

IN BRIEF

**The
Federal Role
in the
Federal System:
The
Dynamics
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Advisory Commission on Intergovernmental Relations, Washington, D.C. 20575 • December 1980

FOREWORD

Nearly 200 years after the Founders signed the Constitution establishing a federal Republic, the Congress requested the Advisory Commission on Intergovernmental Relations to "study and evaluate the American federal fiscal system in terms of the allocation and coordination of public resources among federal, state, and local governments" (P.L. 94-88, the 1976 renewal legislation for General Revenue Sharing). iii

This *In Brief* is a summary of the Commission's response to the Congressional mandate to study and evaluate the federal role in the federal system. It was written by Stephanie Becker, ACIR information associate, based on the work of members of the ACIR Structure and Functions Section, headed by Assistant Director David B. Walker.

Commission work on this topic is comprised of 11 volumes listed below. The series, *The Federal Role in the Federal System: The Dynamics of Growth*, will be issued throughout 1980 and 1981.

- *A Crisis of Confidence and Competence* (A-77), July 1980;
- *Federal Involvement in Libraries* (A-84), June 1980;
- *Public Assistance: The Growth of a Federal Function* (A-79), July 1980;
- *The Federal Role in Local Fire Protection* (A-85), November 1980;
- *Reducing Unemployment: Intergovernmental Dimensions of a National Problem* (A-80);
- *Intergovernmentalizing the Classroom: Federal Involvement in Elementary and Secondary Education* (A-81);
- *The Evolution of a Problematic Partnership; The Feds and Higher Ed* (A-82);
- *Protecting the Environment: Politics, Pollution, and Federal Policy* (A-83), Winter 1981;
- *The Condition of Contemporary Federalism: Conflicting*

Theories and Collapsing Constraints (A-78);

□ *An Agenda for American Federalism: Restoring Confidence and Competence (A-86);* and

□ *Hearings on the Federal Role (A-87),* December 1980.

The ACIR comprehensive analysis of the federal role in the federal system is but one component of the Commission's response to the broad 1976 Congressional mandate. Other parts are:

*Citizen Participation in the American Federal System (A-73),
Conterycyclical Aid and Economic Stabilization (A-69), and
State-Local Finances in Recession and Inflation (A-70).*

Also to be released in 1981 are studies on comparative fiscal federalism, the roles of state and local governments, and the future of federalism in the United States.

Abraham D. Beame
Chairman

Wayne F. Anderson
Executive Director

CONTENTS

Introduction	1	v
A Quantitative Analysis: The Growth of the Federal Role	7	
Historical Analysis: How Did Government Grow?	13	
The Judicial “Greenlight”	15	
Political Factors – A Convergence for Growth	16	
A Normative Analysis: How Well is the System Working?	19	
National Purpose	20	
Fiscal Equity	21	
Economic Efficiency and Administrative Effectiveness	22	
Political Accountability	24	
An Agenda for the Eighties: ACIR’s Recommendations for Change	27	
Decongestion of the Federal Grant System	28	
A Less Intrusive Federal Role	30	
Strengthening the Party System	31	
Preserving and Renewing State-Local Discretionary Authority	31	
Making Federalism a “Front-Burner” Topic	32	
Resolving Ambiguities: Clarifying the Constitutional Amendment Process	33	
Conclusion	35	
Appendix. Recommendations	37	

INTRODUCTION

American federalism—the tripartite system involving shared and separate powers among the federal, state, and local levels of government—is in trouble, the Advisory Commission on Intergovernmental Relations (ACIR) has concluded following a three-year study of the federal role in the federal system. The federal government's influence, the Commission warns, has become more pervasive, more intrusive, more unmanageable, more ineffective, more costly, and, above all, more unaccountable. 1

This view is also shared by many experts. Professor Daniel Elazar, director of the Center for the Study of Federalism at Temple University, was questioned about the condition of American federalism in testimony before the Commission in March of 1980.* Dr. Elazar likened our intergovernmental system to the plight of Daniel Boone: "Daniel Boone once was asked whether he was ever lost in the woods. He looked around, and he said, 'well, I have never been lost. That would really not be my way, but once I was bewildered for three days.'" Dr. Elazar, a leading scholar in the field for over a quarter century, feels that when it comes to federalism, the American people and their representatives are very much lost in the woods, or, at least, seriously bewildered.

Unlike public opinion polls of 20 years ago which reflected a high degree of satisfaction with government in general, today's surveys reflect a pervasive citizen bewilderment, if not cynicism. The Commission asks—if, in a democratic federal republic, the citizens, not to mention its key administrators and politicians, are unable to comprehend policy formulation and implementation—where stands the system?

*For more information on this topic, see *Hearings on the Federal Role* (A-87).

THE SCOPE OF FEDERAL AID

Prior to 1960 – Few and Far Between

- 2
- 1937 Housing
 - 1946 Airport Aid
 - 1946 Hospital and Medical Facilities
 - 1948 Water Pollution Control
 - 1949 Urban Renewal
 - 1950 Federal Impact School Aid
 - 1954 State and Local Planning Assistance
 - 1954 Small Watershed Protection
 - 1955 Air Pollution Control
 - 1956 Library Aid
 - 1958 College Student Aid
 - 1787 Education Land Grants
 - 1862 Agricultural Education (land grant colleges)
 - 1914 Agricultural Extension
 - 50-50 matching
 - state plan approved
 - first modern conditional money grant
 - 1916 Federal Aid Highways
 - 1917 Vocational Education
 - 1921 Public Health Assistance
 - 1935 Social Security
 - 1935 Public Assistance

Source: ACIR staff computations.

HAS INCREASED DRAMATICALLY

1978 — Grants for Everything

Budget Subfunction	Number of Programs
Department of Defense — Military	5
General Science and Basic Research	1
Energy	6
Water Resources	7
Conservation and Land Management	13
Recreational Resources	10
Pollution Control and Abatement	35
Other Natural Resources	4
Agricultural Research and Services	9
Mortgage Credit and Thrift Insurance	2
Other Advancement and Regulation of Commerce	2
Ground Transportation	36
Water Transportation	2
Mass Transportation	8
Air Transportation	3
Other Transportation	1
Community Development	5
Area and Regional Development	36
Disaster Relief and Insurance	9
Elementary, Secondary, and Vocational Education	70
Higher Education	10
Research and General Education Aids	21
Training and Employment	23
Other Labor Services	1
Social Services	47
Health	78
Public Assistance and Other Income Supplements	27
Hospital and Medical Care for Veterans	5
Criminal Justice Assistance	13
General Property and Records Management	1
Other General Government	2
Total	492

The intergovernmental system today, in the Commission's view, is a bewildered and bewildering maze of complex, overlapping, and, often, conflicting relationships among the three levels of government. In short, the system is overloaded. A comparison of the federal-state-local network of 1960 and today provides critical insight. Two decades ago, intergovernmental fiscal transfer programs amounted to a little over \$7 billion. Today, the nearly 500 assistance programs cost \$88 billion. Then, federal regulations imposed on state and local governments were few in number. Now, an estimated 1,260 mandates are in effect. Then, intergovernmental assistance went almost exclusively to the 50 states. Now, about 65,000 units of local government receive some form of direct federal aid.

4 The federal government's influence is felt throughout the nation by virtually all individuals, businesses, other private organizations, and state and local governments, bringing both relief and intrusion, creating both pleasure and pain. Income assistance, federally created jobs, a cleaner environment, safer products, better working conditions, needed community improvements and the like are clearly positive accomplishments. Yet they and other efforts are frequently marred by complaints of excessive paperwork, unnecessary delays, unexpected costs and losses in productivity, and too much federal decision-making at the expense of private freedoms and policymaking discretion by the state and local governments. The Commission recognizes the positive effects of some expansions in the federal role, yet questions the effectiveness of the bewildering network that now characterizes intergovernmental relations.

In order to better understand how the system grew, and to determine how well it is working, the Commission produced in-depth case studies in seven functional areas: public assistance, unemployment, elementary and secondary education, higher education, environment, libraries, and fire protection. Each details the role of various political actors and forces in the development of federal programs.

The Commission's conclusions fall short of calling for a drastic overhaul of the federal system; its major findings, however, are less than sanguine about the present state of intergovernmental relations. At its March 1980, meeting, members reached a consensus. Their overall conclusions are stated below. Specific recommendations for change to alleviate an overloaded system were adopted in June of 1980 and are presented in the Appendix.

■ **The current network of intergovernmental relations has become dangerously overloaded, to the point that Ameri-**

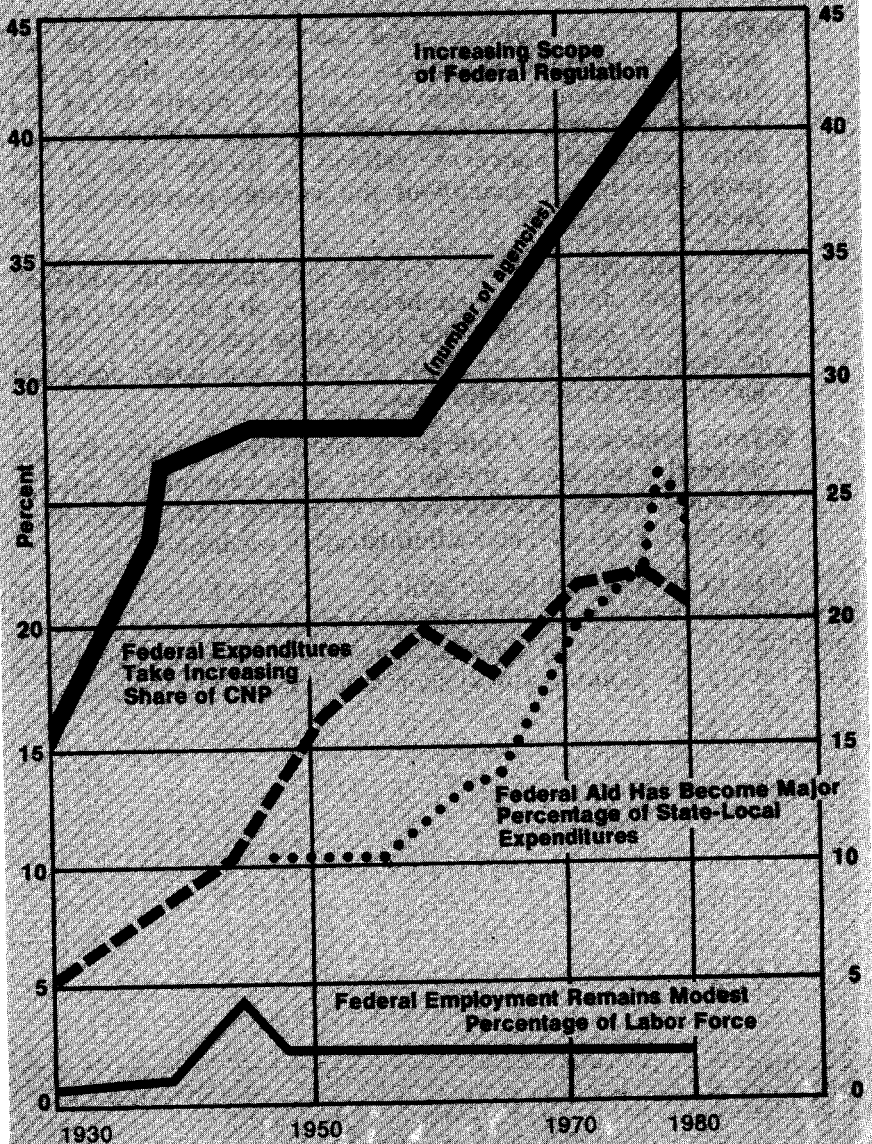
can federalism's most trumpeted traditional traits—flexibility and workability—are critically endangered.

- This threatening condition has come about largely as a consequence of a rapid expansion in the overall scope, range of specific concerns, and coercive character of the federal role in the federal system, thanks to the erosion of various political, judicial, and fiscal factors that formerly disciplined the national political process.
- While certain governmental activities necessitate an intergovernmental approach, the extensive use of the intergovernmental system to deal with nearly all of the nation's domestic concerns, from our most national to our most parochial concerns, reflects a feeble faith in the problem-solving capacity of the various partners in our federal system.
- The willingness of the federal government to consider issues that more properly belong to a city or county council, school board, or state legislature results in it short-changing some of our most national and basic domestic governmental responsibilities.
- This tendency to “intergovernmentalize” practically all domestic functions hinders the achievement of equity, administrative effectiveness, economic efficiency, and political, electoral, and administrative accountability.

5

This *In Brief* provides an overview of *The Federal Role in the Federal System: The Dynamics of Growth* in four parts: a quantitative analysis, an historical analysis, a normative analysis, and, finally, the Commission's recommendations for change.

**The Federal Role Has Grown Bigger and Broader
While Its Bureaucracy Has Stabilized, Relying
Heavily upon Regulatory and Aid Programs
To Achieve Federal Goals**



Source: *A Crisis of Confidence and Competence (A-77)*

A QUANTITATIVE ANALYSIS: THE GROWTH OF THE FEDERAL ROLE¹

7

Especially in the past 20 years, the federal role in the federal system has become *bigger, broader, and deeper*—bigger in the size of its intergovernmental outlays, and in the number of grant programs; broader in its program and policy concerns; and deeper in its regulatory thrusts, preemption proclivities, and the wide range and numbers of subnational governments interacting directly with Washington.

The federal government now pursues a broad and varied set of activities that leaves few, if any, concerns of its citizens unattended. The expanded scope of the federal government's functions appears to follow the general pattern evidenced by European and other western-style democracies. Political scientist Richard Rose noted in a detailed study of 32 such nations that these countries tend to work successively in stages toward three goals: first to secure their existence as a nation; secondly, to mobilize their physical resources for economic development; and, finally, to provide social benefits for their citizens.² American federalism now clearly embodies all three stages of growth with much of the last stage occurring in recent decades.

While the seeds for federal government growth were sown in the 1930s, the most extraordinary expansion of the intergovernmental system took place from 1960 to 1980. Stark contrasts between the federal system as it existed in 1960 and how it operates today are quantified in the ACIR research.

¹For more information on this topic, see *The Federal Role in the Federal System: A Crisis of Confidence and Competence (A-77)*, July 1980.

²Richard Rose, "On the Priorities of Government: A Developmental Analysis of Public Policies," *European Journal of Political Research*, Vol. 4, No. 3, Sept. 1976, pp. 247-89.

- Intergovernmental fiscal transfers amounted to only a little over \$7 billion in 1960, or less than 2% of the GNP and less than 15% of total state-local expenditures. In 1980, intergovernmental assistance programs cost \$88 billion, account for 3.4% of the GNP and over 23% of total state-local outlays.
 - The growth of federal aid has been accomplished by dramatic shifts in its composition. The 132-odd programs in place two decades ago were dominated to the extent of almost 80% by transportation and income security programs. Today, the nearly 500 intergovernmental grant-in-aid programs are much more diversified, affecting nearly every field of state and local operations.
- 8
- The distribution pattern of federal aid has also undergone drastic changes: in 1960, all but 8% of federal grants went to state governments; in 1980, about 25% flowed directly from the federal government to local governments, bypassing the states.
 - Federal aid now goes to about four-fifths of the 80,000 units of subnational governments whereas, 20 years ago, the 50 states received 97% of the funds.
 - Federal regulations imposed on state and local governments, still few in number as of 1960, are now believed to involve 1,259 mandates, 223 of which are direct orders while the remaining 1,036 are conditions of aid. Fifty-nine of these are crosscutting, applying to most federal grants.

Although the federal role in domestic affairs expanded dramatically from 1960 to 1980, surprisingly it was not accompanied by a significant expansion in the federal government's operational activities. The size of the civilian bureaucracy is nearly the same as it was two decades ago. Then, the federal bureaucracy numbered approximately 2.5 million employees; today, it is only 300,000 more. In recent years, federal civilian jobs (when measured as employment per 1,000 population) have actually decreased; at the same time, state and local employment per 1,000 population has been increasing rapidly. It has been estimated that five million people constitute the pool of indirect federal "employees"—these are state and local government and private sector employees whose salaries are paid indirectly by the federal government through grants and contracts even though they remain under nonfederal jurisdiction and control. These facts highlight the degree to which the federal government relies on others to do its domestic governmental business.

The ACIR research documents that the federal role has not just grown bigger, it has changed. This change is one of emphasis at the federal level—from regulator and promotor of the economy and modest provider of intergovernmental aid to big banker, energetic but only modestly effective equalizer, pervasive regulator, and mobilizer of shared functions—and helps to explain why federal employment has leveled off. Many of the domestic activities that the federal government is now conducting, or helping to accomplish, are not being done through federal bureaucracy alone. The conditional grant-in-aid system remains the chief mechanism of achieving intergovernmental fiscal transfers and of interacting programmatically with state and local governments. Massive intergovernmental assistance programs are basic means by which national policymakers have been able to keep the federal bureaucracy relatively small while still ostensibly accomplishing federal purposes. 9

Just as statistics on the size of the federal bureaucracy have tended to mask the true size of the federally financed workforce, the federal budget fails to portray the extent of real or potential outlays. Federal tax expenditures—deductions and credits which reduce tax revenues—have been analyzed in connection with the federal budget since 1974 but are not reflected in the federal budget itself. Such expenditures consist of foregone federal tax collections resulting from special tax “breaks”; some 87 different types of tax credits are now offered, resulting in an estimated \$150 billion in “lost revenue” in FY 1979 alone.

In a similar manner, federal credit assistance programs, consisting of direct loans and guaranteed loans, are not accounted for in the federal budget though they are analyzed to some extent. Nevertheless, there is a potential budget commitment—federal obligations made under these loans and loan guarantee programs amounted to about \$70 billion in FY 1979. These off-budget items—credit assistance programs and tax expenditures—amounted to about \$221 billion in FY 1979—a figure equal to nearly half again as much as total FY 1979 budget outlays.

The federal influence, however, is reflected in more than size of its budget, off-budget obligations, or its bureaucracy. It is heavily manifested, also, through its mandates and regulations. As was indicated earlier, over 1,200 federal mandates now apply to state and local governments. About 223 of these are direct orders while the remainder are conditions of federal aid. Although the regulations are not direct orders per se, the lure of federal funds to financially hard-pressed jurisdictions is so strong that, in most cases, the effect is almost the same.

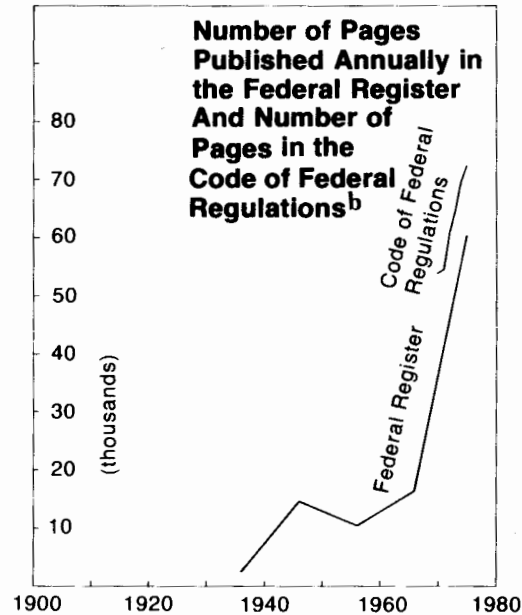
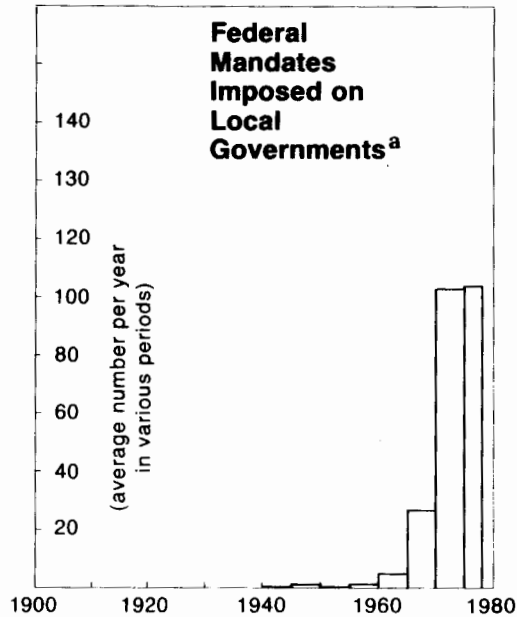
The expansion of federal regulatory activities is usually measured somewhat indirectly for want of a better way. The

FEDERAL FINANCIAL INFLUENCE, FISCAL YEAR 1979

(In billions of dollars)

	<u>Types of Transactions</u>	<u>Amounts</u>	
Federal Budget (69%) Off Budget (31%)	\$496 {	Purchases \$166 } Interest and Other 52 } \$218 Transfers 200 } Grants 78 } 499	Direct Federal Operations (30%) Federal Financial Benefits, Aid, and Incentives (70%)
	221 {	Credit Assistance 71 } Tax Expenditures 150 }	
100%	\$717 Total Federal Financial	\$717 \$717	100%

Source: ACIR staff computations based on the *Budget of the United States*.



^aThe information for this chart was derived from Lovell, Katherine, *et. al.*, *Federal and State Mandating to Local Government: Impact and Issues*, 1979 draft, p. 71.

^bThe sources of this chart were Morris P. Fiorina, *Congress: Keystone of the Washington Establishment*, 1977, p. 93, and the Public Interest, Number 47, New York, NY, National Affairs Inc., Spring 1977, p. 50.

Code of Federal Regulations, for example, increased in size from 23,000 pages in 1950 to nearly 84,000 pages in 1978. The number of pages published annually in the *Federal Register*, another indicator of federal regulatory activities, soared from about 20,000 in 1960 to over 60,000 by the latter 1970s.

The cost of federal regulatory thrusts is high to businesses, states, and local governments and, ultimately, of course, the taxpayers and general population. The total federal paperwork burden on individuals, businesses, and state and local governments was estimated by the Commission on Federal Paperwork at more than \$100 billion in 1977 and paperwork is just one aspect of the federally imposed costs.

HISTORICAL ANALYSIS: HOW DID GOVERNMENT GROW?³

If, indeed, as the Commission concluded, the federal government has become, “more pervasive, more unmanageable, more ineffective, more costly, and above all, more unaccountable,” then it is necessary to ask—how did it get that way? Although the seven functional areas studied by ACIR comprise only a portion (albeit a substantial portion) of the federal government’s business, they nonetheless provide insight into the overall dynamics of the policy process and thus help to determine which of a variety of political, economic, and social forces brought about the present intergovernmental system.

13

Two broad types of policy producing and shaping variables—policy actors and environmental influences—were examined. Policy actors included the Congress, the President, the bureaucracy, the courts, the press, public opinion, and interest groups. Socioeconomic trends and dislocations such as war and economic aberrations constituted the environmental influences or forces. If, as some claim, government has gone awry; if the “enumerated powers” of 1787 have become the immeasurable activities of 1980, all these actors and forces are—to a greater or lesser extent—responsible.

The Role of the Public Entrepreneur

One striking fact emerged from each of the cases which the Commission studied: Policy entrepreneurship—whether Congressional, Presidential, bureaucratic, or special interest—was the predominant factor in program genesis and adoption. Moreover, in every case, only Congress played a consistently crucial role; and, with only one exception, that role was manifested not

³For more information on this topic, see *An Agenda for American Federalism: Restoring Confidence and Competence* (A-86).

MAJOR ACTORS AND FORCES IN POLICY DEVELOPMENT AND GROWTH

	Functional Fields—ACIR Case Studies						
	Public Assistance	Elementary & Secondary Education	Higher Education	Environment	Unemployment	Libraries	Fire Protection
Internal Policy Actors							
Congress	x	x	x	x	x	x	x
President		x			x		
Interest Groups		x		x		x	x ²
Bureaucracy				x	x		x
Courts		x		x			
External Policy Actors							
Public Opinion	x ¹			x			
Elections							
Political Parties					x		
Press	x ¹			x			
Environmental Influences							
Demographic & Social Trends	x	x	x				
Dislocations (War, Depression)	x	x	x		x		

¹Food stamps only.

²Interest groups were crucial in the creation of the U.S. Fire Administration only.

Source: Advisory Commission on Intergovernmental Relations.

in the form of Congress as an institution but as individuals. In other words, the individual Congressional entrepreneur, either working alone or in tandem with others, was the most clearly visible actor. The near universal existence of such activists in the ACIR case studies should lay to rest any notion that Congress acts as a great rubber stamp for Presidential, bureaucratic, or interest group initiatives. In fact, in most instances, the opposite would be far closer to the truth.

This is not to suggest that interest groups, Presidents, and administrators never act in a policy initiation capacity. Nor is it always clear just who is the actual policy initiator. The so-called "issue network" of Congressional committee members, bureaucratic specialists, and relevant interest groups at times obscures legislative authorship.

Yet, more often than not, the ACIR case studies revealed that interest groups resulted as much from government programs as the reverse. That is, the importance of interest groups very often lies not in their greatly exaggerated abilities to create or successfully advocate new programs but rather in the ability of programs to generate new interest groups. And, once established, a group will inevitably work to sustain the program which gave it life. If policy is primarily "created" by Congress, to interest groups—the "offspring" of policy—accrue its "care and feeding."

In the case studies by the ACIR, the bureaucratic role in the realm of program initiation was found to be sporadic and largely secondary. Bureaucratic policy entrepreneurs were relatively infrequent actors and generally entered the initiation process in a supportive role at the behest of some other actor, usually the President.

So too, perhaps surprisingly, Presidents have tended to play a secondary role in the realm of policy initiation. While they have been primary entrepreneurs in many of the largest government endeavors—for instance, the *Social Security Act* and the War on Poverty programs—overall, the case studies revealed a relative lack of protracted Presidential importance in the on-going process associated with each of the functional areas.

The Judicial "Greenlight"

Since the 20s and most pronounced since 1937, the Supreme Court has given its okay to the accomplishment of national purposes through conditional grant programs—in effect offering to Congress a judicial "greenlight" for expanding the federal functional role.

Thus, through acquiescing to Congress, the Supreme Court has been a powerful instrument of government growth. Moreover,

since the mid-1950s, the Court's activist stance in a number of areas has stimulated, in turn, programmatic activity among other political actors. Court intervention into the environmental protection field, to cite one prominent example, has had at least two expansionary consequences.⁴ By providing an arena for environmental battles, the courts increased the visibility and importance of relevant interest groups. Secondly, the courts, by strictly interpreting the *National Environmental Policy Act of 1969*, gave meaning to an often vague piece of legislation and served to further expand the federal environmental role. The "nonpolitical" branch of government, then, has been a potent force in developing the political shape of the nation.

Political Factors— A Convergence for Growth

One of the central questions to emerge from the case studies was not whether policymakers had been responsive—if anything, hyperresponsiveness has been the rule—but rather “to what is government responding?” In other words, has the “popular will,” through the mechanisms which organize it and through which it expresses itself, contributed to the growth of government?

The answer is “yes.” In both 1932 and 1964, the President and Congress perceived a particular type of mandate and acted accordingly. Whether or not the perception was valid, policymakers thought they were responding appropriately. Moreover, despite its designation as the party of “big spenders” and government growth, the electorate has chosen Democratic Congresses for all but four of the past 50 years and has opted for five Democrats out of the last seven elected Presidents. Even in a post-Proposition 13 environment, where the public appears to be demanding less government, a certain ambivalence prevails. “Less government” does not necessarily mean that people want fewer or smaller programs; rather it seems to mean a desire for less burdensome taxes, on the one hand, and, on another, an ideological commitment to the Jeffersonian notion of limited government, the “negative liberal state.”

Environmental dislocations, economic depressions, wars, the baby boom, international events, and scientific achievements have all created a kind of policy ambience in which government

⁴For more information on this topic, see *Protecting the Environment: Politics, Pollution, and Federal Policy (A-83)*.

The Federal Role in Higher Education *

Although the federal government has been involved in higher education since the founding of the Republic, that involvement took a quantum leap during the past two decades. From \$1.7 billion in 1960, total federal funding for a variety of higher education purposes reached \$12 billion annually by the late 1970s.

Beginning with the *Higher Education Act of 1965*, the federal role in higher education has been propelled by a new legitimacy, equal educational opportunity. The *Higher Education Amendments of 1972* reaffirmed the national goal of equal educational opportunity and reemphasized the federal focus on aid to students rather than aid to institutions.

Since 1972, the thrust of federal activities has been primarily nonfiscal in nature. A number of regulatory conditions ranging from health and safety to affirmative action to education record-keeping now accompany federal dollars.

Federal aid in higher education exemplifies the pleasure-pain syndrome which has come to characterize the grant-in-aid system as a whole. On the one hand, the goals of the regulations—the end of discrimination, pay equalization, access for the handicapped, and the like—are worthy. On the other hand, federal regulations are said to challenge academic freedom, the merit system, and are costly to administer and may distort academic priorities.

One possible fallout from the ongoing federal "intrusion" debate may be a sort of regulatory backlash. Indeed, the legislative proposal gaining the most attention in recent years has been the college tuition tax credit, which derives at least some of its appeal from its nonintrusive nature.

*For more information on this topic, see *The Evolution of a Problematic Partnership: The Feds and Higher Ed (A-82)*.

growth could take place. Such dynamics may be dramatic or subtle, have an immediate impact or may be discerned only years after they have occurred. Yet whatever their absolute magnitude, they have combined to condition an activist response from policy actors and thus have been critical in shaping the current contours of the federal government's role.

A NORMATIVE ANALYSIS: HOW WELL IS THE SYSTEM WORKING?⁵

The condition of American federalism cannot be described solely by reference to the flow of funds, programmatic ties, and political activities—although an understanding of these is certainly mandatory. What is also necessary is an assessment of performance, of how well the system is working. 19

Recognizing that no ultimate standard exists by which we can assess the assignment of functions among the federal, state, and local levels of government, the ACIR has chosen a cluster of standards reflecting contrasting values for assessment purposes. Five criteria—national purpose, fiscal equity, economic efficiency, administrative effectiveness, and political accountability—have been utilized by this Commission in past studies and now may be employed to judge how well our federalist system is working today.⁶ Although these criteria are difficult to apply and even conflict with each other at times, each does offer a useful and appropriate standard for a general assessment of the intergovernmental system.

A decade or two ago, most analyses offered generally positive appraisals on nearly every count. Grant programs were at least believed to have the potential to advance principal national goals while leaving other matters to state and local discretion. They also were thought to help equalize incomes and service levels among jurisdictions and individuals, thus benefiting the disadvantaged; to provide an efficient and effective means for delivering services on a cooperative basis among the levels of government; and to assure the responsiveness of the

⁵For more information on this topic, see *An Agenda for American Federalism: Restoring Confidence and Competence* (A-86).

⁶These criteria were used either singly or in tandem in *Financing Schools and Property Tax Relief—A State Responsibility* (A-40) and *Governmental Functions and Processes: Local and Areawide* (A-45).

political system to the needs and desires of its citizens. Those assumptions remained popular even though they were not always supported by empirical research.

More contemporary commentaries, as noted in the ACIR study, provide a far less sanguine view of intergovernmental administration and politics. Evidence from the Commission's seven case studies provides the framework for applying the five criteria and form the basis of the Commission's conclusions and recommendations.

20 While the normative analysis of the ACIR study concentrates on the federal aid system's problems and desirable reforms, the accomplishments of the system are not denied or minimized. Federal programs have addressed numerous human and societal problems, and, some specific activities are well conceived and skillfully administered. The ACIR has studied individual programmatic areas but addresses itself far more to the cumulative effects of recent intergovernmental developments on the overall system.

National Purpose

The selection of the national purpose criteria reflects the philosophy of the ACIR which has consistently held that American government works best when all three levels—national, state, and local—are strong. Accordingly, the national purpose criteria implies that grants-in-aid should be employed to advance major national objectives in the principal fields of federal concern and that other functional fields be left to state and local governments. The concept of national purpose is, however, vague, and has broadened over the years. It has been used to justify a host of federal activities that ACIR research and other studies show to embody no clear or even a cloudy sense of an overriding national priority.

For the first century and a half of American history, the question of national purpose was primarily one of national authority. James Madison asserted in *The Federalist* (Number 45) that powers delegated to the Congress were "few and defined" and "exercised principally on external objectives, such as war, peace, negotiation, and foreign commerce."

Madison's view of a balanced federalism gave way, especially in the past 50 years, to a much more far-reaching interpretation of what constitutes national purpose. Thus, even such a universally accepted federal responsibility as defense has been used to justify the creation of federal programs affecting such diverse local activities as education and fire protection. The acceptance of new national goals, widely embraced over the past

two decades, such as the reduction of unemployment, the elimination of poverty, and the protection of the environment, have resulted in an elaborate network of intergovernmental programs touching upon essentially every field of state and local operations.

The change in the federal role, and the redefinition of the national purpose, have occurred, for the most part, in a succession of small steps, rather than in giant leaps. Policymakers often take advantage of the "temper of the times" to promote their programs. For example, education programs intended to further defense and economic opportunity were accepted when programs of general aid to education probably could not have been. Then, once the precedent was set, additional initiatives were adopted more readily.

The federal government's assistance or regulatory activities, however, now reach into the most traditionally local fields such as arson control, fire protection, police pensions, and pot hole repair, to name but a few. The extension of the federal role into each of these areas seemed reasonable at the time. The ACIR study recognizes the legitimacy of many of these efforts and of the national goals that justified them, but questions the rather drastic consequences of the aggregate of those initiatives. When viewed in their totality, hardly any service or function is not now a national one, at least partially. This suggests an erosion of the most valuable feature of any federal system, especially one that is as vast and variegated as ours: that is, the need for a rough but real division of functional labor among the governmental levels.

21

Fiscal Equity

Fiscal equity has often been cited in support of federal activism. A considerable body of research shows, however, that the federal aid system does not now—and never has—strongly redistributed resources to the most disadvantaged states and individuals. For example, correlation studies indicate that, since 1940, there has never been even a moderately strong negative association between the states' per capita personal income levels and their per capita grant receipts.

Reasons why the often-cited goal of fiscal equity has not been achieved through intergovernmental transfers surface in the case studies. "New Deal" welfare programs emphasized state autonomy over national standards and matched state expenditures, rather than equalizing benefits to the disadvantaged.⁷ Hence,

⁷For more information on this topic, see *Public Assistance: The Growth of a Federal Function* (A-79), July 1980.

public assistance benefit levels and eligibility criteria differ widely from state to state. Many later grants-in-aid, including some which were ostensibly redistributive in intent, have scattered funds widely in an attempt to build supportive political coalitions.

22 A good example of coalition building occurred during the adoption of the Area Redevelopment Act (ARA) in 1961.⁸ Senator Paul H. Douglas' initial bill, introduced six years earlier, was expanded significantly to include both rural and urban areas of underemployment. Today, ARA's successor agency, the Economic Development Administration (EDA), designates 2,230 areas as eligible for assistance, covering fully 85% of the nation's population. In short, a program initially designed to help a small number of depressed areas currently encompasses most of the nation. EDA's programs have survived and grown largely because they benefit the many, rather than the few.

The redistributive effect of federal aid programs in fiscal terms has been blurred by the preference for in-kind benefits and social services rather than direct cash payments for the poor. Programs such as aid to education and employment training, for example, generate more interest group support and have proved to have more popular appeal than does "welfare."

The ACIR analysis portrays the lack of true commitment to the idea of fiscal equity. A deference to the partial autonomy of states persists; coalition building in the Congress continues to favor "distributive" rather than "redistributive" programs; and, especially in recent years, budgetary restraints serve to dampen enthusiasm for revamping the system to achieve fiscal equity.

Economic Efficiency and Administrative Effectiveness

Two other traditional arguments for the use of intergovernmental grants involve economic efficiency and administrative effectiveness. The federal-state-local partnership once was widely praised as the best means to avoid an excessively large federal bureaucracy, an inflexible system, and the diseconomies of scale that might accompany direct national provision of domestic services. Because of America's large population and territory, as well as its diversity, a truly national government would be gargantuan.

⁸For more information on this topic, see *Reducing Unemployment: Intergovernmental Dimensions of a National Problem (A-80)*.

In short, the traditional view of grants-in-aid rested on a view of federalism that is cooperative and collaborative. The system itself was thought to embody the two related criteria of economy and efficiency by combining the best of two worlds, decentralization and centralization through shared responsibilities.

More recent analyses of intergovernmental relations, including many implementation and evaluation studies, identify serious problems with the practice of cooperative federalism though its rhetoric persists. In spite of repeated attempts to simplify and decentralize intergovernmental programs, tensions and considerable turmoil continue. Public opinion, political and editorial rhetoric, and scholarly findings all seem to agree that grants-in-aid, all too often, are plagued by federal program failures, waste, inefficiency, disorganization, red tape, and mismanagement.

23

A variety of research reports have amply documented problems in efficiently implementing intergovernmental programs. First, the chain of command is long. Administrative links between Washington, regional and field offices of the federal bureaucracy, the states, and localities provide many possible points for delay, disagreement, or misunderstanding. Secondly, the proliferation of grant programs itself has greatly exacerbated implementation problems. Every field of federal involvement is now marked by serious programmatic fragmentation. The jungle of programs tends to dissipate federal leverage, on the one hand, and pose serious obstacles to effective and efficient administration, from the state and local point of view. Finally, the increasing use of the federal regulatory "stick" in exchange for the "carrot" of subsidy has made federal aid a more onerous and intrusive burden for recipients. The evidence of rising tension can be found in the courts. One survey of federal court cases identified almost 500 dealing with grant law, 80% of them initiated since 1975.⁹

A number of the case studies in the ACIR review suggest that many of these problems are political, rather than purely administrative, in origin. Many grant and regulatory programs were poorly designed—or not "designed" at all, but just passed. Administrators inherit this political legacy, however, and are blamed if the performance is inadequate.

The ACIR study concludes that when the dual criteria of economic efficiency and administrative effectiveness are applied

⁹Thomas J. Madden, "The Law of Federal Grants," paper prepared for the ACIR Conference on Grant Law, Washington, DC, December 12, 1979, p. 19.

to the intergovernmental aid system as it currently operates, an inverse relationship between the quantity of programs and their quality emerges. Consequently, visions of "partnership" and "cooperation" have been replaced by new images of inadequate implementation, growing fragmentation, increasing intrusiveness, and new antagonisms.

Political Accountability

24 The Jeffersonian philosophy that the functions of local governments should be maximized because they are "closest to the people" generally dominated political rhetoric, if not realities, until comparatively recent times. The idea that political accountability was expected to be strongest at the local, then state, and finally national levels remained popular for many years.

A strong opposing tradition, however, found in Madison's theory of the extended republic, has fueled debate on this issue since the formulation of the Constitution. In Madison's view, a danger exists that small societies, because of their greater homogeneity, would be likely to oppress minority interests. Madison asserted in *The Federalist* (Number 10): "Extend the sphere, and you take in a greater variety of parties and interests; you make it

A Case in Point

The Federal Role in Local Fire Protection*

Federal involvement now extends to what was held to be the most local of functions, fire protection. In 1960, the entire federal intergovernmental role consisted of small-scale cooperative agreements between the Forest Service and state agencies. Today, all federal departments (except State and Defense) as well as at least 11 other federal agencies are involved in fire-related activities that affect state and local governments. In addition to General Revenue Sharing, which is sometimes used to support fire service delivery, 52 grant-in-aid programs handled by 24 separate administrative units are available to subnational governments.

*For more information on this topic, see *The Federal Role in Local Fire Protection* (A-85), November 1980.

A Case in Point

Federal Involvement in Libraries*

The library case study provides a microcosm of the growth of the federal role over the past 20 years. Rooted in the establishment of the Library of Congress in 1800, federal involvement in public libraries has amounted to \$2.3 billion since 1956. Categorical aid did not become available for library services until 1956, and, even then, assistance was limited in scope and designed to be temporary in nature. By the mid-1960s, a dramatic change occurred. The *Library Services and Construction Act of 1964* and other legislation led to what ACIR termed the heyday of federal aid for libraries. Although library services are still viewed as primarily a state and local responsibility, federal library programs have proved to be tenacious and a prediction of their demise is probably unwarranted.

*For more information on this topic, see *Federal Involvement in Libraries (A-84)*, June 1980.

25

less probable that a majority of the whole will have a common motive to invade the rights of other citizens." Yet Madison's notion of the federal role was not substantially different from Jefferson's.

Our intergovernmental system, as it was conceived and operates through grants-in-aid, seemingly reconciled competing centralist and decentralist approaches to the accountability question. Yet few assessments of political accountability in the American federal system are positive today. Instead, the political responsibility for intergovernmental program operations is divided and confused.

The dramatic changes that have taken place in the scope and operations of American government have served to weaken political accountability. As federal programs have grown in number, so have the tripartite collection of interests associated with each of them. The term "iron triangle" has been used to describe the alliances of program administrators, Congressional subcommittees, and interest groups that coalesce around individual aid programs and often dominate decisionmaking. The result has been continuing weakening of the political influence of "generalist" officials and administrators at each level of govern-

ment—as well as the political parties which seek unsuccessfully to bind them together and link them to the public-at-large.

The case studies portray federal programs that, once in place, often become self-perpetuating, leaving few opportunities for full-scale policy review and limiting the effective exercise of political leadership. Popular control of, and participation in, national policymaking has been quite limited, and a sense of alienation is prevalent among the population. The intergovernmental aid system, with its multiple points of political access offered by an overlapping of governmental functions, once seemed to assure access to policymaking by citizens but, in fact, has not. Decisionmaking has become fragmented, atomized, and the system itself has grown to the point where many, including this Commission, consider it to be overloaded. The combined effects of atomization and overload tend to obscure political accountability in any meaningful sense.

AN AGENDA FOR THE EIGHTIES: ACIR's RECOMMENDATIONS FOR CHANGE¹⁰

If in fact, as the Advisory Commission on Intergovernmental Relations believes, the federal government's role in the federal system has become more pervasive, more intrusive, more unmanageable, more ineffective, more costly, and more unaccountable, then where do we go from here?

27

The Commission rejects a dreary more-of-the-same scenario for the future with more federal aid programs, more formal conditions, more buckpassing, and fewer real dollars. The Commission also rejects drastic Constitutional change. While imperfect, the federal system has accomplished much good, and a complete overhaul, so far at least, is unjustified.

Governor Bruce Babbitt of Arizona, a Commission member since 1978, aptly stated the problem, "Today. . . the federal system is in complete disarray. . . . It is long past time to dust off the *Federalist Papers* and to renew the debate commenced by Hamilton, Madison, and Jefferson. They would ask not only whether a proposal is a good program but also 'Is this a federal function?'"

The recommendations adopted in June 1980, rest on the basic precept that preoccupied our Founders—the persistent questioning about what level of government is best suited to perform which functions—but they also look to the future. As the nation nears its Constitutional Bicentennial, the federal system will be in greater need of balance, discipline, and reliability than in the simpler days of just 20 years ago.

The ACIR strategy for change—to restore balance and discipline—is formulated in six parts: decongestion of the grant-in-aid system; reduction of the regulatory burden; strengthened political parties; preserving and renewing state-local discre-

¹⁰For more information on the ACIR recommendations, see *An Agenda for American Federalism: Restoring Confidence and Competence* (A-95) and the Appendix of this In Brief.

tionary authority; a convocation on federalism; and, clarified and improved methods to amend the Constitution.

Decongestion of the Federal Grant System

28 The Commission has been studying the almost continual addition to the now myriad functional roles of the federal government for almost 20 years. Over the past two decades, the federal aid system has grown seemingly without limits, adding more programs, more dollars, greater state-local reliance on federal financing, and more federal policy guidance on top of state and local policies. This growth has spawned too much red tape, along with a substantial confusion of goals, responsibilities, and accountability. Now, as the Commission finds the grant system suffering from overload, it builds on a body of past recommendations, reaffirming many of them, and going several steps further to call for a major sorting out of functional responsibilities among the three levels of government.

In 1969, the Commission urged that the federal government assume full financial responsibility for welfare programs.¹¹ The welfare system, as it currently operates in many instances through federal-state programs, is simply inequitable, too often inadequate, and inconsistently administered. Further, the Commission's argument for federal assumption of the welfare burden, both in the past and now, rests on the need to remove a source of fiscal pressure on those states and localities beset by diminishing fiscal resources or disproportionate shares of the poor.

The Commission now advocates a bolder approach. Recommendations adopted in 1980 reaffirm the Commission's support for welfare reform but also propose federal assumption of certain other fundamental social welfare functions—potentially, employment, housing, medical benefits, and basic nutrition could be wholly federal functions. This position recognized the continuing reality of poverty in the midst of plenty. It suggests that, just as the national government has necessarily assumed paramount responsibility for managing the economy in the aggregate, it also should accept responsibility for meeting the basic human needs of those whom the economy has failed. Each of these interrelated areas is one in which the national government has historically assumed a political and fiscal leadership role—and only national financing can assure that an adequate standard of benefits exists throughout the nation.

¹¹For more information on this topic, see *State Aid to Local Government* (A-34), 1969.

With due respect to current and projected fiscal realities and restraints, the Commission advocates that federal assumption of these basic responsibilities be accompanied by a major sorting out of functional assignments in other areas. Therefore, the Commission recommends that the number of federal assistance programs be reduced substantially either through termination, consolidation, or devolution to state or local governments. In the past, the Commission has advocated consolidation of closely related programs—in 1967, it proposed that the number of federal categorical programs, then 379, be reduced by half through consolidation.¹² In 1977, the Commission recommended regular reassessment of grant-in-aid programs through sunset review procedures.¹³

Grant reform, already, has met with some success in certain areas like community development. Overall, however, the Commission finds that these efforts have been insufficient to produce a net streamlining of the federal aid system. While grant reform is still deemed desirable and imperative in many instances, the Commission now moves beyond advocating consolidation to include, as well, terminating or phasing out many of the numerous, small, narrowly defined grant programs. The major candidates for termination or phaseout include: (1) the approximately 420 small federal categorical grant programs which together account for only 10% of all grant funds; (2) programs in functional fields in which federal aid amounts to approximately 10% or less of combined expenditures in that field (including federal, state, and local expenditures); (3) programs, especially small ones, which have high administrative costs relative to the federal financial contribution; and, (4) programs which obtain—or could obtain—most of their funding from state and/or local governments, or fees for services, or which could be shifted to the private sector.

The Commission's recommendation for sorting out functional responsibilities rests on what is perhaps the most basic principle of federalism: a division of labor among levels of government. After all, Mayors are not Presidents; Congressmen are not county commissioners; and judges are not state legislators. Roles have become much more confused over the past 20 years and, while many of the results can be termed positive, the net effect is overload. The Commission's goal is to retain and strengthen the federal role in those areas in which federal aid is

¹²For more information on this topic, see *Fiscal Balance in the American Federal System* (A-31), 1967.

¹³For more information on this topic, see *Categorical Grants: Their Role and Design* (A-52).

warranted but, at the same time, restrict the federal presence in those fields where it is not.

A Less Intrusive Federal Role

Streamlining and simplifying the federal aid system is but a first step to restore balance to American federalism. The federal regulatory burden also must be reduced. Over 1,200 mandates and conditions of aid now are imposed on state and local governments. Fifty-nine of these are “crosscutting”—that is, they apply to most federal grants.

30 The Commission does not disagree with the goals and intentions behind most federal rules. Indeed, most are largely unassailable. Few Americans are proud of prevalent discrimination in our society based on race, sex, ethnicity, and age. Hardly anyone finds pollution of the air, water, land to be a desirable state of affairs. Most also believe that those unfortunate enough to live daily with handicaps should, at the very least, be allowed equal access to basic facilities.

Rather, the objections to federal rules and regulations address their seemingly endless numbers and their often confusing, conflicting, duplicative, and above all, costly implementation. The burden of implementation falls to the states and their localities and, ultimately, the taxpayers.

No one knows how much federal rulemaking costs the other two levels of government. Some regulations have caused costs far beyond expectation or standard of reason. The ACIR advocates that Congress and federal departments and agencies should begin by detailing—through fiscal notes and regulatory impact analyses—the costs imposed on states and local governments by every federal law and regulation.

Further, the Commission feels that it is now necessary to empower the President to temporarily (up to 180 days) suspend potentially disruptive or very costly national policy requirements. These are the estimated 59 crosscutting requirements, administered by 19 federal agencies, that deal with discrimination, equal access, environmental quality, relocation, prevailing wages, merit employment, financial ethics, coordination, planning, citizen participation, and privacy. Looking to the future, any additional requirements broadly imposed should be subject to possible Presidential suspension if their impact is perceived to be potentially disruptive and/or disproportionately costly.

Congress should no longer legislate in a “pass now, pay later” atmosphere, and federal departments and agencies should no longer promulgate in a vacuum. Due consideration must be

given to the other partners in the federal system—the states and their localities—if the “system” is to continue working.

Strengthening the Party System

Special interest groups may have sprung up like dandelions after a spring rain, but the vast majority of the population is still unrepresented by them. The political parties have historically fulfilled this role. By selecting candidates for public office, preparing platforms, aggregating diverse interests, mounting campaigns, and organizing both the processes of government and of the “loyal opposition,” the parties have played an important role in making mass representative democracy possible.

All indications are, however, that the two-party system is now in a drastically weakened state. Neither of the two major political parties provides a strong focus for personal political loyalties. Neither do they serve any longer as a grassroots forum—a “bottom up” organization which used to exert a vital counterforce against centralization. Indeed, because of their state and local foundations, the political parties have served as the brokers of federalism.

31

To strengthen the party system, and its leadership in Congress, the Commission proposes that each of the two major parties hold mid-term conventions as well as more frequent conferences at the state and local levels. Also, the Commission advocates a reduction in the number, dates, and duration of Presidential primaries and the elimination of open and blanket primaries.

Preserving and Renewing State-Local Discretionary Authority

State and local governments were not altogether passive bystanders as the federal role changed. More often than not, Governors, Mayors, and other elected officials supported, rather than opposed, the creation, continuation, and expansion of federal aid programs.

Especially in the past 15 years, many state and local governments have “come to Washington.” Their representative groups work hard to keep federal aid flowing. While federal conditions, which accompanied this aid, helped to diminish state and local discretionary authority, the public interest groups generally have not been very successful in warding off threats to their member’s authority and autonomy—with the notable exception thus far being the landmark 1976 decision in *National League of Cities v. Usery*.

The ACIR finds that greater autonomy for states and local governments is a necessary ingredient for a balanced federal system. Public interest groups representing state and local elected officials in Washington can begin by reordering their own lobbying priorities. Such an effort is already underway. A number of these associations have labored on various grant management reform efforts and have attempted to identify those fields in which their members' need for federal assistance is paramount, secondary, or only tertiary. Once these priorities are ordered, the public interest groups should begin to work towards identifying intergovernmental activities that are most appropriate for full federal assumption or full devolution to state or local governments or the private sector. Even if these reform efforts are successful, the Commission recognizes full well that the intergovernmental arena will still be a crowded one.

The Commission also finds that state and local governments must maintain a vigilant posture against coercive federal actions. The courts remain the final recourse available to challenge the validity, or even the Constitutionality, of federal regulations and laws. While *NLC v. Utery* remains a signal victory, it is not easy to find the broad support and funds to bring a case before the Supreme Court.

For these reasons, the Commission now urges the creation of a "legal defense fund" for state and local governments (1) to serve as an information clearinghouse; (2) to identify those federal actions which impose the greatest burdens; and, (3) if it becomes necessary, to consider instituting major suits on issues involving fundamental principles.

States are the key link in the federal system. Although more and more federal aid has been designed to bypass states and flow directly to local governments, the states still play a pivotal role vis-a-vis their localities. In the Commission's view, they should assure that all local governments have adequate taxing authority and/or state financial assistance to perform the services for which they are responsible. States should also ensure that their political subdivisions are adequately structured and monitored to assure proper fiscal management and accountability.

Making Federalism a "Front-Burner" Topic

In the nearly 200 years that our nation has lived under the Constitution, the term "federalism" or "federal system" has been bandied about from time to time, but, in recent decades, federal-

ism has been a back burner issue. The approach of our Constitutional Bicentennial, the Commission believes, should be accompanied by a widespread educational effort to discuss and explore what the terms "representative," "federal," and "democratic" mean today. It is time to focus on what in our 200-year Constitutional legacy is outdated, what needs to be revised, and what remains relevant.

The educational campaign the Commission sanctions harkens back to the spirit of Thomas Jefferson who wrote in 1789: "... whenever the people are well informed, they can be trusted with their own government; ... whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights."

The President, the Commission further urges, should issue a call at the earliest possible date for a convocation on federalism — an assemblage of federal, state, and local officials as well as leading representatives of the public-at-large. Its task, in the words of journalist Neal Pierce, should be to "hammer out a governmental reform agenda for the decade... to resuscitate a badly wounded American system."

33

Resolving Ambiguities: Clarifying The Constitutional Amendment Process

Under Article V of the Constitution, the states can petition Congress to convene a Constitutional convention to consider specific amendments to the United States Constitution. While five major efforts have been made over the past two decades to utilize this route, none has been successful. The current drive for a budget-balancing amendment has come close to receiving the required number of petitioning states (30 states to date have requested Congress to convene a Constitutional convention to consider a balanced budget amendment). Two-thirds or 34 of the states are necessary.

The Commission finds that the so far unused state initiative approach needs a clearer means of implementation. Further, it urges that the state initiative method be accorded the same degree of dignity, feasibility, and legal clarity as the more familiar Congressional initiating option. The Commission has held this position since 1971 and now reaffirms its support for the proposed "Federal Constitutional Convention Amendment Act," pending legislation (S. 3 and H.R. 1664, 96th Congress) to "provide needed guidelines for a Constitutional convention to consider specific amendments to the U.S. Constitution should one be invoked by petition from the states."

CONCLUSION

Just as Mt. St. Helen's eruption surprised geologists, the growth of the federal role was not anticipated by most expert "government watchers" 20 years ago. Few saw, in 1960, that the federal government—still the relatively small, limited state, quite like that propounded by the Founders—would become a sprawling Leviathan.

35

In 1960, the welfare "explosion" had not yet begun in earnest. Special manpower measures targeted to the disadvantaged were considered unnecessary. A major federal role in education and health was thought to be a legislative impossibility. And the three Es—energy, environment, and the economy—were still pretty much backburner issues.

We've come a long way in just 20 years. An expanded federal role has brought both pain and pleasure—federal aid, relief, and intrusion.

The Advisory Commission on Intergovernmental Relations believes it is now time to take stock and look to, and plan for, the future. The crystal ball is cloudy. The future is indeed uncertain. Given the track record of past prognosticators, who largely failed to foresee the federal role's significant expansion over the past 20 years, predicting the future should be approached with extreme trepidation and more than a little humility. Still, the 1980s are apt to challenge the capacity of government at all levels.

Perhaps the most hopeful scenario for the future of federalism, and one that the Commission would like to endorse, was expressed by columnist David Broder: "The prediction I would like to make is that the next two decades will be as much a period of institutional rehabilitation and repair as the last two decades were a time of disparagement and destruction of the machinery of our government" (*Washington Post*, September 18, 1980).

RECOMMENDATIONS

(adopted June 20, 1980)

Recommendation 1

37

Decongesting the Federal Grant System

The Commission concludes that the federal government has overused the grant-in-aid mechanism, sometimes giving the state and local governments roles in certain programs that could be handled best by the federal government itself, while at other times establishing a federal role in programs better left to state and local governments. In these cases, the grant mechanism often unnecessarily complicates the administration of the program, confuses political and program accountability, reduces effectiveness, interferes with economic efficiency, and rarely achieves equity goals. Hence . . .

The Commission reiterates and strongly reendorses its earlier recommendation that the nation's excessively intergovernmentalized system be corrected by action of the Congress and the President to (1) reexamine federal, state, and local roles in, and contributions to, the principal functional areas of public policy, including assessments of the desirability of fully nationalizing some functions while reducing, eliminating, or forestalling federal involvement in others; (2) assess the interrelationships among the full range of programs in each policy field; and (3) consider the possible use of instruments other than grants-in-aid to realize national objectives.¹

The Commission also reaffirms its earlier recommendation that the federal government assume full financial respon-

¹ACIR, *Summary and Concluding Observations, The Intergovernmental Grant System: An Assessment and Proposed Policies (A-62)*, Washington, DC, U.S. Government Printing Office, June 1978, p. 78.

sibility for the provision of Aid to Families with Dependent Children, Medicaid, and General Assistance.^{2,3}

The Commission now recommends further that, in addition to the above, the federal government move toward the assumption of full financial responsibility for those existing governmental programs which are aimed at meeting basic human needs for employment security, housing assistance, medical benefits, and basic nutrition.³ In assuming full financial responsibility, the federal government should take steps to ensure uniform levels of benefits, adjusted for cost of living variations, and consistent nationwide administration.⁴

At the same time, separately or in conjunction with efforts to implement the above federal proposals, the Commission recommends that the number of remaining federal assistance programs should be reduced very substantially, through termination, phaseout, and consolidation. As recommended by the Commission previously, the most likely candidates for consolidation should be those which are, or could be made, (a) closely related in terms of the functional area covered; (b) similar or identical with regard to their program objectives; and (c) linked to the same type(s) of recipient governmental jurisdictions.⁵ The primary candidates for termination and phaseout should include: (a) the approximately 420 small federal categorical grant programs which account for only 10% of all grant funds; (b) programs in functional fields in

²ACIR, *State Aid to Local Government* (A-34), Washington, DC, U.S. Government Printing Office, April 1969, p. vi. In 1969, when this recommendation was adopted, federal public assistance aid programs consisted of Aid to Families with Dependent Children (AFDC), old age assistance (OAA), aid to the blind (AB), and aid to the permanently and totally disabled (APTD). Since then, the last three—the “adult categories”—have been federalized into the supplemental security income (SSI) program. AFDC and Medicaid (medical assistance for the poor and medically indigent) are still federal-state programs, and general assistance remains a state-local program.

³Representatives of the Department of Housing and Urban Development (HUD) and the Office of Management and Budget (OMB) supported *Recommendation 1*, except for naming specific programs for full federal financial responsibility.

⁴The question of eligibility for benefits under this fully federal program was debated by the Commission at some length. The Commission agreed that coverage should extend beyond those holding citizenship, but perhaps not as far as to encompass illegal aliens. Since this issue was highly complex and beyond the scope of the research undertaken by the staff, the Commission did not adopt precise wording on the subject of eligibility.

⁵ACIR, *Categorical Grants: Their Role and Design* (A-52), Washington, DC, U.S. Government Printing Office, May 1978, p. 298.

which federal aid amounts to approximately 10% or less of the combined state and local outlays, including federal aid; (c) programs which do not embody essential and statutorily clearly stated national objectives, or which are too small to address significantly the need to which they relate; (d) programs, especially small ones, which have high administrative costs relative to the federal financial contribution; (e) programs which obtain, or could obtain, most of their funding from state and/or local governments, or fees for service, or which could be shifted to the private sector.

The Commission urges that this strategy of full national responsibility for certain programs combined with devolution of responsibilities for others to the state and local levels, or to the private sector, be accomplished by Congress and the President through enactment of legislation after consultation with the affected subnational governments.

39

Recommendation 2

Avoiding Unintended Impacts on State and Local Governments

In this study of the federal role in the federal system, the Commission noted the breakdown of a number of constraints which once limited and disciplined the national role. The erosion of these once viable Constitutional political, institutional, and, until recently, fiscal constraints has contributed to the unwieldy and dangerously overloaded condition of the federal system today.

In the past the Commission has recommended certain basic improvements in the operation of the national government. The Commission recommendations calling for the consolidation of categorical grant programs,⁶ enactment of "sun-set" legislation,⁷ and indexation of the federal income tax are,⁸ if anything, more relevant now for their rationalizing and disciplining effects than when they were initially advanced and the Commission strongly reaffirms its support for them.

At the same time, the Commission now concludes that additional major improvements in the national legislative

⁶*Ibid.*, p. 303.

⁷*Ibid.*, p. 305.

⁸ACIR, *Inflation and Federal and State Income Taxes (A-63)*, Washington, DC, U.S. Government Printing Office, November 1976, p. 9.

processes are essential to the development of more effective, rational, and publicly accountable national policies and to the restoration of a more balanced and functional federalism.

Recommendation 2A

Fiscal Notes

The Commission finds that federally mandated legislation often imposes unanticipated burdens and costs upon state and local governments. Hence . . .

The Commission recommends that Congress amend the Congressional Budget Act of 1974 to require the Congressional Budget Office (CBO), for every bill or resolution reported in the House or Senate, to prepare and submit an estimate of the cost which would be incurred by state and local governments in carrying out or complying with such a bill or resolution.⁹

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Recommendation 2B

Temporary Suspension of Crosscutting Policies

The Commission finds that the implementation of cross-cutting policies sometimes results in unreasonable burdens on and serious disruptions to the intergovernmental system. Hence . . .

The Commission recommends that Congress enact legislation authorizing standby authority to the President (acting through the Office of Management and Budget) to suspend temporarily implementation of enacted crosscutting national policy requirements when it becomes clear that serious and unanticipated costs or disruptions will otherwise occur. The Commission further recommends (a) that prior to any suspension, the President ascertain through an assessment of the requirement's legislative history and, where needed, through direct contact with the appropriate Congressional committees that the impending disruptions were not anticipated by Congress; (b) that the suspension of the implementation of any given policy requirement by the President be limited to no more than 180 days; (c) that the President immediately notify the appropriate committees of Congress of his action and the reasons for it; and (d) that within 60 days of the suspension,

⁹OMB supported this recommendation, but cautioned against any effort to require federal reimbursement of state and local costs resulting from federal mandates.

the President present to Congress an alternative remedial legislative proposal.

Recommendation 2C

Regulatory Impact Analyses

The Commission finds that federal regulations often lack adequate prior assessments of the potential costs imposed upon state and local governments and the private sector by such regulations. Hence . . .

The Commission recommends that the Congress enact legislation requiring each federal department and agency, including each of the independent regulatory agencies, to prepare and make public a detailed analysis of projected economic and noneconomic effects likely to result from any major new rule it may propose.

41

Recommendation 3

**Strengthening Political Federalism through
The Party System**

The Commission concludes that the current philosophical and organizational disarray of both of the major political parties minimize their contribution to the appropriate consideration of the size of the public sector and national-state-local responsibilities within it, has weakened the accountability of public officeholders at all levels of citizenry, has undermined their capacity to balance interest group pressures, and has undercut the traditional position of states and localities as strong political partners within the American federal system. Hence . . .

The Commission recommends that the two political parties and the Congress, or state legislatures, as appropriate, adopt measures which will strengthen the parties as forums for the regular consideration of major policy issues by public officials at all levels of government as well as by citizen party members, and which will enhance the status of the political parties as essential bonds between the governors and the governed in a healthy representative democracy.

Specifically, the Commission recommends that consideration be given to the following proposals, among others: (a) mid-term party conventions in both political parties, as

well as more frequent party issue conferences at the state and local level; (b) the facilitation of greater participation by national, state, and local elected officeholders in party conventions; (c) the strengthening of party leadership in Congress and the reinvigoration of party caucuses as instruments for disciplining members and for the deliberation of, and voting on, proposals relating to the budget ceilings provided for in the Congressional budget process; (d) a reduction in the number, dates, and duration of Presidential primaries and the elimination generally of open and blanket primaries.¹⁰

Recommendation 4

Protecting the Autonomy of State and Local Governments in National Policymaking

42

The Commission concludes that the states and localities also have contributed, both by acts of omission and commission, to the incessant "intergovernmentalizing" of their own processes, programs, personnel, and budgets. Moreover, despite their increased representational efforts in Washington—and thanks to the growing strength of vertical functional and single issue interest groups—the Commission finds that the sensitivity of national policymakers to the role and needs of subnational governments is less now than it was a generation ago, when there was a few sustained representational undertakings. Hence . . .

The Commission recommends that the states and their localities adopt policies and procedures which will strengthen the autonomy of their decisionmaking processes and will protect and enhance their authoritativeness as governments within the American federal system. To this end, the Commission urges that state governments take those actions necessary to assure that all local governments have adequate taxing authority and/or state financial assistance to perform the services for which they are responsible and to assure that such governments are adequately structured and monitored to assure proper fiscal management and accountability.

The Commission further recommends that the elected officials of the states and their localities, both independently and through their respective national associations in Washington, give priority to protecting and enhancing the status of state and local governments within our federal system and to

¹⁰HUD and OMB abstained.

decongesting intergovernmental relationships by (1) participating with appropriate federal officers in identifying intergovernmental activities that are most appropriate for full federal assumption or full devolution to state or local governments or the private sector as proposed in *Recommendation 1*; (2) identifying, through survey techniques, those state and local problem areas in which the need for federal financial assistance is of high, moderate, and low priority; and (3) jointly establishing, on a permanent basis, a state-local legal defense organization, with adequate funding, professional staffing, and appropriate assistance from the states' attorneys general, to monitor and institute legal action opposing "coercive" conditions attached to federal grants and "intrusive" Congressional exercise of the commerce power.¹¹

43

Recommendation 5

Strengthening the Concept of Constitutional Federalism

The Commission finds that the present dysfunctional pattern of intergovernmental relations is partially a byproduct of a decline among the citizenry and officeholders at all levels in their understanding of the meaning and practice of constitutional federalism and of the absence of any dramatic, highly visible effort to address the future of federalism. Hence . . .

The Commission recommends that educators, the media, and public officials at all levels in this decade of the Constitutional Bicentennial stress that the essence of our nearly 200 years of uninterrupted Constitutional development, not to mention the more than 800 years of Anglo-American experience, is the concept of limited government and that this concept of constitutionalism above all else involves a system of regularized constraints on both the governors and the governed and in the American context a basic constraint is the effective application of the federal principle.

In order to help further this educational goal as well as to curb some of the systemic conflicts in contemporary federal-state-local relations, the Commission further recommends a convocation by the President of leaders of Congress, the

¹¹OMB abstained, believing the issue to be primarily of state and local concern. OMB noted with concern however, that the legal defense fund might encourage an increase in lawsuits against the federal government.

Governors, state legislators, county officials, the Mayors, and the public at the earliest possible convenient date to address the current malfunctioning of American federalism and to agree upon an agenda for intergovernmental reform in the 80s.

The Commission further recommends that the top priority items on the convocation's agenda include: (1) a debate on what the term "national purpose" now means in a regulatory and programmatic sense and should mean in a period of fiscal constraint; (2) identification of needed fiscal-functional "trade-offs" between and among the traditional levels in light of their actual and potential revenue raising and servicing roles; (3) a probe of Congress' power to regulate interstate commerce and the related questions of its use to preempt state and local regulatory authority and to mandate services and management obligations on subnational governments; and (4) a defining of the parameters of Congress' conditional spending power, including its use for aiding any and all governmental services, for regulating and for mandating.¹²

44

Recommendation 6

**Ending Ambiguities in the
Constitutional Amendment Process**

The Commission believes that the power conferred upon the legislatures of two-thirds of the states to petition for a

¹²OMB opposed this recommendation, believing it to be inadequately justified.

Congressional call for a Constitutional convention to draft correcting amendments should be accorded the same degree of dignity, feasibility, and legal clarity as the more familiar Congressional initiating option. The Commission finds the absence of clear guidelines regarding the unused state initiative approach to amending the United States Constitution has been a subtle, yet significant factor in the breakdown of constraints at the national level. Hence . . .

To end the uncertainties and ambiguities regarding the alternative state initiating amendatory process authorized by the United States Constitution, the Commission reaffirms its recommendation of February 1971, which urged "the Congress at its earliest opportunity" to "enact the proposed Federal Constitutional Convention Amendment Act" in order "to provide needed guidelines for a Constitutional convention to consider specific amendments to the U.S. Constitution—should one be invoked by petition from the states." Hence, it recommends early passage of the pending version of this legislation (S.3 and H.R. 1664, 96th Congress).¹⁴

45

¹³OMB abstained, noting that the Administration has developed no policy on this issue.

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What is ACIR?

The Advisory Commission on Intergovernmental Relations (ACIR) was created by the Congress in 1959 to monitor the operation of the American federal system and to recommend improvements. ACIR is a permanent national bipartisan body representing the executive and legislative branches of Federal, state, and local government and the public.

The Commission is composed of 26 members—nine representing the Federal government, 14 representing state and local government, and three representing the public. The President appoints 20—three private citizens and three Federal executive officials directly and four governors, three state legislators, four mayors, and three elected county officials from states nominated by the National Governors' Association, the National Conference of State Legislatures, the National League of Cities/U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Congressmen by the Speaker of the House.

Each Commission member serves a two year term and may be reappointed.

As a continuing body, the Commission approaches its work by addressing itself to specific issues and problems, the resolution of which would produce improved cooperation among the levels of government and more effective functioning of the federal system. In addition to dealing with the all important functional and structural relationships among the various governments, the Commission has also extensively studied critical stresses currently being placed on traditional governmental taxing practices. One of the long range efforts of the Commission has been to seek ways to improve Federal, state, and local governmental taxing practices and policies to achieve equitable allocation of resources, increased efficiency in collection and administration, and reduced compliance burdens upon the taxpayers.

Studies undertaken by the Commission have dealt with subjects as diverse as transportation and as specific as state taxation of out-of-state depositories; as wide ranging as substate regionalism to the more specialized issue of local revenue diversification. In selecting items for the work program, the Commission considers the relative importance and urgency of the problem, its manageability from the point of view of finances and staff available to ACIR and the extent to which the Commission can make a fruitful contribution toward the solution of the problem.

After selecting specific intergovernmental issues for investigation, ACIR follows a multistep procedure that assures review and comment by representatives of all points of view, all affected levels of government, technical experts, and interested groups. The Commission then debates each issue and formulates its policy position. Commission findings and recommendations are published and draft bills and executive orders developed to assist in implementing ACIR policies.