*, commonly known as the "sunset" bill, has been the source of continuing controversy, and has been stalled in the Senate Rules and Administration Committee since last summer. Under the proposal, nearly all federal departments, agencies and programs would be re-examined every six years by Congress. Any agency or program which did not receive affirmative legislative reauthorization action would be terminated automatically. Exempted from the measure are social welfare programs such as Social Security and Medicare. Over 50 sunset bills are before various House committees, and no action is expected until the Senate passes a bill.
- The *Federal Grant and Cooperative Agreement Act* is designed to reduce the confusion between the usage of grants, contracts and cooperative agreements by federal agencies.
- The *Municipal Bond Disclosure Bill* was introduced in late 1977, and would require state and local governments to disclose key information when they issue new securities. In addition, units with debts in excess of \$50 million would be required to prepare annual reports on their operations, finances and budget procedures.
- The *Intergovernmental Coordination Act* would establish a national policy on areawide planning and coordination, and strengthen the state and local role

of federal planning programs. The measure also would beef up the A-95 review process.

- Conferees already have approved a number of energy-related proposals, such as an extension of the state energy conservation program, technical assistance grants to states and localities for conservation activities, and a matching program for conservation in schools and hospitals. Intergovernmental issues include utility rate reform, coal conversion provisions, regulation of inter- and intrastate natural gas prices, and various energy taxes.

The List of Caucuses Lengthens

One of the more interesting intergovernmental developments in Congress during 1977 has been the emergence and activities of even more special interest caucuses. For example:

- *The Rural Caucus*, composed of 101 Congressmen, was founded in 1973 to "insure orderly growth and development of rural communities." The caucus held its first conference in 1977 to help dramatize the needs of rural areas and to urge full funding for *Rural Development Act* programs. Approximately two-thirds of the Nation's substandard housing is located in rural areas, and it is expected that the caucus actively will support the reintroduction of the proposed "Rural Housing Act of 1977" early in the 1978 session.
- *The Steel Caucus* was formed in late 1977 to provide "a strong watchdog to protect this endangered basic American industry." The caucus became quite active when steel plants closed in several cities, allegedly because of unfair foreign competition.
- *The Suburban Caucus* was formed in October to support tax relief for suburbanites and more federal projects for middle income families who live outside cities. The primary impetus for the group came from Rep. Ronald Mottl of Ohio when 22 suburban communities in his district failed to receive money during the second funding round of the *Public Works Act*. The caucus has a potential membership of 150 Congressmen whose districts have 60% or more suburban population.

These caucuses, some of which have overlapping membership and at times competing interests, join such other groups as the Irish, Black, Blue Collar, Port, Hispanic and New Members Caucuses; and the Northeast-Midwest Economic Advancement Coalition. The emergence of these special interest groups adds a new dimension to the competition for favorable Congressional action—including the sweepstakes for federal aid and the articulation of an urban policy.

Thus, there already is important grist for the 1978 federal legislative mill, as the Congress and the President consider economic recovery, tax reform, urban policy, and other major issues. If the past is prologue, the outcome of these deliberations will have significant implications for the condition of American federalism. In particular, the actions in 1978 should provide a clearer indication of whether the tilt toward Washington will continue, and how far it is likely to go.

The States in 1977

During 1977, public attention focused on the new Presidential administration and the launching of major national domestic policy initiatives. While these developments commanded the headlines, they should not obscure the fact that state and local governments also were active in similar areas of importance to their citizens. The states' policy agendas were dominated by many of the same issues which received national attention, including welfare reform, health care costs, energy, urban development, and regional competition. Governors and legislators also sought to make many of the same administrative improvements—in executive branch organization, budgeting and legislative oversight—as their counterparts at the national level.

The last few years have witnessed aggressive and innovative actions by the states in areas which are also of national interest. Zero-based budgeting, sunset laws, and procedures for legislative review of administrative rules and regulations had their origin at the state level. The states achieved remarkable progress in ethics reform, while the federal government was in the midst of a national scandal. Most of the states adopted open meetings statutes prior to the enactment of the federal government's "sunshine" law. And, while Congress debated the issues, many states moved to establish and implement energy conservation and development policies.

The importance of these state actions cannot be underestimated, for the states play a pivotal role in the federal system. As recipients and administrators of federal aid, they are a major decentralizing force in the federal system. The states are responsible for providing major public services like higher education, highways, welfare, and health care, and for regulating business. They have the legal power to create and reorganize local governments and to influence the course of urban growth.

Much progress has been made in modernizing state government during the past two decades. Major changes have been made in the organization and operations of the executive, legislative and judicial branches. There have been significant improvements in the relationships between states and their local units. The reform agenda, however, remains unfinished.

The following section examines the actions taken by the states last year on a variety of structural, managerial and fiscal fronts, and attempts to assess their significance as the states once again strive to re-establish their reputations as "laboratories of democracy."

STATE MODERNIZATION

The major developments at the state level in 1977 reaffirmed some of the dominant trends of the last few years. While there were few bold new initiatives, the states continued to revise their constitutions and to reorganize their executive branches, either comprehensively or in a piecemeal fashion. Legislatures strengthened their oversight procedures, and incremental improvements were made in the judicial branch. These actions were part of the continuing efforts by states to put their own houses in order and to enhance their capacity to deliver services, to plan for the future, and to provide open and accessible governments.

Constitutional Revision

Revision of state constitutions has proceeded at a swift but sporadic pace. This activity was intense especially in the 1850s, immediately after the Civil War, and between the 1890s and World War I. Following World War I, re-writing of state constitutions nearly ceased. From 1920 to 1960, only seven constitutions were adopted (excluding Alaska and Hawaii). In the 1960s, the states again entered a period of intense revision activity, partly as a result of the need to reapportion their legislatures following U.S. Supreme Court decisions in *Baker vs. Carr* and *Reynolds vs. Simms*.

From 1965 to 1976, new constitutions became effective in nine states (Connecticut, Florida, Illinois, Montana, North Carolina, Pennsylvania, Virginia, Louisiana and Georgia). Since then, no state has adopted a new constitution, although numerous states have amended their constitutions or plan to hold constitutional conventions.

Arkansas, for example, will convene a constitutional convention in 1979 as a result of Governor Pryor's approval of a law passed during the 1977 special legislative session. Hawaii will hold a constitutional convention beginning in mid-1978, with any proposals for revision or amendments to be submitted at the general election the following November. Tennessee convened a limited constitutional convention in August 1977, which is scheduled to complete its work by July 1978. Only certain sections of the constitution are being considered, including those concerning the Governor's term of office, the judicial article, the legislative session, and the provisions on elections, terms and removal of county officers. The convention already has recom-

“In 1977, revision commissions were operating in six states.”

mended that the Governor be permitted to succeed himself for two four-year terms.

Conventions, however, have not been the most popular way to change constitutions. States are using the constitutional revision commission with increasing frequency to offer expert advice and to propose amendments. Legislatures often prefer this method because they have greater control over the commissions, and readily can accept, reject or modify their proposals. Recent voter rejections of constitutional convention proposals and the failure of individual piecemeal amendments to effectively modernize constitutions provide additional incentives to using this approach.

In 1977, revision commissions were operating in six states (South Carolina, Ohio, Utah, Florida, North Dakota and Georgia), but not all of them completed their work by the end of the year. Although not a revision commission, the Washington Commission for Constitutional Alternatives submitted its report to the Governor in January 1977, recommending changes in four areas—revenue, the executive branch, the legislative branch, and local government.

Not all states were successful in launching constitutional revision efforts. Referenda on a constitutional convention were rejected by Kentucky and New York voters last year. In fact, since 1966, only slightly more than half of the calls for constitutional conventions have been approved by the voters.

Fifteen states, including New York, provide for the automatic submission of the convention question to the voters at intervals ranging from every ten to 20 years. Florida's 1968 constitution requires that a constitutional revision commission automatically be established ten years after the date of adoption, and every 20th year thereafter. This provision is unique because it is the first to authorize submission of amendments by the commission directly to the voters without going through the legislature. Pursuant to this clause, in 1977 the Florida Supreme Court ruled that a 37-member commission be appointed by the end of the legislative session, and the legislature authorized the employment of personnel and appropriated funds. Constitutional revisions are to be proposed for submission to the electorate in 1978.

Executive Reorganization

In 1977, eight states were at some stage of executive branch reorganization and two—Connecticut and Louisiana—completed their work. Since 1965, 20 states have undergone comprehensive reorganization (Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, North Carolina, South Dakota, Virginia and Wisconsin). No other period in history has witnessed such intense activity.

The reorganization activity that began during the 1960s resulted from pressures on the states to establish the policy, organizational and fiscal machinery to enable them to meet the demands made by an increasingly urban population. They also sought to rationalize functional responsibil-

ities, to create clearer lines of authority, and to increase accountability.

Both Louisiana's and Connecticut's recent reorganizations had these objectives. In the case of the former, reorganization was required by the 1974 constitution, which limited to 20 the number of executive departments. Twelve departments were organized in 1976; the remaining eight—all headed by elected officials—were established last year. In addition, the Joint Legislative Committee on Reorganization of the Executive Branch was established to study the reorganization, consolidation and merger of state agencies. In 1977, its authority was continued through the 1978 session.

Connecticut's reorganization will be complete in January 1979. The Office of Policy and Management and the Department of Administrative Services were established in October 1977. The former will be responsible for budget and management functions, as well as for advising the Governor on intergovernmental relations issues and providing technical assistance to local governments. A total of 23 functional departments were created. As in Louisiana, the legislature revealed its continuing interest in executive reorganization by establishing the Joint Committee on Government Administration and Policy, and by adopting a sunset review of regulatory agencies.

During 1977, several other states were involved in reorganization efforts.

- Nevada reviewed its boards and commissions.
- Indiana reduced the number of advisory bodies.
- Hawaii's Government Organization Commission recommended the creation of a department of human resources and a department of economic and community affairs, as well as several management improvements affecting finance, personnel and the decentralization of administrative functions to the departments.
- New Mexico's Governor initiated a reorganization study which recommended the consolidation of 206 agencies, boards and commissions into 12 major departments.
- Kansas' Task Force on Effective Management made 117 recommendations to improve the management of state government, including some executive department reorganization.
- Utah's Governor established by executive order the Committee on Executive Reorganization.

Comprehensive reorganization is not the only way that state agencies are restructured. Many such changes occur in response to the need for closer interfunctional linkages stemming from new problems and altered priorities, or the establishment of federal agencies. At the state level, departments of community affairs, social services, and transportation have resulted from these forces in recent years. In 1977, at least seven states created or restructured individual departments.

“Since 1966, only slightly more than half of the calls for constitutional conventions have been approved by the voters.”

The ability of Governors to ensure that the executive branch responds to changing conditions is enhanced by their having reorganization authority similar to that of the President of the United States. At least 14 Governors now may initiate reorganizations subject to legislative veto (Alaska, California, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, Pennsylvania, South Carolina, Vermont and Virginia). Thus far, this power rarely has been used.

Executive branch reorganization often proved to be a time-consuming task, and the Governor's influence in this process is bolstered by the ability to remain in office for more than two years and to seek re-election. All but four Governors now have four-year terms, compared to 42 Governors in 1960. Currently, only six states prohibit immediate succession. Last year, voters in North Carolina approved a constitutional amendment to allow successive terms. By 1977, 21 states permitted the joint election of the Governor and lieutenant governor.

“One of the most significant actions that state legislatures can take is simply to meet.”

In one area, however, there has been little change in the Governor's ability to manage the bureaucracy—the so-called “long ballot.” In 1965, the average number of elected administrative officials was 4.62. Ten years later, the average was 4.24, only a slight reduction.

The planning and budgeting functions are a major method for Governors to set priorities, develop programs, and control expenditures. State governments have tried various budget procedures—planning, programming, budgeting systems; performance budgeting; and most recently, zero-based budgeting (ZBB). At least 12 states had adopted some type of ZBB system by the end of 1976. In 1977, four more states took similar action: Delaware will convert to a ZBB system by 1979; all state agencies in Oregon will be required to use it by the 1983-85 budgeting process; South Dakota started a pilot program for three agencies; and Idaho's Governor ordered it used for 30 programs.

Legislative Reform

If in the past state governments were thought to be incompetent or corrupt, their legislative bodies bore the brunt of that criticism. Slowly, but steadily, legislatures have begun to restructure themselves and revamp their decision-making processes. They have adopted new ways to assert themselves as an equal branch with the executive and the judiciary, and to exercise their traditional oversight responsibilities.

One of the most significant actions that state legislatures can take is simply to meet. In 1942, only four legislatures met annually (New York, New Jersey, Rhode Island and South Carolina). By 1965, 20 legislatures met each year and by 1977, 43 did so. Some states, such as Washington, actually end up meeting annually without constitutional authority because of special sessions called during the off-year. Recently, New Hampshire and Texas rejected annual sessions, and voters in Montana approved a return to biennial sessions.

Legislatures now meet for more days on the average. But, they still are essentially part-time bodies. In 1965, 17 states had no limit on the length of their sessions; ten years later, there were 18 (some states changed to no limit and others readopted a limit). In fact, 26 states have limited their sessions to half a year or less. One positive sign, however, is that more legislatures are permitted to call themselves into special session—28 in 1976, as opposed to 13 in 1963.

The legislature's ability to make policy has been enhanced by the expansion of its professional staff. Almost all states now have a legislative council or its equivalent to provide research and policy analysis assistance. By the mid-1970s, 35 states furnished professional staff for all committees of both chambers. Eight others made staff available for only some committees. The quality of legislative staff has been improving, too, largely because of better compensation.

Legislators have shown a growing desire to control the state policymaking process. Many have become concerned about the increasing power of the executive branch brought on by larger professional staffs, more sophisticated management and data collection techniques, and independent sources of funds from federal grants.

One way legislatures traditionally have engaged in oversight of the executive is to review the budget and audit agency expenditures. All 50 legislatures now have a staff capability to perform these tasks. On the average, the staff size of legislative fiscal agencies is about ten professionals.

Actions by the legislature to expand its oversight role may be resisted by the executive branch and placed before the courts for resolution. For example, in 1977, the authority of the Kansas Finance Council to handle fiscal matters during the legislative interim was upheld by the Kansas Supreme Court. The council's powers include the authority to authorize state agencies to expend appropriations, to receive and spend federal grants, and to increase expenditure limits in special revenue fund appropriations. The constitutionality of the council had been challenged by the state's attorney general on the basis of separation of powers and other constitutional grounds.

There are two major deficiencies in the budgeting and fiscal review processes of state legislatures. First, the auditing system is not designed for program evaluation or the examination of management issues. In order to make auditing an effective method of legislative oversight, some fiscal agencies have expanded their activities to include performance and management review similar to that of the General Accounting Office of the U.S. Congress.

The second problem is the failure of the budget process to allow for the appropriation of federal funds. With the growth in the number and dollar amounts of such aid, this means that executive branch agencies can develop their own programs and allocate resources without regard to legislative intent. As shown in *Table 2*, 36 legislatures appropriate federal grants to some extent. Nine state legislatures appropriate federal funds by anticipating receipts, reviewing them, and exercising some type of veto power. Nineteen play an advisory role, and eight appropriate federal funds in only a pro forma manner.

Last year, North Carolina enacted a law providing for future appropriation authority. Also, Illinois now requires that federal funds be appropriated, but exempts colleges, emergency disaster funds, and allocations to local governments. State agencies may not hold funds outside the state treasury without General Assembly approval. Pennsylvania's statute is the strongest, but is being challenged

Table 2
Oversight Functions of State Legislatures *
1977

States	Fiscal Review and Analysis	Post Audit	Legislative Appropriation of Federal Funds	Sunset Review	Review of Administrative Rules
Alabama	X	X	X (3)	X C(4)	
Alaska	X	X		X R(5)	X
Arizona	X	X			X (8) Sel
Arkansas	X	X	X (1)	X C	
California	X	X	X (2)		
Colorado	X	X		X R	X
Connecticut	X	X		X R	X
Delaware	X				
Florida	X	X	X (2)	X R	X
Georgia	X	X	X (3)	X R	X
Hawaii	X	X		X R	
Idaho	X	X	X (2)		X
Illinois	X	X	X (2)		X
Indiana	X	X	X (3)	X S(6)	
Iowa	X	X	X (3)		X
Kansas	X	X	X (2)		X
Kentucky	X	X	X (2)		X
Louisiana	X	X	X (1)	X C	X
Maine	X	X		X C	X
Maryland	X	X	X (2)		X
Massachusetts	X	X	X (3)		
Michigan	X	X	X (1)		X
Minnesota	X	X			
Mississippi	X	X	X (2)		
Missouri	X		X (2)		X
Montana	X	X	X (2)	X R	X
Nebraska	X	X	X (2)	X R	X
Nevada	X	X	X (3)		X
New Hampshire	X	X	X (1)	X R(7)/C	
New Jersey	X	X	X (3)		
New Mexico	X			X R	
New York	X	X			X
North Carolina	X	X	X (3)	X R	X
North Dakota	X		X (2)		
Ohio	X	X	X (2)		X
Oklahoma	X	X		X C	X
Oregon	X		X (1)	X R	X
Pennsylvania	X	X	X (1)		
Rhode Island	X	X		X R	
South Carolina	X	X			X
South Dakota	X	X	X (2)	X S	X
Tennessee	X	X	X (2)	X C	X (8)
Texas	X	X	X (2)	X C	X
Utah	X	X	X (2)	X R	
Vermont	X	X	X (1)		X
Virginia	X	X	X (2)		
Washington	X	X	X (1)	X D	
West Virginia	X	X			X
Wisconsin	X	X	X (2)		X
Wyoming	X	X	X (1)		X

*Data supplied by the National Conference of State Legislatures.

- (1) Determine review and have some kind of veto
- (2) Advisory role
- (3) Appropriate "pro forma"
- (4) C—Comprehensive review
- (5) R—Review of regulatory agencies either totally or primarily
- (6) S—Selective agencies
- (7) D—Discretionary
- (8) Sel—Selective rules

in the courts by Governor Milton Shapp. The constitutionality of the law was upheld by the Commonwealth Court. The case (*Shapp vs. Sloan*) has been appealed to the Pennsylvania Supreme Court and no decision has been rendered.

The most dramatic recent development in state legislative oversight has been the adoption of sunset laws, which provide for the periodic review and automatic termination of agencies and programs. Colorado passed the first such law in 1976, with three others (Florida, Louisiana and Alabama) following that same year. Then in 1977, 20 more states acted. The features of these laws vary. Thirteen states apply sunset only to regulatory agencies. All but four sunset laws establish a phase-out period for terminated agencies, and most separate the agencies into groups for review in certain years.

Whether sunset laws will have the desired effect—forcing the legislature to exercise its oversight responsibilities to curb the proliferation of programs and remove agencies which no longer perform necessary functions—remains to be seen. Only two states have had any experience thus far, and the results have been mixed. Colorado, whose law applies to 43 regulatory and licensing boards, conducted performance audits of 13 of these agencies in 1977. Three were terminated, two were consolidated, and three were recreated with modifications. The legislature postponed action on the remainder. On the other hand, Alabama's legislature reviewed 18 agencies specified in its sunset law and terminated one. However, it discovered that more than 200 other agencies would terminate in 1978 unless they were re-established. Because of the large number and a two-hour limit on debate over each agency, few formal detailed reviews were conducted. The Alabama law currently is being re-examined.

Another method by which legislatures are seeking to ensure that the executive branch is carrying out their intent is by reviewing administrative rules and regulations. By 1977, 32 legislatures had provided for the review of all regulations, and most of these bodies can amend or modify them. Like sunset laws, review of administrative rules and regulations is a recent development. Although the Maryland and Idaho statutes date from the 1960s, most states did not take such action until 1974. Also like sunset procedures, the effect of these laws is not known. There is some debate over whether they are unconstitutional, and there undoubtedly will be some testing of their legality in the courts.

Court Reform

An effective judiciary capable of dispensing swift and sure justice is an essential element of a modern state government. Key reforms to achieve this objective include a unified court system, the use of court administrators, full state financing of state and local courts, uniform rules of practice and procedure, a merit system to select judges, and commissions on judicial qualifications, discipline and removal.

Nearly every state has adopted one of these components of a modernized judiciary—the appointment of administrators to manage the courts. In 1965, approximately 25 states had court administrators; now, this is the case in all but Mississippi and New Hampshire. Last year, New York voters approved a constitutional amendment establishing a permanent Office of Chief Administrator. The Supreme Court of Nevada issued an order, effective in July 1977, establishing the Administrative Office of the Courts to serve as court administrator. And, Texas created the Office of Court Administration.

The purpose of a unified court system is to achieve consistency and accountability by consolidating and simplifying the lower courts and giving the state supreme court administrative control. By the end of 1973, 16 states had a unified court system; 17 others had many of the key elements of a unified system. At least 38 states now have some aspects of a unified court system.

In the November elections, New York not only approved a permanent court administrator, but also acted on several other aspects of its judicial system. Voters approved an amendment to allow the Governor to appoint judges to the New York Court of Appeals, which is the highest state court. The Commission on Judicial Conduct will be established to make determinations about judicial disciplinary infractions. These changes and others were proposed by Governor Hugh Carey in 1976. Since then, the legislature has approved a phased state assumption of court costs. The Governor has indicated he will continue to seek merit selection of judges and provisions for a single, statewide trial court.

Along with New York, six other states have undergone some court reorganization in the past two years: Iowa and Wisconsin established an intermediate appellate court; and Alabama, Indiana, Kansas and Kentucky abolished limited and special juvenile courts, justice of the peace courts, and town and city courts, either by replacing them with county courts of broader jurisdiction or by expanding the responsibilities of district courts.

Three more states approved the establishment of new procedures for the discipline and removal of judges in 1977, bringing the total number of states taking such action to 41. Arkansas established the Judicial Qualifications Commission empowered to investigate allegations of misconduct, ethics violations, and the mental or physical disability of judges of courts of limited jurisdiction. The New Hampshire Supreme Court adopted a rule establishing the Committee on Judicial Conduct to hear and decide allegations of misconduct. And the Nevada Supreme Court adopted a comprehensive code of judicial conduct.

Accountability

In the 1970s, many states took major strides to make their government more responsible to their citizens. By passing an array of laws on open meetings, lobbying disclosure, financial disclosure for public officials, and campaign financing, these states have helped make government more open and accountable.

From 1973 to 1976, 33 states strengthened existing or enacted new open meetings legislation. With prior enactments, including the first sunshine law in Florida in 1967, all 50 states now have open meetings laws which apply to both state and local governments. In 1977, Indiana passed a sunshine law requiring the deliberations and actions of public agencies and legislatures to be conducted in the open. Maryland enacted a law requiring adequate notice, open meetings, and the taking of minutes. Texas' new law requires any group supported by tax money to have open meetings. Kansas, Montana and North Carolina also amended their statutes in this area.

All states require lobbyists to register, with 43 including the reporting of lobbying expenses. Recent years have seen several states strengthen their lobbying laws. The strictest law is the *California Political Reform Act of 1974*. However, a Los Angeles Superior Court judge overturned the act in 1977, ruling it unconstitutional on the basis that it dealt with more than one subject. (California voters had approved the political reform initiative in 1974. Under

state law, initiatives must cover only one subject.) The case will be appealed.

Financial disclosure of some kind is required by officials in at least 36 states. In 1977, the Florida legislature passed a law to implement a constitutional amendment dealing with this subject that had been approved by the voters in 1976. The Governor vetoed it, however, because he believed the disclosure requirements were too strict.

All but five states now have some type of campaign financing law, and all but six require candidates to file disclosure reports before elections.

Several state legislatures concerned themselves with ethics in 1977. Both the Indiana and Iowa senates passed codes of ethics for themselves and their employees. Connecticut enacted an ethics law to take effect in 1979, which requires limited financial disclosure by legislators and strengthens some standards of existing legislation, including a ban on gifts to immediate families of public officials. A new ethics committee was established to enforce these laws. Another law forbids lobbyists from giving anything valued at more than \$25.

The Unfinished Agenda

Modernization of state governments through structural improvements and better methods of accountability would be meaningless unless the policies which emerged were responsive to the rapidly changing social and economic needs of their citizenry. Will the states make a contribution to energy conservation? Will they adopt land use programs to preserve our natural resources and to provide for orderly growth? Will they create equitable systems for school financing to help relieve people of the burdensome property tax? Will they contribute to their economic development without creating destructive competition with their neighbors? These and other policy questions will be the continuing challenges.

The most significant issue before the states today is whether they will fulfill their responsibilities to local government in general, and to central cities in particular. Of course, this is not a new issue. It is, in fact, the most conspicuous and persistent failure of the states. For many years it has been argued that the states are "fifth wheels" as far as their local units are concerned—that they will not give these jurisdictions sufficient powers and resources to enable them to tackle their own problems or alternatively, will not provide them with adequate financial assistance. As a result, cities and counties increasingly have turned to Washington for help. The "urban crisis" of the 1970s, however, which was signaled by New York City's fiscal emergency and the severest recession since the 1930's depression, has redirected attention to the states. After all, they are responsible for creating the structural, functional and fiscal framework of local government. Many of the traditional powers of state governments could be mobilized to help arrest central city decline and control suburban growth. Whether a substantial number of states will assume greater responsibility for the future of their local governments is the major unfinished item on the states' agenda.

“At least 38 states now have some aspects of a unified court system.”

TOWARD A NEW STATE-LOCAL PARTNERSHIP

In 1977, with a few notable exceptions, the states continued the trend established during the last two decades of piecemeal, cautious and permissive reforms of state-local relations. State actions on local government issues were dominated by routine housekeeping legislation.

This trend has been the outgrowth of four major developments. First, and most importantly, while individual states have introduced innovative changes, the diffusion of these ideas among the states has occurred at a glacial pace. Secondly, reforms often have been weakened as they have been adopted by successive states. Thirdly, the batting average of recommendations proposed by state-commissioned studies of state-local relations has been low. Finally, and most disturbingly, state legislatures have tended to regulate, mandate, preempt and rigidify local functions, structures and finances. This occurred regardless of home rule, fiscal notes, or other devices intended to increase local discretion and decrease state intervention.

Actions taken during the year also suggest the emergence or continuation of other, more positive, trends in state-local relations. These include:

- an increased interest in the establishment of permanent state-level bodies to study and recommend changes in the authority of local governments and improvements in their relationships with the state;
- a new interest in the formulation and implementation of comprehensive policies and programs dealing with urban areas; and
- a sustained interest in "unshackling" local governments, authorizing home rule powers, and facilitating metropolitan reorganization.

These trends, and the states' actions bearing on them, are the focus of this section.

State ACIRs and Local Government Commissions

The enactment in 1977 of statutes creating the Florida Advisory Council on Intergovernmental Relations and the State and Local Government Commission of Ohio brought to 13 the number of states with permanent commissions responsible for monitoring and recommending improvements in state-local relations. The South Dakota Local Government Study Commission, created in 1968, was the first such body. The Texas ACIR, established in 1971, is perhaps the strongest and most influential of the commissions, although the New Jersey County and Municipal Government Study Commission is older (1969) and has a longer history of legislative successes. Other states with a permanent commission are Arizona (Advisory Commission on Intergovernmental Relations), Georgia (Intergovernmental Relations Council), Illinois (Municipal and County Problems Commissions), Maryland (Commission on Intergovernmental Cooperation), Massachusetts (Local Government Advisory Committee), Michigan (Council on Intergovernmental Relations), and Pennsylvania (Intergovernmental Council).

The Florida ACIR is composed of four members each from the state senate and house, and nine members appointed by the Governor. The council is charged with: evaluating the intergovernmental aspects of government structure, finance, functions and relationships; reviewing and assessing the work and recommendations of the U.S. Advisory Commission on Intergovernmental Relations; preparing material for the Florida Constitution Revision Commission in the areas of state tax structure and other intergov-

ernmental issues; studying the issue of double taxation and the problems associated with local government debt management, and reporting its findings by March 1978; and preparing an analysis of any new program or increased service level mandated by executive, legislative or judicial action in terms of its effect on local government revenues and expenditures.

The provision for the State and Local Government Commission of Ohio was contained in a "tandem election bill" implementing a constitutional amendment calling for the election of a Governor and lieutenant governor from the same party as a team. Under the act, the lieutenant governor's primary duty will be to serve as commission chairman. The commission will be comprised of 13 members: the lieutenant governor; two house members appointed by the speaker and two senators appointed by the senate president; six representatives of local government (two each from the cities, counties and townships) appointed by the Governor from slates of five nominees submitted by their respective government associations; and two public members named by the lieutenant governor. The commission is to serve as a forum for discussing intergovernmental issues and problems. Among its duties are: to study state-local relations and services; to recommend appropriate actions to the Governor and legislature; to report annually on its work and findings; and to coordinate the efforts of universities engaged in research for governments in Ohio. The commission is to be organized 30 days after the new Governor and lieutenant governor team takes office in 1979.

“State legislatures have tended to regulate, mandate, preempt and rigidify local functions, structures and finances.”

Legislation to create a state ACIR also was considered in Montana, Nevada and Wisconsin. In December, the Idaho Governor's Task Force on Local Government recommended creation of a state ACIR.

At least 11 states had an active temporary commission on local government during 1977. Since 1958, 23 states have created at least 31 temporary state commissions on local government. Kentucky and Wisconsin have had three commissions each; and Idaho, Michigan, New York and Virginia have had two commissions each. Twenty-three states have neither created a permanent or temporary ACIR or commission on local government.

A state commission on local government is one approach to developing coordinated state policy on the issues of local government structure, functions, finances and state-local relations. They avoid the problem of fragmentation which usually occurs when individual state departments develop state-local policy along functional services lines such as education or transportation. The commission perspective is usually multifaceted, and can focus on historical developments, common functional patterns, and intergovernmental relationships. Commissions may act as forums for the identification of intergovernmental issues, conduct research programs and prepare recommendations, and develop and support legislative reform packages. Historically however, commissions have been more successful in identification of intergovernmental problems than in their resolutio-

“Several studies of state-local relations were authorized or completed in 1977.”

State legislatures considered the recommendations of five commissions that reported in 1977—Arkansas, Hawaii, Montana, Oklahoma and Wisconsin—and those of a sixth that reported in 1975—Maryland. In addition, the Maine Joint Select Commission on County Government issued its final report; the Kentucky County Statute Revision Commission issued an interim report and prepared legislation for the 1978 legislature; the Kentucky Municipal Statute Revision Commission completed work on a revised municipal code; the Virginia Advisory Committee Studying Local Government released a report recommending a comprehensive revision of municipal and county laws; the Idaho Task Force on Local Government was established and completed its work; and the Delaware Intergovernmental Task Force was created by the legislature.

Several other studies of state-local relations also were authorized or completed in 1977. A study of state mandates was issued by the Illinois Commission on State-Mandated Programs. A Virginia commission to study state revenue sharing was set up by the legislature, and a comprehensive review of local taxes was completed by the District of Columbia Tax Revision Commission. The Idaho Tax Study Committee was created by the Governor to consider improvements in the state and local tax structure and to review possible restrictions on property tax increases. The Rhode Island legislature established a special 15-member commission to study municipal finance and deficit spending, and an extensive study of local finances was authorized in Nevada. The Maine and North Carolina legislatures established commissions to study the proper functions of substate districts and regional councils of government.

It is too early to predict the outcome of the work of these commissions. While the overall record of accomplishments of similar bodies to date is not very impressive, recent developments on the local law revision, home rule, regionalism, and urban policy fronts provide some encouraging signs.

Revision of Local Government Laws

In recent years, the municipal laws of Iowa and Idaho, and the municipal and county codes of Florida and Alaska were completely revised. In each instance, except Idaho, the work was part of an attempt to implement constitutional provisions granting local government all powers not denied by state constitution or by statute. In 1977, similar efforts were successful in Arkansas with respect to county law, and were considered in Montana and proposed in Kentucky. The Montana proposal, which has been referred to the 1979 legislature for further consideration, affects both municipalities and counties. The proposed Kentucky code, which will be considered in 1978, applies only to municipalities, although a comprehensive package of bills revising county statutes also will be introduced.

The new Oklahoma municipal code, approved in June 1977, was not part of an effort to implement a constitutional home rule provision. The code simply updates, revises and clarifies existing statutes. Its major objectives

were to eliminate duplication and conflict in the laws, to organize them in a logical format, and to clarify and simplify the statutes so that they could be more easily identified and understood. The code was prepared by the Oklahoma Legislative Council under the direction of a special advisory committee of local officials, citizens and legislators, and its effective date is July 1, 1978.

Also in 1977, the Utah legislature approved a comprehensive reorganization and revision of municipal law dealing with the organization, operation, incorporation, classification, boundaries, consolidation and dissolution of municipalities.

Local Structural Discretion

State efforts to provide local governments with discretion to determine their legislative, executive and administrative structure date from the first statutory home rule system in Iowa in 1859, and the first constitutional home rule system in Missouri in 1875. With rare and limited exceptions, by 1960 most states permitted municipalities to adopt and amend by referendum various statutory alternative forms of government, or to draft, adopt and amend by referendum charters defining their form of local government.

The great diversity in municipal government forms in the 50 states and the annual growth in the number of municipalities with a council-manager or strong mayor form mark the success of two of the major goals of early 20th Century municipal reformers—to professionalize administration and to enhance the authority and accountability of elected officials. Each year the states continue to adopt dozens of bills amending and refining their existing laws on charters and alternative forms of government.

Turning to counties, although California had granted these units the authority to adopt charters as early as 1911, 50 years later only eight states with county government permitted them to change their form of government. By the end of 1977, however, only seven states (Idaho, Iowa, Massachusetts, Oklahoma, Texas, Vermont and Wyoming) had failed to permit counties to adopt charters or alternative forms of government.

Last year, the Maine legislature enacted a law specifying procedures for the drafting of county charters which could be adopted by public referendum. Louisiana replaced its existing procedure for drafting municipal charters and, for the first time, extended the power to draft charters to parish (county) governments. Also in 1977, state-local government study commissions in Idaho and Virginia recommended the adoption of laws authorizing alternative forms of county government. Bills providing for alternative forms of county government or granting charter writing authority were under legislative consideration in four of the seven remaining states lacking these authorizations (Massachusetts, Iowa, Oklahoma and Texas). The major disappointment of the year in this area of legislative activity was Iowa's failure to approve a constitutional amendment authorizing county charters and granting "shared powers" home rule to counties.

In addition to permitting citizen referenda to change the form of county government, county commissioners have acquired the power through legislation, judicial opinion, or attorney general rulings in at least 24 states to hire personnel to assist the governing body discharge its duties. This permits the county board, by its own action, to hire a county administrator responsible to the commissioners or chairman. This discretionary authority, rather than the adoption of alternative forms or charters, appears to be

the principal reason for the great increase in the number of counties with appointed or elected administrators—from 59 in 1965 to 854 in 1977.

In a departure from the typical pattern of permissive constitutional or statutory provisions for alternative forms of county government, two states have mandated the conversion of all counties to an elected county executive form. A 1974 amendment to the Arkansas Constitution, mandating a council-elected executive plan for all 75 counties, became effective in 1977. A similar statute to reorganize all Kentucky county governments in 1978 into council-elected executive plans was adopted in 1976 by the state legislature. Both plans make the county judge the elected county executive and transform the county fiscal court into a legislative body with a clear delineation and separation of functions between the branches.

In South Carolina during 1977, all counties began operating under a new alternative form of local government statute authorized by a 1972 constitutional amendment. Under a 1975 implementing statute, 25 counties held referenda on alternative forms of government, and 14 adopted new forms. Prior to the elections, there were nine council governments, 15 board of commissioner governments, and no council-manager or council-supervisor governments. After the elections, there were eight council governments, eight council-supervisor (executive) forms, one council-manager, and 28 council-administrator forms, and no board of commissioner forms because it was held to be in violation of the constitutional prohibition on special legislation.

Last year there were at least 32 county study commissions active in 11 states, and 19 city-county study commissions at work in 12 states. At least seven county charters or alternative forms of government were submitted to the voters, but only one was approved: voters in Essex County, NJ, adopted a council-elected executive form of government.

The difficulties in obtaining voter approval of charters and alternative forms of government, which result in the adoption of only one out of every three county charters and one out of every five consolidation proposals, were increased in New York, where the U.S. Supreme Court upheld a state constitutional provision requiring a proposed county charter to be approved by a majority of voters in both the city and noncity portions of the county. The provision was challenged on the grounds that it violated the one-man, one-vote principle drawn from the Equal Protection Clause of the U.S. Constitution. In March 1977, the Court ruled that such a dual majority referendum requirement is constitutional. The Court said that "restructuring county government in New York is similar in impact to annexation and consolidation and in each case separate voter approval requirements are based on the perception that the real and long-term impact of a restructuring of local government is felt quite differently by the different county constituent units that in a sense compete to provide similar government services." The significance of the decision does not lie in the actual charter issue, but rather with other local government restructuring questions. New York's dual majority requirement is not the usual procedure for adopting and amending charters. However, such a requirement is more common for consolidation proposals and annexation questions.

Local Functional Discretion

Since the middle of this century, there has been a remarkable but largely ineffective resolution in state control

of the functional discretion of municipalities and counties. Dillon's Rule—the traditional legal principle for defining the power of municipalities and counties—provides that local governments have only those powers specifically delegated by the state. This principle, however, has been undermined by legislative and constitutional action in all but three states.

In 1952, only 20 states had a statutory or constitutional system for increasing the functional authority of municipal governments, and only a handful of states permitted counties functional discretion. Presently, all but three states for municipalities and 19 states for counties have some method of eliminating the Dillon Rule concept.

The National League of Cities, the National Association of Counties, the National Municipal League, and ACIR have recommended that counties and municipalities be given all legislative powers not denied by the state constitution or statute, or inconsistent with state law. Since this "shared powers" system was first proposed in 1953, it has been adopted in some form by constitutional amendment, state legislation, or judicial decision in 22 states for municipalities (Alaska, Arkansas, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Montana, New Mexico, North Dakota, Pennsylvania, South Dakota, Tennessee and Wisconsin) and in 11 states for counties (Alaska, Arkansas, Florida, Illinois, Kansas, Kentucky, Louisiana, Montana, Pennsylvania, South Dakota and Utah). Shared powers are granted directly to all municipalities in 11 of the 21 states, and to all counties in three of the 11 states. They may be adopted by referendum in the remainder. Until shared powers are adopted by referendum, a local government has granted Dillon Rule powers. Seventeen of the municipal systems are constitutional and five are statutory. Three of the 11 county systems are statutory, with the remaining eight being constitutional.

In addition to the states which have a system granting shared powers to some or all of their local units, each of the remaining states except Alabama, Mississippi and New Jersey have other constitutional or statutory methods for granting increased functional discretion to municipalities after a local vote; eight states have other methods for granting functional discretion to counties. In its various forms, this type of functional discretion usually is called *imperium in imperio*. The local government is considered an "empire within the empire" or a "state within the state." In *imperium in imperio* systems, the state, in theory, cannot interfere in the chartered government's local affairs and governance, but judicial decisions generally have given state governments broad discretion to intervene when an issue such as water pollution is considered a state-wide concern.

The Montana and Arkansas shared power systems became effective in 1977. They were created by earlier constitutional changes and the legislatures enacted measures (Montana in 1975 and Arkansas in 1977) to implement the permissive system for municipalities and counties in Montana, and the mandatory system for all counties in Arkansas. In both states, the state legislature retained control over election administration, private civil relationships, definitions of felonies, public pension systems, occupational licensing, annexation, incorporation, and local planning and zoning authority, but gave local governments full discretion to determine the scope, financing and administration of local government services. In both states, counties with shared government powers will be able

to provide a full range of urban services such as water, solid waste collection and disposal, fire protection, and parks.

The work of the Kentucky County Statute Revision Commission to implement the 1972 legislative grant of shared powers to counties was interrupted by a Kentucky Supreme Court decision that held the 1972 act to be an unconstitutional delegation of authority. The reversal of this decision late in 1977 failed to resolve the question of the constitutionality of the 1972 act. The 1978 legislature will have to resolve the legal confusion created by the court's decisions, since counties have been exercising their shared powers for five years.

In 1977, the Kentucky Municipal Statute Revision Commission completed work on a comprehensive revision of municipal laws to grant shared powers to all Kentucky municipalities. The merged government of Lexington-Fayette County has shared powers and the proposed code would extend them to all other municipalities and repeal the existing laws granting municipalities authority to provide specific services.

In 1976, Idaho granted shared powers to its municipal governments without repealing the existing laws granting municipalities specific authority to provide services. In 1977, the Idaho Governor's Task Force on Local Government recommended that shared powers also be granted to counties.

There have been no real case studies of the success of shared power systems for defining the functional authority of local governments to determine if, as supporters claim, it will reduce the need for annual enactment of new state laws granting authority to local government, and curb judicial interference in local affairs.

In addition to the need to test these claims, at least two other issues have begun to emerge. Of particular concern has been the failure of states to revise and repeal their local government laws granting authority to provide specific services to make them consistent with the grant of shared powers to local governments. Some observers feel that this inaction will result in the courts interpreting those grants of authority as restrictions on shared powers. Florida, Iowa, Arkansas and Alaska have undergone such a general revision. It is in progress in Kentucky and Montana, and has been contemplated in Pennsylvania where it is required by the constitution; but the process has not occurred in other states.

A second emerging issue is the concern over the wisdom of states offering shared powers as an alternative to the existing systems of Dillon Rule powers instead of simply granting shared powers to all local governments. In states which require local referenda to adopt shared powers, the state legislature is obligated to maintain two distinctive sets of local government laws. It must continue adopting laws granting authority to local governments without shared powers and avoid accidentally preempting shared power local governments discretion in these Dillon Rule laws. The legislature also must create a second set of local government laws containing restrictions on the powers of shared-power local governments. The existence of two systems for defining the authority of local governments is unnecessarily confusing to the legislature, local officials, citizens and state administrative officials alike.

Metropolitan Reorganization

In 1977, the Oregon legislature adopted and referred to the voters of the three-county, Portland Metropolitan Service District a proposal to transform the existing district

“Regional advocates across the country hope that the Portland and Denver proposals represent the natural evolution of councils of government into multitier systems of areawide governance.”

into an elected regional council with the authority to assume a number of regional services through voter referenda. The Portland proposal, if approved by the voters in May 1978, will be the first multicounty elected regional council in the Nation with the authority to acquire the power to tax and provide services.

A similar proposal for the creation of an elected Denver Metropolitan Council narrowly passed the Colorado Senate, but was defeated by the House. Following the defeat, a citizen committee was formed to support the bill in the 1978 legislature. If the bill is not adopted, the committee intends to collect signatures to place the proposal on the November 1978 ballot.

Regional advocates across the country hope that the Portland and Denver proposals represent the natural evolution of councils of government into multitier systems of areawide governance. The Twin Cities Metropolitan Council and the Atlanta Metropolitan Regional Commission are two earlier successful state attempts to coordinate planning and service delivery in metropolitan regions. In the Twin Cities, direct election of the governing body for the Metropolitan Council was one of the options considered when that body was originally established and it still receives consideration in the legislature each year despite narrow defeats.

The Oregon bill, if approved by the voters, would abolish the Columbia Region Association of Governments and transfer its planning activities to the district. The district would be governed by a 12-member council elected for four-year terms from single member districts on a nonpartisan basis. Voters also would elect an executive to manage the district. The district would be authorized to assume the functions of metropolitan water supply, human services, libraries, parks and recreation, cultural facilities, and correctional facilities and programs. The district would be able to contract for governmental services to areas outside of the district boundaries. Service subdistricts with independent tax bases could be created by referendum. The district could impose a 1% income tax, subject to approval by referendum, and would be empowered to charge municipalities and counties for land use and environmental functions assumed by the district. The district also would be authorized to assume the duties, powers and functions of the Portland Metropolitan Area Boundary Commission through either initiative or referendum elections. The district would not have the authority to assume the power and duties of the Port of Portland.

The Denver panel that proposed the elected regional planning council originally had debated and rejected (by a single vote) a proposal for a comprehensive consolidation of the four existing regional districts, and creation of a regional authority with an elected board to provide areawide

planning, urban drainage and flood control, management services, waste water treatment, public transportation, water, regional detention facilities, and solid waste disposal. The actual proposal adopted by the committee and considered by the legislature called for the establishment of a Denver metropolitan council governed by a board of 15 representatives elected from throughout the four-county region. The new council would replace the existing Denver Regional Council of Governments (DRCOG). It would be responsible for regional planning and management services to local governments, and could—by constitutional authority—expand to deliver 17 other services in the future upon approval by the voters. Strong opposition by DRCOG's municipal and county official membership was crucial in the defeat of the bill, and the new citizens committee is seeking a compromise with the opponents.

Both the Portland and Denver proposals were developed by citizen metropolitan government study committees which were participants in a five-year demonstration project (1972-77) conducted by the National Academy of Public Administration and funded by the U.S. Department of Housing and Urban Development. Similar citizen metropolitan government study commissions in Rochester-Monroe County, NY, and Tampa-St. Petersburg, FL, which were part of the demonstration project, had completed their work earlier. The Tampa proposal for a multi-county, elected regional council did not receive serious consideration by the state legislature, and there has been only limited implementation of the proposals in Monroe County to restructure the county and reassign functional responsibilities among the county and municipal governments.

Although in 1977 there were at least 19 studies of city-county consolidation, service transfers, or multityer government in 12 states, there were no city-county consolidation proposals submitted to the voters. This contrasts with the average of six consolidation proposals which have been submitted each year since 1970. Thirty-eight consolidation proposals were placed before the voters between 1970 and 1976, with only seven receiving approval. Seventeen of the 25 existing consolidated governments have been created since 1947, and only 18 of 63 consolidation proposals placed on the ballot since 1947 have been approved by the voters.

In the post World War II era, no consolidations have been adopted by the voters in the northeast or north central states (Indianapolis and Marion County, IN, were consolidated by the state legislature), and none have involved the merger of two or more counties. Most consolidation attempts have taken place in medium-sized or small metropolitan areas, usually located in the south or west. Only 13 states have adopted general constitutional or statutory authorization for city-county consolidation. Yet, consolidation continues to be one of the most viable approaches for smaller and jurisdictionally uncomplicated areas.

Without consolidation, major steps can be made toward improved metropolitan governance in a substantial number of single county metropolitan areas through county modernization and the transfer of some functions to the county level. Proposals to reassign functions were considered in several states last year.

- The Washington legislature adopted a law that would authorize King County to assume, after popular vote, the powers and functions of the Metropolitan Municipal Corporation that currently operates under a separate board. Voter ratification of a county ordinance

to assume the functions of the corporation and abolish the separate board would require a majority of those voting in the largest city within the area (Seattle) and a majority of those voting who reside outside the largest city. In a separate action, the King County Charter Review Commission issued a report recommending a reorganization of the King County Council, the creation of 17 single member districts, the merger of King County and the Metropolitan Municipal Corporation, and the creation of subcounty advisory councils.

- In March, Georgia Governor George D. Busbee appointed a 19-member Atlanta-Fulton County Study Commission to study the delivery and financing of over 30 services provided by Fulton County, the City of Atlanta, and nine other municipalities. The commission, which was directed not to consider boundary adjustments, education, or consolidation, has submitted 13 recommendations to the legislature for consideration in 1978. The major recommendations include: the mandatory creation of county taxing and service districts in urbanized unincorporated areas of the county, and citizen referenda on the annexation of the service areas by municipalities; transfer of responsibility for water sewage treatment to Atlanta, and the establishment of a countywide system with uniform water rates; state assumption of financial responsibility for local hospitals; and transfer of library services and tax assessment to the county.
- In Pennsylvania, the Allegheny County Local Government Study Commission is considering a possible reassignment of functions between Allegheny County and the City of Pittsburgh.
- In Erie County, NY, five citizen task forces are reviewing various recommendations for the transfer of certain functions between the county and the City of Buffalo.
- The Massachusetts legislature considered a bill to create a regional financing district in the Boston area, which would permit the use of income, sales and other taxes which are not now available to finance local or regional services.
- A local government charter commission to consider consolidation of municipal and parish government in Lafayette Parish, was created by special legislation in Louisiana. The consolidation proposal must be approved by separate majorities in the parish and affected municipalities.
- Merging similar city and county agencies will be studied by a new city-county consolidation commission created by the Los Angeles County Board of Supervisors.
- The Knoxville City Council and the Knox County Commission in Tennessee have appointed three-member committees to explore the creation of a metropolitan government. Possibilities include adopting a Nashville-Davidson County type of consolidation or modernization of the county government as in Shelby County.
- In response to citizen rejection of consolidation proposals in 1969 and 1972, city and county officials in the City of Athens and the County of Clarke requested the Institute of Government at the University of Georgia in Athens to determine the financial impact of consolidating their governments. The report indicated that a cost saving of \$679,809 could be realized, which

amounted to 15.9% of the total taxes paid by both city and county residents, and 5.3% of the total expenditures.

- A cooperative governmental study committee was organized by the nine general purpose local governments in Schenectady County, NY, to examine the governmental system and the delivery of services.
- A vote on the enlargement and reorganization of the City of Las Vegas was submitted by the Nevada legislature to the electorate of Las Vegas and the area to be included in the enlarged city. The bill, if approved in September 1978, also would expand the city commission from four to eight members to give representation to the new areas, and create citizen advisory councils in each district. Two years ago, a 1975 law consolidating Las Vegas and Clark County was nullified by the Nevada Supreme Court.
- The Champaign-Urbana Study Commission on Intergovernmental Cooperation is considering a recommendation for a multipurpose regional district to perform fire protection, landfill, mass transit, public health, public safety, and sanitary functions. The multipurpose district would eliminate three single purpose districts, and would require state legislative authorization. The commission also is considering a recommendation to eliminate two townships which are coterminous with the two municipalities included in the study.

Substate Districts

There are now some 530 substate regional districts created by 45 of the 50 states, nearly all since 1967 when only six states had substate districts. Alaska, Delaware, Nevada, Rhode Island and Wyoming have not created a substate districting system, and the five Hawaii counties are considered the equivalent of districts. Less than half of the substate districting and councils of government systems are authorized by state law. The remainder have been created by gubernatorial executive orders.

About 95% of these districts possess functioning area-wide bodies—usually councils of governments or regional planning commissions—and most receive some federal or state aid and perform the A-95 clearinghouse function. But overlapping these recognized substate districts, in a crazy-quilt fashion, are about 4,045 geographic areas and 1,800 special purpose substate planning organizations, all fostered by requirements under various federal programs.

As of 1976, some 32 federal programs supported areawide planning; 21 of these encouraged the formation of multi-county districts. All but two of the 32 were for special functional purposes, including community and economic development, environmental protection, transportation, and social services.

Only about one-third of the 1,800 districts had boundaries which coincided with those of the substate districts officially designated by the states. In addition, the state-recognized planning organizations are used by federal programs only about one-sixth of the time. The federal government, therefore, is responsible for encouraging the creation of a wide variety of new multicounty units, although none of these bodies has the authority, accountability and political legitimacy comparable to a government. Only the states can create the framework for regional governance or general purpose regional governments, and they have done so reluctantly.

Rather than allowing the federal government to be the prime mover in regional governance, some states have begun to take the lead in eliminating the confusion and duplication created by federally encouraged or mandated substate planning and development programs. States which have done so—such as Georgia, Kentucky, Texas, Utah and Virginia—have shown that a great deal can be done to coordinate the diverse federal aid programs and to strengthen the state-designated regional bodies. But there was almost no new meaningful state action last year to resolve the growing chaos in substate districting.

In South Dakota, Governor Richard F. Kneip directed the State Planning Bureau to conduct an evaluation of the substate districting system. The Maine and North Carolina legislatures authorized studies of substate regionalism, councils of government, and federal regional programs. The Georgia legislature adopted a bill (which will be automatically repealed in June 1979), granting its area planning and development commissions the authority to provide, manage and operate human service programs. The Georgia law was the result of a 1975 state attorney general's opinion that the commissions only had planning authority and could not provide human services. The legislature enacted the temporary law giving the bodies the authority to provide human services, and requested a special committee of municipal and county officials to make recommendations for permanent legislation. The ad hoc committee is expected to report to the 1978 legislature.

State Urban Policies

The publication of a report in 1977, *State Urban Development Strategies*, by the Council of State Planning Agencies highlighted a growing interest in the development of aggressive state policies and programs to deal with urban problems. At least three states have developed comprehensive urban policies, and most have begun to take some steps to inhibit urban decay and foster urban conservation and development. The creation of state departments of community affairs and housing finance agencies during the last decade represented initial steps by most states toward developing a capacity to deal with urban problems. The authorization of property tax increment financing of redevelopment projects in several states in recent legislative sessions and the adoption of state laws on redlining indicate a new willingness to encourage urban redevelopment.

The number of state departments of community affairs (DCA) has grown from the first department created by New York in 1959, to a total of 30 states with cabinet-level departments, and another 15 with major offices or divisions responsible for local affairs in 1977. Last year, Georgia became the most recent state to organize a cabinet-level department of community affairs. The responsibilities of the Georgia DCA, and most others, include: community development, housing, economic development, intergovernmental coordination, planning, training, and technical assistance. Almost all of the departments operate a local government advisory task force consisting of county and municipal officials to advise and assist in establishing state policy concerning local governments.

Only a few states, however, have developed or targeted state or regional economic development programs to assist central cities. There are only isolated examples of states using highway planning, airport development, mass transit, location of state facilities, investment of state funds, state financial assistance programs, and metropolitan tax base sharing to influence urban development patterns.

Three states have emerged as pioneers in developing and implementing state urban policies. Massachusetts, under Governor Michael S. Dukakis, has one in place; Michigan, under Governor William G. Milliken, has begun to implement an urban policy; and California Governor Edmund G. Brown, Jr., is considering carrying out a program developed by his own Department of Planning and Research.

The Massachusetts program is designed to reverse state and federal policies which have fostered "scatterization" of development and jobs. The solution endorsed by Gov. Dukakis did not lie in massive appropriations for cities or ambitious land use efforts, but rather turning all the state's existing regulatory powers and its public investment programs to achieve one goal: the conservation, utilization, and development of existing city and town centers. The state has located its own facilities in downtown areas, shifted sewer assistance programs to favor densely settled areas, and diverted state and federal highway funds from new projects in the open countryside to projects improving city sidewalks and roads. State school building assistance programs were shifted to favor rehabilitation of schools in center cities and away from suburban areas.

Under Gov. Milliken, Michigan has sharply increased state revenue sharing for cities, made a state "equity payment"—almost \$30 million in 1977—for services that Detroit provides its suburbs and the state, enacted a 12-year tax benefit for factory improvement or new construction, and approved a job development authority. The Governor also has asked the legislature to approve the sharing of property taxes on new construction in the Detroit area, similar to Minnesota's pioneering program for the Twin Cities region.

The California plan under consideration borrows heavily from the Massachusetts model, and would require all state agencies to tailor their policies toward urban conservation. The program would be directed toward reversing the spread of development in California that is continuing to consume open spaces and farm land while central cities are becoming ghost towns.

The new urban policies have met strong opposition in all three states from affluent suburban communities obliged to share development grants or tax revenues with central cities; from real estate, development, and construction interests whose development options would be curbed; and from reluctant state bureaucracies.

The Reform Record

This review of state actions taken to improve local government structure and performance during 1977 and the last two decades suggests the following conclusions.

- Most states have created a state agency to coordinate state-local relations and to provide technical assistance to local governments, but these agencies are almost universally handicapped by the lack of adequate state funds to fulfill their missions.
- Most states now provide permissive legislation to enable local governments to adopt alternative forms of government or charters, authorize various forms of government, charters, and optional functional home rule; and permit interlocal cooperation agreements and service transfers. Yet, these laws often inhibit changes because of complex procedural requirements and limited options.
- Only a few states have granted all municipalities and counties all functional powers not denied by the state constitution or state laws; created boundary review

commissions and strengthened the annexation authority of municipalities; discouraged the creation of independent special districts; and consolidated, coordinated and strengthened substate districts.

- The utilization by local officials of permissive state legislation on alternative forms of local government and interlocal cooperation to alter local structures and services is impressive if not universal. The use of state laws authorizing local option taxes, general purpose taxing and services districts, city-county consolidation, and functional home rule is not as comprehensive, and the response of local electorates to referenda on all of these issues has been more cautious.
- A clear and consistent pattern of state legislative and executive support to strengthen local governments has begun to emerge in a number of states, with a few even beginning to formulate a comprehensive state policy on urban growth and development. However, most states have yet to develop a consistent strategy or policy for strengthening local governments and utilizing state regulatory powers, services, taxing powers, and fiscal grants to influence urban and rural growth and development.
- Finally, the lack of such policies reflects the weakness of state departments of community affairs and other state intergovernmental policy forums, the lack of continuity inherent in temporary local government study commissions, the inadequate channels for state-local communications, the traditional enmity between state and local officials, the preoccupation of city and county officials with federal programs, citizen apathy, and the practical political and fiscal difficulties in reforming historic patterns of state-local relations.

The conclusions suggest that there appears to be a major shift toward local structural discretion and a modest shift toward states giving local governments concurrent functional jurisdiction with the state through the device of granting local governments all powers not denied by the state constitution or by state law. There are major problems with the manner in which this increased discretion has been provided to local governments, and its utility is reduced by state-imposed mandates, inadequate local fiscal resources, and the failure of states to deal effectively with jurisdictional questions. Federal, state and local governments, as well as private organizations and citizens, should be concerned over the continued reluctance of the majority of the states to develop comprehensive urban growth and development policies, to undertake substantial rather than cosmetic reform of the functional, structural, fiscal and jurisdictional components of state-local relations, and the slowness of the diffusion of significant state-local innovations.

STATE-LOCAL FISCAL HEALTH

The fiscal health of the state-local public sector has improved steadily since the 1974-75 recession. According to the *Survey of Current Business*, total revenue receipts amounted to \$288 billion in the second quarter of 1977, representing an increase of 14% over the total received in the second quarter of 1976, and 25% over the amount received for the same quarter in 1975.

While a number of factors tend to contribute to these increases, two stand out as being most significant. First, as a result of the states relying more upon economy-based income and sales taxes, their revenue capacities are enhanced during times of economic growth and inflation. In

fiscal year 1977, tax collections amounted to \$174.2 billion, up 12% from 1976, and the largest increase since 1972. Secondly, federal aid to state and local governments has continued to grow at a phenomenal rate. In FY 1975, federal aid amounted to \$47.8 billion; by FY 1977, that figure was estimated to have increased by approximately 52%, totaling \$72.4 billion.

As the Nation recovers from the recession, Governors and state legislators continue to reflect an attitude of fiscal uncertainty and restraint. While state-local tax collections amounted to \$174.2 billion in 1977, it is estimated that of this amount, only 0.5% was a result of legislative action. In fact, the Tax Foundation reported that the 1977 tax hikes represented about one-half the amount approved in 1976, and less than one-third of the 1975 figure.

Probably the most significant indicator of restraint among state-local public officials was the fact that total expenditures for FY 1977 amounted to \$253.8 billion, representing an increase of only 6.5% over 1976 compared to a 12.4% increase during the previous year. Without question, many states are attempting to rebuild their diminished surpluses to provide a fiscal cushion against an uncertain federal aid policy and a shaky economy. Over the last four quarters, state and local governments have shown surpluses on general accounts ranging from \$6 billion to \$14 billion. If social insurance funds are included, the surpluses have ranged from \$21 billion to \$27 billion.

State fiscal actions in 1977 reflect the legislative trends which have been developing since 1970. Tax increases were largely confined to secondary and tertiary sources. A concerted effort continues to be made to reduce the regressivity of the property tax through the use of circuit breaker and income tax credit programs. There was sustained interest in upgrading both state supervision of local government finance and state financial management assistance to local governments.

During the early 1970s, the property tax became a primary target for many state court decisions, particularly when it was used for financing public schools. In 1977, the state courts continued to take issue with school financing systems, and state legislatures responded with new state aid mechanisms and actions aimed at reducing the weight of local property taxes.

Selective excise taxes were by far the most popular source tapped by state legislatures last year, and these will furnish about half of the expected new money resulting from tax legislation. Eight states raised motor fuel levies, four increased their cigarette taxes, and eight hiked levies on alcoholic beverages. About one-quarter of the newly enacted taxes were accounted for by three states which raised sales and/or use taxes. The remainder of new tax revenue is largely a result of across-the-board increases in personal income taxes in two states and corporation income tax hikes in four states. *Table 3* gives a state-by-state breakdown of key features of state-local revenue systems.

Property Tax Relief

As early as 1963, ACIR encouraged states to take an active role in property tax relief. Initially, little action occurred; but by 1977, every state in the Nation had undertaken some form of property tax relief.

Legislative action in 1977 was relatively heavy, as 19 states expanded or raised their property tax relief programs. Most of the measures enacted allowed or increased credits or refunds available to elderly homeowners. One of the more significant developments occurred in Rhode Island where a circuit breaker program was adopted for

senior citizens, bringing the total number of circuit breaker states to 26.

School Finance Reform

The 1970s have been an active period for reform in public education financing systems. Between 1970 and 1976, over 20 states enacted fundamental changes in their funding mechanisms for public schools. Probably the most significant catalyst for these changes was a series of state court decisions, starting with the *Serrano* case in California, which found the state-local fiscal systems supporting public education to be in violation of the state constitution in that they did not provide equal educational opportunities. The courts have been concerned with reducing expenditure per pupil disparities among school districts, which were largely a function of the districts' property wealth. The states have responded by appropriating greater amounts of aid and reducing local property taxes.

In 18 states which have adopted new aid programs, their share of support for public education has increased from an average of 39% to an estimated average of 51% of total revenues. These states also have experienced substantial property tax relief, with Colorado, Florida and Wisconsin averaging over a 10% reduction in property taxes. In addition to providing more aid, many states have attempted to control local tax pressure and reduce educational expenditures by legislating budget restrictions, general expenditure controls, and tax limits on local districts.

Many of the Nation's large cities seem to be the greatest beneficiaries of this reform movement. Although city tax bases are weakening, their schools managed to raise per pupil expenditures from \$747 in 1970, to \$1,264 in 1975—an increase of 69%. Increases of nearly 100% were realized in Boston, New York, Minneapolis-St. Paul, Austin, Phoenix, Denver and Portland. While greater tax revenues contributed to this hike in large city school spending, nearly 55% of the increase was offset by state and federal aid. However, even though intergovernmental aid to city schools has grown dramatically, their fiscal health remains poor as declining tax bases have generated tax pressures, and the number of "high-cost" students continues to mount. As a result, urban school finance problems will continue to demand new state and federal aid policies.

While educational finance reform activity was relatively light in 1976, with the only major change occurring in New Jersey, in 1977 eight states enacted significant legislation revising their aid distribution formulas: South Dakota, Missouri, Tennessee, South Carolina, California, Colorado, Washington and Texas.

In other actions, beginning with this school year, Minnesota will recapture a portion of the excess revenues collected by school districts when they tax themselves at the maximum levy allowed under the foundation program. In Maine, voters seemed eager to regain local control of school financing by repealing a statewide uniform property tax. New York passed a bill raising the expenditure level in its foundation program and setting a limit of 6% on state aid increases, either on a per pupil or on a total basis. The state role in financing capital outlays was enhanced in two states. In Maine, a bill providing state financing for school construction became law. School districts must contribute either 5% of the cost of the new building or the equivalent of one mill of their property tax effort—which ever is less. Wyoming also passed a law equalizing the distribution of state aid for capital outlays and for debt service.

Table 3
Key Features of a High-Quality State-Local Revenue System

State and Region	State Individual Income Tax		State General Sales Tax		Local Property Tax			State Percentage of State-Local Tax Revenue, 1976
	Broad-Based Income Tax		Use of Tax ¹	Food Exempt (E) or Income Tax Credit (C)	Use of Tax ²	State-Financed Property Tax Relief		
	Income Tax	Use of Tax ¹				Homeowners	Renters	
United States	41 + D.C.	Moderate	Moderate	30	High	34	24	56.9%
New England								
Maine	Yes	Low	Moderate	E	Moderate	Elderly	Elderly	73.9
New Hampshire	No ³	—	No Tax	No Tax	Very High ⁴	—	—	39.1
Vermont	Yes	Moderate	Low	E	High ⁴	All	All	58.1
Massachusetts	Yes	High	Low	E	Very High	—	—	52.0
Rhode Island	Yes	Moderate	Moderate	E	Very High ⁴	Elderly	Elderly	59.0
Connecticut	No ⁵	—	High	E	High	Elderly	Elderly	52.1
Mideast								
New York	Yes	High	Moderate	E	Very High	—	—	47.4
New Jersey	Yes	Low	Moderate	E	Very High	Elderly	—	39.4
Pennsylvania	Yes	Low	Moderate	E	Moderate	Elderly	Elderly	63.2
Delaware	Yes	High	No Tax	No Tax	Low	—	—	80.2
Maryland	Yes	High	Moderate	E	High	Elderly	—	58.1
District of Columbia	Yes	High	High	E	High	All	All	—
Great Lakes								
Michigan	Yes	Moderate	Moderate	E	Very High	All	All	55.3
Ohio	Yes	Low	Low	E	Moderate	Elderly	—	52.9
Indiana	Yes	Low	Moderate ⁶	E	Moderate	Elderly	Elderly	61.4
Illinois	Yes	Moderate	Moderate	—	High	Elderly	Elderly	55.4
Wisconsin	Yes	High	Moderate	E	Very High	All	All	66.4
Plains								
Minnesota	Yes	High	Moderate	E	Moderate	All	All	68.0
Iowa	Yes	Moderate	Moderate	E	High	Elderly	Elderly	59.7
Missouri	Yes	Low	Moderate	—	High	Elderly	Elderly	53.0
North Dakota	Yes	Moderate	High	E	Moderate	—	Elderly	67.0
South Dakota	No	—	Moderate	—	High	—	—	47.0
Nebraska	Yes	Low	Moderate	C	Very High	Elderly	—	47.9
Kansas	Yes	Low	Moderate	—	Moderate	Elderly	Elderly	56.8
Southeast								
Virginia	Yes	Moderate	Low	—	Moderate	—	—	59.4
West Virginia	Yes	Low	Low ⁷	—	Low	Elderly	Elderly	77.9
Kentucky	Yes	Low	Moderate	E	Low	—	—	74.6
Tennessee	No ³	—	Moderate	—	Moderate	Elderly	—	61.3
North Carolina	Yes	Moderate	Low	—	Moderate	—	—	71.4
South Carolina	Yes	Low	Moderate	—	Low	Elderly	—	74.8
Georgia	Yes	Low	Moderate	—	Moderate	—	—	61.5
Florida	No	—	Moderate	E	Low	Elderly	—	61.6
Alabama	Yes	Low	Moderate	—	Low	—	—	74.5
Mississippi	Yes	Low	High	—	Low	All	—	76.4
Louisiana	Yes	Low	Moderate	E	Low	—	—	70.7
Arkansas	Yes	Low	Moderate	—	Moderate	Elderly	—	75.8
Southwest								
Oklahoma	Yes	Low	Low	—	Moderate	Elderly	—	68.3
Texas	No	—	Moderate	E	High	—	—	58.1
New Mexico	Yes	Low	High	—	Moderate	Elderly	Elderly	82.3
Arizona	Yes	Low	High	—	Moderate	Elderly	Elderly	61.3
Rocky Mountain								
Montana	Yes	Moderate	No Tax	No Tax	Moderate	—	—	52.0
Idaho	Yes	Moderate	Moderate	C	High	Elderly	—	67.0
Wyoming	No	—	High	¹⁰	Low	Elderly	—	58.5
Colorado	Yes	Moderate	Moderate	C	High	Elderly	Elderly	51.3
Utah	Yes	Moderate	Moderate	—	Low	—	—	65.2
Far West								
Washington	No	—	High ⁸	E (Eff. 7/1/78)	High	—	—	70.3
Oregon	Yes	High	No Tax	No Tax	High	All	All	50.4
Nevada	No	—	High	—	Moderate	Elderly	Elderly	58.7
California	Yes	Moderate	High	E	High	Elderly	All	51.9
Alaska	Yes	High	No Tax	No Tax	Moderate	Elderly	Elderly	82.7
Hawaii	Yes	High	High ⁸	¹¹	Low ⁴	—	All	77.1

NOTE—Excludes local income and general sales taxes. Local income taxes are imposed by at least one local government in 11 states, general sales taxes in 26 states.

¹Based on per capita collections for fiscal year 1976. Moderate use indicated for states with per capita collections within 25% (+ or -) of the unweighted average for all states with the indicated tax. Below 25% of average = low use, above 25% = high use.

²Based on average effective property tax rates for existing single family homes with FHA-insured mortgages in 1975. Moderate use indicated for states with an effective property tax rate between 1.25 and 1.75%. High use = states with a rate between 1.75 and 2.25%. Very high use = states with a rate over 2.25%. Low use = states with an effective rate below 1.25%.

³Tax limited to interest and dividends.

⁴Based on 1974 effective rates, 1975 data not available.

⁵Tax limited to capital gains and dividends.

⁶Excludes receipts from the Indiana gross income tax.

⁷A sales tax credit based on federal adjusted gross income is provided for the elderly and disabled persons.

⁸Excludes the Hawaii, Washington and West Virginia business gross receipts taxes.

⁹An income tax credit is provided for all state-local taxes paid.

¹⁰A sales and use tax refund is provided for low-income elderly and disabled persons.

¹¹Effective January 1, 1974, a general excise tax credit replaced the consumer, educational, drug and medicaid, and rental tax credits.

Source: ACIR staff compilation.

Taxation of Natural Resources

In 1976, 31 states utilized some form of severance taxation (taxes on the removal of natural products—e.g., oil, gas, timber—from land or water which are measured by the value or quantity of the products which are removed or sold) with revenues totaling over \$2 billion. While this represents only slightly over 2% of total state tax collections nationwide, it constitutes a much larger share in individual states. For example, in 1976, six states (Louisiana, New Mexico, Oklahoma, Texas, Montana and Wyoming) generated over 10% of their tax revenue through the severance tax, with Wyoming and Louisiana collecting over 21% and 33% respectively. State severance tax legislation in 1977 was exceptionally heavy, as 16 states either increased their rates or expanded their taxing base to include previously untapped resources.

States, however, are not the only level of government interested in taxing the Nation's resources. Last year, President Carter submitted a national energy policy to Congress which would utilize federal excise taxes as the primary instrument to influence the supply and demand for various energy sources.

Although it is far from clear whether the taxation of the Nation's resources, by either the federal or state governments, poses a serious problem for our federal system, a potential for friction does exist. Intergovernmental complications could develop along three fronts. First, a national objective that encourages the development of certain resources stimulates the growth of particular industries in states containing that resource, regardless of whether they want that activity and are prepared to deal with the social, economic and environmental costs which may be associated with a particular extractive activity. On the other hand, national objectives could be undermined if a particular state levies excessive taxes on the very resource the country wishes to develop, thereby increasing its cost of production and actually discouraging its development. And finally, states which are rich in natural resources may have an economic advantage over others. For example, the price of coal from Montana to generate power in New York includes Montana's severance tax, and the extra cost that results is passed directly on to New York consumers of electricity. In effect, to the extent that Montana's severance tax is able to generate revenue exceeding the governmental costs associated with the mining of coal, it is able to export its tax burden to consuming states.

State Energy Policies

In at least one respect, the states are far ahead of the federal government in the energy field: they are making a concerted effort to provide incentives to homeowners and businesses to utilize nonfossil energy sources. In 1974, Indiana was the only state that provided a property tax deduction for the installation of solar energy devices. In 1975, nine states took similar action, and four states did so the following year. As the national concern over the energy crisis mounted, an avalanche of state actions aimed at encouraging the use of alternative sources of energy occurred in 1977. Twenty-one states either legislated special tax treatment measures for the first time or revised and expanded their current programs. Most of this legislation gives either an income tax credit or exempts the new installation from property taxation. A significant proportion of the programs are aimed at solar energy development, but many states now have begun to expand their programs

to include an assortment of alternative energy sources, such as wind, wood or geothermal resources.

Competition for Industry

Over the last two years, there has been an escalating concern about the widening disparities in rates of economic growth and demographic change among certain sections of the country. Correspondingly, the attitude among many state and local public officials has been that their governments should take a more active role in creating a healthy "economic climate" by encouraging the development and expansion of business activity within their respective jurisdictions.

The powers of state and local governments to influence economic activity are sharply limited by the U.S. Constitution. In particular, the Commerce Clause prevents these units from regulating economic activity to any large degree. Therefore, state and local governments largely rely on their powers to tax and spend as mechanisms to influence economic activity and especially to attract industry.

There are basically eight strategies most commonly used by state and local governments in order to influence industrial location:

- differentials in tax rates*—a low rate for a particular tax relative to the rate in other states;
- real property exemption*—excluding land and/or improvements;
- inventory exemption*—exemptions on goods in transit (freeport), exemptions for manufacturing inventories and raw materials used in manufacturing;
- machinery and/or equipment exemption* from property taxes or sales taxes;
- credits against the corporate income or franchise tax*;
- bond financing* for land acquisition and plant construction;
- guarantees of commercial loans* for plant construction; or
- loans of public funds* for plant construction.

In addition, states have fashioned incentives for specific industries or functions, such as moderating pollution abatement requirements. They also have provided technical incentives like weighting the sales factor of the corporate income allocation formula, special depreciation allowances, and merit rating in unemployment and workmen's compensation.

Tax and financing incentives may be the most expedient means available to politicians to improve a state's posture toward business. Other ways of doing so, although probably more effective, are much more difficult to achieve. Public works improvements require a long-term, costly effort; reducing the burden of workers' compensation or unemployment compensation programs requires a confrontation with organized labor; lowering the business tax appears to favor businesses over individuals; and easing regulations brings an angry response from environmentalists and consumer advocates. Hence, quick, politically neutral tax incentives have great appeal to legislators, and their use has become widespread. In 1977, nine states enacted bills providing such incentives: Connecticut, Massachusetts, Vermont and Kentucky (machinery and equipment exemptions); Indiana and Colorado (real property exemptions); Florida (inventory exemption); Maine (corporate income tax credits); and New Jersey (machinery and equipment exemptions and real property exemptions).

While tax incentives have a great deal of political appeal, their effectiveness as an economic development tool is questionable at best. Conventional wisdom holds that state

and local taxes are unlikely to influence economic growth except where states in close proximity have significantly different tax laws, as in the cases of New York, New Jersey and Connecticut, and Massachusetts and New Hampshire; within metropolitan areas; and where a metropolitan area crosses state lines and state and local tax rate differences are relatively large. These assumptions now are being tested by ACIR and others.

State-Local Fiscal Conditions

As indicated previously, the degree of home rule authority that legislatures have granted to local units, and subsequent judicial interpretations of the extent of local discretion, have varied widely among the states. Local fiscal operations have traditionally been major—and controversial—objects of state restraints. Even where additional state funds are provided to help offset the costs of state restrictions, local officials tend to feel that these actions are an unwarranted infringement on their power. *Table 4* shows six factors which may be used to discern the overall condition of state-local fiscal relations. State actions in two of these areas—property tax limits and mandates—are particularly good indicators of these relationships.

State Limits on Property Taxes

In recent years, a growing number of states have enacted tighter restrictions on local taxing and spending authority. Since 1970, at least 15 states and the District of Columbia have established some form of new control on local fiscal powers. In 1977, Indiana set limitations on property tax units (except school corporations), and Iowa limited the growth in taxable value of agricultural land and residential property.

While recent public demands for property tax relief have been largely responsible for states taking such drastic actions, other factors have promoted greater state control over local taxing and spending powers. These include: court-mandated upgrading of assessment practices; state assumption of an increasing share of state-local expenditure responsibilities; state efforts to specifically control the growth in school spending; and a general perception by state legislators that local officials need state-imposed restrictions on local tax and spending power in order to withstand the pressures for additional spending.

These new controls differ significantly from traditional measures which simply limited property tax "rates." Eight of the states which have departed from the status quo opted for some form of property tax "levy" limit (Kansas, Minnesota, Wisconsin, Indiana, California, Washington, Alaska and Ohio). In 1977, Maryland became the sixth state to enact a "full disclosure" law setting up a public hearing procedure to affect the property tax levy, joining Florida, Montana, Hawaii, Virginia and the District of Columbia. New Jersey is the only state that has enacted an explicit expenditure lid on local governments.

In assessing the impact of new fiscal controls, the evidence indicates that levy limits—in conjunction with increases in state aid or new local tax options—have reduced slightly the growth of property tax burdens. In Kansas and Indiana, the rate of property tax growth has been slowed by enacting new sales or income taxes; while in California, Minnesota and Wisconsin, large increases in state aid were important factors.

State Mandates

State mandating of local government services and pro-

grams increasingly has become an irritant in state-local relations. While these mandates are justified in many instances, they raise distinctly intergovernmental issues centering on the division of authority and financial responsibility between state and local governments. Stated simply: state mandates substitute state priorities for local priorities.

In 1977, the most significant state action on mandates was the work of the Illinois Commission on State Mandated Programs that was created by Governor James R. Thompson early in the year. The commission set up separate subcommittees on education mandates and on local government. Only the latter has completed its work; the education subcommittee is continuing to collect information and is not expected to report to the 1978 legislature.

The local government subcommittee report contains recommendations on 25 specific state mandates and the following four general recommendations:

- fiscal notes should be required on all legislation with a fiscal impact on local governments;
- a permanent commission on local fiscal impact, consisting of legislators and local officials, should be created to prepare fiscal notes and conduct an ongoing review of state mandates;
- local officials should be included in the process of preparing and reviewing administrative rules, and this review should consider the local fiscal impact of those rules; and
- program analyses prepared by the budget bureau should reflect the true cost of new or reduced programs by including the fiscal impact on local governments as well as the fiscal impact on the state.

The New York State Budget Division, at the direction of Governor Hugh L. Carey, is conducting a similar study. The Florida ACIR also is authorized to study all existing and proposed state mandates. In Wisconsin, a study of state administrative rules will consider the fiscal impact of those rules on local governments, and will examine the need for fiscal notes on all proposed rules. Prior to 1977, 32 states had adopted provisions for fiscal notes. Last year, laws requiring or amending fiscal note procedures on state mandates were adopted in Washington, Oregon, Nevada, Kansas, South Dakota and Utah.

Summing Up

The 1970s have continued to increase intergovernmental fiscal dependency which has greatly influenced thought and action among state and local governments. States and large cities are relying more heavily on federal dollars which lack predictability in both form and purpose. This has contributed to a general feeling of uncertainty that has been reflected in fiscal restraint among the states. Without question, a major target for reform in the 1970s has been the financing of public education, where states are assuming greater fiscal responsibility in order to reduce wealth and expenditure disparities at the local level. Fiscal sensitivity also is becoming more horizontal in nature as state fiscal actions on energy resources, the taxation of business, and the taxation of particular commodities may have profound economic implications among the states themselves. Finally, state actions taken to relieve property tax burdens have created many fiscal and administrative implications for local governments. In some instances, local units bear the direct cost associated with property tax relief, or they have become increasingly dependent on state aid or nonproperty tax resources.

Table 4

Six Indicators of State-Local Fiscal Relations

State and Region	Number of State Mandates (77 Possibilities Surveyed)	Fiscal Note on Legislation Affecting Local Government	Type of State Limit Placed on Municipal Tax or Spending Powers	In Lieu Payment	Type of Compensation to Local Government ¹ for Tax Exempt State Property	Local Tax Permitted	Major State Revenue Sharing on "Need" Basis (Dollars Per Capita) ²	States Which Permit Local Income and Sales Taxes
UNITED STATES	35*	17	2	33		16	\$14.05	— ⁸
New England	35*							
Maine	39 ³	No	None		None		5.07	—
New Hampshire	40	No	None	X			4.81	—
Vermont	31	No	None	X		X	—	—
Massachusetts	46	No	None	X			—	—
Rhode Island	11 ³	No	None		None		6.56	—
Connecticut	45	No	None	X			2.74	—
Mideast	37*							
New York	60	No	Tax Rate	X		X	24.54 (cavt)	I, S ⁹
New Jersey	45	4	Expenditures	X		X	3.39 (m)	—
Pennsylvania	41	Yes	Tax Rate	X			1.83	I
Delaware	21	4	None		None		—	I
Maryland	20	Yes	Full Disclosure ⁵	X			4.82	I
District of Columbia	—	—	Full Disclosure ⁵				—	S
Great Lakes	37*							
Michigan	25 ³	No	Tax Rate	X		X	26.01 (avt)	I
Ohio	49	4	Tax Rate	X		X	10.92 (cm)	I, S
Indiana	26	Yes	Tax Rate and Levy	X			5.18	—
Illinois	37	No	Tax Rate	X			8.44 (cm)	S
Wisconsin	50	Yes	Tax Levy	X		X	61.21	—
Plains	38*							
Minnesota	51	4	Tax Rate and Levy	X		X	31.80 (L)	S
Iowa	33	Yes	Tax Rate and Levy		None		2.60	—
Missouri	32	No	Tax Rate	X			—	I, S
North Dakota	38	Yes	Tax Rate	X			3.16	—
South Dakota	39	4	Tax Rate	X			1.91	S
Nebraska	36	Yes	Tax Rate		None		11.54	S
Kansas	35	Yes	Tax Rate and Levy	X		X	12.41	S
Southeast	27*							
Virginia	46	No	Full Disclosure ⁵			X	3.94	S
West Virginia	8	No	Tax Rate		None		—	—
Kentucky	28	4	Tax Rate		None		—	I
Tennessee	23	Yes	None		None		7.24 (L)	S
North Carolina	32	No	Tax Rate	X		X	6.48	S
South Carolina	27	No	None	X			11.86	—
Georgia	25	4	Tax Rate	X			3.41	S
Florida	43	4	Tax Rate Plus ⁶	X			30.09 (cm)	—
Alabama	11 ³	Yes	Tax Rate		None		2.06	I, S
Mississippi	29	No	Tax Rate	X			.33	—
Louisiana	20	No	Tax Rate	X			30.19 (pms)	S
Arkansas	33	No	Tax Rate	X		X	6.07	S
Southwest	33*							
Oklahoma	25	No	Tax Rate		None		1.99	S
Texas	33	Yes	Tax Rate	X		X	—	S
New Mexico	36	No	Tax Rate		None		1.97	S
Arizona	39	No	Tax Rate and Levy		None		43.08 (cm)	S
Rocky Mountains	37*							
Montana	48	Yes	Tax Rate Plus ⁶	X			—	—
Idaho	41	Yes	Tax Rate	X			6.52	—
Wyoming	37	No	Tax Rate			X	16.18	S
Colorado	23	Yes	Tax Levy	X			—	S
Utah	35	Yes	Tax Rate	X			—	S
Far West	46*							
Washington	46	4	Tax Rate and Levy	X		X	7.16	S
Oregon	45	No	Tax Levy	X		X	8.96	—
Nevada	44	Yes	Tax Rate			X	22.26	S
California	52	Yes	Tax Rate and Levy	X			15.60 (ca)	I, S
Alaska	39	4	Tax Rate and Levy		None		24.00	S
Hawaii	49	No	—		None		26.29	—

*Averages

¹In most cases, these state payments are for a small select category of property, and seldom provide for full coverage of state property.²U.S. Totals: No limits—9; Tax rate limits—24; Expenditure limits—1; Tax rate & Levy limits—8; Tax levy limits—3; Full disclosure—3; and Tax Rate plus—2.³Based on partial response.⁴Fiscal note information provided at request or on a permissive basis but not necessarily for all state government actions.⁵Full disclosure of effect of assessment increases on property tax rate.⁶Tax rate limit plus full disclosure policy.⁷For those state programs which total \$25 million or more the type of local government receiving funds has been indicated by the following symbols: c = counties; m = municipalities; a = cities; p = parishes; v = villages; t = townships; and L = all taxing units. For more detailed information about these programs see *Federal-State-Local Finances: Significant Features of Fiscal Federalism, 1973-74 Ed. (M-79)*, February 1974. See Table 56, p. 79.⁸U.S. totals: ten income tax states and 27 sales tax states.⁹I = local income tax permitted; S = local sales tax permitted.

Source: Recent ACIR state surveys conducted in late 1976 and early 1977.

The Courts and Federalism

Judicial decisions, and the actions and inactions which follow upon court decrees, have been central to the operation of federalism since our Nation's beginning. Spirited debate was carried on by the Founding Fathers over how much power should be delegated to the courts and how that power should be properly utilized. James Madison and Alexander Hamilton in the *Federalist Papers* presented persuasive arguments in support of the concepts of judicial review and the separation of powers. Continued contention over how judicial power would be utilized was assured by the decision to establish both a state court system and a separate federal judiciary. Beginning in the early national period, state and federal courts dealt forthrightly with the complicated relationships of the federal, state and local partners in American federalism.

The decisions of the courts have firmly influenced the complexion of the federal system and the manner in which its members interact. The historic state hegemony over local government and the few cases where meaningful local government home rule has been established are both attrib-

utable to state court action. The relative autonomy of the states in the 19th Century and the increase in federal regulatory power in the 20th Century were developments legitimized by the federal courts.

Five constitutional doctrines are the bases of most cases relating to intergovernmental relations:

- the income tax power of the federal government as set forth in the Sixteenth Amendment;
- the doctrine of federal supremacy over the states derived from the Supremacy Clause and expanded through the operation of the Constitution's Necessary and Proper Clause;
- the concept of state sovereignty as guaranteed in the Tenth Amendment and reinforced by the grant of sovereign immunity in the Eleventh Amendment;
- the powers delegated to the federal government under the Commerce Clause; and
- the Fourteenth Amendment requirements of "due process" and "equal protection under the laws."

The last two have been the most significant.

Today, with increasing frequency, state and federal courts are called upon to resolve conflicts which hold intergovernmental significance. Decisions in such cases determine the servicing assignments which governments carry out, the structural form that they assume, and their ability to raise revenues to support their service delivery and administrative components. Historically, such decisions generally were based upon an interpretation of statutory provisions and gave specific direction for action or inaction by one government vis-a-vis other governmental levels. The recent *NLC vs. Usery* case dealing with the extension of minimum wage and maximum hourly pay rates to state and local officials is representative of this type of decision. *County of Los Angeles vs. Marshall* is another such case. A U.S. District Court judge on December 29 of last year refused to enjoin implementation of a federal law establishing state and local government responsibility for their employees' unemployment compensation benefits. Plaintiffs had claimed that the law, scheduled to go into effect on January 1, 1978, is unconstitutionally coercive and would result in employee dismissals and reduced services.

More and more frequently, however, court cases which have profound effects upon governmental activity and financial stability arise over disputes concerning individual rights. As examples of what some experts term "activist court" decisions have become more numerous, the courts influence the operation of the legislative and executive branches, and thereby change the nature of traditional federal relationships.

This article will examine a range of state and federal court decisions which were handed down in 1977. The number of such cases decided in any given year precludes a complete review. What appears below is a survey of 1977 cases selected to exemplify those with traditional intergovernmental significance and those based upon individual rights. The cases were selected from six areas of judicial activity—taxation, school finance reform, school desegregation, growth policy and land use control, prison reform, and the conditioning of federal grants. As the courts have become more active in these and other policy arenas, their rulings have had a major impact upon the roles of the federal partners and the processes by which social policy is made.

The emergence of more activist courts in the federal system has been accompanied by significant changes in the nature of the litigation process. Five elements, as described

“Local responsibility for the financing and administration of public schools is an ingrained tradition in this country.”

by Harvard Law Professor Abram Chayes, characterize the new model of litigation. First, the party structure is no longer rigid but amorphous. Because the remedy is negotiated it is no longer a “winner take all” result. The dispute is not over private grievances based upon statutorially derived rights, but over the operation of public policy, with constitutional provisions frequently used as justification for the decree. Secondly, the suit is no longer retrospective and adjudicative but is predictive and legislative. Thirdly, relief is not based solely on the amount of harm done, but rather is forward-looking, and formulated on flexible and broad remedial terms. Fourthly, the suit is no longer self-contained. The court’s decree may have important consequences for individuals or groups not directly involved. Furthermore, the court’s decree may not terminate its participation in the suit, but may require continued court supervision and readjustment of the policy determination. Lastly, the judge is no longer passive but is active, as he or she assumes responsibility for fact evaluation and for organizing and shaping the judicial process to achieve a decision.

The new form of litigation is intended to identify what needs to be done to solve social problems and how remedial actions should be carried out. In performing this function, the courts are thrust into a more visible and dynamic role in the federal system.

School Finance

Local responsibility for the financing and administration of public schools is an ingrained tradition in this country. Because the property tax—which generally is the basis for school finance levies—varies widely from one district to another, inequities can arise in the quality of education. For this reason, state school finance systems have come under attack, with the courts leading the way.

In June 1977, the U.S. Supreme Court refused to review the California Supreme Court’s *Clowes vs. Serrano* decision issued in December 1976. The refusal let stand the California Court’s decision to uphold the 1980 deadline by which the financing of public education through the property tax must be equalized by the state legislature. By denying certiorari, the High Court closed a ten-year chapter of litigation stemming from the original 1967 *Serrano vs. Priest* case.

The *Serrano* case represents a clear example of the new form of litigation. Here, the state court perceived a societal problem and utilized the case to realize major systemic change. In so doing, it prescribed legislative as well as administrative actions. While the U.S. Supreme Court abstained from acting in its 1977 *Serrano* decision, it did not prevent state courts from entering into the area of school finance reform. The U.S. Supreme Court had forecast this approach in its earlier *Rodriguez* decision dealing with state school finance litigation. A number of state courts already have become active in directing the method of local school financing.

In *Seattle School District No. 1 vs. State of Washington*, decided in January 1977, the Superior Court for Thurston County ruled that the system was inadequate under the state’s constitutional requirement that the state furnish ample education to all children. The state judiciary moved beyond its more traditional role by requiring the legislature to provide a remedy to the financial inequities by July 1979, and by assuring that the court would retain jurisdiction over the case. The court indicated that it would take appropriate action if the legislature failed to establish the proper financial remedies by the target date.

In *Horton vs. Meskill*, decided in April 1977, the Connecticut Supreme Court held that the state school financing system was invalid under the provisions of the state constitution because it denied equal educational opportunity to children from districts with lower assessable property values. Unlike the Washington and California decisions, the Connecticut Court did not set a specific date for the formulation of a new financial system, nor did it give the legislature specific guidelines for the preparation of a plan. It did state, however, that “significant . . . state support” is required to equalize the disparities in educational funding in Connecticut.

In December, Judge Paul Riley of Hamilton County Pleas Court ruled the Ohio state school financing system unconstitutional. In this case the Cincinnati school district, in a class-action suit, argued that the state legislature’s school funding system failed to satisfy the Ohio constitutional requirement for provision of a “thorough and efficient education.” Judge Riley, noting the necessity of state funds for the proper operation of the districts, ordered the financing decision to take effect on July 1, 1978. This decision will permit the schools to remain open and the legislature to design a new system for funding them. In striking down the one-year-old state school finance system, which makes state aid contingent on the ability of local districts to pass tax levies, the court affected 85% of Ohio’s two million public school pupils.

Conditioning of Federal Funds

The courts also have moved into a traditional administrative area in decisions which either direct or condition the manner in which the government distributes grant funds.

In January of last year, low-income citizens in Davenport, IA, won a consent decree in the U.S. District Court for the Southern District of Iowa. The decree ordered the City of Davenport to limit the portion of its \$925,000 community development block grant (CDBG) award to be spent on projects in affluent sections of the city. These grant monies were in turn to be directed to projects benefiting the city’s poorer sections. The suit challenged a city plan to spend \$337,000 of the CDBG funds on parks and tennis courts in the most affluent section of the city. In negotiating the agreement to alter its expenditure of funds, the city consented to the allocation of \$45,000 to hire two new staff persons responsible for implementing a housing program for the poor; the addition of a full-time attorney-investigator to deal with housing discrimination; the use of \$30,000 to implement an inner city development corporation; and the expenditure of \$225,000 to purchase land for multifamily housing and to rehabilitate existing housing.

Two recent lower court decisions dealt with the minority quota provision of the 1977 *Public Works Act* that requires that 10% of a grantee’s funds be directed to qualified minority businesses. In the first case, a federal judge in

“The Court is not limited to simply prohibiting action in violation of a statute, but also may require affirmative actions to be taken to assure compliance.”

Los Angeles ruled that the minority quota provision is unconstitutional because it violates the Fifth Amendment. However, the judge refused to halt construction financed by the \$4 billion allocated nationwide under the *Public Works Act*.

In *Constructors Association of Western Pennsylvania vs. Kreps*, a preliminary injunction was sought against the 10% minority quota, arguing that the funding requirement violated the Fifth Amendment right to equal protection. The U.S. District Court for Western Pennsylvania found that the minority quota does not offend this guarantee, and held that the 10% quota was reasonable since it was well below the 17% minority population level and is not harmful to nonminorities.

In *U.S. vs. City of Chicago* (January 1977), the Seventh Circuit Court of Appeals dealt with the use of general revenue sharing funds. The federal district court initially had found the city police department's use of racially and sexually discriminatory employment practices to be in violation of the *1964 Civil Rights Act*, and its use of general revenue sharing funds to pay police salaries in violation of the *State and Local Fiscal Assistance Act of 1972*. The appeals court upheld the federal court's power to enjoin the federal government from paying all revenue sharing funds to the city until its police department took affirmative steps to end employment discrimination. The majority opinion stated "the Court is not limited to simply prohibiting action in violation of a statute, but also may require affirmative actions to be taken to assure compliance."

Taxation

Several 1977 tax cases are important to federalism because they affect the states' ability to raise revenues.

In *Complete Auto Transit vs. Brady*, the U.S. Supreme Court unanimously ruled that states may tax businesses for the privilege of operating within a state, even if that operation is part of interstate commerce. The case arose over a Mississippi tax levied "for the privilege of engaging in or continuing in business, or doing business." Any business transporting persons or property between points within Mississippi was required to pay a tax established as a percentage of its income. After General Motors shipped vehicles to Mississippi, the Complete Auto firm trucked them to dealers within and without Mississippi.

This decision overturned the Court's decree in *Spector Motor Service Inc. vs. O'Connor* (1951), which had forbidden the imposition of a privilege tax on activities in interstate commerce. The Court looked beyond the label applied to the tax and recognized that this tax was no different than other taxes whose constitutionality it had upheld. The Court established specific standards which must be met by any proposed privilege tax: there must be activity within the taxing state sufficient to justify the tax; the taxing power must be fairly apportioned between

the taxing state and other jurisdictions; the tax must not discriminate against interstate commerce; and the tax must be fairly related to the services, privileges and benefits afforded by the taxing state.

The impact of *Complete Auto Transit* is to simplify state taxation of businesses engaged in interstate commerce. Several states which have passed net income taxes collected from corporations engaged only in interstate commerce will have the option to simplify and unify their tax systems by collecting the privilege tax under the state franchise tax.

Soon after the *Complete Auto Transit* decision was handed down, the *Commonwealth vs. Universal Carloading and Distribution Company* case was decided in the Commonwealth Court of Pennsylvania. In this case, business activity carried on by Universal Carloading consisted of forwarding freight in interstate commerce. The company had filed state corporate income tax returns but had never filed a franchise tax return under Pennsylvania's foreign franchise tax. In its opinion, the Commonwealth Court held that the "demise" of the *Spector* rule "necessarily deals a fatal blow to appellant's hope of prevailing here."

In January 1977, the U.S. Supreme Court handed down a unanimous decision in *Boston Stock Exchange vs. State Tax Commission*. Here, the Court declared the New York state stock transfer tax statute to be unconstitutional because it discriminated against interstate commerce. The Court determined that the New York transfer tax provisions placed heavier burdens on in-state transfer of securities resulting from out-of-state sales than on those resulting from in-state sales, and was therefore in violation of the Commerce Clause.

In *Mathews vs. Colorado*, the Colorado Supreme Court ruled that the state's allowance in determining the use tax on motor vehicles purchased out-of-state was discriminatory and in violation of the Commerce Clause. Colorado permitted the application of the tax credit when the vehicle was purchased within the state.

A decision which may contradict the *Complete Auto Transit* ruling was recently handed down by the Washington Supreme Court. In *Association of Washington Stevedoring Companies vs. Department of Revenue*, the court held invalid the state's gross receipts taxation of in-state stevedoring at Washington ports in loading and unloading of goods. The court concluded that this activity is inseparably part of interstate and foreign commerce, and therefore is not subject to state taxation. In June, the state filed a petition for writ of certiorari with the U.S. Supreme Court. In seeking review of the state court's decision, the state is relying in part upon the *Complete Auto Transit* holding, arguing that if fairly apportioned and applied in a nondiscriminatory manner, the tax on stevedoring is permissible under the Commerce Clause.

An important development bearing upon interstate commercial relations occurred when the Iowa Supreme Court overturned a county district court decision in *Moorman Manufacturing Co. vs. Bair*. The Iowa Supreme Court ruled that the state's single-factor (sales) apportionment for the computation of corporate income tax was not unconstitutional. The Iowa corporate tax apportions income solely on the basis of sales within the state, and therefore provides large Iowa manufacturers which do most of their business beyond the state's border with substantial tax savings. Firms which manufacture their goods outside of Iowa, but sell their products within the state, argue that this tax policy penalizes them. Many other states employ the three-factor formula that takes into account

sales, plant and payroll. The U.S. Supreme Court has agreed to review the Iowa Supreme Court's decision.

On April 4, the U.S. Supreme Court handed down its decision in *National Geographic Society vs. California Board of Equalization*. The Society challenged the constitutionality of California's use tax as applied to its mail-order business. In the suit, the Society attempted to recover taxes collected on its two California offices which are engaged solely in the solicitation of advertising for its magazine. In its unanimous decision, the Court held that the application of the use tax on the Society's mail order operation did not violate the Due Process Clause or the Commerce Clause of the Constitution. Previously, shippers were liable for such taxes only if they owned stores in the state imposing the tax. By expanding this rule to include any business facility, the Court reinforced the current judicial trend that supports broad state application of such business taxes.

In October, the U.S. Supreme Court heard arguments on *United States Steel Corporation vs. Multistate Tax Commission*. The Multistate Tax Commission (MTC) is a 19-state compact that pools members' resources in order to perform audits of multistate corporations. In 1972, 82 corporations brought suit against MTC seeking to disband it. Lawyers for the plaintiffs argued that the MTC was unconstitutional because it lacked Congressional approval, imposed an unreasonable burden upon interstate commerce, and discriminated against multistate corporations. In July 1976, the U.S. District Court for the Southern District of New York rejected these claims and upheld the constitutionality of the MTC. The U.S. Supreme Court decision on the MTC case is expected in 1978.

Land Use and Zoning

The impact of the U.S. Supreme Court decision in *Village of Arlington Heights vs. Metropolitan Housing Development Corporation* (January 1977), is to toughen the standards by which claims of racially discriminatory housing policy will be judged, and to thereby limit the range of activity of federal courts in this policy area. The suit arose in 1971 when Metropolitan Housing sought to rezone a 15-acre tract of land in Arlington Heights, IL, from a multifamily to a single-family classification. When the rezoning was denied, the corporation and others brought suit on the basis of a violation of the 1968 *Fair Housing Act* and certain constitutional provisions. The trial court held in favor of Arlington Heights, finding that the refusal to rezone had no racially discriminatory effect. The appeals court reversed this finding that Arlington Heights' justification for its action (a desire to maintain a "buffer zone" and protection of property values) was not "compelling." The U.S. Supreme Court reversed this decision and upheld the trial court's finding. In so doing, the Court stated that proof of racially discriminatory effect was inadequate evidence, and that proof of discriminatory intent is necessary for the court to require rezoning.

In this decision, the Court effectively limited the role of the federal judiciary in rezoning cases involving claims of racial discrimination.

In *Oakwood at Madison vs. Township of Madison* (January 1977), the New Jersey Supreme Court qualified judicial involvement in the new public law litigation process by withdrawing the trial courts from the protracted, complex process of fact collection, review and assessment concerning the definition of a regional area and the determination of what "fair share regional housing

needs" are for a municipality. The *Oakwood* case arose in 1970 when the developer-plaintiff challenged the local zoning ordinance that restricted its effort to build housing for the poor in the township. The trial court held the ordinance invalid. In January, the New Jersey Supreme Court upheld the trial court's finding, stating that the ordinance was exclusionary because it precluded the supply of moderate and low-income housing to the region, whether or not the exclusionary effect was intended.

While this ruling apparently contravenes the U.S. Supreme Court decision in *Arlington*, the New Jersey Court in *Oakwood* evidenced its awareness of limitations inherent in the activist role. By directing the trial courts to withdraw from the process of "demarcating the region" and determining "fair share" housing for a municipality, the New Jersey Court noted that such process "is much more appropriately a legislative function rather than a judicial function to be exercised in the disposition of isolated cases."

As such, the *Oakwood* case recognized the importance of the constitutional separation of powers doctrine and the impropriety of the courts becoming deeply involved in what are essentially legislative and administrative processes of defining regional boundaries and determining fair share housing.

School Desegregation

One year after the U.S. Supreme Court declared public school segregation to be unconstitutional, it delegated the responsibility for school integration to local school officials (*Brown vs. Board of Education, I and II, 1954*). In order to ensure the expeditious movement toward integrated schools, the Court directed district courts to use "broad equitable powers" to induce unwilling local officials to desegregate. This directive put the federal and state courts in the center of contention over another major social issue.

In June of last year, the U.S. Supreme Court reaffirmed the broad remedial powers of the federal district courts to achieve educational equity through desegregation. In *Milliken vs. Bradley*, it upheld a district court decision requiring the Detroit School Board to carry out additional pupil assignment, and requiring the school board or the state to institute additional compensatory or remedial programs. The Court ruled that the cost of the programs be borne equally by the school board and the state.

In June, the U.S. Supreme Court vacated and remanded the U.S. Sixth Circuit Court of Appeals decision in *Daytona Board of Education vs. Brinkman*, indicating that the constitutional violation found by the district court did not support the broad districtwide remedy imposed, and that more specific findings and additional evidence were necessary. The court held that the incremental impact of the violation on racial distribution must

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be determined, and that the remedy must speak only to the incremental difference. In so doing, it attempted to link the remedial action with the extent of harm done, an important characteristic of the traditional form of litigation. But in its remand, the Court reaffirmed the power of federal district courts to, when appropriate, require systemwide remedies through a variety of desegregation techniques including racial districtwide pupil distribution requirements, the "pairing" of schools, the redefinition of attendance zones, and a range of centralized special programs and "magnet schools."

In the third instance of 1977, the U.S. Supreme Court upheld a plan to merge city and suburban schools in Delaware for the purpose of integration. The Court-approved plan will create one district for the City of Wilmington and the 11 districts of surrounding New Castle County. This action upheld a May decision by the U.S. Court of Appeals for the Third Circuit which called for extrametropolitan integration because the suburban districts, as well as the City of Wilmington, had carried on unlawful discriminatory policies.

Prisons

A third area in which the courts have been more active recently is that of prison administration. In the face of administrative and legislative recalcitrance, the courts have stepped in to protect the constitutional rights of prisoners. The courts have stipulated actions to be taken by state executive branches, which also frequently require additional appropriation of funds by the legislative branch.

A number of 1977 prison-related court cases dealing with conditions of confinement underscore the courts' involvement in traditional executive and legislative arenas. In *Loaman vs. Helgemoe*, the U.S. District Court of New Hampshire found that prisoners have the right to be held in facilities whose conditions do not cause degeneration. This three-part right stipulates that prison facility conditions should not: threaten the inmates' sanity or mental well-being; be counterproductive to the inmates' efforts to rehabilitate themselves; or increase the probability of the inmates' future incarceration. In holding that prison conditions which fail to meet these standards violate the prisoners' Eighth Amendment rights, the District Court ordered significant changes in state prison conditions, including the provision of job and training opportunities, recreation, prisoner classification, staff training, and visitation allowances.

“In the face of administrative and legislative recalcitrance, the courts have stepped in to protect the constitutional rights of prisoners.”

In August, the U.S. District Court of Rhode Island, in *Palmigiano vs. Garrahy* and *Ross vs. Garrahy*, ordered the state to close its maximum security facility within a year, and to upgrade the health and safety conditions and the rehabilitation programs in the remainder of the prison system. The court granted the state a maximum of two months to complete the administrative changes, but only

one month to devise a plan for the replacement of the maximum security facility.

Similar decisions were handed down in the States of Delaware and Oklahoma in the last year. In February, a U.S. District Court ordered the population of the Delaware Correctional Institution reduced by half before July 1 of last year. In October, the Tenth Circuit Court of Appeals upheld a lower court ruling requiring the State of Oklahoma to halve the number of inmates housed in its maximum security prison and youth reformatory. In both states, prison populations were reduced through paroles and the transfer of prisoners to other institutions.

In *Bounds vs. Smith* (April 1977), the U.S. Supreme Court upheld a district court order requiring North Carolina to provide its prisoners with library aid facilities. A group of inmates had alleged Fourteenth Amendment violations because of the state's denial of their access to the courts through its failure to provide legal research facilities. A U.S. District Court decided in favor of the prisoners' claims, and charged the North Carolina Department of Corrections with the task of designing a constitutionally sound program to assure inmate access to the courts. The state proposed a plan for seven library units to serve all penal units. The plan also requires the provision of legal forms, writing paper, typewriters, and copying machines. The district court found this plan to be both economically feasible and practical, and the U.S. Circuit Court of Appeals for the Fourth Circuit affirmed it, except insofar as the plan denied women prisoners access to the library facilities.

In upholding the district court decision, the U.S. Supreme Court held that the fundamental constitutional right of access to the courts requires state prison authorities to assist inmates in the preparation and filing of appropriate legal papers. But while reaffirming the broad scope of judicial action in program administration, the High Court noted the limitations of judicial activism. In its affirmation of the *Bounds* decision, the Court cautioned against federal courts "sitting as co-administrators of State prisons," and noted that the Court "exceeds its powers when it puts itself in the place of (prison) administrators."

The Supreme Court's cautioning notwithstanding, the courts' role in the administration of penal institutions provides a primary example of their willingness to force action by other governmental institutions to assure individual rights.

The Courts and the Federal System

"The law is not made by judge alone," said Jeremy Bentham, "but by judge and company." Today, as one writer has noted, a judge and company have become a conglomerate. The increased size of the parties in litigation, the high decree to which the judge guides the case, the negotiated nature of the decree, and the courts' retention of jurisdiction after the decree is handed down are all elements in this trend.

These developments are, in part, a result of the courts' attempt to adapt to the changes provoked by industrialization, urbanization, and technological advances. These phenomena have resulted in the massive growth of government in the 20th Century. As Professor Roger Crampton has observed, "the Leviathan is upon us," and the courts have expanded their breadth of activity in response to the increase in regulation by the other governmental branches.

Citizens and groups dissatisfied with the responses to their problems by public officials turn in ever increasing

numbers to the courts for relief. In response, the power of the courts has flowed into the vacuum created by the executive and legislative branches. As a result, the courts have moved beyond their earlier roles as controllers and qualifiers to become policy initiators and directors of administrative action.

These changes in judicial role and process are not without support. Advocates of more active courts note that presiding judges, unlike their legislative and administrative counterparts, are insulated from narrow political pressures but also have knowledge of the political process. Freed of the usual political constraints, judges may select from a wider range of options. The activist model of litigation also permits the application of broad national policies to situations of limited scope, as well as substantial opportunity for the participation of those who represent the parties affected by the case. The limited scope of the judicial process, relative to legislative or executive branch processes, also allows a close scrutiny of the evidence submitted. In addition to the review on the part of the adversary parties, the judge may call on authorities and panels of experts in an effort to further clarify the issues. This information may be interpreted objectively and dispassionately by the judge, without being distilled by the preconceptions and prejudices common to bureaucracies. Finally, the judiciary also may be depended upon to address problems which arise as a result of public programs. While the legislative and executive branches may defer or not take remedial action, the judiciary must respond to the issues placed before it.

These arguments in support of more active courts and the new form of litigation have their critics. They argue that this trend begs the question of what impact the active courts have on other governmental institutions, or the traditional institutional relationships in American federalism, or the public's image of the judiciary.

The policymaking and administrative role of the judiciary raises important questions concerning the maintenance of its own legitimacy, whether it possesses the capacity to mandate and oversee broad social policy, and whether it is truly accountable to the public which it serves. When the courts mandate new school finance programs or tell the state how to run its prisons, for example, they appear to be legislators and administrators more than judges. If the public's perception of the judiciary as a unique entity in the federal system is diminished through this blurring of jurisdictional boundaries, these critics contend, then judges will lose both credibility and authority. If this occurs, the activist judges will have done a grave disservice to the judiciary as well as to the federal system.

A more active judiciary also raises an important accountability question. It becomes increasingly difficult to reconcile policymaking, nonelected, life-tenured judges with traditional values of a representative democracy. These officials can be held accountable only with a great deal of effort, yet they have the power to dramatically alter or suspend decisions made by elected legislatures.

The question of whether or not the judiciary has the capacity to perform a more active role also is raised. Social policy decisions frequently require continued judicial surveillance and/or periodic judicial intervention to readjust the remedial action. This has led some observers to question whether the courts possess the requisite resources to carry out these protracted tasks and satisfy their ongoing adjudicative responsibilities.

The issue of a proper court role was underscored by Judge Hays of the Second Circuit in his dissent to the 1970

Norwalk ruling. In commenting on a related 1970 decision, Hays declared:

The traditional role of the courts is, given the changing nature of the society they serve, placing the courts in a position of being called upon to make exceedingly non-traditional decisions. Citations to instances of courts handling exceedingly complex bankruptcy or reorganization cases does not change the fact that our courts remain technically incapable of adequately solving the urban ills of our nation on their own. It is only by explicitly recognizing that its role in that policy process is not to resolve policy issues themselves but to force their resolution by those competent to make them, the courts can participate creatively in the rebuilding of the cities.

Justice Holmes, at the end of the 19th Century offered advice to focus on "what the court will do in fact, and nothing more pretentious." For most of the 20th Century what the court did "in fact" fitted neatly within the traditional judicial framework and form of civil litigation. In the last 25 years, however, the courts have moved far beyond that limited definition of judicial action.

In developing its proper role in the urban affairs issues alluded to by Judge Hays, and in other public policy cases, the courts must tread a narrow path between becoming a "superlegislature," conducting an "ongoing constitutional convention," and failing to carry out their constitutionally mandated task of assuring the preservation of the Constitution and the laws of the land.

In this regard, the 1977 cases exemplifying the activist court reinforce the current trend in judicial action. And this trend is not likely to be altered in the near future, for the blurring of institutional boundaries and the erosion of traditional institutional roles are processes which, once begun, are exceedingly difficult to halt or reverse.

(Continued from page 2.)

a unique institution, permanent in concept (despite its advisory role), responsible to both the President and Congress as well as its state, local and citizen constituencies, and the first formal body monitoring the workings of our federal system since the *Constitutional Convention* itself. What, then, has been and should be its role in the shape of things past and future?

I suggest it must be a severe critic, a sound innovator, and perhaps equally important, a philosophic spearhead. The rhetoric and slogans we leave to others, and I will not even attempt to comment on "Great Societies" vs. "New Federalisms" vs. whatever else. (And all credit should be given to President Carter for not yet feeling the urge to have a new slogan to categorize whatever variations he is successful in imposing on an already confused, but established, system of intergovernmental relations.)

We have sought to provide thoughtful leadership in broad scope, even as we were dealing with day-to-day, and sometimes nitty-gritty issues. Our first formal nationwide conference on federalism in 1975 set the standard, and as it turned out, was almost the only part of the whole Bicentennial celebration that dealt with what it was all about—an innovative governmental system that has lasted 200 years. A volume on *American Federalism: Into the Third Century* was another important part of this philosophical base. We asked where we were heading—or should be—governmentwise.

In the broad sweep of events, I would list ACIR's lead role in highlighting the problems of financing public education (with subsequent significant results in increased state funding); in initiating the debate on federal funding of welfare programs

(now a partial reality); in fleshing out the concepts of general revenue sharing and of block grants (now both realities); in identifying the emerging problems of municipal bankruptcy (and in devising state programs for preventing this in the future); in highlighting the tangled web of metropolitan balkanized governments and regional basin inconsistencies (although here with few results to note); and in undertaking a monumental study of the entire federal aid delivery system, from White House to individual recipients (and many of our recommendations for Presidential staff involvement were adopted by the Carter Administration).

More microcosmic issues included the first public spotlight on the cigarette bootlegging problem; highlighting inequities in the way the military handles state and local taxes for its personnel; a review of state-local relations in criminal justice; the first official look at indexation of state and federal income taxes; a study of state mandates on local government; recommendations dealing with the appropriation of federal grants by state legislatures; a continuing update of property tax administration; and identifying urban problems and needs, to mention but a few of the subjects upon which we have focused.

Like a kaleidoscope, membership on ACIR constantly is changing. Of the 26 members, only Congressman L. H. Fountain of North Carolina (the Commission's cofounder) and Mayor Jack Maltester of San Leandro, CA, were members when I arrived eight years ago. But year-in and year-out, state and local members in particular have been faithful in their attendance and active in their participation. The federal team has been more erratic, ex-

cept for the House contingent. This is a vital forum which only can function effectively if all levels of government and its citizen members participate. The roster of members is impressive: Muskie and Ervin, Rockefeller and Reagan, Mills and Ullman, Percy and Hollings, Romney and Shultz, to name but a few. Some of the debates which these and others engaged in were memorable. I most vividly recall one in which Romney the Republican Cabinet member teamed with Ullman the Democratic Congressman, and took on Muskie the Democratic Senator allied with Shultz another Republican Cabinet member.

IV.

In numbers alone, these past eight years have seen total government spending almost double, federal grant programs increase over three-fold, and public employment increase by one-third (mostly at the state and local level), to 15 million employees. With at least 33 general purpose laws superimposing broad controls on grant-in-aid programs, and at least 172 specified federal mandates in such areas as citizen participation, it is no wonder that confusion reigns at the state and local levels. Perhaps we need a new environmental impact study to measure the effect of federal laws and regulations on state and local governments, not to mention the private sector. But the situation is not helped by the vigor and skill with which organizations of state and local officials lobby for more federal assistance, now apparently their primary task.

In short, our society—and therefore our government—has taken another quantum leap in complexity in the past decade. The numbers of dollars spent and personnel involved are im-

portant only as indicators of a new magnitude and complexity. Therefore, we must develop a new determination to face head-on some problems we have brushed under the carpet for many years, even decades. While we must recognize and welcome the continuing need to use governmental power to eradicate—or at least ameliorate—past inequities, we must learn to use this force in rational ways, with recognition of all the intergovernmental implications of each action. Today's challenge is not so much the identification of issues (this we have done ad nauseam), but rather the shaping of our public policy mechanisms to enable us to deal with these issues.

We should worry less about major surgery (i.e., should we shift to a parliamentary system?) which will never occur, and concern ourselves with how we meld into better harmony that which we have. We should be asking how the branches of government—executive, legislative and judicial—could at least pull in the same general direction; how the levels of government—federal, state and local—blend their policies and programs; and finally, how the citizens of this country understand that the greatest participation they can make to democracy is to vote, be interested in the issues, come to public meetings, express their views, and be provocative, belligerent, but still constructive.

We have too many stalemates in this government. We have the bureaucracy vs. the elected leaders! We have the Congressional committee staffs vs. the bureaucracy! We have the courts vs. the executive and legislative! We have the President vs. his own Cabinet, his bureaucracy, and the interest group constituencies! A simple pluralistic so-

ciety of the 18th Century is now a complex pluralistic society with awesome problems. We must find ways to improve the existing governmental system, and to strengthen our capacity to meet the challenges which confront us today and which will confront us in the decades to come. In short, we must develop mechanisms to reconcile the conflicting—and often noisy—divergent views.

V.

This is my last report as Chairman of ACIR. I would like, in conclusion, to highlight the identifiable problems of our federal system, perhaps less momentous than those I have just mentioned, but still basic to our ills.

1. At one end of the federal delivery system, in our urbanized metropolitan areas where 75% of our population now live, we have a fragmented local government hodgepodge (in most areas), with fractured government, poor or no areawide planning, destructive and competitive taxing policies, and layer upon layer of conflicting federal government involvement in an attempt to rationalize the mess. Moreover, most states have not shouldered their responsibilities to local government, particularly our big cities. We have no coordinated urban strategy, nor do I see one yet emerging from current deliberations.
2. At the other end of the delivery pipeline, we have an uncoordinated federal bureaucracy administering the 448 different state and local grant programs, with at least 33 broad controls, and who knows

how many regulations, spewing out about \$70 billion in taxpayers' dollars this year (and an estimated \$80 billion next year), with very little direction—as yet at least—from the White House; pitifully poor federal regional coordination; and complete disdain in the Congressional committees—at least about the ability of state and local officials to administer these programs effectively.

3. With state and local taxes now topping the \$100 billion mark annually, it suddenly has occurred to the pundits that we have a bicameral taxing system. This writer has long, and lonesomely, suggested that we needed a national fiscal policy, that in the actions which Congress periodically takes (often in election years) to reduce the federal income tax, perhaps some consideration should be given to state and local tax policies as well. Countercyclical legislation pouring billions of dollars into the system, was considered to be the answer; it may be the doomsday of a truly federal system.

This country has survived longer than any other as a federal republic. There is nothing perfect about our way of doing things, but it has worked. My recitation of troubles is not to suggest Armageddon; it is to warn about the difficult decisions which must be made in the years ahead. We are a unique society, heterogeneous, but consistently homogeneous when threatened. I only hope we see both the dangers and the opportunities in the years ahead.

Robert E. Merriam

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