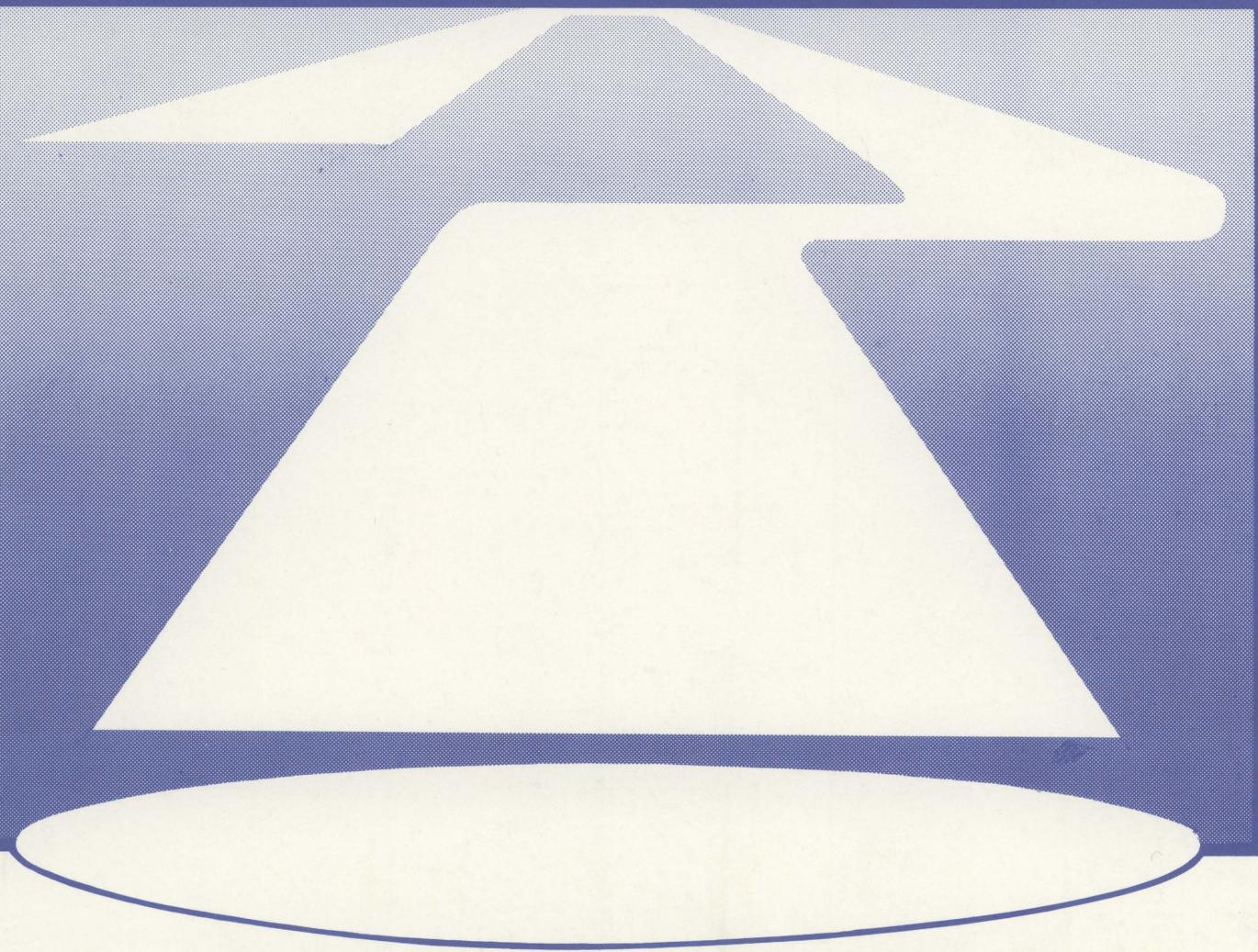


# Conference on the Future of Federalism: Report and Papers

Advisory Commission on Intergovernmental Relations  
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## THE FUTURE OF FEDERALISM IN THE 1980s





An Information Report

# **THE FUTURE OF FEDERALISM IN THE 1980s**

**Report and Papers from the  
Conference on the Future of Federalism**

**Alexandria, Virginia  
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**Abraham D. Beame**  
**Chairman**

**Wayne F. Anderson**  
**Executive Director**



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# Introduction

The future of American federalism is as crucial a topic for discussion today as it has been at various earlier points in our 200-year history. Even if this were not the bicentennial decade of the Constitution, surely a reason for review of fundamental principles, the dramatic differences between the American federal system of 1960 and 1980, would compel us to ask in what directions we may be headed and how we ought to proceed during the next decade. Moreover, a period of economic, political, and judicial turmoil appears to be likely to put additional stresses and strains on the system and to cause even more changes in the current pattern of intergovernmental relations.

Recognizing some of these conditions, the U.S. Congress in the 1976 renewal legislation for general revenue sharing mandated that the Advisory Commission on Intergovernmental Relations (ACIR):

study and evaluate the American Federal fiscal system in terms of the allocation and coordination of public resources among federal, state, and local governments including, but not limited to, a study and evaluation of . . . forces likely to affect the nature of the American federal system in the short-term and long-term future and possible adjustments to such system, if any, which may be desirable, in light of future developments.<sup>1</sup>

In response to a portion of this charge, the Commission undertook a major study, *The Federal Role in the Federal System: The Dynamics of Growth*. This 11-volume study

stresses that over the past two decades, in particular, the federal role has become bigger, broader, and deeper—bigger in the size of its intergovernmental expenditures, and in the number of grant programs; broader in its program and policy interests; and deeper with its expanding regulatory role, supercessive tendencies, and intrusive interaction with subnational governments. These national tendencies—along with the historic trend of not assuming direct responsibility for program operation and, hence, of keeping the federal bureaucracy comparatively small—have produced a pattern of intergovernmental relations that is now more complex, more unmanageable, more ineffective, more costly, and (above all) more unaccountable.

To complement this study of the federal role, the Commission has also reviewed the state-local assignment of functions in response to Congress' mandate to:

study and evaluate . . . state and local government organization from both legal and operational viewpoints to determine how general local governments do and ought to relate to each other, to special districts, and to state governments in terms of service and financing responsibilities, as well as annexation and incorporation responsibilities.<sup>2</sup>

To fulfill the Congressional mandate to evaluate the forces affecting the American federal system in the future and possible adjustments to the system, ACIR convened a Conference on the Future of Federalism on July 25–26, 1980. This report summarizes the discussions of that conference and contains the papers commissioned for it.

Forecasting the future is never easy. The future is not always a direct extension of the past; unexpected crises often create startling impacts; political, economic, and judicial trends, even when identifiable, are subject to varying interpretations of direction, impact, and meaning. Yet, forecasting is extremely important because every vote, every budget, every statute, every agency or court ruling made today will affect, and be affected by, the future. Any exercise that provides policymakers some guidance about the future may assist and even improve that policymaking, and thus must be worthwhile.

Nevertheless, as ACIR Senior Analyst David R. Beam notes in *Chapter 1*, "Forecasting the Future of Federalism: Task and Challenge," the record on intergovernmental forecasting to date has not been encouraging. He reviews the major dilemmas in futurist research and investigates both the record of past forecasting endeavors and the reasons for their deficiencies. This paper also highlights the fact that many major modifications made to the intergovernmental system over the past two de-

cades were not, and reasonably could not have been, anticipated. Prescience is a characteristic few have exhibited; when it is present, it is often a matter of luck.

Analysis of the future necessarily begins with a recounting of the past and a description of the present. The second chapter, "Federalism in Transition: 1959–1979," presents a brief historical overview of the most fundamental changes in American federalism over the past 20 years. Featured in the article by ACIR Assistant Director Carl W. Stenberg are the results of a staff analysis of the key intergovernmental events influencing the changes in federalism during that period.

History must be examined from a variety of perspectives. Federalism certainly merits consideration from distinct disciplinary paradigms. For this reason, ACIR commissioned the preparation of background papers, each by a noted expert. Included in this document, therefore, is "Fiscal Federalism in the United States: The First Two-Hundred Years, Evolution and Outlook" (*Chapter 3*), by Prof. George F. Break from the University of California at Berkeley; a chapter on political federalism, "Bare Bones: Putting Flesh on the Skeleton of American Federalism" (*Chapter 4*), by Prof. Aaron Wildavsky, also from the University of California at Berkeley; and one on judicial federalism, "Federalism in the Courts: Agenda for the 1980s" (*Chapter 5*), by Prof. Lewis B. Kaden of Columbia University's School of Law. Each author was asked to review the recent record from his own specialized vantage point and to outline the major alternative perspectives on American federalism in the 1980s. Hence, each paper closes with a series of informed speculations on the shape of federalism in the future.

*Chapter 6*, "The Future of Federalism: Views of a Roundtable," by ACIR Information Officer Carol Weisert highlights the discussion and conclusions of ACIR's Conference on the Future of Federalism. Participants in the conference included leading observers of the federal system and experts on those forces likely to be the most influential modifiers of the system. The participants included present and former government officials from federal, state, and local governments; representatives from public interest groups; and prominent scholars of political, fiscal, and judicial federalism. A list of the conference attendees is given in the *Appendix*.

The group spent a day and a half discussing the forces affecting the future of federalism and developing alternative views on the prospects for federalism in the future. Also at issue were suggestions for adjustments that might aid the system's performance in the 1980s.

Perhaps not surprisingly, this group did not foresee major modifications of our political system or revolu-

tionary changes in intergovernmental relationships. After analyzing the nature and extent of the problems likely to face our intergovernmental system in the 1980s, most concluded that the expected system adjustments during the next decade will be of the tinkering or incremental-change nature. What is likely to happen, they said, is a continuation of "more of the same." Implicitly, they also believed that this will be adequate to allow our system to weather its trials.

The final chapter, "The Future of Federalism: An ACIR Agenda," presents the findings of ACIR's major study of the federal role in the federal system. Like participants at the conference, ACIR rejected major Constitutional revision and the *status quo* possibilities. In-

stead, it proposed a middle-range approach to reform of the system that encompasses a variety of recommendations to relieve what ACIR terms the "overloading" of the intergovernmental network. Decongestion, discipline, and greater managerial dependability are the hallmarks of ACIR's strategy.

This document cannot, and does not forecast the nature of the federal system in 1990. It does describe what can and might well occur, using some of the best thinkers in intergovernmental relations to make their best guesses about the state of federalism in the future. The result, although not definitive, is much like the intergovernmental system it analyzes—both fascinating and perplexing, but without major surprises.



# **Forecasting the Future of Federalism: Task and Challenge**

**David R. Beam**

**Advisory Commission  
On Intergovernmental Relations**

## **THE PRESENT CONTEXT**

### **A Sense of Foreboding**

**A**s always, at the beginning of a new decade, the nation looks forward to the events of the next ten years and beyond. Newspaper articles, popular or scholarly periodicals, and a considerable number of private and public organizations identify trends, develop prognostications, and propose solutions to potential problems of the future. An official study under White House auspices was established by an executive order of the President in October 1979.<sup>1</sup> The President's Commission for a National Agenda for the Eighties, however, was only one of many major explorations of prospects in government, the economy, social relations, energy, and other fields, on a national or international scale.<sup>2</sup>

Although such projects are traditional, the task has been approached with a somewhat more urgent spirit than in either 1970 or, especially, 1960. In part, perhaps, the concurrence of the decade's start with the nation's bicentennial era creates a somber and reflective mood, suggesting some reconsideration of fundamentals in government and other aspects of American life. The celebration of 200 years of Constitutional government in 1989 invokes, in and of itself, a reassessment and possible redefinition of public responsibilities and political organization.

Clearly, the more determinative factor is the high and rising tide of disenchantment with national conditions and with the performance of governmental (and other) institutions. A lack of confidence—indeed, a sense of

betrayal—is now widespread. As measured by either objective indicators or popular moods, the economic, political, and social fabric is badly strained. A sense that national progress is inevitable, or can at least be assured through public leadership, has been weakened, if not lost.

Although these frustrations and disappointments are often intensely personal in their impact—lost jobs (or promotions); costly houses, food, transportation; unsatisfactory social or marital relationships; conflict among the generations—the ultimate causes seem to be more situational than individual. This century and its final decades have been identified by experts in a variety of fields as a period of thoroughgoing societal transformation and potential human crisis. Thus, they echo the balladeer's refrain: "the times, they are a changin'."

To Kenneth Boulding, the 20th century stands at the midpoint of the second great transition in the history of humankind. The first, begun perhaps 5,000 years ago, resulted from the invention of agriculture and the growth of an urban civilization. But, because of the rise of science and technology, the foundations of that civilization are crumbling, and a "post-civilized" society is emerging. The lengthy interim period, he suggests, is "a rather disagreeable state for most people living in it."<sup>13</sup>

Futurist Alvin Toffler contends that "a new civilization is emerging in our lives," bringing with it "new family styles; changed ways of working, loving, and living; a new economy; new political conflicts; and beyond all this an altered consciousness as well."<sup>14</sup> He regards this "third wave" of historical evolution as comparable in importance with the invention of agriculture and the development of industry. While he expects the potential emergence of new, more productive human relationships in many spheres, the "transition years immediately ahead are likely to be stormy and crisis-ridden."<sup>15</sup>

Although their nomenclature differs, many other commentators have agreed that the present, and the emergent future, differ sharply from the recent past—too sharply, perhaps, for human comfort. Peter Drucker has described our age as one of "discontinuity."<sup>16</sup> Many writers (such as Boulding and Toffler) employ terms that suggest that the root causes are economic and technological. Willis W. Harman suggests that the nation is in the midst of a shift from an industrial to a "transindustrial" society.<sup>17</sup> Daniel Bell employs the term "postindustrial,"<sup>18</sup> while Zbigniew Brezinski portrays the advent of a "technetronic" era.<sup>19</sup>

Most commentators also warn of dangers ahead, and of crisis in the literal meaning of the term—"the turning point for better or worse . . . ; the decisive moment."

**"Although perspectives differ in some respects, if a central theme (beyond the scope and rate of change) arises in recent commentaries, it is a growing awareness of limits . . . "**

Herman Kahn describes the period 1974–2000 as an "era of malaise" on the social, economic, political, and psychological fronts, with great potential for violence and disorder and significant vulnerability of national and international economic systems.<sup>20</sup> Michael J. Harrington, the socialist writer whose early works sparked much of the antipoverty concern of the past 20 years, foresees the 1980s as a "decade of decision," in which our lives will change as profoundly as in the 1930s.<sup>21</sup>

Although perspectives differ in some respects, if a central theme (beyond the scope and rate of change) arises in recent commentaries, it is a growing awareness of *limits*—and, because of them, of increasing competition and potentially dangerous conflict among those contending for scarce manmade and natural resources. For example, to Richard J. Barnet, scarcity will be the major theme of the coming "lean years." Shortages of energy, nonfuel minerals, food, water, and human skill, he believes, portend for the next generation:

bigger changes in the organization of the planet than we have had for at least 500 years. A crisis of values has swept across both the capitalist and socialist worlds. The rapid process of decolonization following 400 years of imperial conquest in Asia, Africa, and Latin America is far from completed. Profound struggles are taking place or are in the offing—between rich and poor nations over their share of the world product, within the industrial world over sharing resources and markets, and between cities and regions within nations over access to food, fuel, minerals, and water. The

world is already in the midst of a transition to a postpetroleum civilization.<sup>12</sup>

Such scarcity poses political threats to governmental processes based on the promise of an ever expanding economy to sustain the "pursuit of happiness." Hence, futurist Robert U. Ayres fears that the next 50 years will be:

the declining decades of the age of democracy as we know it, because of its inability to cope with the imperatives of human survival in a world in which there are no longer any easy solutions where "everybody can win." More and more often, *somebody has to lose*. Democratic institutions, never deeply rooted in most countries, have already proved to be pretty much incapable of grappling with problems for which all the solutions are painful.<sup>13</sup>

A parallel interpretation is provided by a noted economist, Lester C. Thurow, who warns of the dangers of political and economic paralysis because of an inability to allocate losses in a stagnant, "zero-sum" society.<sup>14</sup> Richard E. Cohen, writing in the political weekly *National Journal*, also suggests that the "age of limits has become a political reality," with Proposition 13 providing what may be the most appropriate metaphor for the politics of the 1980s.<sup>15</sup>

The nation seems to have run up against some new kind of intellectual limit as well, with understanding another scarce resource, despite rapidly expanding scientific knowledge. Most pointed and poignantly, the discipline of economics is in serious disarray—a fact readily admitted by its leading practitioners. The former "queen" of the social sciences is now the court jester. "The economic ideas and policies employed during the Great Depression and through a long era of post-World War II prosperity seem to have worn out," the *Wall Street Journal* has editorialized.<sup>16</sup> The confusion of economists is mirrored in the political arena as well, for the tenets of Keynesianism and welfarism have provided a "public philosophy" for the nation since the New Deal period—a theme for organizing both government and opposition. Now, in political as well as economic terms, Americans seem to be "between idea systems."<sup>17</sup>

## The Status of Federalism

What is true of American society generally is equally true of American federalism. In the view of the Advisory

Commission on Intergovernmental Relations (as reflected in the findings of its recent study on *The Federal Role in the Federal System: The Dynamics of Growth*,<sup>18</sup> and a series of other reports), contemporary federalism is in serious disarray. Like the economy, and like the political system generally, intergovernmental relationships have lost their pragmatic virtue; in many respects, they no longer work. Thus, there is a sense of potential crisis in the decade ahead, requiring tough decisions and new directions; an awareness of limits, affirmed by the fiscal constraints produced by the nationwide tax revolt and measures to restrict spending at all levels; and a recognition that many of the key organizing ideas of the past—intergovernmental relations as a "cooperative" venture, a "sharing" of responsibilities—may no longer apply.

All factors—the disturbing performance of federal institutions and intergovernmental programs, a sense of economic and political limits on what may be hoped for and achieved, and an awareness of widespread change and potential crisis in American society and throughout the world—must necessarily influence views of the future of American federalism in the 1980s. They provide the socioeconomic context and the political climate as the decade begins, making the task of forecasting and planning seem all the more urgent.

This chapter, the first of several background papers prepared for use by the participants in the ACIR Conference on the Future of Federalism, briefly reviews some of the major theoretical and methodological dilemmas of futurist research as they pertain to intergovernmental relations. Consistent with this aim, this paper probes briefly the record of past policy forecasting efforts at the, national, state, and local levels. It underscores the point that many key changes in the intergovernmental system over the past two decades were not anticipated—and probably could not, even in principle, have been anticipated—much before their actual occurrence. (Some remain nearly inexplicable after the fact.)

A useful coda for this effort is provided in the words of Eli Ginzberg, a noted expert in one of the many fields of dramatic intergovernmental change over the past two decades. Ginzberg has observed all too accurately that:

No one who was present when manpower policy was born in the early 1960s would have been in a position to sketch its contours in the latter 1970s. This should be a warning that similar difficulties are faced by the investigator who seeks to discern the shape of things to come, even if a foreshortened future of the mid-1980s is used as the cutoff date.<sup>19</sup>

Ginzberg does offer his own informed speculations on the direction in which manpower policy seems to be headed, but he is conscious of the limits of any such attempt.

The point detailed herein is that the future is often not simply a straightforward, linear extension of either the long-run or the short-run past. Although it may in some sense be true that "forecasting is history extended,"<sup>20</sup> it also is true that accumulated hindsight and the most careful analysis of the present are never sufficient to foretell the future; indeed, they often are misleading.

Three reasons are suggested why social and governmental change can be discontinuous and, hence, unpredictable. These pertain to the influence of crisis, choice, and complexity in the operation of political and other social systems. Finally, various futurist texts are used to describe five tenets for students of the future of federalism. The terms "interdeterminacy," "multiplicity," "plausibility," "probability," and "advocacy" are suggested as watchwords for the governmental forecaster.

## **RETROSPECT: THE PAST OF THE FUTURE OF FEDERALISM**

In an essay published in 1968, Robert A. Nisbet criticized the implicit historicism he found in much futurist material. The premise he attacked was that stated by Leibniz in the 18th century: "The present is big with the future, the future might be read in the past, the distant is expressed in the near."<sup>21</sup> Nisbet argued that this notion of historical continuity—that the future was in some sense "genetically" or casually related to the past—had been accepted by the major philosophers of 19th-Century history as well as modern-day futurists. Yet he regarded it as quite erroneous. The relationship of the future to the present and past, he declared, is only chronological. Hence, the most intensive social analysis cannot yield knowledge of things to come.<sup>22</sup>

The record of previous efforts at political extrapolation does suggest that the ultimate key to predicting short-term governmental developments has not yet been identified and probably does not exist. Knowledgeable experts were quite unable to foresee even the broad outlines of the changes in American federalism that occurred over the past 20 years. At the national, state, and local levels, unexpected changes have been the rule, and social scientists have been far more skilled at the job of history than prophecy.

To substantiate this point, it is only necessary to recall the state of expert economic and political opinion in 1960. There was then little recognition that the nation

was nearing a period of rapid expansion of government, in general, and of federal domestic responsibilities, in particular. Quite the contrary. "The danger," Morton Grodzins declared, "is that the central government is doing too little rather than too much." He warned that "the centrifugal force of domestic politics needs to be balanced by the centripetal force of strong presidential leadership."<sup>23</sup> At about the same time, John Kenneth Galbraith was explaining the "inherent tendency" for the production of public services to lag behind private sector growth,<sup>24</sup> while Anthony Downs was propounding the theoretical reasons for government budgets being inevitably "too small" in a democracy.<sup>25</sup> As late as 1963, James MacGregor Burns was warning of the political "deadlock and drift" that was expected to persist in the indefinite future.<sup>26</sup>

Although these forecasts were wrong, none of the analysts should be condemned, because the evidence in favor of their opinions seemed quite ample. Government was still a modest operation in 1960. Despite the Constitutional revolution of the New Deal era, important remnants of "dual federalism" remained in practice and seemed very firmly entrenched.

Although the "War on Poverty" was to become the dominant theme of the decade, poverty simply was not a major public concern in 1960, and the associated outpouring of legislation aimed at the needs of the disadvantaged was not expected. Indeed, the problems of poverty, economic inequality, and discrimination were considered to be largely outside the realm of the "political" branches of government.<sup>27</sup> The welfare explosion had not yet begun. Although the number of recipients of Aid to Families with Dependent Children (AFDC)

**"The record of previous efforts at political extrapolation does suggest that the ultimate key to predicting short-term governmental developments has not yet been identified and probably does not exist."**

had increased somewhat in the 1950s, the percentage of children receiving benefits was stable, and the payments were low.<sup>28</sup> A majority of economists, including those of the incoming Kennedy Administration, believed that economic growth would absorb most of the unemployed and that special manpower measures targeted to the disadvantaged were unnecessary. Those few experts who were concerned about structural unemployment fixed their attention chiefly on the potential plight of the older, mostly white, mostly male workers apt to be displaced by automation, rather than on youth, blacks, and women who became the principal targets of new federal employment policies.

In other related social fields, major policy breakthroughs also seemed unlikely. Efforts to establish a major federal role in education and health had been frustrated for decades. Having surveyed the dismal record of efforts to enact a major program of aid to schools through 1961, Frank Munger and Richard Fennel declared that there was no "end . . . in sight,"<sup>29</sup> although passage of the landmark *Elementary and Secondary Education Act* (and thereafter a number of related bills) was then just four years away. Only a daring few would have predicted the creation of a very substantial federal role in health care, as provided by the enactment of Medicare and Medicaid in 1965 and a host of other services and regulatory legislation thereafter. Prior to the 1960 Presidential campaign, at least, the adoption of a major health benefit program appeared to be a legislative impossibility.<sup>30</sup> Despite continuing popular interest, both major political parties had repudiated national health insurance in the 1950s, while the American Medical Association provided a textbook example of the powerful "veto group."

Although government had changed dramatically by the late 1960s, the policy trends that were to dominate the coming decade again were not perceived widely in advance. The three "Es"—energy, environment, and the economy—were backburner issues and seemed likely to remain so. Few anticipated the string of events that would lead to the creation of a national Department of Energy or efforts to establish a national energy policy following the OPEC embargo in 1973–74. Two careful students of the environment, Richard A. Cooley and Geoffrey Wadesford-Smith, could plausibly assert in 1969 that the era of national concern had passed, although the nation then stood poised on the very eve of the "environmental decade."<sup>31</sup> Finally, it was widely believed that the business cycle had been whipped, that both excessive unemployment and inflation were things of the past.<sup>32</sup> No one expected the coming stagflation, nor the consequent imposition of wage-price guidelines

and controls, nor the vast expansion of public employment make-work programs.

The probable course of federal policy in other fields also was unclear. The election of President Richard M. Nixon was widely regarded as marking a major shift toward decentralization, devolution, and deregulation in the years ahead, although this did not occur. Richard P. Nathan predicted the adoption of large, flexible programs of "overhead aid" for state and city governments in the 1970s, together with a movement toward the wholesale consolidation of grant-in-aid programs in other functional areas and a drastic reduction in the role of categorical assistance programs.<sup>33</sup> Although modest programs of overhead aid are now in place, categorical programs continue to dominate, and federal intergovernmental regulation, far from declining, has grown sharply. Nathan also foresaw a shift toward centralization of welfare programs by the adoption in 1972 of a uniform-support category, with nationwide benefit levels and eligibility standards, thus guaranteeing a minimum income level for all.<sup>34</sup> This expectation still has not come to pass.

The record of prognostications for state and local governments, also based chiefly on extrapolations from past trends, has not been much better. Here, too, change has been rapid and surprising. Despite contrary expectations, the past 15 years have seen a notable wave of reform and innovation at the state level. Declarations like Luther Gulick's in 1933—"the American State is finished"—were far wide of the mark.<sup>35</sup>

Gulick, of course, was not alone in delivering such an obituary. In the mid-1960s, the states were regarded not as the keystones of the federal system, but as its fallen arches. W. Brooke Graves condemned them for lacking a "self-starter" and for failing to protect civil rights and to address urban needs.<sup>36</sup> Charles Press and Charles R. Adrian described states as "horse and buggy" governments, saddled with malapportioned legislatures, weak and disorganized executives, inadequate revenue systems, and outmoded constitutions. In their view, the states were "sick, sick, sick"—and seemed likely to remain so.<sup>37</sup> The key problem, they contended, was the dominance of an "archaic small-town ideology" and moral code, which left "the concepts of reality that dominate policy making in most states . . . out-of-date by at least half a century."<sup>38</sup>

Yet, as Mark Twain said of his own published obituary, the reports of the states' demise were greatly exaggerated. Ten years later, it accurately could be said that a "quiet revolution" had "transformed state government . . . into a solid instrument for meeting the complex needs of American society."<sup>39</sup> Many states had been

thoroughly reorganized, and some had moved to the forefront of policy innovation. Indeed, some seemed to be more energetic and effective in responding to the needs of their citizens and their communities than Washington's own once vaunted bureaucracy.

While the states were most often condemned in the 1950s and 1960s for their disinterest in local governmental problems, by 1980 a great many had assumed substantial new responsibilities in this field. A contemporary survey notes that:

after years of derogatory characterization as "weak sisters," "fallen arches in the federal system," "indecisive," "antiquated"—to cite only a few of the criticisms—state governments appear to be tooling up for the future. . . . There are still leaders and laggards as there always were. Nevertheless, most are increasingly able to earn high marks in the performance of their functions.<sup>40</sup>

Specific (and largely unanticipated) improvements cited include more extensive grants of home rule authority to, and improved administrative supervision of, local governments; substantially increased financial aid, including the assumption of greater fiscal responsibility in fields such as education and welfare, as well as a variety of other property tax relief measures, and the widespread establishment of new state departments for community or urban affairs.

Urban affairs also have taken a somewhat different course than was anticipated 15 years ago. At that time, the fragmentation of local governmental jurisdictions in the nation's metropolitan areas—and the disparities and administrative dilemmas that resulted from it—was regarded as a primary urban problem. Politically jaundiced analysts were quite correct in concluding that political realities were working against the adoption of large-scale government consolidation schemes—the favored remedy.<sup>41</sup> In fact, very few "metros" have been established in the intervening period. What unexpectedly transpired, however, was the almost universal development of metropolitan councils of governments and an array of specialized substate organizations, chiefly instigated by new federal planning requirements. Although areawide planning and coordination have improved, an additional layer of functional fragmentation has appeared at the regional level.

Analysts also were off the mark in many other areas affecting local government. In particular, the potential for and nature of what became the "urban crisis" was consistently underestimated. The racial tensions of the

1960s caught the nation, including its social analysts, off guard. Kenneth B. Clark has recalled that:

it appeared that the task of achieving racial justice in America, and particularly the task of enlisting government in the struggle to relieve American Negroes of the burdens of racial segregation and discrimination, was about to be resolved. The 1963 march on Washington was widely interpreted as the opening of the final stage in major civil rights victories.

But, instead of orderly changes in the pattern of race relations, a series of northern ghetto rebellions erupted almost abruptly after the 1963 peak. In 1964, Harlem rioted. In 1965, Watts exploded. Every major northern city whose population included a substantial portion of Negroes has experienced ghetto turmoil . . . .<sup>42</sup>

Similarly, the urban fiscal crisis and sharp service cutbacks of the mid-1970s were not generally anticipated, although they became the dominant concern of urban analysts and policymakers for the rest of the decade. With the decline in overt racial tension, urban conditions seemed likely to improve and political interest waned. Indeed, in his 1973 State of the Union Address, President Nixon assured the nation that the urban crisis had peaked, "that fears of doom are no longer justified."<sup>43</sup> Near bankruptcy in the nation's largest city and elsewhere thus came as a shock, even to most experts. As George E. Peterson has noted:

By 1974, with the advent of federal revenue sharing and the emergence of current year surpluses in state budgets, . . . several fiscal experts were forecasting . . . a steady accumulation of excess revenues in the state and local sector. According to one observer writing in 1973, the new circumstances promised "to make fiscal crisis seem a thing of the past" for many state and local governments, though the central cities were exempted from this optimistic forecast.<sup>44</sup>

Peterson remonstrates that:

the record admonishes caution in looking beyond today's budget difficulties to their longer run implications. At each extreme of past fiscal cycles, analysts and politicians alike have fallen into the error of predicting that the most recent trend would persist, largely unabated, into the future. . . . In retrospect, predictions

like these must seem hurried extrapolations of trends that, although intensely felt at the time, turned out to be far less permanent than they first appeared.<sup>45</sup>

Key demographic trends affecting all of the nation's communities and geographic regions also were unanticipated, although these have loomed large on the recent political agenda. In the mid-1960s, the rapid population growth of large urban centers, and the concurrent need for an expansion of urban public services, was a priority concern. The nation's political leadership and its leading analysts decried the "emptying out" of rural America and the overconcentration of the population in the country's major metropolitan areas.<sup>46</sup> They looked forward apprehensively to the era "megalopolis"—a sprawling agglomeration of people and buildings up and down the entire eastern seaboard. None foretold the demographic reversals of the 1970s: nonmetropolitan areas growing faster than metropolitan areas; absolute population declines in a number of large metropolitan areas; a flow of economic activity out of the northeast and into the newly prosperous sunbelt, and a net north-to-south migration of the nation's black population.<sup>47</sup> Yet, by 1978, the objectives of population deconcentration reflected in the *1970 Housing Act* and the *Rural Development Act of 1972* were null and void, and the nation sought to devise a new urban policy more in keeping with these new realities.<sup>48</sup>

In summary, the record of the past provides warnings to those who would undertake the task of governmental forecasting. Most of the dramatic changes of the past two decades were not anticipated; the same may well be said by historians one or two decades from now. These weaknesses, moreover, seem endemic to social science forecasting; the case of federalism is by no means unique. A wide variety of trends and events involving employment, inflation, agricultural production, fertility, mobility, public opinion, and political behavior have caught the nation and its leading analysts off guard.<sup>49</sup> The obstacles appear to be inherent in the subject matter, rather than just limitations of effort, theory, or technique.

### A CLOUDED CRYSTAL BALL: THE SOURCES OF UNCERTAINTY

Although the past record of political, economic, and social forecasting on issues relating to American federalism is unimpressive, an examination of history does help illuminate the reasons why the future is difficult to foresee. In this respect, at least, it can be instructive.

The root problem is change—not simple change, such as alterations in size, but changes of relationship, such

**"Most of the dramatic changes of the past two decades were not anticipated; the same may well be said by historians one or two decades from now."**

as development or reorganization. The subject matter of the social sciences is fluid and therefore necessarily perplexing.<sup>50</sup> What Nobel Laureate Wassily Leontief observed about economic systems in his Presidential address to the American Economic Association is true of social systems generally:

In contrast to most physical sciences, we study a system that is not only exceedingly complex but also in a state of constant flux. I have not in mind the obvious changes in the variables . . . that our equations are supposed to explain, but the basic structural relationships described by the form and the parameters of those equations. In order to know what the shape of the structural relationships actually are at any given time, we have to keep them under continuous surveillance.<sup>51</sup>

Experts in other disciplines have reached similar conclusions. Political scientists Gabriel A. Almond and Stephen J. Genco attribute the inability to foresee political trends to the fact that "the regularities we discover are soft. . . . [They] appear to have a short half-life. They decay quickly. . . ."<sup>52</sup> Psychologist Lee J. Cronbach has observed, in very similar language, that:

Generalizations decay. At one time a conclusion describes the existing situation rather well, at a later time it accounts for rather little variance, and ultimately is valid only as history.<sup>53</sup>

Many examples might be offered as illustrations of the time-bounded quality of social science generalizations. From the economic sphere, in the 1970s the relationship changed between the rates of inflation and unemployment; from the political arena, one might recall the emergence of "big government" as a concern of liberals as well as conservatives in the latter 1960s; in social relations, there was the rapid acceptance of dual

careers as a norm for married couples of middle and high, as well as lower, social status. Given this dynamism, social scientists need not fear that their task will ever be completed, that the final book will be written, that the ultimate "laws" will all be discovered. Society changes as they watch; the conventional wisdom of the past, however well grounded, sooner or later becomes outmoded.

These observations also can be applied to the study of American federalism. Over the past 20 years, each key institution of governance has changed, leading to new forms of systemic behavior. Although the actors' identities remain the same, the mode of operation and the relationships with each other is now quite different. Textbook descriptions of Congress, the Presidency, interest groups, the political parties, the states, the judiciary, and others *circa* 1960 are badly dated. For example, during the past 20 years, power in Congress has been radically diffused, and members have seized the initiative in many aspects of domestic, budgetary, and even foreign policy. The federal courts—once regarded as neutral "umpires" of federalism or even a highly conservative force—have played an aggressive and activist role in dealing with social issues. The political parties, always highly decentralized, have been substantially reorganized on a national basis and have suffered a reduction in influence. Over these years, state and local governmental jurisdictions have also "come to Washington" on a full-time basis, establishing new lobbying offices and strengthening their national associations. The changes in each institution have necessarily had an impact on the others. To cite one obvious case, the Presidency has lost a great deal of its influence and prestige as Congress has asserted itself, as interest groups have proliferated, and as political parties have declined.

Compared to 20 years ago, it is a "whole new ball game," with new team lineups and many new rules as well. The character of these changes in federalism is not adequately conveyed by reference to the rising levels of federal spending and taxation or even to the increase in intergovernmental programs. During the 1960s and 1970s, the style of play altered—chiefly from one of widespread constraint to widespread activism, coupled with a thoroughly atomized system for decisionmaking. Hence, rather than condemning the stultifying effect of "veto groups," analysts and politicians (of liberal and conservative stripe) now are much more concerned about the excessive benefits obtained by special interests. Rather than deplored the power of the oligarchs of Congress and its ruling "conservative coalition," they criticize the legislature's lack of both effective leadership and willing followership. The Presidency, long regarded

as the mainspring of the system, was only a few short years ago described as dangerously imperialistic; now it is faulted for being excessively weak. Instead of explaining why the government budget is necessarily "too small" in a democracy, many experts have turned their attention to explaining why it is necessarily "too large." Yesterday's solid truths have become today's historical trivia.

## CRISIS, CHOICE, AND COMPLEXITY

Futurists and analysts of various stripes have identified three key factors as contributing to the changeability—and, hence, the unpredictability—of social processes: crisis, choice, and complexity. Each of these three "C factors" can alter the structural equations of reality, leading to new forms of behavior, by introducing new variables or changing the interaction of pre-existing ones. That is, social indeterminacy stems in large part from:

- the important influence of unexpected *crises*, surprises, and chance events;
- the major element of freedom of *choice* in the actions of human decisionmakers; and
- the poorly understood *complexity* of large-scale, interdependent social, economic, and political systems.

The impact of each factor on the development of federalism is considered briefly below.

### Crisis

A review of the past suggests that unexpected dislocations—including many crisis events—loom large as influences on the course of the nation's development. Indeed, much of the history of the past two decades could be written as a series of surprising, and very often uncomfortable, political shocks: the assassinations of President John F. Kennedy, Sen. Robert Kennedy, and civil rights leader Rev. Martin Luther King; the installation of Russian missiles in Cuba; the escalation of conflict in Vietnam; the OPEC oil embargo; the protests and riots in ghetto streets and on college campuses; the sharp recession and continuing stagflation of the mid-1970s; the Watergate revelations, culminating in the resignation of President Nixon; the influx of refugees from Southeast Asia and, most recently, from Cuba and Haiti; and the seizure of the American embassy in Iran. Each event has altered the nation's social, economic, or political environment and has had an impact on the activi-

ties of government at one or more levels. None could have been readily forecast; yet, if they had not occurred, our history would be different.

From the standpoint of federalism, the most critical events are those of extreme severity that affect the entire society. Within this century, the key examples are, of course, provided by the Great Depression and World War II. The governmental impact of the Depression was far-reaching, adding many new regulatory and assistance programs, overturning previous Constitutional interpretations, elevating the Presidency, enlarging the bureaucracy, and stimulating new political constituencies among such groups as the elderly, laborers, and farmers. Perhaps most revolutionary of all was a redefinition of the appropriate scope of national responsibilities. Prior to that time, the federal government had been thought of as a kind of vague and removed protector of "life, liberty, and property." Although the numerous New Deal programs were important in themselves, their paramount effect was to change popular expectations concerning what the national government should, could, and was indeed obliged to do to ensure the economic well-being of its citizens. Now, whichever way the economic breezes blow, the government must respond.

In a similar way, World War II profoundly changed American society and the federal government's role within it. The national revenues and debt expanded drastically out of wartime necessity and never returned to previous levels, permitting later rises in domestic outlays. Federal intervention in the economy was essential throughout the conflict, and like the Depression, encouraged a belief that it could be managed effectively from Washington.

In any futurist assessment, the possibility of another depression or war must, of course, be acknowledged. Either occurrence on a large scale would radically alter the course of national and governmental development. To futurist Edward Cornish, it seems probable that a second depression would be even more devastating than its predecessor, creating more human hardship because of the higher levels of economic specialization, integration, and interdependence among individuals and nations.<sup>54</sup> The horror of a full-scale nuclear war is almost unimaginable, threatening not only widespread loss of life, but also the near destruction of the nation's industrial structure and social and administrative apparatus.<sup>55</sup>

It may be hoped that neither will occur in the next decade, although both possibilities cannot be dismissed entirely. Although few mainstream economists and big business forecasters believe that another depression is possible, some less conventional analysts disagree.<sup>56</sup> MIT's Jay Forrester, identifying a 50-year long-term

cycle in the U.S. economy, believes that the 1980s will offer hard times, as does futurist Edward Cornish.<sup>57</sup>

The threat of war, perhaps, looms larger. A review of recent futurist literature identified the arms race as "the first broad area of deep concern."<sup>58</sup> Although the issue has become almost a cliche because of familiarity, the stockpiling of armaments is accelerating and spreading from the major powers to the Third World nations. In January 1980, the "doomsday clock" appearing on the cover of the *Bulletin of the Atomic Scientists* was moved up to seven minutes before midnight—two minutes closer than its position since 1974. The change was intended to "record and emphasize the accelerating drift toward world disaster in almost all realms of social activity."<sup>59</sup>

Yet, neither depression nor war need be full blown to have a significant policy impact. The 1973–75 recession produced a sizable package of countercyclical programs of assistance to distressed individuals and communities. Whether or not such an episode will be repeated during the 1980s is uncertain. In the past few months, economists have differed sharply about whether or not the nation was entering, would enter, or was already in a period of economic decline, and if so how deep it might be. This confusion, coupled with the nearly universal failure to foresee the 1973–75 recession<sup>60</sup>—the worst since the 1930s—suggests the operation of many factors that were not adequately understood.

Wars also can be comparatively small scale and distant—such as Vietnam—and still have important ramifications for politics, policy, and finance. Given the recent record and current tensions, the probability of such conflicts in the 1980s might seem particularly high. Even the threat of war is a potentially potent political factor, perhaps leading to a mobilization of arms (as it now seems to be doing) or alternately to new national commitments to their control.

Other less profound dislocations, perhaps more aptly termed "surprises" than crises, also have had substantial impact on intergovernmental relations, although they are usually confined to just one or a few narrow fields. One leading example is the successful launching of the Soviet satellite "Sputnik" in 1957. Aside from its obvious stimulative effect on the American space program, Sputnik also dramatically altered the terms of the national debate over federal aid to education. The need to match the technical achievement and the apparent military superiority of the Russians ended a long-standing religious and racial stalemate on school aid, leading to the rapid development by Congress and the Eisenhower Administration of what became the *National Defense Education Act* (NDEA). Its passage, less than one year after the

Soviet launch, was nothing short of phenomenal and marked a major turning point in the growth of a federal role in education.

A wide variety of examples of other influential happenstance occurrences might be taken from almost any other field of federal, state, or local policymaking. For example, the development of a federal role in the fire protection field during the 1960s was boosted by surprise events such as the Bel Air/Brentwood conflagration in 1961, the Cuban missile crisis of 1962, the arson associated with the 1965 riots in Watts and elsewhere (perhaps the single most important factor), and finally the Apollo spacecraft fire of 1967.<sup>61</sup> In the 1970s, the energy crisis established an important new field of intergovernmental concern, spawning a new federal department; a variety of new assistance programs and conservation requirements; interstate tensions over resource development and its impact; and a challenge to the ethic of environmental quality which once seemed to be a paramount national objective.

The widespread importance of such singular events suggests to some analysts that they are a normal feature of institutional change; in a sense, government by crisis may be quite routine. Robert U. Ayres comments that discontinuity is a standard mode of adjustment:

although underlying factors do tend to change gradually, their visible manifestations are often sharp and violent, as though restraining forces are suddenly overwhelmed. There is a great deal of evidence that human institutions do not adjust very readily to small pressures. This is probably because of negative feedback loops which give institutions—like individuals—a built-in capacity to preserve themselves in their original form. As pressures build, the institution reacts defensively, hardening its shell, so to speak, to ward off external threats. Not until the pressures become overwhelming and some sort of crisis or revolution occurs is the institution swept away or reformed in a fundamental way.<sup>62</sup>

He likens the process of adjustment to that occurring in earthquakes, where no motion at all occurs along a fault line until a certain minimum threshold level is suddenly, and violently, overcome.<sup>63</sup>

This style of policy formulation may actually be quite typical of American institutions and processes. A recently published comparison of welfare reform issues in the United States and Canada indicated that "contrary to the view that the United States depends most on incremental change, the most significant change occurs

during rare periods of jarring but constructive crisis."<sup>64</sup> The author, Christopher Leman, cited experience with old age insurance, unemployment insurance, and income maintenance in support of his "big bang" theory of policymaking. In these areas, policy development has been characterized by long periods of stability punctuated by occasional episodes of rapid change. Similarly, one might recall the bursts of social legislation in 1964-65, consumer protection laws in 1966-68, environmental measures in 1969-70, and energy legislation in recent years. The existence of these discontinuities does, of course, make policy forecasting more difficult.

Thus, although particular crises and surprises by definition are difficult to predict, the probability of their occurrence as a class—and their influence, if and when they do occur—should be recognized and (if possible) even planned for. For these reasons, William Ascher has suggested that:

the most important area of specialization in forecasting will be the development of methods designed to be highly sensitive to potential surprise outcomes, even if they are not the most likely outcomes. The rationale for such forecasts is the need to anticipate and avert future problems and crises that may not be apparent from considerations of what is *most likely* to happen.<sup>65</sup>

Among other things, he contends:

surprise-sensitive forecasting must not resort to consensus amalgams of the forecasts of others. Consensus, or the procedure of averaging numerous different forecasts, counters "high" surprises with "low" surprises, and generally produces the most middle-of-the-road projections. If, indeed, the average forecast were to anticipate a crisis, that crisis would not be very surprising.<sup>66</sup>

## Choice

The recent history of the development of American federalism also suggests that the future is unpredictable because it is made, not simply endured. Willy-nilly or by design, human choices play a major role in determining the course of events. If not exactly in the driver's seat, people are also not simply along for the ride. Indeed, to some extent, the future is its own "cause" because of the purposiveness of human action. Willis Harman notes:

We all are accustomed to thinking of the past

## **"The recent history of the development of American federalism also suggests that the future is unpredictable because it is made, not simply endured."**

as a cause of subsequent events—a decision was made, a law was passed, an encounter took place, and *as a result* various other events transpired. We reason this way every day. Less obvious is the fact that our view of the future shapes the kind of decisions we make in the present. Someone has a vision of the future—of a great bridge, a new industrial process, or a utopian state—and *as a result* certain events are taking place in the present. Our view of the future affects the present as surely as do our impressions of the past or the more tangible residues of past actions.<sup>67</sup>

Although policy analysts have traditionally devoted most of their attention to the investigation of large, impersonal forces—urbanization, technological development, public opinion, social conflicts, demographic trends, electoral mandates—in determining governmental events, the record shows that a decisive role also is played by the personality, interest, values, and commitments of the decisionmakers themselves. Moreover, it is not only the very few great men and women of history, but also a great many lesser individuals who sometimes leave their stamp on governmental trends. Individuals tucked away at strategic locations in the bureaucracy, the legislature, interest groups, the media, or elsewhere can influence outcomes by pointing out problems or proposing solutions to them.

The crucial importance of the individual in shaping the development of federalism over the past 20 or more years was dramatically portrayed by the Commission's recent study of the growing federal role. The report disclosed that policy entrepreneurs in Congress, acting under conditions of relative freedom from Constitutional, fiscal, and political constraints, had been preeminent in encouraging recent programmatic growth. Of the range of political actors participating in the seven functional fields examined:

only Congress played a consistently crucial role, a role which is particularly significant in the originating phase of the policy process. . . . [I]n the initiation of programs, no other actor eclipses the individual Congressional entrepreneur or issue activist. The near universal existence of such policy entrepreneurs in the case studies belies the notion that Congress acts as a great rubber stamp for Presidential, bureaucratic, or interest group initiatives. In fact, in many instances the opposite would be closer to the truth.<sup>68</sup>

Evidence of an entrepreneurial pattern appeared time after time, for both grant-in-aid and regulatory programs. For example, enactment of the food stamp program can be attributed in good part to the persistent one-person struggle of Congresswoman Leonor K. Sullivan. Waging an almost quixotic battle against the steadfastly opposed Eisenhower Administration, Republican members of Congress, hostile committee chairmen, and rural and southern reticence, Sullivan—an Agriculture Committee outsider—waited ten years for the opportunity to logroll her bill into law. Thereafter, the Missouri Congresswoman continued to fight and bargain for favorable provisions and against unfriendly amendments. In the same way, the creation of the Area Redevelopment Administration—the forerunner of a whole series of federal efforts aimed at problems of structural unemployment in rural and urban areas—can be attributed largely to the efforts of one man—Sen. Paul H. Douglas of Illinois. He formulated the intellectual underpinnings of the program and played a leading role in shaping the coalition that supported the legislation. Largely because of his perseverance, the act survived two Presidential vetoes and was finally signed into law under the Kennedy Administration in 1961.<sup>69</sup>

Among regulatory enactments, Title IX of the *Education Amendments of 1972*, which seeks the elimination of sex discrimination in education admissions, facilities, and practices, was largely the effort of Rep. Edith Green of Oregon. Enlisting the support of women's groups and sympathetic female Congressional staffers, Green was successful in her endeavor despite a lack of interest in or support from the educational community. Many other similar cases could be cited.

The importance of individuals in Congress has many ramifications, each of which creates further uncertainty from the standpoint of the forecaster. The passage of a bill may crucially depend on committee assignments, changes of chairmanships, and all the vagaries of personal psychology and life that may influence how one's

time and attention are allocated. These factors magnify the importance of communications networks, of timing, of the correctly phrased argument, and of the cocktail party conversation. In addition, they pose endless difficulties for the futurist.

Entrepreneurial politics, of course, is not the exclusive province of Congress. It is practiced by Presidents, bureaucrats, and a variety of other well placed individuals. The federal new towns in-town program, for example, was:

President Johnson's idea. One morning in August 1967, as he was sitting in his bedroom at the White House and talking to Special Assistant Joseph A. Califano, Jr., it occurred to the President that federally owned land in the cities could be used for housing. Within hours, his staff had assembled a working group from the executive departments to figure out how this could be done.<sup>70</sup>

Less than one week later, the program (which did not require new legislation) was announced to the public.

This particular program was atypical in its ease of creation, as well as comparatively minor, although it should be remembered that the typical federal program is comparatively minor. But much loftier ventures also have been launched largely through Presidential discretion and by the exercise of Presidential willpower. The declaration of a national War on Poverty, which had ramifications for nearly every aspect of government, cannot be accounted for by reference to great events, by pressure from lobbies, or by a mandate from the public.<sup>71</sup> Instead, it reflects the intellectual currents of that time, coupled with President Johnson's personal decision. A whole range of policy proposals had been suggested to him as possible themes for the 1964 reelection campaign—including a second major tax cut, revenue sharing, health insurance, consumer protection, and conservation.

President Johnson was the one to make the choice among these competing uses of funds and of political energy. He selected the anti-poverty idea as a centerpiece or flag for his 1964 campaign.<sup>72</sup>

Since the poor are a minority, and since many do not vote (or always vote Democratic), it is not clear that the choice was even the most politically strategic one. However, with the President's preference clear, what became the *Economic Opportunity Act of 1964* was drafted by an executive branch task force and accepted without

much serious challenge or revision by a favorably disposed Congress.

The stature of the Presidency is such that White House support, even casually given, can sometimes rather decisively sway policy outcomes. The nature of the Presidency (now a collective office) is such that the President's own importance also magnifies that of hundreds of individuals who work, write, or sometimes speak in his name; their actions or inactions may be crucial determinants of events. Sometimes, the results are astonishing. For example, the Nixon Administration's advocacy of a guaranteed annual income was largely the work of "holdover Democrats" within the executive branch, using an idea formulated within Sargent Shriver's Office of Economic Opportunity. The outcome, as Vincent and Vee Burke have written, was "stranger than fiction," for:

anyone who had predicted that Richard Nixon would be the first President to propose a guaranteed income for families, coupled with wage supplements for poor fathers, would have been dismissed as mad.<sup>73</sup>

Individual actors outside formal government institutions can also sometimes have a significant impact on the course of public policy. Members of the media—by what they publicize and what they ignore—can make political news as well as simply report it. A single column written by Ann Landers did much to spur passage of the *National Cancer Act of 1971*. Her published request that readers let Congress know of their support for the bill—later reprinted in full-page advertisements—produced an avalanche of mail, perhaps totaling as many as one million pieces. Given the aroused state of public opinion stimulated by the article, opponents became fearful of being depicted as being "in favor of cancer."<sup>74</sup>

In contrast, actions leading to untimely publicity can also narrow possibilities, precluding what otherwise might have been accomplished. During the summer of 1964, a program of revenue sharing for state and local governments was proposed within the Johnson Administration by Walter W. Heller, Chairman of the Council of Economic Advisers, and a task force directed by Joseph A. Pechman of the Brookings Institution. The concept was apparently popular with the President, because he gave it his stamp of approval in a campaign statement issued October 28, 1964. Yet, the President dropped the plan following a newspaper account of the task force's work which appeared in *The New York Times*—the only one of 11 preelection studies that issued any public information. The subsequent enactment of Great Society programs and the increasing military commitment in

Vietnam absorbed the federal fiscal dividend on which revenue sharing was premised<sup>75</sup> and delayed its adoption for eight years.

To attribute policy changes to the actions of a single individual is unusual. Small groups, however, are often decisive, because government involves an endless series of committee meetings, working groups, and task forces, and a few key individuals in these processes can exercise great discretion. Much of the final content of the *Employment Act of 1946*, which formally committed the national government to the use of Keynesian economic policies, was determined in conference committee. So important were the views and actions of some of its 12 members that Stephen K. Bailey, who wrote the definitive history of the subject, devoted an entire chapter to a description of their personalities.<sup>76</sup> "The fate of any piece of legislation," he stressed,

cannot be understood without an appreciation of the fact that Congressmen are people, with all that banality implies. Like the rest of us they become bored by tedious debates, angered by personal affronts, inspired by the words of leaders they respect, irritated by the weather, confused by technical problems, upset by domestic misunderstandings. . . . [T]hey have been molded in their thinking by scores of influences: parents, teachers, friends, enemies, social status, occupation or profession, personal successes and failures, adult associates, regional interests, local opinions, party loyalties, and the general social, economic, moral, and intellectual milieu of their generation and culture.<sup>77</sup>

"In a study of policymaking," he declared,

it is not enough that we understand influences external to the policymaker. Constitutions and statutes, public opinion and pressures, facts and arguments, parties and patronage—these factors are important only as they reach and are interpreted and accepted by men's minds and prejudices. Like the action of light on variegated surfaces, external factors are absorbed, refracted, or reflected, according to the peculiar qualities of the minds they reach.<sup>78</sup>

Such human variability provides grist for the mill of the political historian or the political novelist, but it confounds the political futurist, making his task nearly impossible. Ayres stresses that:

many human decision processes—especially

where a few individuals are especially influential—are essentially unpredictable. This is because of the inherent impossibility of an outsider knowing enough "at a distance" about the factors that will affect the thinking of decisionmakers. These factors are only partly visible, at best, to the nonparticipants. Personal ethics, prejudices, idiosyncrasies, fears, and ambitions all play a significant role in decisions, even at the very highest levels.<sup>79</sup>

Although broader currents of opinion cannot be dismissed as causative factors—and, as Ayres also notes, "decisions undertaken by large numbers of individual humans can often be adequately 'modeled' statistically . . . as in economic demand forecasting or traffic flow studies"<sup>80</sup>—even here, the possibility of fundamental change looms comparatively large. The record is clear on this. The public opinion and voter surveys of the 1950s did little to forecast the development of or reaction to issues such as civil rights, Vietnam, women's rights, ecology, student unrest, "or anything else one wants to add to the list of political problems that emerged in the 1960s."<sup>81</sup> In 1965, a noted analyst looked forward to an "age of consensus," tolerance, and satisfaction in the years ahead, just as the nation was in fact coming apart.<sup>82</sup> More broadly, recent decades have seen the collapse, not only of the traditional "public philosophy,"<sup>83</sup> but also of many aspects of traditional social philosophy, with rapid and wide-ranging changes in basic values.

The problem is fundamental, rooted in the nature of human decision. Despite rhetorical references to the "weight" or "force" of public opinion, or to the "currents" flowing within it, the object of study is intangible, and thus very different from any kind of physical process. In his thorough review of forecasting efforts, Ascher concludes that much sociopolitical forecasting fails because it pertains to the "deference values" of respect, rectitude, affection, and power, all of which can be altered by human volition, unconstrained by material resources. Thus:

Heroes can be created overnight, by an act of will on the part of people who want heroes, but an increase in electrical capacity can be accomplished only through the investment of time. Elections can swing dramatically from one candidate to another, whereas changes in attitude alone cannot budget the GNP.<sup>84</sup>

Secondly, he notes, sharp reversals are possible.

There is seldom a consensus on the preferred

direction of the development of social activities and attitudes. Consequently, even the direction of future social change is highly uncertain in contrast with the unidirectional nature of many material trends such as industrialization, technological progress, or economic growth.<sup>85</sup>

Finally, Ascher adds that:

social attitudes, because of their independence from material resource basis, are usually less cumulative than material growth patterns. . . . [T]he predominance of a social attitude does not necessarily enhance the chances for its further acceptance. This often means simply that the pendulum of social attitudes is on the verge of swinging back again in the opposite direction.<sup>86</sup>

In the final analysis, therefore, any form of forecasting in which the human factor looms large contrasts with the situation in the physical sciences and is better compared with playwriting,

with the characters and their initial relationships well defined, but the script as yet unwritten. . . . The characters live out the play and create it as they go along. The real world is "ad lib" in important respects.<sup>87</sup>

As in a good play or novel, the "plot" of the future not only must flow from the nature of its characters, but also reflect their capacities for choice and change:

The events of the future will happen because people, institutions, and nations are what they are and behave as their characters and circumstances dictate. . . . Action must follow from internal dynamics.<sup>88</sup>

Again, as in any drama, there always is more than one potential denouement. Ascher argues that it therefore "is much safer for forecasters to generate a series of conditional forecasts, each based on a policy alternative, than to presume what the policymakers are going to do."<sup>89</sup>

## Complexity

More than anything else, perhaps, the development of new federal intergovernmental programs over the past two decades has been an education in complexity—an explication of the obduracy of social problems and the obtuseness of the governmental intervention strategies aimed at their solution. Despite—or even, in some cases,

partially because of—the good intentions and substantial efforts of the federal government, the nation's schools are worse, its health care more expensive, its crime rate higher, its unemployment more widespread, its neighborhoods just as segregated, its decent housing less available, and its hard-core poverty seemingly just as intractable as in 1960. What the nation has discovered, in the words of Lawrence M. Friedman, is that:

societies are the hardest machines to repair. They are a maze of circuits and wires, capable of miraculous performance; but when the system fails, not all the king's or all the President's men can put things easily to rights.<sup>90</sup>

If a summary finding can be drawn from the host of federal evaluation studies prepared over the past dozen years, it is a harsh judgment: little, if any, effect. Outright failures are commonplace.<sup>91</sup> Even the results of most charitable assessments show that the sponsors of new social programs expected and promised far more than they delivered.<sup>92</sup>

While poverty was reduced substantially in the 1960s and 1970s, this outcome was principally an unplanned, unintended, and undesired consequence of the enormous growth in welfare spending that the architects of the New Frontier, the Great Society, and the New Federalism had tried to stem.<sup>93</sup> Economic dependency, not economic opportunity, was the nation's de facto solution to disadvantage. Meanwhile, dissatisfaction with the maze of new federal assistance and regulatory programs, as well as the cumbersome bureaucracy that administers them, has escalated dramatically. The public's faith in the possibility of "good works" by government, and in the good will of the officials who run it, has declined sharply.

None of this was anticipated—which is, in itself, an important commentary on the limits of forecasting. The new programs of the 1960s and thereafter were launched in a spirit of confidence, with the expectation of easy (and even comparatively cheap) victories. Six years after the inauguration of the Great Society, Alice M. Rivlin observed that the proponents of new federal programs for health, education, and social services had:

thought the main problem was underfinancing. They thought far too much was spent on the private sector and far too little on public needs. They were confident that an influx of resources into the public sector—for example, federal aid to education—would produce results.<sup>94</sup>

This confidence was misplaced, and the actual results provided a stark lesson in social complexity. The aware-

ness of ignorance about how to produce effective services increased: "We know now that we don't know," Rivlin said.<sup>95</sup> Another six years later, a report prepared by the Institute for Research on Poverty also declared that:

one lesson of the 1960s is that we know very little about poverty and society. The Kennedy people thought the Eisenhower years were empty and static because Eisenhower ignored the insights of the best and the brightest, relying on men with narrow business minds. The fact was, the experts knew very little themselves; sociologists and psychologists knew next to nothing; social work specialists knew even less, and there were not enough to go around anyway. The economists knew something, but it was less than they thought. The lesson was expensive. . . .<sup>96</sup>

Cities also turned out to be more complicated socio-economic organisms than anyone had supposed. A full decade after the creation of a cabinet department to aid them, an Urban Institute analysis found that there was:

less consensus on the ultimate causes of many serious urban problems, and even less consensus on the measures that would ameliorate them, than there was in 1966, or in 1965. Confidence in our ability to frame solutions has declined as understanding of problems has grown. . . . One can say—at least about the domestic sphere of government action—that we now know more than we did but, deprived of our hubris, are less confident in our ability to shape a future as we will.<sup>97</sup>

As an appreciation of complexity has grown, these results have seemed more comprehensible. Apparently,

the operation of complex systems—that is, systems "in which there are at least a moderate number of variables or parts related to each other in organic or interdependent ways"<sup>98</sup>—is inherently difficult to understand, even harder to control, and often quite impossible to forecast. Consequently, such systems are sources of frustration to the policymaker, the expert analyst, and especially the futurist. Indeed, it sometimes seems that the more one learns about complexity, the less one knows about it. It is not even clear that traditional concepts of causation can be meaningfully employed. The systems analyst's motto—"everything is related to everything else"—is a counsel of caution to both policymakers and futurists. If everything is connected, then causes are multiple. The very distinction between "causes" and "effects" can lose its meaning if a series of variables are interrelated through a variety of positive and negative feedback processes:

In the enormously complex world of social interrelations we cannot say in any simple way that one change produces the other, only that they are enormously interrelated and both aspects of human life change together.<sup>99</sup>

To cite just one of many similar cases, the rampant inflation of recent years seems to be "too complicated for any single-cause explanation and too intractable to respond to any single-remedy policy."<sup>100</sup> Instead, in the opinion of Robert M. Solow, the economy has become "inflation-prone" because of the interlocking decisions of a variety of private and public actors:

Since prices respond mainly to costs and costs are just somebody else's prices, . . . once a round of price increases gets started, it is likely to continue. . . . We are tossing a hot potato from one to another, and nobody wants to be holding the thing when the game ends.<sup>101</sup>

Complex systems also tend to behave "counterintuitively," to use Jay W. Forrester's term.<sup>102</sup> It is his view that the human brain, despite its remarkable performance in other areas, is not adapted to comprehending the multiple causal loops and nonlinear feedback processes that characterize the operation of social systems. For this reason, human intuition and judgment often lead people to make wrong decisions.

A particular problem is that the long-run consequences of a policy action may be quite different from the immediate short-run consequences. Forrester's work offers a number of examples in which good intentions have led to bad results because of a failure to appreciate this sort of behavior. For instance, his computer simulations of

**"Indeed, it sometimes seems that the more one learns about complexity, the less one knows about it."**

urban development suggest that:

A low-cost housing program alone moves exactly in the wrong direction. It draws more low-income people. It makes the area differentially more attractive to the poor who need jobs and less attractive to those who create jobs. . . . [A]s the area becomes more destitute, pressures rise for more low-cost housing. The consequence is a downward spiral that draws in the low-income population, depresses their condition, prevents escape, and reduces hope.<sup>103</sup>

Forrester concludes that "many of the problems which we face today are the eventual result of short-run measures taken as long as two or three decades ago."<sup>104</sup> Aaron B. Wildavsky has formed a similar view, noting that "solutions create their own effects, which gradually displace the original difficulty."<sup>105</sup>

Moreover, so deeply intertwined are the problem areas of public life that unintended side effects and unanticipated consequences can undo even beneficial results. The bureaucrat's rallying cry—"That's not my department"—thus becomes a watchword for failure. Again, examples are plentiful. The creation of the interstate highway system after 1956 is the best known example and a concrete monument to the complex, multiple impacts of a seemingly straightforward, and very successful, program. Designed as a transportation measure, and justified by its contributions to national defense, the new high-speed expressways are:

an engineering marvel which has put postwar America on wheels and, as an aid to truck and automobile transportation, has exceeded all expectation.

The problem is that the planning which preceded construction of the highway system was narrowly focused and largely ignored anything not directly connected with technical design and construction per se. It was known in the early 1950s that concentration of automobiles can cause severe pollution problems, but this was ignored. Routes were laid through central cities, ultimately requiring the eviction of thousands of people at a time when good housing was in short supply, but this was brushed aside in 1956. Obviously, the system would have (and has had) enormous and detrimental effects on other modes of transportation, but these too were overlooked. By opening up the suburbs to uncontrolled growth, the system facilitated

urban sprawl and accelerated the decline of central cities, but this was not taken into account either. Tens of billions of dollars were spent on a program which promised to—and has—shaped our nation in concrete. The structure of domestic commerce was violently altered without consideration of the "spillover" effects that such a system would have on important sections of the economy and the regions through which the roads were to be built.<sup>106</sup>

When the number of programs is very large, the probability of such unanticipated consequences is very high. Wildavsky has observed that:

[A]s large programs proliferate, they begin to exert strong effects on each other, increasing reciprocal relations and mutual causation; Policy A affects B, B has its effect on C, and C back on A and B. An immediate effect of new large programs amid this increased interdependence is that their consequences are more numerous, varied, and indirect, and thereby more difficult to predict. . . .<sup>107</sup>

#### Performance and forecasting both suffer.

This, of course, is a good capsule description of contemporary American federalism. Over the past 20 years, essentially every major field of activity, in every state and community area, has become a tangled network of overlapping, interrelated, confusing, and often conflicting administrative relationships. Effective management and planning are often impossible. For example, in the Tidewater, VA, area, the General Accounting Office (GAO) identified 44 federally assisted employment and training programs operating in FY 1977. Collectively, the 44 programs (based on 16 separate legislative authorizations) served over 70,000 participants through a network involving eight federal departments and independent agencies, 26 national organizations or state agencies, and more than 50 local administering agencies. According to GAO's assessment, the multiplicity of interrelated programs posed severe difficulties to coordination, management, and planning.<sup>108</sup> Similar accounts could be repeated endlessly.

Performance gaps also occur because of the multiple layers of responsibility and the weak carrot-and-stick incentives for cooperation. Implementation studies suggest that programs involving a large number of clearance points by diverse and independent participants are unlikely to achieve their objectives. Jeffrey L. Pressman and Aaron B. Wildavsky have written that the circumstances of intergovernmental operations are such that:

our normal expectation should be that new programs will fail to get off the ground and that, at best, they will take considerable time to get started. The cards in this world are stacked against things happening, as so much effort is required to make them move. The remarkable thing is that new programs work at all.<sup>109</sup>

Although the administrative consequences are most obvious, such programmatic complexity also overloads decisionmaking processes and strains individual decisionmakers. Public officials on Capitol Hill, in the White House and the executive branch, or in state capitols and municipal buildings across the nation find it impossible to meet all the demands on their time and attention. Error rates have increased accordingly, and many significant federal spending and regulatory programs have been enacted with little awareness of their full costs and administrative implications.<sup>110</sup> Programmatic complexity also is mirrored in the political arena, as each program area is surrounded by a tight network of affected interest groups and overlapping networks of legislators and bureaucrats. Pluralism, once considered a virtue, has run amok, reducing accountability and sometimes precluding effective action in the "special interest" state.

In summary, the term "complexity" is an apt description of present social reality. The segmented society, economy, and governmental system of the past has become an intricately interconnected one of a national—and, in many respects, international—scale. Shocks and tremors spread and clash, like ripples from a handful of stones tossed into quiet waters. Ultimate outcomes are uncertain. As Todd R. LaPorte has said:

We are caught somehow in spreading webs of dependence. These networks become increasingly hard to understand. We act, supposing that the consequences of our actions will be acceptable. Yet our actions often prompt reactions unforeseen and unwanted. We seem to have unfamiliar connections to others, connections the strength and locus of which change frequently. The duty of comprehension often burdens us uncomfortably, for what we had been taught is true does not help us to make sense of surprise nor assist us to create new alternatives which win much confidence.

...<sup>111</sup>

This indeterminacy cannot be overcome; it is, in fact, inherent in complexity. Multiple possibilities and alternative outcomes are almost always possible, and these

**"The task facing those considering the future of federalism is doubly difficult, because socioeconomic trends, as well as the probable responses to them by governments at all levels, must both be anticipated."**

multiply in number as the period under consideration lengthens. Garry D. Brewer comments:

As the projected time frame expands beyond the immediate, marginal present, the number of possible systems states increases rapidly. Projecting into the future involves the selection from among an extremely large number of possible developmental sequences, of that *one* sequence most likely to occur. The greater the extension of the time frame and consequent increase in potential states, the less the likelihood of accurately anticipating the system's future behavior.<sup>112</sup>

The task facing those considering the future of federalism is doubly difficult, because socioeconomic trends, as well as the probable responses to them by governments at all levels, must both be anticipated. One order of complexity thus confronts another.

## SOME TENETS OF FUTURISM

The shortcomings of past efforts at prophecy, together with a consideration of the implications of crisis, choice, and complexity for social, economic, and political processes, all suggest that the task confronting the forecasters of federalism is very formidable. More starkly, it clearly is impossible to specify what the condition of American federalism will be ten years hence, just as present circumstances were not foreseen ten years ago.

Impossibility clashes sharply with necessity, however, as the process of governance itself requires some image

of the future. Indeed, every vote, every budget, every statute, every agency or court ruling embodies two implicit futures: What will happen *without* the contemplated action, and what will happen *with* it. Such forecasts and promises—of energy shortages or surpluses, of economic problems or recovery, of environmental degradation or improvement, of more crime or less—are the very stuff of political rhetoric and policy choice. Every politician and citizen is willy-nilly a “futurist,” like it or not. Some simply are more careful about their activities than others.

Consideration of the issues discussed above does suggest how the task may be approached somewhat systematically. The following five tenets of futurism are provided to guide the participants in the Commission's Conference on the Future. They pertain to indeterminacy, multiplicity, plausibility, probability, and advocacy.

### Indeterminacy

Indeterminacy is the first tenet of futurism. Given the importance of crisis, choice, and complexity, certainty is impossible. All interpretations of the future therefore must be conditional.

Many futurists use the term “projection,” rather than “forecast,” to indicate this spirit of tentativeness. Projections are contingent statements, resting on a series of stated or stated assumptions—a series of “if’s.”<sup>113</sup> Furthermore, they are only as good as their underlying assumptions. Ascher has noted that “the core assumptions underlying a forecast . . . are the major determinants of forecast accuracy. . . . When the core assumptions fail to capture the reality of the future context, other factors . . . cannot ‘save’ the forecast.”<sup>114</sup> Because of this, explication of the underlying premises must be a primary concern.

### Multiplicity

Indeterminacy implies multiplicity—the existence of more than one possible outcome. Hence, a number of different or even conflicting projections could be equally valid, although only one particular forecast can be. Each simply represents an alternative appraisal of how things could be one day, contingent on different core assumptions.

Contemporary futurists have incorporated the notion of multiplicity into the very definition of their field. Paul Dickson notes that:

one of the things that virtually all futurists believe is that there is a broad array of *alternative*

## “Indeterminacy is the first tenet of futurism.”

*futures* open to us. It therefore follows that the proper role of futurism is to lay out these alternatives for present inspection. . . .<sup>115</sup>

Similarly, the reference manual prepared by the World Future Society contrasts contemporary futurist techniques with earlier social prognostications on this very point:

The current view of futurists can be characterized as an inquiry into a host of *alternative* possible futures whose development may be altered by the deliberate and *active* intervention of man. . . . While 19th-century philosophers of social change sought to identify the underlying natural laws that governed the forces of change on the premise that knowledge of these laws *per se* was sufficient for knowing the future, 20th century futurists have abandoned this philosophic search for underlying “truth” and instead concentrate on applying scientific methodologies, largely developed in other disciplines, to exploring a set of alternative futures whose occurrence is possible.<sup>116</sup>

Even those working in comparatively narrow fields must recognize and allow for multiplicity. For example, demographers typically prepare a series of population projections reflecting different assumptions about fertility, morbidity, migration, and so forth.

To link together separate forecasts into broader wholes, many futurists prepare a series of comprehensive scenarios, each portraying in graphic language the cumulative impact of an entire set of events. These depict what life would be like if various possible events occur.<sup>117</sup> As defined by Edward Cornish:

A scenario is a kind of realistic fantasy; it begins with an examination of current actualities of a situation and then takes an imaginative leap into the future by setting forth a series of events that might occur. There is no limit to the number of scenarios that might be created, because the number of things that human beings can do is infinite.<sup>118</sup>

In writing scenarios, many futurists adopt the position of an historian at some future date, looking back over

the events that have already occurred, and prepare a narrative account on that basis.<sup>119</sup>

## Plausibility

Plausibility is the highest standard for judging the quality of forecasts and scenarios. The aim of the scenario writer is to move from the present to the future in a reasonable series of steps, regardless of probabilities. A good set of scenarios should identify at least the major potentialities inherent in present and alternative future conditions, regardless of their likelihood.

This approach is necessitated by the possible occurrence of key crisis events, the complexity of societal processes, and the importance of human choice in both creating and ameliorating outcomes. Ayres comments that:

it is useful to distinguish between scenarios that are unlikely to the point of being inconceivable and ones that, even though improbable, could come to pass under a particular set of circumstances. Examination of the latter is an essential part of contingency planning.<sup>120</sup>

Some "lookout" institutions give special attention to the advance detection of possible major structural changes in the system (or systems) under study, even though their occurrence may be improbable.<sup>121</sup>

The identification of unlikely but very desirable possible outcomes—utopias, even—may be a useful corrective to the normally limited scope of incremental analysis.<sup>122</sup> The portrayal of unlikely but dangerous possibilities—as, for example, in Rachel Carson's *Silent Spring* and a variety of dystopian novels—can serve a warning function and even help to avert the conditions they depict.

## Probability

Although probability is a secondary concern, most futurists do consider the likelihood of various conceivable outcomes. Ascher indicates that "often a particular probability or range of probability is attached to each scenario, and sometimes one is casually labeled 'most likely'."<sup>123</sup> Often these probability estimates must be purely subjective.

Complex scenarios, of course, have many "nested" component parts or steps. Probabilities also may be assigned to the occurrence of each of these.<sup>124</sup> Outcomes also often are contingent on policy choices, which may

themselves have probabilities attached. Thus, Olaf Helmer recommends that a political analysis of the future:

should identify those decisions which are subject to control as well as those developments which are not, whose occurrence would be likely to have a major effect on the probabilities of these alternatives.<sup>125</sup>

## Advocacy

Finally, futurist studies are usually both normative and action-oriented. They attempt to evaluate and shape the future, not simply to describe it. Dickson comments that:

futurism is basically action oriented, in that it is ultimately geared to creating the future rather than simply thinking about what it will be like.<sup>126</sup>

He adds that the whole point of developing alternative scenarios "is to avoid the undesirable futures and move toward the most desirable ones."<sup>127</sup>

Ascher indicates that a variety of "normative forecasting" techniques are employed to suggest what *ought* to be done as well as what *will* happen. These are a natural outcome of the recognition of the element of choice in societal processes. He notes:

One motivation behind the development of normative forecasting is the recognition that forecasting is intertwined with policy decisions made by the forecast-users. If actual trends depend on the policy choices of forecast-users, . . . a forecast that *assumes* their policy choices is hardly meaningful or welcome. This problem . . . is obvious in providing forecasts to top public policymakers in areas such as pollution control, where governmental choices on the strictness of antipollution regulation will make a huge difference in the trends that forecasters are expected to project.<sup>128</sup>

Hence:

it is much safer for forecasters to generate a series of *conditional* forecasts, each based on a policy alternative, than to presume what the policymakers are going to do. A safe *and* active role for forecasters in this situation is to work backward from desired "end states" (such as an acceptable level of air pollution) to the policies required to bring them about.<sup>129</sup>

In developing policy proposals, as in other areas, fu-

turists attempt to reach beyond the obvious or conventional problem solutions. Dickson offers this example to contrast the work of the futurist with that of the typical long-range planner:

A planner looks at birth statistics to determine the future need for hospital beds in an area; the futurist asks if there are better options to the present concept of patient care or innovations on the horizon which could change the demand for hospital beds, such as electronic devices that will allow a patient to be diagnosed at home as his heartbeat, blood count, and other variables are telegraphed to the hospital.<sup>130</sup>

## Conclusion

In summary, the preceding five tenets of futurism indicate the manner in which the Commission has interpreted its charge from Congress to conduct a study of the future of American federalism, the forces that will shape it, and any policy adjustments that may be required

to improve its operations. The Commission recognizes that the future is indeterminant, and that multiple developmental scenarios are not only conceivable but also quite possible, owing to the impact of crisis or surprise events, the major influence of human choices, and the uncertainties inherent in the operation of very complex systems. Therefore, ACIR has requested that the participants in its Conference on the Future of Federalism engage in a speculative dialogue about the potential condition of federalism *circa* 1990, including different interpretations of the roles and responsibilities of each of the three levels of government—national, state, and local—and the nature of the political process at that point in time. Each scenario should be plausible, representing the outcome of a conceivable series of economic, political, and social events and major policy choices. It also would be valuable to indicate which scenario seems to be the most probable, although likelihood is not the greatest concern. Finally, the discussants should consider the desirability of each alternative scenario that they develop, and if possible advocate policies (to governments at any level) that would make the more desirable outcomes more likely to occur.

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## FOOTNOTES

<sup>1</sup>P.L. 92-512 (86 Stat. 919), Sec. 145

<sup>2</sup>Ibid.

<sup>3</sup>Executive Order 12168, October 24, 1979.

<sup>4</sup>A major review of global economic and political trends in *Interfutures: Facing the Future: Mastering the Probable and Managing the Unpredictable*, Paris, France, Organization for Economic Co-Operation and Development, 1979.

<sup>5</sup>Kenneth Boulding, *The Meaning of the Twentieth Century*, New York, NY, Harper & Row, 1964, pp. 1-2.

<sup>6</sup>Alvin Toffler, *The Third Wave*, New York, NY, William Morrow and Company, Inc., 1980, p. 17.

<sup>7</sup>Ibid., p. 19.

<sup>8</sup>Peter Drucker, *The Age of Discontinuity*, New York, NY, Harper and Row, 1968.

<sup>9</sup>Willis W. Harman, *An Incomplete Guide to the Future*, San Francisco, CA, San Francisco Book Company, 1976, p.4.

<sup>10</sup>Daniel Bell, *The Coming of Post-Industrial Society: A Venture in Social Forecasting*, New York, NY, Basic Books, 1973.

<sup>11</sup>Zbigniew Brezinski, *Between Two Ages: America's Role in the Technetronic Era*, New York, NY, Viking Press, 1972.

<sup>12</sup>Herman Kahn, *World Economic Development: 1979 and Beyond*, New York, NY, Morrow Quill, 1979.

<sup>13</sup>Michael J. Harrington, *Decade of Decision: The Crisis of the American System*, New York, NY, Simon and Schuster, 1980.

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<sup>15</sup>Robert U. Ayres, *Uncertain Futures: Challenges for Decision-Makers*, New York, NY, John Wiley & Sons, 1979, p. 415.

<sup>16</sup>Lester C. Thurow, *The Zero-Sum Society*, New York, NY, Basic Books, 1980.

<sup>17</sup>Richard E. Cohen, "The Political System Attempts to Cope with Public Loss of Faith in Government," *National Journal*, January 19, 1980, p. 110.

<sup>18</sup>Quoted in Barnet, *op. cit.*, p. 15.

<sup>19</sup>John Herbers, "Americans Seem to Be 'Between Idea Systems,'" *New York Times*, December 30, 1979, p. 12:5.

<sup>20</sup>The summary finding and the recommendations of this study are presented in Chapter 7 of this report.

<sup>21</sup>Eli Ginzberg, "Manpower Policy: A Look Ahead," *Work in America: The Decade Ahead*, Clark Kett and Jerome M. Roscow, eds., New York, NY, Van Nostrand Reinhold Company, 1979, p. 89.

<sup>22</sup>Robert U. Ayres, *Uncertain Futures: Challenges for Decision-Makers*, New York, NY, John Wiley & Sons, 1979, p. 41.

<sup>23</sup>Robert A. Nisbet, "The Year 2000 and All That," *Political Science and the Study of the Future*, Albert Somit, ed., Hinsdale, IL, The Dryden Press, 1974, p. 259.

<sup>24</sup>Ibid., p. 265.

<sup>25</sup>Morton Grodzins, "The Federal System," *Goals for Americans: The Report of the President's Commission on National Goals*, New York, NY, Prentice-Hall, Inc., 1960, p. 282.

<sup>26</sup>John Kenneth Galbraith, *The Affluent Society*, New York, NY, New American Library, 1958, p. 205.

<sup>27</sup>Anthony Downs, "Why the Government Budget is Too Small in a Democracy," *World Politics*, 7, July 1960, pp. 541-63.

<sup>28</sup>James MacGregor Burns, *The Deadlock of Democracy*, Englewood Cliffs, NJ, Prentice-Hall, 1963, p. 2.

<sup>29</sup>Henry J. Aaron, *Politics and the Professors: The Great Society in Perspective*, Washington, DC, The Brookings Institution, 1978, p. 16.

<sup>30</sup>Sar A. Levitan and Robert Taggart, *The Promise of Greatness*, Cambridge, MA, Harvard University Press, 1976, p. 49.

<sup>31</sup>Frank Munger and Richard Fenn, *National Politics and Federal Aid to Education*, Syracuse, NY, Syracuse University Press, 1962, p. 170.

<sup>32</sup>See Theodore J. Marmor, *The Politics of Medicare*, Chicago, IL, Aldine Publishing Company, 1973; and James L. Sundquist, *Politics and Policy: The Eisenhower, Kennedy, and Johnson Years*, Washington, DC, The Brookings Institution, 1968, pp. 287-321.

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- <sup>32</sup> Arthur M. Okun, *The Political Economy of Prosperity*, Washington, DC, The Brookings Institution, 1970.
- <sup>33</sup> Richard P. Nathan, "Intergovernmental Relations in the Year 2000," *The Future of the U.S. Government*, Harvey S. Perloff, ed., Englewood Cliffs, NJ, Prentice-Hall, 1972, pp. 362-69.
- <sup>34</sup> *Ibid.*, p. 367.
- <sup>35</sup> Luther Gulick, "Reorganization of the State," *Civil Engineering*, August 1933, pp. 420-21.
- <sup>36</sup> W. Brooke Graves, *American Intergovernmental Relations: Their Origins Historical Development, and Current Status*, New York, NY, Charles Scribner's Sons, 1964, pp. 812-13.
- <sup>37</sup> Charles Press and Charles R. Adrian, "Why Our State Governments Are Sick," *Capitol, Courthouse, and City Hall*, Robert L. Morlan, ed., 3rd Ed., New York, NY, Houghton Mifflin Company, 1966, p. 19.
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- <sup>39</sup> Daniel J. Elazar, "The New Federalism: Can the States be Trusted?", *Public Interest*, 35, Spring 1974, pp. 90-91.
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- <sup>43</sup> See Donald H. Haider, "Fiscal Scarcity: A New Urban Perspective," *The New Urban Politics*, Louis H. Masotti and Robert L. Lineberry, eds., Cambridge, MA, Ballinger Publishing Company, 1976, pp. 171-72.
- <sup>44</sup> George E. Peterson, "Finance," *The Urban Predicament*, William Gorham and Nathan Glazer, eds., Washington, DC, The Urban Institute, 1976, pp. 37-38.
- <sup>45</sup> *Ibid.*
- <sup>46</sup> See James L. Sundquist, *Dispersing Population: What America Can Learn From Europe*, Washington, DC, The Brookings Institution, 1975.
- <sup>47</sup> George Sternlieb and James W. Hughes, *Post-Industrial America: Metropolitan Decline and Inter-Regional Job Shifts*, New Brunswick, NJ, Center for Urban Policy Research, Rutgers—The State University, 1975.
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# **Federalism in Transition: 1959-79**

**Carl W. Stenberg**

**Advisory Commission on  
Intergovernmental Relations**

**T**he evolution of the American federal system has been accompanied by significant changes in the distribution of governmental powers and responsibilities. Sometimes these shifts have occurred gradually over several decades. Other times they have taken place over a relatively short period, particularly in response to developments on both the domestic and international fronts. The Civil War and Great Depression, for example, tested the strength, endurance, and adaptability of the federal system. Worldwide inflation, energy shortages and costs, and monetary instability present similar challenges to contemporary intergovernmental relationships.

The past two decades have witnessed many key events that initiated or affected the nature and direction of major intergovernmental trends. These events and trends have altered the fiscal, functional, and political balance within the federal system and have rekindled debate over the proper division of powers and responsibilities among the constituent governmental units. Together they mean that as the nation enters the 1980s, the patterns of intergovernmental relations are fundamentally different from those that had been present 20 years earlier.

This paper reviews developments between 1959 and 1979 that challenged and changed the course of the American federal system. It is based on a survey conducted by ACIR professional staff members regarding the most significant intergovernmental events and trends over that period (see *Exhibits I and II*). While the results may not be necessarily representative of the wide range of participants and diversity of viewpoints in the field, the purpose is to provide a point of departure for, and perhaps a stimulant to, students and practitioners who

# ACIR's Poll of Major Intergovernmental Events Of the Past 20 Years

In order to more accurately identify and review the key intergovernmental events and trends between 1959 and 1979, a poll of ACIR professional staff members was conducted in the fall of 1979. Two rounds of surveys were undertaken. The first asked for a list of the ten most significant intergovernmental events during the past 20 years and the reasons why each item was chosen. The second round listed these responses in three clusters—intergovernmental events, trends, and societal events—and called for a ranking of the most important ones in

1. Passage of General Revenue Sharing And Five Block Grants
2. Enactment of Civil Rights/Voting Rights Legislation
3. *Baker v. Carr*
4. Passage of California's Proposition 13
5. Economic Opportunity Act/War on Poverty
6. National Environmental Policy Act (NEPA)
7. *Serrano v. Priest*
8. New York City Fiscal Crisis
9. School Desegregation Court Cases: *Green v. New Kent County School Board*, *Swann v. Charlotte-Mecklenburg Board of Education*, *Milliken v. Bradley*
10. Peaking of Federal Aid
11. Passage of Medicare/Medicaid

each category. The survey results were then reviewed and discussed by ACIR's management staff.

Listed below are the intergovernmental events that were ranked highest by the staff. The intergovernmental trends are listed in a box on page 8.

While the poll was neither scientific in technique nor necessarily representative of the views of the wide range of participants in intergovernmental relations, we hope it will serve as a point of reference for—and perhaps stimulant to—others who attempt to assess federalism in transition.

**Most frequently cited item by the staff, primarily due to the fact that these enactments put into place a tripartite system of federal aid that gave states and localities added discretion over how federal dollars could be spent.**

Facilitated the expression of minority political clout, especially in central cities.

A landmark Supreme Court decision calling for "one man, one vote" in state legislatures that brought to an end rural domination of many state legislatures and led to the modernization that occurred there throughout the 1970s.

Was the most dramatic expression of citizen dissatisfaction with government and led to considerable activity in cutting taxes and establishing spending and taxing limits in cities and states across the country and a rethinking of the roles of the various levels of government. Was also significant in that such a major tax policy was the result of citizen initiative—successfully bypassing representative government.

Heralded the major acceleration of federal domestic assistance, providing substantial federal dollars to inner cities while largely bypassing state and local government.

Led to federal preemption of the air/water quality field and served as a forerunner to other national level actions in the regulatory area that threatened the "balance" of federalism.

A California Supreme Court decision that reaffirmed the principle of equity in funding/service delivery and brought about significant reorganization of school finance systems.

Capped the awareness of the intergovernmental effects of suburbanization and the intergovernmental responsibilities toward central cities and urban areas.

While *Brown v. Board of Education* was the first such case in the early 1950s, the past two decades saw cases that in combination laid the basis for HEW school desegregation initiatives that have powerfully affected and sometimes damaged numerous central cities.

After years of skyrocketing federal aid increases, the last year of the decade brought a turnaround and an apparent peaking of the massive aid increases. The impact on state and local governments which have grown accustomed to substantial federal aid "fixes" may well be enormous.

Represents another major expansion of governmental activity involving all three levels of government and significantly expanding social programs to the elderly and poor.

Source: Advisory Commission on Intergovernmental Relations, *Intergovernmental Perspective*, Vol. 6, No. 1, Washington, DC, U.S. Government Printing Office, Winter 1980, p. 5.

## **ACIR's Key Intergovernmental Trends of the Past 20 Years**

1. Growth in government and expansion of governmental roles into many areas formerly in the purview of the private sector.
2. Massive growth in the size, scope, and intrusiveness of federal aid.
3. Troubled cities and urban areas.
4. Increasingly significant role of the courts in intergovernmental areas accompanying a concern for equity in the system.
5. Growing local government (particularly cities) dependence on state and federal aid.
6. Strengthened states in general and more powerful state revenue systems in particular.
7. Disaffection with government and growing concern for government accountability, manifested in the late 1970s by Proposition 13 and other "tax revolt" activities and responses.
8. Increased intergovernmental lobbying—governments lobbying government.
9. Increasing numbers of regional bodies.
10. Emergence of the Frostbelt-Sunbelt regional competition, also the growing tensions between the "haves" (the oil rich states) and the "have-nots" (the consumer states).

Source: Advisory Commission on Intergovernmental Relations, *Intergovernmental Perspective*, Vol. 6, No. 1, Washington, DC, U.S. Government Printing Office, Winter 1980, p. 8.

seek to understand and assess federalism in transition during the 1960s and 1970s, and to provide an historical perspective for those who wish to prepare for the federalism of the 1980s.

### **GOVERNMENTAL GROWTH**

The most striking change in intergovernmental relations between the 1950s and the late 1970s was the growth of government, especially in the federal and state sectors. This expansion was reflected in many ways:

- A sharp rise in federal domestic expenditures and state-local outlays from 15.9% of the Gross National Product (GNP) in 1959 to 25.9% in 1979 (see *Figure I*);
- A near doubling (from 19 to 37) between 1960 and 1979 in the number of states using both income and sales taxes;
- A 90.6% hike between 1953 and 1977 in the real tax burden for the middle-class family;
- A 72.5% increase between 1957 and 1977 in the

number of state and local employees per 10,000 population; and

- An explosion in the number and types of regulatory activities, illustrated by expansion in the size of the *Code of Federal Regulations* from 23,000 pages in 1950 to nearly 84,000 pages in 1978 and of the *Federal Register* from 9,500 pages to over 61,000 pages during the same period.

These figures represent significant changes in the role of government in the private sector of the economy and in the day-to-day lives of American citizens. From the standpoint of intergovernmental impacts, however, the federal government's assumption of progressively greater responsibility for dealing with domestic problems through use of grants-in-aid stands out as a dominant feature of this 20-year period. Federal funds supported state and local efforts to tackle tough social and physical problems; they stimulated new undertakings; they helped develop more systematic ways of identifying interfunctional linkages and coordinating activities; and they encouraged improvement of recipient organizational arrangements, of personnel systems, as well as of planning and management capabilities. At the same time, they occasionally generated administrative, fiscal, and political problems for both grantors and grantees.

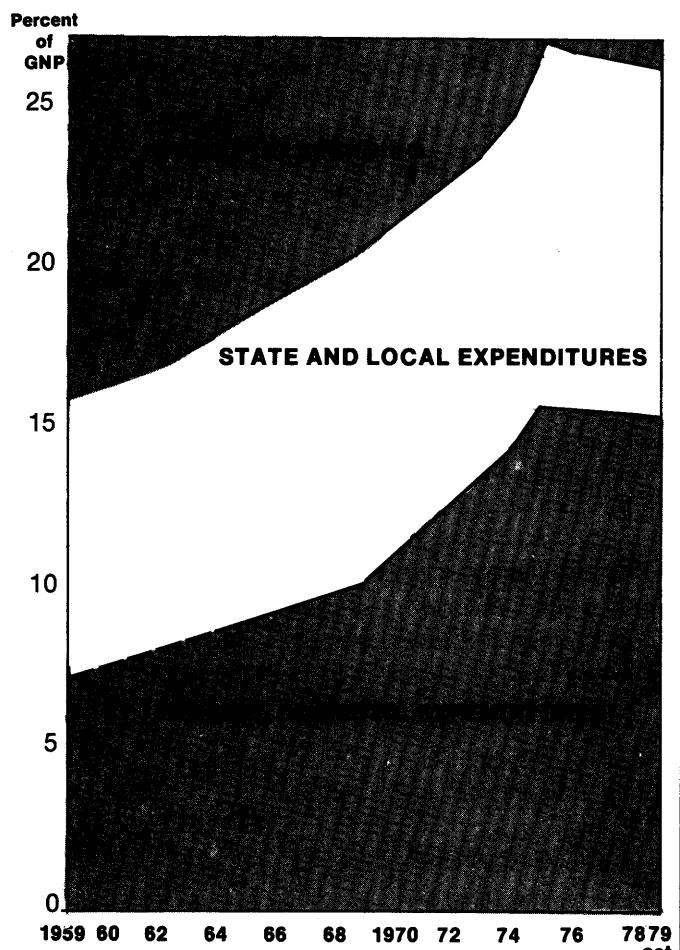
At least seven aspects of this federal assistance phenomenon are especially noteworthy:

1. **The Dollar Amount.** Aid to state and local governments has mushroomed from approximately \$7 billion in fiscal year 1960 to \$83 billion in fiscal year 1980, with the annual rate of growth during the past decade standing at about 15%, or \$6 billion a year. As a percent of total state-local expenditures, federal aid has risen from 14.7% to 23.6% over this period. The number

**"The most striking change in intergovernmental relations between the 1950s and the late 1970s was the growth of government, especially in the federal and state sectors."**

FIGURE I

**Total Domestic Spending, 1959-1979<sup>1</sup>**  
**(Expenditure as a Percentage of Gross National Product)**



<sup>1</sup> From own funds. Calendar Years

Source: Advisory Commission on Intergovernmental Relations, *Intergovernmental Perspective*, Vol. 6, No. 1, Washington, DC, U.S. Government Printing Office, Winter 1980, p. 7.

of programs also has climbed steadily—from 150 in 1960 to 498 in 1979.

2. **Instruments.** The types of instruments for dispensing aid have increased and given rise to a variety of federal-state, federal-local, and federal-private transactions under formula and project categorical grants, block grants, general revenue sharing, procurement contracts, and cooperative agreements. Determining which instrument to use to accomplish a particular purpose has only recently become a real concern to assistance program designers.

3. **Participants.** The extent of state and especially local government involvement in federal programs has expanded to the point where virtually all general purpose local units and many special

purpose ones now receive federal funds. This was not the case as recently as the early 1970s. Until the advent of general revenue sharing, many smaller jurisdictions and rural communities did not participate in federal grants or received only relatively small amounts of funds through a limited number of programs. Some jurisdictions, especially the larger ones, have come to depend heavily on this source of revenues to sustain their service delivery systems. Federal aid as a percent of own source revenue of the nation's 47 largest cities, for example, jumped from 2.6% in 1957 to 49.7% in 1978. Adding to the complexity of the intergovernmental partnership are organizations like Federal Regional Councils, multistate and substate regional planning and development agencies, and neighborhood bodies that have been established to plan for, administer, coordinate, or spend federal monies. The number of people affected by the actions—or inactions—of these units has similarly multiplied.

4. **Strings.** The conditions attached to federal programs are often extensive, expensive, and intrusive. While traditional "watchdog" requirements (such as financial reporting and audits) continue to be applied, in recent years the federal government has increasingly used assistance programs as vehicles for achieving national social policy goals, such as affirmative action, environmental quality, historic site preservation, and citizen participation. Some 59 of these cross-cutting requirements apply to most or all federal aid programs, regardless of purpose.
5. **Certainty.** Although more federal funds are now available to more jurisdictions for more purposes than ever before, recipients' capacity to plan for the effective use of these monies continues to be impaired by uncertainty over whether the amounts required to launch a program or to undertake a project will be available when they are needed, and whether they may be used for recipient priority purposes. Advance planning is made difficult by the annual nature of most grant awards, as well as by the frequent wide gaps between Congressionally authorized spending levels and actual appropriations.
6. **Bypassing.** The bypassing tendencies of federal agencies and Congressional committees have become more pronounced over the past 20 years. States in particular have been the long-standing

targets, although during the 1960s local governments experienced some of this federal leapfrogging with money going directly to community action agencies or to other neighborhood groups. While the majority of the 39 federal-local programs were enacted between 1960 and 1967 (with the exception of public housing, urban renewal, airport development, and community action), most of these involved relatively small project grants. With the establishment of general revenue sharing and sizable block grants in the community development and employment and training areas in the early 1970s, however, the dollar amounts of direct federal-local aid increased substantially by the end of the decade—to some 30% of total federal assistance to state and local governments, and double the 1968 percentage.

7. **Lobbying.** Accompanying the growth in the number of programs and the amounts of federal assistance was an increase in the intensity and the number of participants in Congressional lobbying. Functional interest groups have long been an integral part of the Washington scene. During the 1960s and 1970s, various special issue interest groups (such as civil rights advocates, the handicapped, environmentalists, and consumers) as well as public interest groups like Common Cause and "Nader's Raiders" were influential in the design of federal policies, programs, and procedures. Their actions often produced new requirements and conditions that were imposed on grant recipients. Not widely recognized, however, were the activities of what Professor Samuel Beer of Harvard University has called "topocrats," or representatives of a particular place rather than function or special issue.

From the standpoint of program politics, this intergovernmental lobbying phenomenon has at least two key dimensions. First, the efforts by national associations of state and local chief executive and legislative officials have increased to articulate the need for federal action, to urge the use of certain instruments to accomplish national purposes, and to support the renewal and perhaps redesign of existing programs. Second spokesmen for regions of the country that are seeking their "fair share" of federal resources have emerged. Representatives of the sunbelt states, for instance, have sought to end what they consider to be long-standing patterns of

geographic discrimination in aid formulas and to achieve a more balanced distribution. The presence of these intergovernmental lobbyists has added a new and sometimes controversial dimension to the so-called "iron triangle" of federal agency-Congressional committee-special interest group participation in national policymaking.

## THE URBAN CONNECTION

The factors responsible for the substantial growth in the federal government's fiscal role have their roots in the Great Society. Beginning in 1964, President Lyndon B. Johnson called for the development of new and expanded federal partnerships with state and local governments and with private enterprise to tackle many of the pressing problems of urban society—poverty, crime, unemployment, illiteracy, substandard housing, disease, and physical decay of the infrastructure. His "creative federalism" agenda launched a number of what were to become long-standing changes in the nature and extent of the federal government's relationships with the state, local, and private sectors. In addition to the seven general features of federal assistance noted earlier, these included:

- A shift in the functional distribution of federal assistance outlays from commerce and transportation programs (36% of the total in 1963 to 23% by 1968) to health and human resources programs (13% of the total in 1963 to 40% in 1968);
- Changes in the objectives and operation of the traditional grant-in-aid system featuring: (a) the use of federal aid to stimulate state and local action in behalf of an expressly stated national purpose instead of to support the ongoing operations of these governments, (b) the active inter-

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vention on the part of federal administrators to influence the program priorities and implementation processes of recipients, and not to remain largely in the background, (c) the distribution of an increasing share of federal funds on a project grant and competitive basis instead of in accordance with a statutory formula and as an entitlement, and (d) the assumption of a substantial federal matching share (for example 80% or more) instead of the requirement for a significant state or local cash contribution (such as 50%) to program costs;

- A recognition that the resources of private enterprise should be mobilized to work with government agencies in tackling urban problems, and that financial assistance or tax benefits should be offered as an incentive to such involvement;
- A willingness on the part of Great Society architects to use federal funds to facilitate the organization of community groups or private non-profit organizations to plan for and carry out federal programs, sometimes without the consent or cooperation of local government officials; and
- An increase in the number of devices to help coordinate the rapidly proliferating federal aid system, including assignment of convenor authority to certain agency heads, designation of the Vice President and the Director of the Office of Emergency Preparedness as the President's liaison with the nation's Mayors and Governors respectively, installation of new budgeting and management techniques such as the Planning-Programming-Budgeting System (PPBS), and creation of community-level and substate regional coordinating mechanisms like community action agencies, model cities boards, and councils of governments.

The Great Society years generated great expectations on the part of many people—especially the poor and racial minorities—who historically had experienced difficulty exercising effective political clout at the local level and penetrating the Washington “iron triangle,” which had crafted the federal aid system and often steadfastly resisted any alteration in the program status quo. A fundamental shift in the purposes of federal assistance was triggered by at least three forces: the emergence of black political power in many of the nation’s cities; the coalescing of divergent urban, consumer, civil rights, environmental, and other groups in the wake of the Viet-

nam war and the assassinations of Rev. Martin Luther King and Sen. Robert Kennedy; and the social unrest and violence in many of the nation’s cities and on college campuses. As a result, more and more money was targeted to needy jurisdictions and, directly, or indirectly, to the needy people living in them.

In the middle to late-1960s, discussion of the urban condition were permeated with the notion of “crisis.” Attention was riveted on the problems of the “unheavily city,” the migration of people and businesses to the suburbs, and the social, economic, and physical consequences of local budgetary overburdens, infrastructure deterioration, metropolitan disparities, jurisdictional fragmentation, citizen alienation, and city hall isolation. At that time, the best course of action appeared to be the declaration of a national objective, the designing of an aid program, and the establishment of a new office or agency in Washington to administer it. There was a close relationship, in the minds of many, between the amount of outside financial assistance available and the prospects for successfully remedying urban problems.

Yet the Great Society also left in its wake much disillusionment, if not despair. The great promises and sometimes lofty social goals of Johnson-era federalists—to eradicate poverty, to control crime, to restore a sense of community, to rebuild the urban physical plant, and so forth—were inspiring to many, but by the late 1960s the amounts of dollars that a national budget stretched by the Vietnam war could make available severely curtailed the level of national effort that could be mounted. Local revenue systems, hobbled by dependence on the property tax, could do little to compensate for these cutbacks. There was a growing realization that the exercise of governmental spending powers provided no assurance that various societal problems could be ameliorated. Some even contended that certain governmental programs, like those that encouraged suburbanization, only compounded the problems of urban America.

Ten years later, significant shifts were evident with respect to the future of central cities. It had become commonplace for politicians to talk about a “lowering of expectations” with regard to what could be accomplished as a result of governmental intervention. The Carter Administration developed a national policy and a series of program initiatives aimed at targeting federal resources to distressed urban and rural areas, better coordinating agency actions that impact on these places, and leveraging private sector investments in community development. A number of states took similar actions. At the same time, many cities were experiencing a “gentrification” phenomenon in response to rising energy costs and soaring real estate values. While concerns

mounted about the effects of the displacement of the poor and elderly from neighborhoods undergoing renewal, and the dependence of larger jurisdictions on outside funds, by the end of the decade a somewhat strengthened intergovernmental commitment to community conservation was apparent.

## EQUITY AND THE COURTS

Despite disillusionment about the capacity of targeted funds to redress well ingrained social, economic, and political imbalances, redistribution of resources has remained a basic purpose of federal assistance programs. At the same time, the equity principle has been reaffirmed by an increasingly activist federal and state judiciary. Contrary to earlier views that the courts should not intrude into the political thicket of the executive and legislative branches, over the past 20 years the judiciary has played an increasingly significant role in intergovernmental relations. In the 1950s and early 1960s, state legislative reapportionment and school desegregation were the focal points of judicial efforts to extend the fairness doctrine. Judicial decisions on these subjects made a significant impact on the composition and performance of state legislatures and on the nature of the problems and solutions available to the nation's cities.

During the 1970s, the 14th Amendment was invoked by federal courts and counterpart provisions of state constitutions by state courts to curb discrimination in the quality of education arising from disparities in school expenditures, in the patterns of delivery of other public services by cities and counties, and in the boundary adjustment and form of government decisions of local governments. In addition, the courts were often not content to make pronouncements and await lengthy implementation proceedings. In one highly publicized case, the New Jersey Supreme Court in 1976 ordered the public schools in that state closed until the state legislature adequately funded its school equalization order.

During the 1970s, the highly intergovernmental area of litigation relating to federal grants-in-aid also mushroomed. Federal grant law, called a "slumbering giant" by one jurist, awoke to the point where there are now more than 500 decisions directly related to receipt and use of federal assistance.

**"... the Great Society also left in its wake much disillusionment, if not despair."**

A decade ago, suing a grantor agency was an extraordinary act. Today it is frequent, even commonplace. These lawsuits may seek to overturn grantor fiscal actions based on noncompliance with federal "strings" or to prove that grant regulations are illegal or unconstitutional. They may challenge federal denial of reimbursement for claimed costs or may question in court the disapproval of a discretionary grant.

The issues that make up this burgeoning area are varied. They range from the state legislature's right to appropriate federal funds, to Constitutional changes required for a state to implement a federal program; from the ability of a locality to refuse funding of a program "mid-stream" in order to avoid compliance with a regulation it does not like, to defining the limitations of compliance with certain national policy regulations.

Most of these cases rely on the spending power of Article I, Section 8, of the U.S. Constitution to provide for the general welfare of the nation. In upholding this power, the U.S. Supreme Court has generally—but not always—held against the states and localities. One important decision of the 1970s, *National League of Cities v. Usery*, handed down in 1976, relied on the interstate commerce clause to rein the power of Congress to override state sovereignty even when exercising its powers to tax or to regulate commerce.

These cases have clearly placed the courts in the mainstream of intergovernmental policymaking and implementation. They also have imposed on the judiciary a sometimes staggering workload and required justices to become knowledgeable about matters of economics, public administration, and politics, as well as law.

## THE STATES: UNRECOGNIZED PARTNERS?

One of the real ironies of the 1959–79 period involves the states' position in the intergovernmental system. The bypassing of the states in the antipoverty, model cities, and other urban development and social programs of the Great Society raised serious questions in some quarters about the viability of state government. These included basic concerns about the proper role of the states in relation to their political subdivisions, the range of responsibilities that the federal government should assume in meeting urban needs and problems, the prospects for increasing centralization of power in Washington, the possibility that the states had forfeited their role as major urban policymakers to become administrative adjuncts of federal agencies, and the most desirable and feasible ways to provide federal financial assistance to local governments.

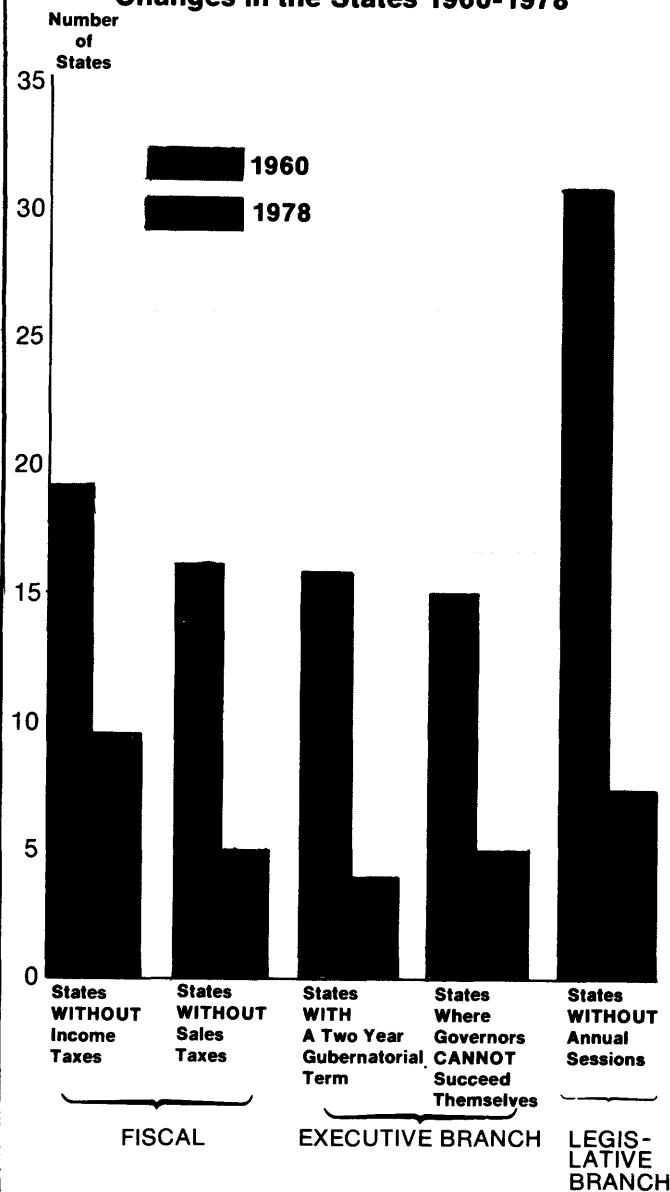
In other quarters, the post-1960 resurgence of direct federal-local relationships merely confirmed the validity of certain indictments of the states that had been made again and again since the Depression. The most common charges were that state elected and appointed officials were corrupt, incompetent, and racist; that state constitutions were long, complex, and antiquated; that Governors were weak, underpaid, and overworked; and that legislatures were unrepresentative, backward, and cumbersome. As a result of these conditions, so the argument ran, states maintained outmoded and unnecessary shackles on the structural, functional, and fiscal powers of local government. While recognizing that these indictments did not apply across the board, during the 1960s and 1970s, some national and local observers nevertheless would probably have agreed that Charles E. Merriam's 1934 assessment of the states' activities was of contemporary relevance: "In many instances the state is a fifth wheel as far as city government is concerned."<sup>\*</sup>

By the early 1970s, however, many of the indictments of the states were no longer valid, largely because of constitutional modernization and reapportionment (see Figure II). Nearly all Governors served a four-year term and were eligible for reelection, and most had gained greater control over management of their executive branch as a result of a reduction in the number of separately elected officials, an authorization to reorganize agencies subject to a legislative veto, and the establishment of an executive budget process. The states' legislatures also had become more effective as well as representative. Meeting on an annual basis, increasing the number of professional staff, raising salaries, streamlining committees, and other institutional improvements made state legislative offices more attractive to potential candidates and enhanced the exercise of the legislatures' lawmaking and oversight functions.

State revenue systems have also been overhauled in recent years. The increased revenues collected by the states have been used to expand state educational, social welfare, health and hospitals, transportation services, and local aid programs, as well as to provide tax relief to certain residents, such as the poor and elderly, and to businesses.

These state accomplishments generally were ignored by national policymakers throughout the 1970s. The bypassing tendencies increased, the failure to differentiate among the states on the basis of their interest and capacity to handle urban problems persisted, and the paternalistic or contemptuous attitudes in some Washington quarters

**FIGURE II**  
**Changes in the States 1960-1978**



Source: Advisory Commission on Intergovernmental Relations, *Intergovernmental Perspective*, Vol. 6, No. 1, Washington, DC, U.S. Government Printing Office, Winter 1980, p. 10.

concerning states continued. More often than not, these attitudes were conditioned by outdated political attitudes (e.g., deep-seated antagonism and distrust between state and big city political leadership), political philosophy (e.g., "states' rights"), and political pragmatism (e.g., easy access to national decisionmakers). They failed to recognize that in at least a legal sense local governments remained "creatures" of the state, to take into account

\*Charles E. Merriam, "The Federal Government Recognizes the Cities," *National Municipal Review* 23, 1934, p. 108.

the growing evidence of the states' willingness and ability to assume new urban responsibilities and to appreciate fully their record in discharging existing duties.

## NEW FEDERALISM

An exception to these generalizations was Richard Nixon's "New Federalism" domestic agenda. Coming in the wake of a national administration that had justified the expansion of the federal role in domestic affairs partly on the basis of the states' default on their urban responsibilities, the Nixon Administration adopted a much more supportive position concerning the states.

In August 1969, President Nixon introduced a series of proposals that formed the core of his agenda for New Federalism. In special messages on welfare, manpower, and revenue sharing, the President called for a fundamental departure from the trends in federal-state relations that in his view had developed over the previous 30 years. The New Federalism of the 1970s would be an administratively decentralized and functionally devolved system. The deliberate intents of the administration's proposals were: (a) to reverse the flow of power, funds, and responsibilities away from the federal government and toward the states, localities, and general public; (b) to reduce the size and power of the federal bureaucracy; (c) to simplify intergovernmental administrative machinery; and (d) to bolster the authority of elected officials of general purpose governmental units and to curb that of private nonprofit organizations, special districts, and other so-called "paragovernments."

The principal themes of New Federalism included:

- A belief that big government and large centralized bureaucracies remote from the people and the sources of problems were undesirable, and that the best government is that "closest to the people";
- A feeling that Washington alone cannot accurately diagnose or solve all or even most domestic problems, and that a loss of public faith in the federal government had occurred because of a gap between promise and performance;
- An assumption that the appropriate roles and functional assignments of different levels of government could be identified, and that subnational units would be willing to assume their proper responsibilities;
- A view that the structure of the federal executive branch needed to be overhauled, its bureaucracy cut down and made more accountable, and its personnel put "on tap, but not on top"; and

- An awareness that the degree to which functions could be returned to states and localities would be conditioned by their willingness and capacity to perform, and that federal tax revenues should be used for the purpose of strengthening the capabilities of state and general purpose local governments.

These themes could be traced as far back as to the 1950s, when agreement was fairly widespread that the states were responsible and responsive partners in the federal system, and that federal centralization was a dangerous condition. They also paralleled one of the main purposes behind the creation of the Joint Federal-State Action Committee (1957-60) and, to some extent, the Commission on Intergovernmental Relations (1953-55)—the pinpointing of functions that are performed by the federal government that could be turned back to the states. Twenty years after these bodies issued their reports and disbanded, and six years after President Nixon left office, the interest in functional reassessments is now reemerging. One example is President Jimmy Carter's establishment of a commission to develop a national agenda for the 1980s, which will consider this issue among others. The renewed interest in functional reassignment during the 1970s has largely been a reflection of mounting concern about accountability stemming from what has become a "supermarbleized" and overloaded federal system.

## THE ACCOUNTABILITY QUEST

The New Federalism years witnessed the launching of the tripartite federal assistance system, featuring the addition of block grants and general revenue sharing to existing categorical aids. By the mid-1970s, the structure of federal assistance was more diverse and discretionary. Although the number of categorical programs continued to increase, block grants, general revenue sharing, and some large formula categoricals gave state and local recipients considerable leeway in allocating federal funds to their priority needs.

To some observers, including President Nixon, these discretionary instruments were a "leap of faith" in federalism. To others, like the national associations that represent state and local chief executive and legislative officials, they were symbols of important victories in the battle against the "iron triangle." To still others, especially members of Congress, they were necessary compromises that could be kept in check by employing a number of tactics, such as selectively earmarking priorities or establishing additional program categories, al-

lowing the buying power of federal dollars to be eroded gradually by inflation, and requiring recipients to adopt a number of procedural devices such as public hearings and periodic audits to help ensure openness and enforce compliance.

The rapid expansion in the dollar amounts of federal assistance, the diversification of funding instruments, the lobbying by state and local governments for more federal involvement (at least fiscally) in domestic affairs, the emergence of and competition between sunbelt and frost-belt states and other regional coalitions in formula battles, and the desire of Congress and of the federal bureaucracy to show sensitivity and concern for national as well as less than national problems all combined to effectively blur responsibility between the various governmental levels. Responsibility for handling matters that as recently as the early 1960s had been exclusively within the domain of state or especially local governments was increasingly shared by a variety of governmental, paragovernmental, and nongovernmental actors. A review of federal aid bills introduced in Congress since that time, for example, reveals a long list of activities considered by some members to be national, not subnational problems. These include:

- school security,
- pothole repair,
- training for use of the metric system,
- home insulation,
- urban park facilities,
- meals-on-wheels,
- jellyfish control,
- snow removal,
- police disability payments,
- aquaculture,
- displaced homemakers,
- bridge replacement and rehabilitation,
- urban gardening,
- noise control,
- arson,
- rat control,
- alcohol abuse,
- solid waste disposal,
- aid to museums,
- runaway youth,
- art education,
- rural fire protection,
- education of gifted children, and
- development of bikeways.

Unquestionably, many of the federal assistance programs spawned during the 1960s and 1970s were desirable and even necessary. But intervention on such a

**"As the decade of the 1970s ended, there seemed to be a growing realization that federal agencies were mainly check and condition writers—not service deliverers."**

massive scale also created confusion and uncertainty over which level of government or group of public officials were ultimately responsible for service delivery. There were simply too many fingers in the intergovernmental service delivery pie.

Somewhat ironically, although New Federalists sought to keep the size and influence of the federal government and especially its bureaucracy in check, as well as to decentralize decisionmaking, the opposite occurred. The amounts of federal aid and the number of programs mushroomed, while decentralization efforts were for the most part sporadic and short-lived. Moreover, the structure of the intergovernmental system became more complex, confusing, and costly. Thousands of institutional bodies were created largely as a result of federal initiatives or resources to perform various roles in connection with assistance programs. These included ten Federal Regional Councils, several multistate economic development commissions, over 500 clearinghouses to handle areawide review and comment procedures under the Office of Management and Budget (OMB), Circular A-95, and more than 2,000 single and multipurpose substate regional planning bodies. Most of these bodies were established to plan, coordinate, and facilitate communications—functions that were especially vital to intergovernmental relations in the 1960s. Their implementation capacity, however, has been severely curtailed by their voluntary nature and lack of operational authority.

In addition to the emergence of new organizations and intergovernmental procedures, the 1959-79 period witnessed a tremendous expansion in the volume of paperwork that flowed between grantor and grantee agencies through these and other organizations. This increase was attributable to many sources including: (a) crosscutting

requirements attached to grant programs that require aid recipients to document their compliance with various national priorities and social policy objectives; (b) plan development, application submission, and financial reporting conditions that provide federal funding agencies and Congressional committees with information necessary to make decisions on grant awards as well as to monitor and evaluate program implementation; (c) regulations governing procurement procedures, subcontracting, employment conditions, and the like; (d) laws such as the *Freedom of Information and Privacy Acts* that are intended to make governmental records available to the public and to provide guidance for disclosing or not collecting certain types of information about citizens or public employees; and (e) procedural requirements imposed on recipients that seek to ensure that decision-making in connection with the use of federal funds will not occur behind closed doors and that genuine opportunities will be provided for citizen access to and participation in these matters.

Mounting paperwork requirements have greatly increased the compliance costs that both public and private agencies must pay. For example:

- A 1979 report by OMB on progress in implementing the Federal Paperwork Commission's recommendations indicated that federal agencies were using 4,916 forms, reports, and record-keeping requirements which imposed an estimated reporting burden of over 786 million hours.
- In a November 1, 1979, statement before the Senate Governmental Affairs Committee, OMB Associate Director Wayne G. Granquist estimated that over half of the total federal nontax reporting stems from the need to ensure compliance with laws or regulations.
- A study for the Joint Economic Committee by Murray L. Weidenbaum predicted that the public and private sectors would spend at least \$100 billion complying with federal regulations during 1979; the Department of Commerce put the figure at between \$150 billion and \$200 billion, and others claimed that both estimates were incorrect.
- On June 16, 1979, the federal government announced that over a three-year period, 13 federal agencies had spent \$36 million to comply with the *Freedom of Information and Privacy Acts*.

Despite the volume of paperwork and administrative costs that are associated with various efforts to enhance public sector accountability, several intergovernmental realities reduce their effectiveness. Federal funds under

many programs are highly fungible, in the sense that once they are deposited in the recipient's general fund they simply become money available to carry out services. The possibilities for supplantation, displacement, or diversion are real and will remain so until federal funds can somehow be traced.

Even if clear "audit trails" could be established, the sheer number of recipients, the range of their program commitments, and the staff and geographic limitations experienced by grantor agencies mean that much activity under federal programs actually escapes review or scrutiny. The General Accounting Office, for example, recently released a study of 73 grant recipients that revealed that 80% of their federal funds were not audited by grantor agencies.

A third factor is how the information supplied by recipients is handled in Washington. Plans, applications, financial reports, and technical materials travel from city hall or county courthouse through a chain of regional, state, and federal intermediaries before arriving in Washington, where they may be given a cursory review, filed away, and forgotten. The sheer amount of required information, and the usually large number of participants, make intensive scrutiny a luxury that understaffed grantor agencies cannot normally afford. As President Carter indicated in his September 9, 1977, memorandum to the heads of federal departments and agencies on improving grants management:

Many existing federal requirements are confusing and unnecessarily difficult to comply with. They produce mounds of paper—some grant applications arrive in Washington in crates rather than envelopes—but the material they demand is too often duplicative, unhelpful, and sometimes even unread.\*

As a result of the foregoing factors, many of the approaches that have been employed over the past 20 years to instill accountability for the proper expenditure of public funds could be considered at best as ineffective and inefficient and at worst as misguided and counterproductive. As the decade of the 1970s ended, there seemed to be a growing realization that federal agencies were mainly check and condition writers, not service deliverers. Recipients who are hundreds, if not thousands, of miles away from Washington were resource mobilizers and program implementors. In an increasingly complex assistance structure and costly regulatory en-

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\* President James E. Carter, "Statement by the President," Washington, DC, Office of the White House Press Secretary, Sept. 9, 1977 (mimeo), p. 1.

vironment, the need to rethink the accountability dimension of intergovernmental relations has become more and more critical.

## THE TRUST FACTOR

Even though the past 20 years have witnessed rapid governmental growth accompanied by significant changes in intergovernmental relations, one factor has been omnipresent—the skepticism, if not distrust, shown toward state and local elected officials by many of their counterparts at the national level. These attitudes have been reflected in a variety of ways:

- The bypassing of states and occasionally localities by the federal government;
- Conditions attached to federal funds under 155 programs calling on recipients to hold public hearings, to organize advisory committees, and to establish other processes for facilitating citizen participation in decisionmaking;
- The 59 crosscutting requirements that mandate recipients to prepare frequently massive and costly documentation of their adherence to various national social policy objectives; and
- The reluctance shown by Congress to expand significantly the discretionary portion of federal assistance, and ready willingness to recategorize existing block grants and to let general revenue sharing twist slowly in the inflationary winds.

In the view of some members of Congress, federal program administrators, and interest group spokesmen, these trends indicate that the state or local ballot box does little to ensure that elected officials will be sufficiently sensitive of, and responsive to, constituents' needs and interests. The perpetuation of so-called "picket fence federalism" tendencies—featuring close and frequently reinforced ties between functional specialists at the various governmental levels which elected and appointed generalist officials can do little to alter—illustrates a fundamental underlying question in inter-

governmental relations: Whom do you trust? The "creative federalism" and "new federalism" periods indicate the extremities of this issue; the former relied heavily on the Washington bureaucracy, the latter on state and local elected officials. During the Ford and Carter years, more of a middle-ground approach between the forces of centralization and decentralization and the position of generalists and specialists in intergovernmental decisionmaking had been sought in actual practice.

Throughout the 1970s, another element of this equation became more and more significant. Middle-class Americans, who had experienced a progressively bigger tax bite as government operations at all levels expanded and mounting frustrations at perceiving that their tax burdens far outweighed the benefits they received from the public sector, turned to the initiative and referendum to send a message to governmental officials concerning their dissatisfactions. Many of these actions took the form of proposals to establish state constitutional or statutory limits on taxes and/or expenditures. Pressure was also placed on Congress by many state legislatures to pass a Constitutional amendment requiring a balanced federal budget.

Some of these proposals were not well conceived, and the long-term impact of those that were successful cannot be discerned yet. But the tax and expenditure limitation movement reveals much about the breakdown of the processes of representative government—processes that enable an airing of views on policy alternatives, provide vital checkpoints that mitigate against radical change, and offer opportunities for making compromises and forging consensus. The middle-of-the-road philosophy of the major national political parties since 1964 regarding federalism issues contributed to this breakdown.

As the decade of the 1980s gets under way, perhaps the most disturbing trend involves the future directions of representative government. Concerns about the proper relationship between the governors and the governed go back to the founding of the Republic. But considering the dramatic changes that have occurred over the past 20 years, and the current domestic and international challenges confronting the nation, the restoration of trust in representative government is crucial to the course of federalism in the years ahead.

# **Fiscal Federalism in the United States: The First 200 Years, Evolution and Outlook**

**George F. Break**

**Department of Economics  
University of California, Berkeley**

**L**ike all economic prospects for the coming decade, the future course of fiscal federalism is far from clear, and perhaps mercifully so. Yet various important trends can be discerned, and discussion of their shape and significance may help in the design of future policies to improve the fiscal environment of our nation at all levels of government. As Henry J. Aaron has put it:

Each era is the temporal meeting place of attitudes, political and social movements, and intellectual developments, all shaped by demographic trends and historical events deeply rooted in the past.<sup>1</sup>

We begin, therefore, with a look back, at those past trends that in retrospect seem to matter most.

## **THE HISTORICAL ROOTS OF FISCAL FEDERALISM**

### **The First 150 Years**

Probably few federal government employees steaming through a Washington summer realize that the decision to locate the nation's capital on the banks of the Potomac was an inherent part of the first major compromise in fiscal federalism. Treasury Secretary Alexander Hamilton, intent upon establishing the financial integrity of the new U.S. government, was convinced that a prerequisite to this endeavor was federal assumption of the debts of the states, which had largely been incurred during the struggle for independence. Not surprisingly, this plan met with resistance from states (largely in the south) that

had paid off most of their own debts and saw little reason to share the burdens of others. Nevertheless, with the aid of Thomas Jefferson, whose antifederalist sentiments had not yet been fully aroused, Hamilton managed to win the votes he needed by promising to reimburse the states for any debts they had repaid and to support the south's choice for the site of the new capital. This was an important bargain, for it was a major step toward centering fiscal authority in the federal government—a principle by no means unequivocally sanctioned by the Constitution.

From the assumption of those state debts to General Revenue Sharing has been a long trip, on an unblazed trail full of twists, turns, and steep gradients. Depressions and wars have been the major turning points, each one producing a change not only in directions but also in the tempo of progress. Every step forward has broken new ground. Where we have come in our exploration of the patterns and possibilities of fiscal federalism could provide some useful guidance as we push on into a new decade.

The debt assumption bargain was significant for a number of reasons. It was the first bold step taken toward the exercise of fiscal federalism within a community of states far more accustomed to the bachelor condition of semiautonomous confederation than to the married one of federal union. What federation under the terms of the new Constitution was to mean was an almost totally unknown quantity. Hamilton's success in winning the somewhat reluctant Jefferson's support for his cause demonstrated that the lines which were to separate the major political factions in the new Republic during its first 75 years were malleable. Those who believed it was essential for the national government to take responsibility for a widening circle of functions obviously related to the general welfare but not specifically authorized by the Constitution would, as in this case, win most of the major battles, even though it was the strict constructionists who would, as the number of states in the south and west increased, dominate the Presidency until the Civil War. Despite the political strength of the strict constructionist view, the trend that Hamilton started in the debt assumption act largely determined the course that fiscal federalism was to follow through the succeeding two centuries.

This dichotomy between political policy and economic necessity meant that the scenario played out during those years before the Civil War was a curious one of double entendre. At the level of national politics, the federal government played a cautious and tentative role in approving financial support for functions outside the range of its explicit powers; while at the level of practical

economics, particularly on the frontier, it played a major part in financing the development of the growing nation.

One extremely important effect of the debt assumption act was to give every state that had repaid part or all of its war debts a nest egg in the form of federal securities; this precluded the need for most states to impose taxes to finance their own operations for the first decade, since the income derived from the federal securities, supplemented by the revenue from state-owned lands, covered the great majority of their expenditures.<sup>2</sup> This was indeed significant, for it started the states off as *de facto* dependents of the federal government, rather than the reverse. Meanwhile, the federal government was deriving revenue from tariffs, which proved adequate until threats from France and later from England necessitated a substantial defense buildup. To meet this need, the federal government was obliged to turn to the states, imposing on them a Constitutionally authorized direct levy, which they raised from property taxes on their citizens. Even this was not adequate to meet the costs of waging the War of 1812, and the federal government was forced to

George F. Break



ask the states to raise and equip troops, with the understanding that their expenses would later be reimbursed. (These reimbursements were in time made and played an important part in the development of public education systems in many of the original 13 states.)<sup>3</sup> This acknowledged weakness of the federal government in time of crisis demonstrated the inefficiency and insecurity inherent in its limited capacity to tax and might have led to major changes in the new Republic's fiscal structure had not it been for the fortunate circumstance of population pressure, which opened up a vast new and seemingly unlimited source of revenue in the territories to the south and west—i.e., public land.

The expansive acreage of the public domain was to be the prime fiscal resource of the federal government for the rest of the 19th century and was to serve as the principal instrument of fiscal federalism. Land grants were to perform the same function in the 19th century that money grants were to do in the 20th century. Even strict constructionists, who balked at cash grants, were inclined to make little difficulty about land grants, at least as long as the objectives to which they were directed seemed to serve the national interest. Although clearly fungible, land grants seemed more like "free money" than tax revenue and were dispensed by Congress with a liberal hand, somewhat in the manner of the money grants of a much later era.

While land grants were the politically acceptable means of subsidizing facilities of national usefulness, they were subject to one or two ground rules that, particularly at first, stringently limited the role of the federal government in overseeing their use. The first was that the grants and the proceeds from their sale were special to the public-land (i.e., new) states and in no way justified the awarding of grants of equal value to the older states. The second was that although the federal government could make clear its intention in making the grants, and even see to it that some statement of purpose was included in the authorizing legislation, the grants must be regarded as "gifts" of the federal government and subject to no legally binding constraints. As the land grants became more common, and more accepted as instruments of national policy, these restrictions on federal oversight were relaxed and states were obliged to be more answerable for their use. The imposition of firmer strings tended to prevent the newer states from squandering their inheritance, as some of their predecessors had done.

The political opposition to translating land grants into cash subsidies for states with no reserves of public land was strong, but there were occasional ways of dealing the older states in on this vast resource. War veterans

## **"From the assumption of those state debts to General Revenue Sharing has been a long trip, on an unblazed trail full of twists, turns, and steep gradients."**

from Virginia and some other eastern states were given "bounty lands" in Ohio and elsewhere in the west; rather generously reckoned reimbursements for the 1812 war expenses of the older states were financed largely from western land sales; and in 1837 and 1841 all states briefly received distributions from Treasury surpluses swelled by land sale proceeds. Yet as late as 1857, a Presidential veto killed the first version of the *Morrill Act* (which five years later during the Civil War was easily enacted), authorizing land grant subsidies for all states for the support of agricultural colleges.

The legal complications of federal grants, therefore, exercised some strong constraints on national fiscal policy until the Civil War. These derived from a combination of Constitutional scruples, sectional rivalries, and conceptual uncertainties about the appropriate functions and limitations of government. In pragmatic terms, however, as Daniel Elazar has pointed out in his fascinating study dedicated to the destruction of the myth of "dual federalism" (*The American Partnership*), federal grantsmanship was at least as important an element in the financing of the U.S. government during most of the 19th century as it has been during the 20th century.<sup>4</sup>

The feasibility limits of the strict constructionist view are well illustrated in the paradoxical Presidency of Thomas Jefferson, whose philosophic leanings were those of a Virginia conservative, yet whose Administration moved the young federal government into new and venturesome areas. A crucial partner in the debt assumption act, as President he assented (despite misgivings about its legality) to the Louisiana Purchase and permitted his remarkable Treasury Secretary Albert Gallatin not only to plan an elaborate interstate network of roads and canals, but also to induce Congress to finance it through an inventive intergovernmental grant arrangement. When confronted with the tradeoff between his narrowly legalistic view of the Constitution and the prac-

tical importance of developing the nation's most valuable resources—its people and its vast expanse of uncharted land—Jefferson, unlike some of his successors, showed himself to be more pragmatist than purist.

One of the most important precedent-setting pieces of legislation passed during Jefferson's first term was the act that admitted Ohio into the Union in 1802. Through the ingenuity of Secretary Gallatin, this act included a provision that earmarked 5% of the proceeds of land sales in the new state for the construction of roads linking Ohio and the river of the same name with the navigable waters flowing to the Atlantic. (The percentage was later reduced and still later increased, but similar provisions were made for each new state, and the conditions for using the money were later extended to include intrastate roads.) The initial product of this imaginative agreement was the nation's first interstate highway—the Cumberland (or National) Road. The states involved had to approve the route, but the surveying was done by the Corps of Army Engineers and the work financed by money that without the earmarking would have gone to the federal Treasury's general fund. The "legal fiction," as Elazar puts it, made possible the "first and only all federal road to be constructed through already existing states."<sup>5</sup> As the project was pushed into the sparsely settled country beyond Ohio (as far as Illinois), federal funds were advanced even before the land-sale revenue was received. As matters developed, the federal subsidy turned out to be greater than intended, as the states disclaimed responsibility for maintaining the road, which soon became eroded by the heavy traffic on it. By general demand, therefore, the federal government maintained it until the 1830s, when it was ceded to the states along its route.<sup>6</sup> By tacit agreement the federal government thus became the prime mover in the general development of internal improvements, a vast and expanding program that was to create a long and enduring federal-state partnership in the construction of wagon roads, canals, railroads, highways, and other components of the nation's ever growing transportation system.

Another equally significant aspect of the 1802 legislation admitting Ohio as a state was the provision that granted to the state one section in each township for the support of public schools and three townships for the support of higher education. This major federal subsidy for education—a principle carried over from the *Northwest Ordinances of 1785 and 1787*—was given to all new states, and the amounts of granted lands were later doubled and redoubled.

Jefferson's Administration, therefore, not only established the principle that the federal government had a major responsibility for subsidizing education and in-

ternal improvements, but pioneered a number of fiscal partnership arrangements, by which that mission could be carried out. Although land grants were the chief instrument for federal participation, they were by no means the only form of federal subsidy. Although strict constructionist objections made it necessary for the federal government to make the states the primary agents in the construction of roads and other communications arteries, much of the financing continued to come from Washington, DC. In addition to the earmarked land-sale revenues, the federal government supplied much equipment and most of the technical services through the Army Engineers, and in the sensitive early years significant amounts of money through participation in joint stock companies. These joint stock company arrangements were fiscal partnerships that included not only the federal and state governments, but often municipal governments and private investors.<sup>7</sup> Later, contractual arrangements with canal and railroad companies were worked out, providing substantial federal subsidies under conditions supervised by the states.

With respect to education, the role of the federal government, although important because of the extensive and valuable land grants, was a more passive one. The first grants for "common schools" were given to the townships, but when experience showed that they were often misused or ignored, they were made to the states as overseers of their use. Even so, the lack of strings on the grants resulted in much squandering of the heritage, particularly during the early years of the 19th century, when land was cheap and abundant and education seemed like something of a "frill" in frontier communities. Later in the century, accounting restrictions were attached, minimum prices were established for land sales, and states began to maintain educational trust funds which provided a valuable legacy for their public education systems.

Although Jefferson had bowed to a higher necessity in matters that he viewed as important national concerns, his successors proved to be less flexible. Until the Civil War, a long line of Presidents, mostly strict constructionists, tended to beat back the more overt attempts to change the nature of fiscal federalism, although a number of incremental steps were taken—as for example the tightening of conditions on and accountability for federal grants. There was even some tentative broadening of the definition of the "general welfare" responsibility, as when isolated land grants were obtained by a persuasive spokesman for the deaf to establish institutions for their care and education. Yet the welfare state was a long way off. A bill authorizing land grants for the benefit of the indigent insane was unhesitatingly vetoed by President

Franklin Pierce, who argued that such grants would set a precedent for requiring federal support for all manner of needy persons. His veto message clearly recognized the fungibility of land grants and found no justification in the general welfare clause of the Constitution for such expenditures.<sup>8</sup> Pierce's successor proved even more rigid in interpreting that clause. In the face of growing concern about the deterioration of the nation's agricultural acreage as a result of unwise farming practices and the prodigal exploitation of cheap and readily available new land, Rep. Justin Morrill won Congressional approval for his bill to give land grants or their equivalent value to all states for the support of agricultural colleges, but President James Buchanan vetoed it resoundingly. Buchanan's argument has a particularly ironic ring today. Appropriations of federal money to the states, he said, "would be an actual consolidation of the federal and state governments so far as the great taxing and money power is concerned, and constitute a sort of partnership between the two in the Treasury of the United States, equally ruinous to both."<sup>9</sup>

Presidential intractability and Constitutional constraints to the contrary notwithstanding, the pressure for federal assistance for public programs was not only relentless but often successful. The strict constructionist view was easier to reconcile with unrestricted grants than with categorical ones. Faced with an embarrassing Treasury surplus in 1836, President Andrew Jackson was brought around to signing the *Distributions Act*, apportioning the surplus above \$5 million to the states on the basis of their Congressional representation. Four years earlier he had vetoed a bill that would have authorized annual distributions to the states of the proceeds of public land sales, but he reluctantly approved the new compromise version, which offered the surplus funds as technically recallable loans and did not distinguish their source, although the surfeit largely came from a boom in western land sales. The issue was laid to rest within the year by the Panic of 1837, which dried up the surplus and interrupted the payments. Another effort by Henry Clay to obtain for the states the proceeds of land sales briefly became law in 1841, despite the opposition of President John Tyler, but these grants also were suspended when the drain on the Treasury put increased pressure on the other main revenue source, the tariff, and pushed it above the agreed-upon cutoff point.<sup>10</sup>

It is tempting to find close parallels with General Revenue Sharing in these abortive efforts to obtain distributions of federal funds for the states, although the analogy should not be pressed too far. There are some striking similarities, to be sure. Public land sales were in effect the 19th-century equivalent of the income tax,

and sharing the proceeds was a means of apportioning among the states the benefits derived from the nation's most lucrative revenue source. Land seemed a boundless, nature-provided resource, generating an abundance of nontax revenue for the benefit of the nation, even as rising productivity, as described by Walter W. Heller, could create a "costless" fiscal dividend to finance revenue sharing. Yet the basic conception behind the 19th-century surplus distributions was totally different from that of revenue sharing. Clay's idea was to obtain for the public land states the right to keep the land-sale proceeds for themselves, and the distributions to all the states became the best compromise he could work out. That was a far cry from Heller's notion of achieving a kind of fiscal balance for the nation as a whole.

The constraints that the Constitutional issue put on the size and shape of fiscal federalism were, of course, very much diminished by the Civil War. With the Constitutional question pushed into the background, the way was cleared for the assumption of greatly broadened fiscal responsibilities by the federal government. Early in the war two landmark bills, both of which had failed to become law in the prewar environment, were quickly enacted. One was the *Morrill Act* and the other the *Homestead Act*. Both institutionalized some changes in federal policy that had been occurring in practice but lacked the sanction of fully recognized legal authority. The *Morrill Act* protected its educational grants by placing numerous accountability requirements on them. The *Homestead Act* bypassed state agencies in granting farm land directly to individuals, at practically no cost if they lived on it and worked it for five years. While the *Homestead Act* responded to populist pressure and developed the land, it had the effect of quickly transferring much of the government's revenue base into private hands. Together the two Civil War measures greatly hastened the demise of land as the mainstay of federal fiscal policy.

As the 19th Century neared its end, two more precedent-setting landmarks in fiscal federalism were passed—the *Hatch Act*, establishing annual money grants for agricultural experiment stations and attaching to them a number of compliance requirements, and the second *Morrill Act*, which tightened the conditions upon the college land grants, set financial and accounting standards for their sale and use, and added annual cash subsidies.<sup>11</sup> The era of conditional cash grants had formally begun.

The *Weeks Act of 1911* pushed the development of federal grants another long step forward, as it authorized Congressional appropriations for formula-designed grants-in-aid to states on a matching basis.<sup>12</sup> Beginning with forestry, such partnerships were soon arranged for high-

# **"It took the Great Depression, however, to produce the first big explosion in grants-in-aid. . . ."**

way construction, merchant marine training, the national guard, agricultural extension programs, and vocational education.<sup>13</sup>

The ratification of the 16th Amendment in 1913 removed the last major obstacle on the long road from federal assumption of state debts to general revenue sharing. The fiscal partnership principles had been established, but the erosion of the public domain meant that a new means of financing the rapidly widening circle of joint governmental responsibilities had to be found. The income tax filled that revenue gap. And it had another very important effect. As a direct levy by the federal government on individuals, it created a new link between each taxpayer and Washington—a very different kind of relationship from that existing under the old system of indirect taxes. Individuals now had a new, direct stake in the federal government and new claim upon it, inviting a whole new way of thinking about Washington's responsibility for establishing justice, insuring domestic tranquillity, and promoting the general welfare. Equally important, the federal government now had a direct stake in the productive effort and economic well-being of its citizenry.

Fueled by the income tax, which by 1922 was providing nearly 60% of federal revenue, federal grants-in-aid grew at a steady pace during the 1920s. A court challenge to the intrusion into state affairs resulting from federal grants terms and conditions failed to be upheld in 1921; for the time being the Constitutional issue was again disposed of.<sup>14</sup> By the end of the decade, Washington's grants to states, which totaled about \$42 million in 1920, had nearly quadrupled.<sup>15</sup>

It took the Great Depression, however, to produce the first big explosion in grants-in-aid, which became major instruments by which the New Deal channeled relief to states, local governments, and individuals and endeavored to prod the economy into action. In the process the federal government not only assumed a vastly increased role in virtually every aspect of national life, but also began, slowly and reluctantly at first, to part company with the concept of the balanced budget and to fill the revenue gap in a new, unprecedented way. By 1940

state-matched grants-in-aid (not counting outright grants or emergency relief to states) had grown to nearly \$1.5 billion—an increase of more than 900% since the beginning of the Depression.<sup>16</sup> During the war years, they declined a bit, only to emerge into their real heyday in the postwar world.

A significant aspect of the fiscal federalism practiced by the New Deal was the institutionalization of direct grants and loans to cities for such purposes as unemployment relief, public works, and housing, and to counties and rural communities for a variety of agricultural programs. Although, as Elazar richly demonstrates, the careful separation of federal-state powers and lines of authority had long been more myth than reality, the intermediary position of the state between its subdivisions and Washington had usually been recognized in one form or another. But when the City of Cleveland set up its own office of Commissioner of Federal Relations, it seemed to traditionalists an ominous handwriting on the wall.<sup>17</sup> Certainly it was a sign that fiscal federalism was entering a new era.

## **From the New Deal to the Great Society**

The intense pressures created by the Great Depression, combined with the bold and innovative response of the Roosevelt Administration to it, transformed not only the nature of the nation's federal structure, but also the public's perception of what that structure should be. Although dual federalism may never have been a fully functioning reality, it remained very much alive as a concept, and it proved totally inadequate as a mechanism for coping with an economic disaster of major proportions. The immediate need for public welfare services on a mass scale simply could not be met by the archaic service delivery systems of the various states. Although state agencies had become increasingly active as the 20th century advanced, the patterns inherited from the English poor law tradition were still deeply ingrained, and welfare was still primarily a local responsibility. Participation by the federal government was almost entirely limited, at the outset of the Depression, to the Public Health Service.<sup>18</sup> With the economy in shambles and bread lines growing, radical changes were in order.

Within two years the New Deal had enacted a network of programs that provided a host of services, including general assistance, work relief, farm subsidies, business loans, and an array of insurance programs—against bank failures, crop failures, unemployment. Most significantly for the long term, it created the Social Security

system, insuring wage earners and their dependents against loss of income due to widowhood or old age and providing categorical assistance for the blind, for dependent and crippled children, and for maternal and child health. The direct contractual relationships established by the Social Security system between the federal government and individual citizens represented a major new development in fiscal federalism, and they were matched by new kinds of intergovernmental partnerships. The federal government bankrolled cities that had been brought to the brink of bankruptcy by a combination of Depression-shattered revenue systems, statutory limits on borrowing, and mass unemployment. Washington did not hesitate to bypass the state governments, which not only lacked the fiscal flexibility to handle the crisis, but also in many cases were governed by conservative administrations that disapproved of massive federal action of this kind. Through a variety of fiscal arrangements—ranging from direct cash payments, to loans, to conditional formula grants, some with matching requirements and some not, to federally administered social insurance—Washington channeled money by the most direct means to wherever it was needed. Some of the intergovernmental arrangements involved the federal and state governments as partners, some federal-state-local, others federal-local. An inventive innovation, later to become a familiar fiscal device, was the tax credit, used for the first time with the employer payroll tax to induce state governments to enact their own unemployment compensation programs.<sup>19</sup>

Although the lion's share of the money expended by the federal government in grants to state and local governments during this period went for emergency relief public works, which reached a peak of \$1.9 billion in 1935 and then rapidly fell off and were mostly soon terminated, the patterns were established.<sup>20</sup> The federal government had fully come of age, learned to use both the carrot and the stick, and brought into being a new kind of federal structure. In a matter of months the era of intergovernmental relationships, with their complex linkages and often confusing intermixture of responsibilities, had been born and had grown to adolescence. This had not been accomplished without a renewal of the Constitutional issue, which again was put down by the Supreme Court in 1936 and 1937, as it determined that the Tenth Amendment restricts neither the public welfare spending power of the federal government nor its authority (through the *Social Security Act*) to put pressure on states to enact unemployment compensation laws.<sup>21</sup>

The extent of the changes that occurred during that painful and remarkable Depression decade (1929 to

1939) can be seen from the totally revised pattern of public sector expenditures. In 1929 federal expenditures, according to the National Income and Product Accounts, were \$2.6 billion (2.5% of the gross national product (GNP)) and state and local expenditures were \$7.6 billion (7.4% of GNP). Ten years later the federal government's \$8.9 billion (9.8% of GNP), which included federal aid, had surpassed the combined state-local total of \$8.5 billion (9.4% of GNP).<sup>22</sup>

With the advent of World War II, despite a sharp dropoff in intergovernmental aid, the upward trend of federal spending was, of course, rapidly accelerated, and by 1949 federal expenditures of \$41.3 billion (16.0% of GNP) were more than twice the \$18.0 billion (7.0% of GNP) spent by state and local governments. Defense and international affairs (including the Korean War), plus interest payments on the national debt, kept the trend rising sharply and steadily until 1954, when it suddenly peaked at 19.1% of GNP and then slowly declined, in relative terms, during the next five Eisenhower years, to 18.7%, at which level it remained fairly stable until 1964, when it began a new ascent.

It is only when the costs of national defense and international affairs are excluded from these aggregate figures, of course, that the outlines of fiscal federalism can be detected. In that area the two decades following World War II, while marked by steady growth, seemed like a lull between storms. A British poet once wrote, "Each age is a dream that is dying / Or one that is coming to birth."<sup>23</sup> In retrospect it is fascinating to observe that despite the efforts of the Eisenhower Administration to abort it, the dream that was conceived in 1946 with the passage of the *Full Employment Act* finally emerged nearly 20 years later in the Great Society. There were important factors, aside from conservative politics, of course, that contributed to the length of the gestation period of the welfare state—the Korean War, which diverted the attention of the Truman Administration; the

**"The federal government had fully come of age, learned to use both the carrot and the stick, and brought into being a new kind of federal structure."**

coming of age of the Social Security system, the costs of which rose from 1.0% to 2.6% of GNP between 1954 and 1964; the twin booms in automobiles and babies that necessitated an unprecedented amount of capital outlay for highways, schools, and housing. While the settlement of the Korean War made it possible to cap off the skyrocketing rise in the federal share of total national product by allowing a big drop in defense spending, the unavoidable necessities on the home front pushed federal domestic expenditure up steadily during the 1954-64 decade (from 6.2% to 8.5% of GNP). This increase closely paralleled a sharp rise in state and local expenditures, which advanced from 3.5% to 4.3% and from 4.0% to 4.8% of GNP, respectively.<sup>24</sup> Even a conservative administration could not keep federal aid to state and local governments from doubling in response to this pressure. Dollar outlays by the federal government to finance construction of the interstate highway system and to assist housing and urban renewal grew by more than 20% a year, and school grants-in-aid, dramatically spurred by Sputnik, grew by more than 11%.<sup>25</sup>

Within the federal grant structure, moreover, a significant development was taking place. This was a marked reduction in matching requirements for many programs. The traditional 50-50 match was replaced in the case of the highway program by one in which the federal government supplied 90% of the funds, and the low match became a common feature of other joint endeavors as well.<sup>26</sup> This change, which permitted recipient governments to obtain substantially more than one federal dollar for each dollar of their own, made a major difference in the incentive pattern. One result was to prompt closer federal supervision of grant programs, as the objectives being promoted were increasingly national and the federal stake in the ventures greater than that of the recipients.<sup>27</sup>

The shifts that were taking place in federal-state-local relationships caused growing concern in Washington. Recognizing as early as 1953 that some sorting out of issues was needed, President Dwight D. Eisenhower acted on a suggestion of the 1949 Hoover Commission and appointed a Commission on Intergovernmental Relations to research the problems and make policy recommendations. The Kestnbaum Commission, as it became known, "conducted the first official broad-ranging review of national-state-local relationships since the adoption of the Constitution."<sup>28</sup> They reported in 1955. Their efforts to determine some rational and workable pattern for the nation's complex multilevel system of taxing and spending led to the appointment of a Presidential staff member to try to coordinate activities, but this task, which was probably impossible in any event,

was complicated by the antagonism that had already developed. As one expert put it:

On the Kestnbaum Commission urban interests and policy perspectives were not significantly represented. Urban interests were further alienated . . . by Eisenhower's opposition to most of the grant programs that a Democratic-dominated Congress (1955-61) pressed upon him.<sup>29</sup>

The Commission's recommendations to separate tax sources, sort out functions, and generally put things in the disarranged household back on their shelves seem in retrospect like helpless appeals to stem a rising tide. But the President was sympathetic and in June 1957 was still trying. Addressing the annual Governors' Conference, he bemoaned "the drift of pressures, programs, and financing toward Washington" and recommended joint federal-state action not only to designate functions that (given revenue adjustments) the states could take over from the federal government, but also to plan ahead for the handling of future functions and responsibilities.<sup>30</sup> A Joint Federal-State Action Committee was set up and tried vainly for two and a half years to turn some grant programs, with revenues, back to the states.<sup>31</sup> In 1959 the Advisory Commission on Intergovernmental Relations was created "to monitor the operation of the American federal system and to recommend improvements." They have been wrestling with the increasingly complex problems ever since.

With the end of the Eisenhower Administration, the Washington environment changed abruptly. A young President, with ambitious hopes for a better world and few inhibitions about expanding the scope of government, filled his Administration with bright young economists who were developing new concepts in federal fiscal management. They revived the dream of a full-employment economy and set the stage for fully turning on the flow of funds from Washington to the rest of the nation, which Eisenhower had tried so hard to stanch.

## **The Era of the Great Society**

One of the unique and remarkable documents of the 1960s is a description of economic policymaking during the Kennedy and early Johnson years by the man who served from 1961 to 1964 as chief economic adviser to those Presidents. Walter W. Heller's account of those fateful years is of special significance not only because there has never been a more articulate practitioner of the profession in such a critical role, but even more because

he and his fellow economists probably had more influence on government policy at that time than economic advisors before or since have ever had. In the pages of his book, *New Dimensions of Political Economy* (parts of which were delivered as the Godkin Lectures at Harvard in 1966), the dismal science emerges from the gloom and becomes the science triumphant.

In a paean of praise for the efficacy of judiciously applied economic (largely Keynesian) doctrine, Heller joyously describes the excitement of the Kennedy years and the pleasure of working with a President ready, willing, and able to learn from economists and even to be guided by them. Not that achieving that happy rapport was entirely easy—for Heller describes his horror at learning from the newly elected President John F. Kennedy of his intention to balance the federal budget in the face of a lagging economy. By the time the first Kennedy State of the Union message was delivered, however, the professorial touch had begun to tell, and Heller and his colleagues were able to detect "seven escape hatches" in the President's description of his program.<sup>32</sup> Little by little the economic brain trust won President Kennedy over to the imaginative concept of the full employment budget and by late 1963 had even gained his somewhat reluctant agreement to a tax cut as a means of prodding the economy by stimulating private spending. This boon to the private sector was, of course, seen only as a necessary first step toward the more important objective of greatly enlarging the scope of public spending. As Kennedy commented to Heller just 11 days before his death, "First we'll get your tax cut, and then we'll get my expenditure programs."<sup>33</sup> Although Kennedy did not live to see it, the tax cut went through in 1964 in what was for Heller a triumphant victory for Keynesian economics.

**"President Johnson had fewer inhibitions than his predecessor about accepting the new Keynesian economic theology, and he readily took to the idea of applying rising federal revenues to his Great Society."**

It seemed finally to exorcise the ghost of the old orthodoxy about annually balanced budgets, as the economy responded well to the new fiscal medicine.

Heller next focused his concern on the plight of the state and local governments, which were bearing the brunt of the fiscal pressures created by a fast growing population and increasing urbanization. He had become convinced that a program of unrestricted general assistance grants, or "revenue sharing" as he preferred to call it, would provide the best means which the federal government could make its abundant resources available to the levels of government that most directly had to deal with the multiplying needs. In 1964 he recommended to President Lyndon B. Johnson that some of the fiscal dividend to be expected from the stimulated economy be used to inaugurate an almost spectacularly simple form of revenue sharing:

In capsule the revenue sharing plan would distribute a specified portion of the Federal individual income tax to the states each year on a per capita basis, with next to no strings attached. This distribution would be over and above existing and future conditional grants.<sup>34</sup>

Heller's idea was seconded by a task force set up during the heat of the Presidential campaign under the chairmanship of Joseph A. Pechman to make recommendations in the area of federal-state-local fiscal relations. An unfortunate press leak resulted in premature publication of the plan; Johnson was irritated; opposition from organized labor and other sectors formed; the plan was shelved.

President Johnson had fewer inhibitions than his predecessor about accepting the new Keynesian economic theology, and he readily took to the idea of applying rising federal revenues to his Great Society. Although turned off to the idea of revenue sharing, he assented enthusiastically to a greatly stepped-up program of categorical aid aimed at a large number of designated social needs. Unfortunately, the War on Poverty was launched just as our involvement in Vietnam was also being stepped up. In opting for "guns and butter" together, the Johnson Administration quickly exhausted the full-employment fiscal dividend and pushed the economy to a stage that caused a number of Presidential advisers—as well as Heller, who by that time had returned to the groves of academe—to feel that the economic tuning process called for a tax increase to avert rising inflation.

That President Johnson recognized the dangers of the situation is shown by a passage in his economic report of January 1966, in which he stated: "If it should turn

out that additional insurance [against inflation] is needed, then I am convinced that we should levy higher taxes rather than accept inflation—which is the most unjust and capricious form of taxation.”<sup>35</sup> In the event, however, he did not heed his own advice. With the economic signs sufficiently mixed to throw some doubt on the forecast, the Johnson Administration opted not to take the politically painful route of asking Congress for a tax increase and thereby opening Pandora’s box by inviting public debate on the war and its escalating costs.

The decision not to enact a tax increase in 1966, added to the earlier one to go for a proliferating number of categorical aid programs rather than the administratively simpler and fiscally more controllable revenue sharing, was a crucial one for the nation. Together with the soaring costs of the Vietnam War, these moves set the budget on an inflationary course that has proven increasingly hard to reverse. Moreover they effected profound and irreversible changes in the nature of fiscal federalism.

By attempting to do too much too quickly, the Great Society sowed serious seeds of doubt about the ability of government to solve economic and social problems that had seemed so manageable only a few years earlier. Indeed, the pendulum of public perception swung so far that in the eyes of many, the government became the creator of problems rather than the resolver of them. Consequently, the expanding intergovernmental role assumed by the federal government encountered increasing skepticism and resistance. As Henry Aaron has put it:

much of this legislation called upon the federal government to deal on an individually tailored, detailed basis with the incredibly varied situations in countless separate jurisdictions. The resulting red tape, confusion, and waste revealed the limits of the capacity of the federal government to deal with problems in the small.<sup>36</sup>

Ironically, the great vigor and dedication with which the federal government pursued its goals in those years created conditions that banished all hopes of future fiscal dividends, catapulted policymakers from the happy pursuit of new spending initiatives to the dismal necessity of trying to cut back the built-in growth propensities of established government programs, and set the stage for the reappearance (in a more elaborate guise) of the Heller-Pechman revenue sharing plan.

### **The New Federalism**

Perceiving the disarray, in both a fiscal and an administrative sense, which had resulted from the rapid

**“. . . the Nixon commitment was to a complex intergovernmental structure with shared responsibilities, fiscal as well as functional.”**

proliferation of Great Society categorical programs and from the consequent creation of a forest of vertical alliances between Washington and thousands of local governments and “paragovernmental” agencies, the Nixon Administration put a high priority on changing things. Within the first year, President Richard M. Nixon issued a call for a “New Federalism.” This concept was quite different from President Eisenhower’s, for it did not envisage either a substantial shrinkage in the size of government or a separation of functions. In contrast, it emphasized the enormity of government’s responsibility and the interdependence of the federal, state, and local levels:

As we look ahead to the ’70s, we can see one thing with startling clarity. There is far more that needs to be done than any one unit of government, or any level of government, could possibly hope to do by itself. If the job is to be done, a greater part of it must be done by states and localities themselves, and by the people themselves. . . . [But] I can assure you . . . we are not simply going to tell you the states have a job to do; we are going to help you find the resources to do it.<sup>37</sup>

In effect, therefore, the Nixon commitment was to a complex intergovernmental structure with shared responsibilities, fiscal as well as functional. His specific proposals called for consolidating and coordinating programs that had been handled separately (and often redundantly) by categorical grants, for returning the states to an important intermediary position, and for initiating a program of general revenue sharing.

Members of Congress, however, were not easily brought around to the reform of a system that had created vast numbers of special constituencies and clearly established the Congressional fingerprints on billions of dollars funneled directly to their home jurisdictions. The difficulty of “streamlining” the grant system has been aptly described by Richard P. Nathan:

The problem, simply put, is that this approach doesn't work. Let me use an illustration. In 1969, the Administration proposed the consolidation of several narrow library grants. The Congress resisted, and the reason was simple. It can be expressed quantitatively: 99.99% of the public is not interested in library grant reform. Of the 0.01% who are interested, all are librarians and oppose it.<sup>38</sup>

So two and a half years after his original New Federalism speech, President Nixon tried again to interest Congress in his program, emphasizing welfare reform first, then revenue sharing, which he saw as a combination of general purpose and special purpose programs. His "special" revenue sharing areas were law enforcement, manpower, education, transportation, rural community development, and urban community development. Through the heat of the preelection summer, the houses of Congress, having put aside welfare reform, worked out their separate versions of general revenue sharing, adapting the clear and simple outlines of the 1969 proposal, largely drawn from the original Heller-Pechman plans, to the baroque reality of Congressional politics. Instead of a permanent percentage allocation of the income tax base, a specified dollar amount was assigned to the program and a five-year trial life was authorized. Instead of making a per capita distribution to each state and letting it distribute the funds to its own subdivisions in accordance with the assignment of responsibilities with that state, the distribution system was prescribed by Washington; only one-third of the money was allocated to state governments and (after special distributions to Indian tribes and Alaskan villages) the rest to general purpose local jurisdictions. Instead of no restrictions on fund use, recipient governments were prohibited from using revenue sharing funds to match other federal grant funds, given a list of priority-expenditure categories for use of their allocations, and required to make construction projects financed by their grants subject to the prevailing wage provisions of the *Davis-Bacon Act*. Instead of a minimum of red tape, there were antidiscrimination and accounting requirements, and recipients were obliged to produce planned-use and actual-use reports.<sup>39</sup> The most baroque feature of all was the double formula defining fiscal need and tax effort to be used in distributing money to the states. Not surprisingly, the House version was weighted toward heavily populated urban states; the Senate version was not. The compromise solution was to compute distributions according to both versions and give recipients the more favorable of the two. Thus heavily loaded with

its political baggage, the bill was sent to the President and signed with much fanfare a few days before the election of 1972.

The result was a far cry from the classic Heller vision of making the states partners in the federal income tax, in a way that would:

- (a) not only relieve immediate pressures on state-local treasuries, but hitch their fiscal wagon to the star of economic growth;
- (b) improve the distribution of federal-state-local fiscal burdens;
- (c) reduce economic inequalities and fiscal disparities among the states;
- (d) stimulate state and local tax efforts; and
- (e) build up the vitality, efficiency, and fiscal independence of state and local governments.<sup>40</sup>

Not only had the original conditions changed with the disappearance of the fiscal dividends, but also considerable doubt was created about whether the new program was a supplement to or a substitute for categorical assistance. This, combined with the short-term approach that Congress had mandated, made it difficult for recipient governments to know how to fit the distributions into their budgets. There was considerable risk in initiating new programs that would be dependent on shared revenue, particularly after the President recommended in his budget message of January 1973, that deep cuts in federal categorical aid be made in the 1974 budget.<sup>41</sup> For some months it appeared that revenue sharing would be a substitute for other aid; but Congress effectively reversed the White House, and 1974 appropriations for grants-in-aid were slightly higher in dollar terms than they had been in 1973, although the increase was the lowest since 1961.<sup>42</sup>

The program of revenue sharing that had finally been brought to birth was scarcely in this world before many of those, in and out of Congress, who had played some part in its parentage were disclaiming it. Some worried aloud that it would make state and local governments too dependent on Washington; others grumbled that it called for sharing revenue that Washington did not have. Liberals were particularly critical, arguing that it was displacing other grant funds and being used to help the rich more than the poor; Heller himself bitterly accused it of being used "to justify the homicide of selected social programs."<sup>43</sup> A group of Republicans, on the other hand, clung to the hope of getting it back to its original form and, as time for renewal drew near, cosponsored a bill to enact a permanent revenue sharing program along the lines of the 1964 Heller-Pechman proposals, with a fixed percentage of the federal personal income tax redistributed to state and local governments.<sup>44</sup> The

Ford Administration put out a trial balloon that suggested staying pretty much with the 1972 program and increasing funding at a slow rate. This suggestion was displeasing to representatives of the big cities, who felt cheated by the 1972 allocation formula and wanted a bigger boost in funding.<sup>45</sup> The most determined criticism, however, came from civil rights groups, who wanted their needs protected by explicit regulations on fund expenditures. Still other groups, like the League of Women Voters, wanted more citizen participation in decisionmaking about fund use.<sup>46</sup> It appeared that the concept of providing unrestricted grants, to be used at the discretion of elected state and local officials, was not compatible with the kind of democracy that groups with special axes to grind felt comfortable with.

The debate over revenue sharing continued in one form or another from April 1975, when the Administration's bill was submitted, until October 1976, when the President signed the extension act. Probably there were few issues in the entire area of fiscal federalism that failed to be given a thorough airing during that period. The pulling and pushing among jurisdictions that stood to gain or lose from various divisions of the pie occupied one part of the stage, while special interest groups lobbied hard in another corner for guarantees that their concerns would be included in the growing list of mandates being attached to the fund expenditures. The battle over how the money would be apportioned belongs to the tradition of the Judgment of Paris (or perhaps that of bargain day in Filene's basement) as an example of how human ingenuity is tested by proximity to a coveted prize. Yet it transcended such classic contests in intermixing selfish interests with basic political principles and social ideologies. It was a "battle royal," and, as could have been predicted, it wound up in something of a draw.

If nothing else, the long tug-of-war over renewal of revenue sharing focused the attention of many of the most able economic and political thinkers of the nation on the fundamental issue of what democratic fiscal policy should be and how it should be applied to a republican form of government. It joined theory and pragmatism in a search for viable means of determining objectively interjurisdictional differences in fiscal need and fiscal capacity. It spotlighted the basic issue of accountability and the challenge of fungibility—the question of whether fund uses can really be controlled or even traced, or whether grant monies, like drops of water flowing into a pond, raise the general level and create new bays but defy meticulous identification and prescribed restrictions. It probed for answers as to how the structure of U.S. democracy can be made more responsive to special needs without sacrificing majority rule.

Finally, after all the discussion, the big questions largely remained unanswered. The Great Society had tried to specify national objectives and to implement them with lavish application of carefully labeled categorical grants; like the land grants of the preceding century, the pinpointed categoricals were often woefully unsuccessful at fulfilling their intended purposes. Like parents who try to force their children into patterns of which they approve, a long series of Washington regimes have discovered that they can not keep things under their direction as much as they would like. And that raises a nagging question: Whose will, after all, ought to be done in a democracy? Is Washington really in a better position to judge needs and ordain reforms than those people out in the hinterland? One hears Henry Clay asking whether Washington really owns that land it is so liberally dispensing on the frontier; a 20th-century echo persistently poses a similar question about the tax revenue that Mayors and Governors strive so energetically to retrieve in the form of grants.

These hard questions and the ambiguous answers they evoke drive home the point that policy decisions about the future of revenue sharing will be judgmental. The lines form primarily according to how people feel about the role the states should play in fiscal federalism. Strong centralists tend to mistrust state governments as intermediaries in dispensing the funds in accordance with the needs they observe and the division of fiscal responsibilities within their borders. Those who favor more decentralization tend to believe that intrastate patterns are sufficiently disparate to make a high degree of state discretion a necessary condition of efficient fund allocation. In 1975–76 liberals tended to prefer more conditions and less state discretion; conservatives tended to want fewer strings and more state discretion. If that alignment seems somewhat paradoxical, insofar as liberals are not always identified with strict rules and centralized authority, nor conservatives with the opposite, the explanation has to lie in the tendency for state governments to be more conservative than Washington and in the liberal fears that in the absence of explicit requirements there would not be a sufficiently "progressive" distribution of funds.

Meanwhile, as Washington debated renewal of revenue sharing, the plight of the cities was dramatized by the near bankruptcy of New York City and the widespread fiscal effects of the 1974–75 recession. To cope with the latter problem, Congress passed a countercyclical fiscal assistance measure, which President Ford vetoed. Passed again in June 1976, it was again vetoed; but this time the veto was overridden.<sup>47</sup> The *Antirecession Fiscal Assistance Act*, or ARFA as it was known, authorized \$1.25 billion for five quarters, apportioned

on the same one-third state, two-thirds local basis as revenue sharing and distributed to jurisdictions where unemployment exceeded 4.5%. This assistance took some of the pressure off the General Revenue Sharing battle, and during the preelection summer, the Congress ground out a compromise that led to the enactment of an extension of the program until October 1980.

The extension act responded to liberals by strengthening and augmenting the nondiscrimination and citizen participation requirements, adding new auditing and accounting provisions, and eliminating the antimatching restrictions on use of the funds. Conservatives were pleased by the elimination of the priority-expenditure categories and by the retention of the *status quo* in such basic features as the distribution formulas, that liberals had wanted to make more favorable to central cities. The lack of general enthusiasm for the final product probably redounded most to the advantage of the liberals, as the program was renewed for less than four years and at a fixed level of funding. It ensured that revenue sharing would remain a mere drop in the bucket compared to categorical and block grants; under the impact of inflation, it has become a steadily decreasing drop.

While General Revenue Sharing was given a short new lease on life and sent off to live on a small fixed income, the other major intergovernmental fiscal recommendation of the Nixon years, special revenue sharing (although that name was soon dropped), was beginning to come into its own. Consolidation of categoricals into "block grants" was by no means a new idea in the 1960s. The Hoover Commission in 1949 had recommended broad fund authorization to replace related but fragmented categorical grants, and the Eisenhower Administration had tried to set up block grants in the areas of health and public welfare.<sup>48</sup> These efforts were frustrated largely by the fears of the beneficiaries of the affected categoricals that they would lose in the transformation. It took the categorical grant "explosion" of the Great Society to overcome these fears enough to permit the Partnership for Health (1966) and Safe Streets (1968) block grants to be enacted. Their relatively small size and failure to include many related programs made them inoffensive and at the same time relatively ineffectual. President Nixon's proposal to merge 129 categorical programs into six consolidated ones met with strong resistance from vested interests, and Congress quickly sidelined three of the special revenue sharing bills designed to implement the idea. A fourth was kept from a similar fate by a White House threat to effect the consolidation on its own.<sup>49</sup> The result of this move was the *Comprehensive Employment and Training Act* (CETA), which merged 17 manpower training programs into a

block grant and packaged it together with some related categoricals. The following year the Community Development Block Grant (CDBG) and a Social Services block grant were set up.

The block grant format was intended as a move toward greater coordination and efficiency in the focusing of federal money on definable problem areas. The idea was to distribute funds almost entirely on an entitlement basis, typically with no matching requirements and few strings. While this would permit Washington to target beneficiaries, it would give local jurisdictions considerable latitude in setting their own priorities and designing their own programs. While federal agencies would oversee the programs and render accounts to Congress, there would be wide variation in the ways the funds were used. The hope was to encourage innovation, ingenuity, and administrative flexibility in ministering to need. Unfortunately, practical experience with block grants has not made those the prime characteristics.

The first of the modern block grants, the Partnership for Health, ironically floundered on the rocks of non-partnership. While the idea was to form a coalition between the federal and state governments for a broad-scale, decentralized assault on health problems, the effort to put the idea into practice soon ran afoul of funding limitations, administrative fiefdoms, and conflicting aims. Instead of encompassing the entire health area and supplanting most or all of the related categorical programs, it consolidated nine formula grants into one block grant section and merged seven project grants under another section, leaving out of its purview a number of existing programs.<sup>50</sup> Not only did Congress later enact a number of new and separate categorical health programs, but it also proceeded, in violation of the principle of permitting wide discretion in fund use, to mandate specific health problems to be covered by the block grant. As matters developed, a decade after the enactment of the partnership, less than 1% of federal health funds were committed to it and state health departments derived less than 4% of their budgets from it.<sup>51</sup>

The Safe Streets block grant program, which was created *de novo* rather than as a consolidation of existing programs, has had little more success at vindicating the block grants principle. If this program has had a single Achilles heel, it is the elaborate chain of command involved in the planning process. The result has been a lack of sufficient authority or incentive at any one level to focus on the long-term objectives that the program envisaged or to evolve effective new systems of crime prevention and control. The original intention of Congress was to give wide latitude to recipients in determining how funds should be spent, but the road to action

had to cross so many jurisdictional lines and required such elaborate coordination of plans—statewide, regional, and local—that progress (which then had to be monitored and evaluated) was slow and difficult. Discouraged that their program did not seem to be making much headway against the problem of crime, Congress kept asserting its priorities and adding mandates until the block grant that had started as a *tabula rasa* gradually became a collection of categories. Neither state officials nor the crucial regional planning units (which by order of Congress had to be more than half comprised of “elected officials”) really had much opportunity or incentive to perform their functions imaginatively. It was much easier to settle for short-term goals that allowed each jurisdiction to take what it could get for itself than to work out long-term patterns of coordinated action against crime. The onus that the program put on official patience was too much for some, including the Governor of California, who took things into his own hands, restructured the program, and ran into considerable difficulty with Washington.<sup>52</sup>

These two early block grants, neither of which was notably successful, provide more evidence of what should be avoided in block grant design than of what should be retained. Both suffered from limited scope and limited funding. Both involved coordination of too many separate and established agencies at different levels of government. And both fell victim to Washington’s seemingly irresistible tendency to attach its strings and impress Congressional fingerprints on grants even when a decentralized decisionmaking format may be called for. “Creeping categorization” seems an inherent proclivity even in programs more comprehensive than these. The strings appear, on paper at least, to establish more accountability, and the visible fingerprints give more political leverage and creditability to the politicians who can claim them. The fact that the increased administrative work and reduced authority for officials of recipient governments may interfere with both the efficiency and the effectiveness of the programs has been acknowledged as a possible problem by Washington, but the propensity remains a strong one.

The undistinguished record of the earlier block grants did not deter the Nixon Administration from pressing for the large-scale amalgamation that became CETA. The original grand plan was to consolidate a score of separate manpower training programs that had grown up in the wake of the Watts riots in the 1960s and turn them into a massive, coordinated effort to rehabilitate the unemployed, underemployed, and disadvantaged of our society by making them into productive, functioning participants in the economic system. Such a mission seemed

to link this endeavor to a long and distinguished tradition shared by the public education land grants of 1802, the *Morrill Acts* of 1862 and 1890, the Civilian Conservation Corps, the National Youth Administration, the G.I. Bill of Rights, and a host of other federally sponsored educational and vocational training programs. Unfortunately, this long-range conception was by necessity mixed in CETA with an array of shorter term objectives which, by a kind of Gresham’s Law, soon became the dominant components.

This diversion of aim might have resulted in any event from the fact that the CETA package was characterized more by compromise than by comprehensiveness, as it included only a small part of the federal aid for manpower and employment training and a great many heterogeneous categoricals “aimed at public service jobs, emergency employment, the Job Corps, and special target groups like youth, Indians, and migrant and seasonal workers.”<sup>53</sup> The compromise in objectives was matched by an equally confusing compromise in instrumentation. Following hard upon the initiation of General Revenue Sharing, it absorbed some of the qualities implicit in it—decentralized decisionmaking, vesting of considerable authority in local elected officials (although states were supposed to help plan, supervise, and contribute to service delivery)—while still retaining a heavy burden of categorical baggage carried over from the programs folded into it. These disparate elements were never fully clarified, either conceptually or functionally. The result was a confusion of both purpose and process that made it all too easy for the funds to flow into the well worn paths of political expediency. This tendency was accelerated by the recession of 1974-75, which occurred so soon after the passage of the act as effectively to blur the original intent and turned it largely in the direction of providing short-term work relief in the form of public service jobs. Instead of focusing on the long, slow task of retooling people for permanent employment, CETA became a primary means of holding down the unemployment rate.

As with revenue sharing, the basis on which the money was to be distributed had to be worked out by a careful process of compromise. The Administration wanted more decentralization, the Congress more control from Washington. Although some elements of revenue sharing were incorporated into the Title I (block grant) part of CETA, which allocated funds on the basis of a formula that weighted previous manpower funding heavily (50%), relative unemployment levels moderately (37.5%), and the incidence of low income adults somewhat (12.5%), the addition of six other titles to the CETA program reduced the block grants to a position of relatively minor

importance, particularly as the funding of public service employment became the dominant feature.

The high aims and good intentions that went into the construction of CETA were so numerous that they inevitably got in each other's way. As an ACIR analyst has described it:

the tendency of most of the continuing categoricals to focus vertically on the special training needs of specific geographic, income, racial, age, or other components of the unemployed population has created both policy and administrative problems for a program that is geared to dealing on a horizontal basis at the local level with a range of manpower undertakings.<sup>54</sup>

The insistence that local objectives be served in a framework that satisfied Washington's notions of key national objectives deprived the program from the outset of the flexibility that the block grant design was supposed to facilitate. Local planning, which specifically called for citizen participation, quickly became more a matter for staff experts than for elected generalists and members of the public. The aim of building up effective statewide service delivery processes also proved more manageable in theory than in practice.

The effect has often been (as described in a Brookings Institution report on the use of federal grants in Houston) to turn much of the decisionmaking over to political power centers, usually but not always representing black or other minority groups, who operate in something of a Tammany Hall manner.<sup>55</sup> They allocated the jobs to public employment or contracted them out to community-based nonprofit organizations, often dedicated to political activism. This assured a steady channeling of funds into the hands of various targeted groups and held down the employment rate, but it did little to advance the long-term objective of training sidelined workers for private sector employment. By placing hard-to-employ people in short-term instant jobs it provided some on-the-job training, expanded public sector employment, and gave the elected officials who controlled the chain of command a major funding source of great significance—not only for patronage purposes, but also (particularly as local budgets tighten) for the financing of public activities that distinguish their administrations. CETA's policy of using federal money for community action programs was directly inherited from the Great Society, but the Carter Administration's rapid infusion of money into CETA raised the level of operations to unprecedented proportions and institutionalized these activities as an aspect of local government.

Current efforts to trim the CETA budget, by withdrawing job funding not only from local governments but from the community-based organizations that have been such major beneficiaries, are proving extremely painful and difficult to implement. The obstacles being encountered speak not only to the deep political entrenchment of the program but to the comparative ineffectualness of the democratic process in paring down the size of operations funded by government.

The other product of the New Federalism's special revenue sharing thrust was the Community Development Block Grant, established by the *Housing and Community Development Act of 1974*. In a sense this attempted to do for urban areas what CETA originally was supposed to do for people—rehabilitate, develop, revitalize them. Unlike any of the earlier block grants, this one bypassed the state governments and established a direct federal-local partnership. Again the goals, although related, were mixed enough to make for considerable administrative confusion. Part of the aim was to encourage local governments to take stock of their housing problems and to improve these facilities; part was to assist with the physical improvement of neighborhoods; part was to subsidize community social service programs. Although specifically directed at "communities" in the most localized sense, the areawide problem of sewage treatment became attached, as it was carried over from the water and sewer categorical grants folded into the block grant. Once again the hybrid nature of the package complicated its administration.

Like CETA, the CDBG block grant provides some interesting lessons in design problems and tradeoffs. Both have struggled to direct their funds to beneficiaries having the greatest perceived fiscal needs without losing the broad political support needed to keep the programs going. The greater the targeting, the greater the potential for alienating the voters left out. CDBG began with one distribution formula in 1974, and added a second in 1977. And it may face still more adjustments. In contrast to CETA, it has shifted decisionmaking from federal to local officials. Less than 30% of CDBG funds, for example, have gone into activities supported by the folded-in categorical grants.<sup>56</sup> The broad-based, block grant part of CETA, on the other hand, amounts to less than one-fourth of the total program (\$2.0 billion in fiscal 1981, as compared to \$6.8 billion assigned to the other categorical parts).<sup>57</sup>

## The New Federalism Since Nixon

The political outlook for block grants seems to depend on which party is in a position to make the decisions

concerning them. In his 1977 and 1978 budgets, President Gerald F. Ford proposed to apply block grant consolidations to three new areas: 15 child nutrition programs with a combined 1978 spending level of \$3.3 billion, 20 health programs including Medicaid with a proposed 1978 spending authority of \$13.2 billion, and 23 education programs funded at a level of \$3.8 billion. Little interest was aroused by these reform plans, perhaps because they sought to combine greater state and local freedom to make fiscal decisions with a reduction of federal budgetary support.<sup>58</sup> Too many people lost in that arrangement to make it palatable. Under President Carter's Administration, the CETA budget was greatly stepped up, primarily in the public service employment area, until by 1979 total outlays reached nearly \$10 billion, of which the broad-based portion represented an increasingly small fraction. Although CETA's funding, like other federal aid, has now receded from that high-water mark, the tendency for Democrats to prefer the categorical approach has been apparent.

The immense growth of CETA since 1974 has belied the general trend in federal grants-in-aid, which about that time moved from a fast to a slow-growth stage. Having expanded from less than 1% of GNP in 1949 to 2.2% in 1969, federal aid reached a high plateau of 3.6% of GNP in 1975-78, and then sagged slowly to 3.4% in 1979-80. The more dramatic view of this shift is obtained from the vantage point of state and local governments, which saw their federal grant assistance drop from 25.5% of their total expenditures in 1978 to 23.2% in 1980; in constant (1967) dollar terms this meant that their per capita federal aid receipts fell from \$181 in 1978 to an estimated \$159 in 1980.<sup>59</sup> What awaits them in the new decade is a matter of concern, particularly to beleaguered big cities and jurisdictions seriously affected by the taxpayer revolt.

## FISCAL FEDERALISM IN THE 1980s

The outlook for intergovernmental relations in the 1980s is inevitably clouded by the atmosphere of doom and gloom pervading the nation's economy. The pessimism with which the decade opened was repeatedly voiced at a conference of business and financial leaders and economists held in January to celebrate the 60th birthday of the National Bureau of Economic Research. The wide-ranging conference discussions of the major economic trends since World War II communicated little optimism about the prospects for the nation's raising its rate of productivity growth, containing and reducing its inflationary pressures, recovering some of its interna-

**"The outlook for intergovernmental relations in the 1980s is inevitably clouded by the atmosphere of doom and gloom pervading the nation's economy."**

tional competitiveness, and surmounting the critical problems posed by threatened shortages in the supply of vital natural resources. Only the inherent sense of humor of the participants served to relieve the gloom. As one discussant put it: "The last conference I attended where a comparable consensus about future economic prospects existed was in 1929. In that case it was entirely optimistic. Let us hope this one turns out to be as wrong about the future as that one."

With that warning in mind about the dangers of simply extrapolating current trends indefinitely, the following attempt to probe a bit into the future of fiscal federalism will focus on the probable consequences to be expected from some of the most likely economic trends of the 1980s. That the past is prologue has been richly demonstrated by the historical developments which this paper has tried to trace. Each age, however, makes its own critical choices at every bend of the road, and in the short run at least those choices make all the difference. Having taken a long look back at the way we have come, we must now try to peer into the mysterious years ahead and consider the possible alternatives that seem to be open.

Despite the dark clouds and stormy atmosphere with which the decade is beginning, there are bright spots on the horizon that offer the possibility that the 1980s may go out like March—as a lamb. State and local governments can take hope from demographic trends, which not only can be predicted with some accuracy for the period but promise relief in several respects.<sup>60</sup> Schools and universities, freed of the inexorable pressures of rising enrollments, should be in a position to reduce their claims on the public purse or to improve the quality of their services. The baby boom generation will be in its most productive life cycle phase, providing more in tax revenue than it receives in services and transfers. Public sector wage rates, having risen at least to equality with comparable rates in the private sector, should exert less upward pressure on government budgets than they have

in the past. Even petroleum prices appear to have reached levels at which alternative energy sources begin to look economically attractive. If so, the real cost of oil supplies should be much more stable in the 1980s than in the 1970s, and inflationary pressures should be correspondingly moderated.

These bright spots are, of course, only possibilities—opportunities that depend on a combination of fortune and enlightened action by the nation. One critical uncertainty has to do with inflation control, which depends among other things on the society's willingness and ability to raise its levels of saving and investment and to strengthen the other determinants of economic growth. Other crucial factors are the nation's ability to respond to the challenge of operating in a less secure world, both politically and economically, and the skill with which it handles the adjustment to higher energy and natural resource costs. Unless these hurdles can be surmounted in an efficient and cooperative way, there can be little basis for optimism.

## Fiscal Federalism in a High Inflation Economy

While the general economic welfare is bound to suffer greatly from high inflation, the impact on different groups is very uneven. There are many losers and some gainers, but the effects on different levels of government can be predicted to some degree.

An extremely useful tool for anyone interested in projecting future currents in government spending is the current services budget, introduced at the federal level by the *Congressional Budget Act of 1974* and annually included in *Special Analysis A of the Budget of the United States Government*.<sup>61</sup> This budgetary exercise estimates the future spending levels required for the maintenance of all programs and activities at their current quality-of-service levels, and compares these expenditure projections with the revenues to be expected from currently existing tax and revenue laws. The projections are based on a set of assumptions about future economic development and must be judged accordingly. One key factor under present conditions is the sensitivity of the estimates to different rates of inflation. Fiscal experts are always faced with the nagging question of whether higher inflation would be likely to generate fiscal surpluses or deficits, and if so at what levels of government.

## THE FEDERAL GOVERNMENT AND INFLATION

Although combined in the unified budget, the Social Security system and the remainder of the federal gov-

ernment's fiscal activities should be treated separately. An important change effected by the 1977 *Amendments to the Social Security Act* converted the system from one whose very survival was threatened by accelerating inflation to one that profits moderately from it.<sup>62</sup> What makes the difference are the time lags built into the law. Whereas taxable wages—and, hence, system revenues—are likely to react quickly to increases in the Consumer Price Index (CPI), retirement benefits are adjusted upward only once a year. It is also estimated that the benefit entitlements of active workers react to a higher rate of wage increase with about a two-year lag. The system's Board of Trustees estimated in their 1979 annual report, for example, that for the 1979-2003 period a long-run annual CPI increase of 2% would produce average Old Age, Survivors, and Disability Insurance (OASDI) system expenditures equal to 10.74% of taxable payroll, compared to a projected level of 10.40% for a 6% inflation rate.<sup>63</sup>

Apart from these favorable lag effects on the financial position of the Social Security funds, a number of less certain influences also exist. One is created by the ceiling on taxable earnings. As long as it is there, the sensitivity of wages above and below that level to inflation will affect the sensitivity of system revenues to rising prices. The most ominous threat to system solvency would come from a close relation between inflation and a combination of high levels of unemployment and low rates of growth of real income and wages. The latter two phenomena seriously affected Social Security financing in the 1970s. The 1979 Advisory Council on Social Security, for example, concluded that under the impact of high unemployment and slow wage growth, "the combined OASDI trust funds declined from 73% of annual outlays at the beginning of 1974 to 29% at the beginning of 1979."<sup>64</sup> Whether high inflation does significantly slow the nation's rate of economic growth and raise the incidence of periods of high unemployment is an unsettled economic issue. Nevertheless, the threat is there, adding to the numerous discomforts of living with inflation.

The rest of the federal budget contains a diversity of items—some indexed for inflation in the sense that the real revenue yield or the real expenditure flow tends not to be affected by the rate of inflation, some underindexed, and some overindexed. Putting them all together, Edward M. Gramlich estimated that in 1973 federal expenditures had an average inflation elasticity (the ratio of the percentage increase in the current dollar value of the item to the percentage increase in prices) of 0.68 and total receipts an elasticity of 1.17.<sup>65</sup>

In the absence of discretionary actions by Congress, then, the indication is that the federal budget gains from

**"On the revenue side of their budgets, state governments seem much better protected from the ravages of inflation than their local subdivisions."**

inflation. Two of the main contributors to those gains that are of special interest here are grants to state and local governments, assigned an inflation elasticity of zero, and individual income tax revenues, estimated by both Joseph A. Pechman (1973) and the Council of Economic Advisors (1975) to have an inflation elasticity of 1.6.<sup>66</sup> This high sensitivity results both from the use of nominal, rather than real, taxpayer incomes as the tax base and from the lack of any automatic upward adjustment for inflation of the tax-rate brackets, personal exemptions, and other structural features of the tax. Both kinds of inflation indexation could be adopted for the federal individual income tax, but the threat they pose to the growth of federal revenues has been a major barrier to their enactment.

In general, then, federal budgetary conditions tend to be eased by inflation. At the same time, of course, inflation may increase—or create—pressures for change in certain federal programs. Serious, continued erosion of the value of private pensions, for example, may stimulate demands for higher Social Security retirement benefits.<sup>67</sup> Failure to index the federal individual income tax for inflation, by creating severe taxpayer inequities and economic distortions, may so undermine the popular image of that tax that the government will have to seek other forms of revenue or risk the acceleration of pressures to cut back expenditure levels significantly.<sup>68</sup> Inflation, in short, is likely to prove a very unpleasant parasite for any economy to live with long.

### **STATE AND LOCAL GOVERNMENTS AND INFLATION**

While the federal government is mainly a transfer agent, shifting funds from one group to another, state and local governments are mainly providers of direct services to the public. In 1976 (the latest year for which National Income and Product Accounts data for all three levels of government are available), purchases of goods and services were only 34% of total federal expenditures but 56% of state, and 96% of local expenditures.<sup>69</sup> If grants-in-aid are excluded from the spending totals, the service components of total direct expenditures were 40% federal, 90% state, and 96% local. State-local spending in an inflationary economy, therefore, will be dominated by the behavior of wage rates and the prices of private goods and services. Of the two, the local sector is the more labor intensive. In 1976, for example, compensation of employees was 61% of local purchases of goods and services, compared to 47% for state governments.<sup>70</sup>

In general, public and private sector wage costs should

react to inflation in much the same way. Unanticipated accelerations of inflation tend to reduce real wage rates, while unexpected decelerations raise them. There are some indications, as in 1979, that state-local sector wage rates react less rapidly than others to anticipated inflation, but unless these lags are later made up, the quality of government services must fall. Over the longer period, then, current services budget projections will be mainly a function of the probable levels of comparable wage rates in the private sector.

The nonlabor component of government purchases should also show an inflation elasticity of unity, in the absence of strongly divergent price trends. Unfortunately, rising inflation rates tend to be accompanied by just that phenomenon. If such conditions persist in the future, state and local budget officials may need to become experts in the behavior of different commodity and service prices, both as causes and as effects of inflation.

One potentially important difference in the reaction of sector labor costs to inflation may occur in the provision of retirement benefits. Gramlich's estimates give federal civil service and military retirement expenditures an elasticity of 1.33—the result of a law that deliberately overindexes those benefits.<sup>71</sup> State and local governments compete more directly for workers with the private sector, where the situation is quite different. There, inflation has already eroded the value of many pension benefits, and unless future pressures for relief focus on the Social Security system, state and local governments are likely to find their employee retirement costs rising sharply. That would add still more time bombs to those already ticking for the many governments still operating with grossly underfunded pension plans.

On the revenue side of their budgets, state governments seem much better protected from the ravages of inflation than their local subdivisions. The individual income tax, which in 1978 provided 26% of state tax

collections but only 5% of local, is highly sensitive to both economic growth and inflation. Because of their greater progressivity, state income taxes are typically more sensitive than local; however, six states—Arizona, California, Colorado, Iowa, Minnesota, and Wisconsin—have indexed their personal income tax structures for inflation, thereby reducing the inflation elasticity of their tax systems. Their tax bases, nonetheless, still use nominal rather than real income, and this tends to increase tax burdens on both business and property incomes as inflation accelerates.<sup>72</sup>

The retail sales tax, which provided 30% of state tax collections in 1978 and 8% of local, may also be a highly inflation-sensitive source of revenue, although this quality is more uncertain than for the individual income tax. If inflationary expectations induce people to save less and to shift their spending from tax-exempt services to taxable consumer durables, sales tax revenues will rise rapidly with inflation. On the other hand, since the price elasticity of demand for such items as food, medical services, and gasoline (that are frequently exempt from this tax) is less than unity, any relative increase in the price of those items, such as has recently fueled inflationary fires, will leave consumers with less money to spend on taxable goods. These shifts, at constant saving rates, will reduce the inflation elasticity of the sales tax. For states that use a credit-rebate mechanism instead of exemptions to relieve low income families from excessive sales tax burdens, on the other hand, sales tax revenues will tend to respond quickly to inflation unless the credit-rebate allowances are indexed so as to maintain their real values.

Forecasting retail sales tax revenues in an inflationary economy has become a hazardous undertaking. In California between 1974 and 1978, for example, the growth in sales tax receipts was consistently underestimated by state revenue analysts.<sup>73</sup> Further study of the determinants of sales tax revenues is clearly needed.

The main source of local tax revenue—the general property tax—is even more of an enigma in the present context. Providing 80% of local tax collections in 1978 and 2% of state, the property tax has traditionally been regarded as a relatively growth-insensitive source of revenue. The reassessment lags on which this conclusion has mainly rested, however, can be minimized or eliminated under a well monitored statewide law requiring property assessment at full market value, or some fraction thereof. Moreover, the fact that inflation tends to make the ownership of tangible assets more attractive for most people than investment in stocks, bonds, and other financial assets has the effect of making housing prices rise more rapidly than the general price level. This

works to increase the inflation sensitivity of a well managed property tax. A remaining uncertainty, however, is the extent to which good assessment practice tends to stress normal, long-run market value rather than current sales prices. The more it does, and the more inflation is regarded as a temporary phenomenon, the less elastic the property tax base will be.

Selective sales and excise taxes, which provided 18% of state tax collections in 1978 and 3% of local, tend to be strongly inflation insensitive. Specific excises imposed on a quantity, rather than a value, basis such as those on gasoline, tobacco, and alcoholic beverages, have a built-in zero inflation elasticity that could be negative if rising prices induce consumers to shift purchases away from these items.

The most important kind of nontax revenue for both state and local governments is intergovernmental aid. In the National Income and Product Accounts measures for 1976, for example, federal grants were 27% of state receipts, while federal and state grants together comprised 46% of local receipts.<sup>74</sup> Intergovernmental grants, as already noted, tend to have a low built-in sensitivity to inflation. For local governments, this means that almost half of their general fund revenue is likely to fall in real purchasing power as inflation accelerates. Pressures may of course be put on grantors to raise their support levels, but it is politically easier to reduce real grant aid by expanding nominal grant funds less rapidly than the inflation rate than to cut nominal grant funds in a noninflationary economy. As major grant intermediaries, states both lose and gain from the inflation insensitivity of intergovernmental aid. It is true that inelastic federal aid amounts to more than one-quarter of their general revenues, but they can shift much of this inflation burden to local governments through their own inelastic state aid programs. Indeed, in 1976 they did more than that, since state grants to local governments were 35% of total state National Income and Product Accounts receipts, compared to the 27% they received in aid from the federal government. On their intergovernmental aid accounts, therefore, both state and federal governments appear to gain budgetary ease from inflation at the expense of the local public sector.

## PUBLIC AND PRIVATE DEBT IN AN INFLATIONARY ECONOMY

An important determinant of a sector's vulnerability to inflationary gains or losses is its status as a net debtor or creditor. One of the most firmly established propositions in economics is that debtors gain and creditors lose from unanticipated inflation. A second long-stand-

ing hypothesis, but one subject to serious challenge, is that real interest rates are unaffected by anticipated inflation. Nominal interest rates, this argument holds, should add to the real rate an inflation premium equal to the rate of expected inflation. In a world without income taxes in which the basic real rate of return is 3%, an expected inflation rate of 12% a year, for example, would produce a risk-free nominal interest rate of 15%. With income taxes that include nominal, rather than real, interest income in their bases still higher nominal rates would be required. The hold-harmless rate for an investor in the 30% marginal income tax bracket, for example, would be 20% rather than 15%, and for someone in the 50% bracket it would be 27%. There is considerable empirical evidence that nominal interest rates in this country have not adjusted upward in recent years by the full amount of expected inflationary premiums.<sup>75</sup>

The impact of inflation on different debtors and creditors, then, is subject to considerable uncertainty. Nevertheless, it is important to consider the status in this respect of the three levels of government in recent years. Although the economy's total reliance on debt did not change between 1947 and 1978 (being 151% of GNP in each year), some very striking structural shifts did occur. Federal government debt fell from 91% of GNP in 1947 to 28% in 1978, state and local debt rose from 7% to nearly 13% of GNP, households raised their indebtedness sharply from 18% to 52% of GNP, and business increased theirs from 30% to just over 50% of GNP.<sup>76</sup> During the last half of the 1970s when inflation rates were accelerating, however, federal debt did increase more rapidly than GNP, rising from 25% of GNP in 1974 to 28% in 1978, while state and local debt declined steadily from a postwar peak of 15% of GNP in 1971 to 12.5% in 1978.<sup>77</sup>

All three levels of government both make and receive interest payments. The federal government, however, has been a significant net debtor throughout the postwar period. During the 1959-76 period for which National Income and Product Account data are available, the local government sector has also been a consistent net debtor, although not by large amounts. In 1976, when local government expenditures were \$155 billion, for example, local interest payments were \$7.8 billion, while interest receipts of \$7.0 billion came one-fifth from social insurance funds and four-fifths from other sources.<sup>78</sup>

State governments in contrast were consistent net creditors during the period. In 1976 when their total expenditures were \$148 billion, interest payments were \$3.8 billion, and interest receipts \$10.3 billion, nearly 60% from their social insurance funds.<sup>79</sup> In their investment-debt accounts, then, the federal government

stands to gain from inflation, state governments to lose, and local governments, on the average, to be in a neutral position.

## Fiscal Federalism in a Slow Growth Economy

Perhaps the most ominous economic note on which the 1980s have begun is the recent pronounced slowdown in the increase of U.S. productivity rates. Real output per worker hour rose by more than 3% a year between 1948 and 1966, fell to about 2.25% in 1965-73, and was only 1% a year between 1973 and 1977. Toward the end of the 1970s, average labor productivity change was negative. Both labor and total factor productivity have been increasing less rapidly in the United States than in other major countries since 1960.<sup>80</sup>

Government has been both a contributor to and a sufferer from these plummeting growth trends. Whether they will continue in the 1980s, stabilize at some low level, or recover to some intermediate figure is, of course, unknown. Few experts expect a return to the performance of the economy before 1973, but the Townsend-Greenspan projections made for *Fortune* do set the rate of growth of real output per worker during the 1980s at 1.7% a year.<sup>81</sup> Certainly that kind of decade average could be achieved given the will and the wit to do so. Since both of these prerequisites are subject to some doubt, the potential impact of a slow growth economy on intergovernmental fiscal relations is a topic well worth discussing.

One effect, and not an altogether unpleasant one, would be that low productivity growth in the public sector would be less conspicuous as the private sector moved closer to that comatose condition. The relative price of government services would no longer rise steadily and inexorably as it does in a high growth economy

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propelled by rapid productivity increase in the private section.<sup>82</sup> Invidious comparisons would tend to disappear as the performance of the private sector sank back toward that of the public sector. These changes would not necessarily alter the overall demand for government services. In a high growth economy, both real per capita income and the real price of government services rise steadily and produce offsetting effects on demand for public sector output. In a low growth economy, both trends are muted, but their net impact may be much the same. One important intergovernmental effect does, however, seem likely. Since the real value of transfer expenditures is determined by private sector prices, these programs, unlike purchases of goods and services, tend not to be affected adversely by lagging productivity advances in the public sector. In a high growth economy, therefore, the real price of federal government benefits, which flow significantly from transfer programs, tends to rise less rapidly than the real price of state and local benefits, which are generated largely by direct service operations. In a low growth economy, conversely, these adverse pressures on state, and especially local, governments would be moderated.

Another widely discussed effect of a shift from high to low economic growth is an intensification of interest in, and conflict over, the distribution of claims to national output. It is much easier politically to divide up increments to total output than to redivide a fixed amount of goods and services. As Henry Rowen emphasized in the title of an article presenting his case for economic growth and increased productivity, "A Rising Tide Lifts All Boats."<sup>83</sup> Or, to change to the classic figure of the pie, which has to be made to go around, a larger share for one person means a smaller one for someone else. A likely result of slow growth, then, is increased social tension as rising demands for government aid, subsidies, and transfers run headlong into stiffening opposition to higher taxes and lowered living standards. One result might be much sound and fury to little or no effect. Fewer government projects and programs might be approved because agreements on the appropriate allocation of benefits would be harder to come by. Taxpayer insecurity over future demands for more and more redistribution might provide support for tax and expenditure limitation measures, especially at the federal level where most of the action is. Alternatively, if pressures for more income support were to dominate, federal tax burdens could be expected to rise since in the foreseeable future transfer expenditures can no longer be expected to expand at the expense of defense spending.

While the specific details are hard to foresee, the federal government is likely to be the main arena for the

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battles over redistribution and at the same time for efforts to raise the nation's economic growth rate. Some state and local governments will be little affected by any slowing of the national growth rate, but others, which might have grown slowly in a high productivity economy, will face the disagreeable prospect of actual decline. Migration from declining to expanding regions may increase, producing important fiscal effects on the communities involved. In her 1975-76 study of Massachusetts cities and towns, for example, Helen F. Ladd found that per capita expenditures were lowest in communities with moderate growth rates, highest in declining areas, and moderately high in rapidly expanding municipalities.<sup>84</sup>

If slow growth does intensify public interest in income redistribution, regional rivalries are likely to increase as well. Intergovernmental fiscal relations will then be both more important and more difficult. Another set of forces pointing in the same direction was set in motion by the OPEC oil price increases in 1973.

### **Fiscal Federalism in a World of High Cost Energy**

The last years of the 1970s were buffeted by the large windfall gains and losses created by the massive oil price increases of the period, and the 1980s are likely to see more of the same. Regions rich in natural resources, and particularly in sources of energy, will prosper while other regions struggle to maintain accustomed standards of living. Allen D. Manvel, for example, estimates that in the six-year fiscal period 1974-79, severance taxes and oil and gas rents and royalties yielded \$2,040 per capita in Alaska; \$1,459 in New Mexico; \$1,099 in Louisiana; \$845 in Wyoming; \$472 in Texas; and \$410 in Oklahoma, the country's six major oil-exporting states; but produced only \$17 per capita in all other states.<sup>85</sup> Alaska

has already eliminated all state income tax burdens on long-term residents, and more fiscal dividends are eagerly expected. Such regional windfall gains are not the stuff of which domestic tranquillity is made. At the very least, they seriously undermine the case for basing the distribution of federal aid (as does the revenue sharing law) on an area's per capita personal income rather than on its ability to raise government revenues.

The other side of the high cost energy coin shows the beginning of a complex set of internal relocations set in motion by the changed environment. In addition to the interregional migrations noted in the preceding section, there are likely to be many business and household relocations as people seek to minimize the costs of energy. In the short run, the central cities may gain at the expense of suburbs; in the longer term, information systems technology may help create a decentralized cottage industry type of economy in which many people work at home much of the time and commute to the office only occasionally. Whatever the future may bring, the nation's cities will need to remain flexible, probably more dependent on their own resources, and perhaps enjoying it the more withal. The more diverse and uncertain the fiscal challenges of different communities and states, the stronger the case for unrestricted rather than categorical federal grants.

These internal uncertainties of reaction to high-cost energy are matched by possibly even more critical external ones of availability of supplies under disturbed world conditions. Dealing with these contingencies is the federal government's responsibility, already manifested in the developing debate over relative funding levels for defense and domestic programs. Given the staying power of the latter any substantial expansion in defense spending is likely to require tax increases and to result in a larger federal sector.

In addition to all of these new responsibilities in the energy area, the federal government may also be approaching an important watershed in its international economic relations. The two sharply different directions that may be taken have much in common with the major policy alternatives facing the federal grant system. On one side of the divide lies an ever more tightly controlled domestic economy, protected from foreign competition by tariffs, quotas, and regulations, valuing the security of the *status quo* above the potential economic gains from vigorous, unfettered international competition. This is in many ways the easier policy choice since it involves the pursuit of obvious short-run gains at the expense of long-run, uncertain ones. The danger, of course, is that the low trade world economy, like the low growth domestic one, may some day awake to the

true cost of comfortable complacency but find the climb back to the watershed difficult, if not impossible.

On the other side of the divide lies the deliberate pursuit of high levels of international trade based on each nation's exploitation of its own comparative economic advantages. In the world of the 1980s, the developing countries are rich in human labor and natural resources, the developed countries in technology, knowledge, and skills. Each party can gain by buying what the others do best. For the federal government, it is a matter of encouraging the steady development of such an interactive world economy while moderating some of the major adjustment costs likely to be suffered by domestic producers and thereby alleviating the insecurities that many perceive in a world of unregulated competition and trade. In these difficult endeavors the federal government may find a valuable ally in the multinational corporation, or the new variation on that theme that Peter Drucker calls a "transnational confederation" (a term that fiscal federalists will find of particular interest).<sup>86</sup>

In the domestic economy, much the same policy choice exists. Should we encourage vigorous interregional competition and local self-reliance? If so, the federal grant system would face a major reorientation toward tax and revenue sharing and block grants. Or should we continue recent trends toward a centralized fiscal system, tightly controlled from Washington? If so, categorical grants would remain the dominant federal aid instrument. This choice, more than any other, will determine the shape of fiscal federalism in this country during the 1980s. It is by no means the first time that such an important crossroads has been encountered.

## SUMMARY AND CONCLUSIONS

As one looks back over the long way this country has come in the development, or really creation, of a system of fiscal federalism, identifiable trends can be discerned. A federal government that began in an atmosphere of some suspicion, whose every activity was scrutinized by zealous defenders of states' rights for evidence of possible encroachments on their province, has become in less than 200 years so much the arbiter of individual citizens' lives that it seems to many that the Tenth Amendment has been reduced to the status of a vestigial remnant. Many forces have participated in this evolution, but none more importantly than fiscal ones.

The federal government of the 1790s was almost entirely a direct provider of services, and the scope of those services was confined within narrow boundaries. Para-

doxically it was the first of the ideologically strict-constitutionist Presidents, Thomas Jefferson, who extended the mission of the federal government by channeling the resources at its disposal into the development of the public domain and of the people who were settling it. The earmarking of land and the proceeds from its sale for education and for the construction of a widening communications network in the expanding territories to the south and west of the original 13 states was a critical move in the acceptance of broadened responsibilities by the government in Washington. Tentative as the moves in that direction were throughout most of the nation's first century, the impact on the development of the country was enormous. By the end of that century, money grants-in-aid to achieve national objectives had become accepted instruments of policy, but it took the 16th Amendment not only to provide the means of financing Washington's expanding sense of its responsibility, but at the same time to give the average citizen a direct personal link with the federal government. The Constitutional restriction prohibiting the federal government from levying direct taxes "unless in proportion to the census of enumeration hereinbefore directed to be taken" maintained the strong intermediary position of the states in fiscal, and therefore in political, terms. The change which gave the Congress power "to lay and collect taxes on income, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration" effectively removed one of the key prerogatives that had assured the states of a pivotal position in the federal structure. In fiscal terms, some would say, it turned the republic into a democracy.

The New Deal, and the Keynesian economics that it rather timorously accepted, pushed that development substantially further. In becoming the nation's banker, the federal government took on the job of "maintaining economic and social equilibrium" by becoming the protector, regulator, and even architect, of its welfare.<sup>87</sup> This was a far cry from the government that had had to borrow from the states to wage a war and had been obliged to depend on tariffs and land-sale proceeds for its Treasury. With a claim on everyone's purse and a responsibility for providing jobs, food, and security, Washington began to embody Jeremy Bentham's vision of a government whose business "is to promote the happiness of the society, by punishing and rewarding."<sup>88</sup>

In coping with the critical problem of the Depression, the New Deal pursued policies of punishing and rewarding that made fundamental changes in the nature of the economic system and in the relationship between government and business. Underregulation of business had undoubtedly been a major factor in the creation of

the Great Depression, and the New Deal's reaction to that was to adopt an attitude that many in the business world saw as punitive. Although World War II made partners of these adversaries, and the dollar-a-year man was commonplace in the highest circles of Washington, the sense of grievance on both sides smoldered on; in the postwar world, the political establishment and the economic system have, more often than not, found themselves in an adversary relationship. With the politics of one generation becoming the sociology of the next, the children nurtured by the New Deal grew up feeling that government was their friend and protector against an unscrupulous business community. The New Deal had made Washington the biggest employer in the nation, and the *Full Employment Act of 1946* proclaimed the intention of the federal government to resume that role whenever the economy slumped. A government that only 100 years before had had to return a budget surplus to the states now saw itself as ultimately responsible for the physical, social, and economic well-being of the entire populace. The snail darter had not yet been perceived as a ward of Washington, but that would come in time. In time even the Chrysler Corporation would plead for that status.

The New Deal's system of punishments and rewards also made important changes at the interpersonal level. The *laissez-faire* environment existing before the Depression had created wide disparities between rich and poor. The New Deal not only reduced the power of business and increased that of labor, but utilized both tax and expenditure policies to redistribute income and narrow the wealth gap.

Once this enormously broadened sense of federal responsibility had been established, the mechanics of financing it became a major issue. The 16th Amendment had not only made ample funding possible but had moved the center of fiscal power to Washington. Eisenhower's Administration, like Jefferson's, paradoxically contributed to greater fiscal centralization while adhering ideologically and politically to the principle of decentralization. Even as the President was urging a separation of functions and a return of responsibilities to the states, his government was institutionalizing the low match in intergovernmental grants. Even more paradoxically, the most brilliantly simple blueprint for decentralization was developed by economic advisers to Democratic administrations that were solidly wedded to a centralized power structure. President Johnson's decision to shelve the revenue sharing idea and opt instead for a huge increase in categorical grants kept the controls firmly in Washington. Together with his decision not to raise taxes in order to cool down the rising heat of the economy, it was a

critical move on the way to a big expansion of the federal government and 15 years of mounting inflation.

Given Johnson's Congressional background, it is probably no wonder that the marvelous simplicity of Walter Heller's initial concept of revenue sharing as a means by which states would be made partners in the federal income tax did not find in the President a natural ally. It did not satisfy Washington's need for paper accountability and, above all, it violated the fingerprints principle by which Congress lives. So instead of reinforcing the existing governmental structures, giving them all a stake in the general economic health of the nation and centering responsibility for the use of government revenue at the level that spends it, the architects of the Great Society created an elaborate network of recipient agencies, many of them peripheral to the existing federal structure, and all tied directly to Washington. The attempts of the Nixon Administration to decentralize the grant system made very little real difference. General revenue sharing has been burdened with mandates and funded parsimoniously. Block grants have had too hard a time escaping from the categoricals folded into them or laid on them to prove what they could do.

The bemused observer of these developments becomes fascinated by the Newtonian effects they have given rise to. In an age in which individual rights are paramount and the franchise has been extended to a widening segment of the society, fiscal power has become increasingly centralized. While the categorical grant principle appears to emphasize accountability and functionalism, it so splinters responsibility and obscures the lines of authority as to preclude real accountability. By diverting so much effort and money into the channeling process, it delivers relatively little to the goal. And, more dangerously for the democracy which it is supposed to serve, it moves fiscal power away from the vast numbers of local jurisdictions where the voters are and where the money is spent, centering it instead in the relatively small, remote, and isolated arena of Washington, where the influence of the individual voter is minimized and that of the special interest groups maximized. Local officials, who know that the funding of their governments is heavily dependent on Washington, must defer to the powers there about as much as to their own electorates. It makes for a very convoluted kind of democracy.

Pushed, swirled, and dazed by these currents and discouraged by government's inability to solve the problems it so expensively and ostentatiously sets about to deal with, many citizens react at election time by trying to vote in the controls on government that elected officials will not effect on their own. While state and local governments have so far borne the brunt of these ballot-box

expressions of no confidence, many voters may really be trying to communicate that sentiment to Washington. There is some evidence that the antigovernment mood could produce changes in the general 20th-century drift of intergovernmental relations. A possible sign of a new trend is found in the fiscal muscle-flexing of states that have important mineral deposits within their borders. Montana's recent imposition of a severance tax on its coal, for example, may be an important straw in the wind. California's voters, however, rejected a special 10% surcharge on the business income of energy companies in June 1980, by a 56-44 margin. Other states with vital natural resources show similar signs of extracting from them some fiscal advantage; some lively interstate tax rivalry could result. With states starting to flex their muscles and look about for ways of exporting taxes, the outlines of fiscal federalism could change somewhat, particularly if voter resistance builds up against the income tax. Under the impact of inflation, Washington's principal fiscal resource is losing its reputation for fairness and could be in for some stormy weather. So far the cloud is no bigger than a man's hand, but Washington might do well to take note of it.

Even in the absence of any major trend toward a return to a decentralized fiscal system, some significant changes are most likely to occur in the federal grant structure. With Washington straining to control inflation, on the one hand, and to beef up the nation's defenses, on the other, substantial cuts in intergovernmental aid are a looming threat and some are already in evidence. These pressures add to those created by taxpayer resistance to high tax and expenditure levels, public disenchantment with an unindexed income tax in an inflationary world, and the likelihood that the Social Security system will require some general fund financing. The combined effect will be to make it a major goal of Washington to redesign the intergovernmental aid system, to produce

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A reduction of federal aid will leave state and local governments more on their own, but the critical question is how much on their own? Depending on the answer to that question, any of four different designs seems possible.

Option No. 1 would build in a maximum of state and local fiscal freedom and responsibility. This is the "make it and drive it yourself" model. As its fiscal instrument it would use federal tax reduction, combined with large cuts in federal grants. This would leave state and local governments room to increase their own taxes to finance their own program menus, permitting them to pick up the funding in areas cut back by the federal government if they so desire. Theoretically, at least, there should be a distinct efficiency gain from the increase in state and local fiscal powers and the reduction in federal strings, constraints, and controls. State revenue systems could, if they wished, increase their administrative efficiency by tying in with the federal income tax under the *Federal-State Tax Collection Act of 1972* (Title II, P.L. 92-512).

Option No. 2 would be based on federal-state tax sharing—a "carpool" arrangement. The funding instrument would be a release by the federal government of a given percentage of the individual income tax it collected in each state and a reduction in federal aid expenditures. This approach can be compared with Canada's tax rental, or tax abatement, agreements. It would, like Option No. 1, have the advantage of strengthening state and local spending priorities and providing funds with no federal controls. But it would differ from Option No. 1 in requiring no specific effort on the part of the states to obtain the released funds. The importance of the latter feature would depend on the extent to which interjurisdictional competition, or the fear thereof, reduces the capability of state and local governments to exercise their powers to tax; this is an unresolved issue on which the empirical evidence is ambiguous. If Option No. 2 were to be chosen, equity would require some related adjustments. Because source-oriented tax sharing gives more per capita revenue to high income states, federal grants would have to be redesigned to strengthen their interstate equalization features. Equalization grants could be made only to the lowest income states or to low income cities or to both. Alternatively, the tax sharing plan could be designed to minimize the distribution effects as, for example, by limiting the shared portion to a percentage of the revenue raised by the first bracket federal tax rate in each state. An additional modification would call for including the corporation income tax in the plan so as to work that variable into the shared pie.

Option No. 3 would start from the existing federal grant system and work to decentralize it. It is a kind of "rent it and drive it yourself" model. It would use the existing instruments but expand general revenue sharing and the present block grants and form new block grants by consolidating related categorical programs. It might also allow state and local governments to "opt out" of specified categoricals in return for some specified amount of unrestricted funds, as permitted in Canada. The basic aim would be to change the mix so as to generate more fuel efficiency. From the present federal grant system composition of 10% general purpose grants, 10% broad-based grants, and 80% categorical grants, the redesigners would work toward, say, 25-25-50, or 40-20-40, or even 40-40-20. This could strengthen state and local spending priorities without eliminating the federal influence on their choices and might therefore be more acceptable to Congress, insofar as it allows them some continued control, preserves their fingerprints, and maintains the status of the federal government as donor of the funds.

Option No. 4 is a "come along for the ride" model that would work toward incremental reform of the present grant structure. It would improve the administrative efficiency and targeting effectiveness of existing programs, consolidating some in the process and phasing out general revenue sharing. The basic rationale would be that there is a national interest in all state and local spending programs, that different degrees of interest exist at those levels, and that it is the purpose of federal grants to compensate for such localized deficiencies as are caused either by lack of adequate interest or insufficient capacity.

Political reality probably dictates that Washington will avoid any of the models that involve a fundamental shift of authority to the state and local levels unless there is a clear grassroots mandate to that effect. Unfortunately the average citizen understands the impact of government taxes and expenditures on his or her own life but lacks the degree of familiarity with the design and operation of federal grants needed to mount a grassroots reform movement in that area. As long as Washington can take the credit for giving away money, even if that money came from the toil and enterprise of the nation, it will probably do so, particularly when reinforced by interests that stand to gain more by concentrating pressure on Washington than by having to win over voters, bureaucrats, and elected officials in widely scattered states and local jurisdictions. As for the public interest, there is no certainty that it is best served by the levels of government closest to home or even by ballot box legislation, but there are many reasons to doubt that it is well served by a system with such a concentration of fiscal power at the

top that local officials know that Washington holds the key to their success. Some decentralization seems clearly warranted.

While a total separation of powers and responsibilities cannot be expected in a complex society such as ours,

the confusion of lines of authority which the present grant system has exacerbated needs sorting out. Relinquishing enough strings to make local governments more responsive to their citizenry seems a reasonable first step in that process.

## FOOTNOTES

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# **Bare Bones: Putting Flesh on the Skeleton of American Federalism**

**Aaron Wildavsky**

**Survey Research Center  
and  
Department of Political Science  
University of California, Berkeley**

**W**hat is that we hear rattling around in the closet of American government? The bare bones of federal structure. The critics' conception of federalism as a structure without a sinew, bones without connective tissue, has come back to confront us. At long last, the oft-repeated fears that federalism would regress to its Constitutional origins, dust to dust, structure to structure, working out the consequences of formal arrangements unmediated by social ties, are being realized.

If federalism has not been entirely synonymous with American society, a symbol of its diversity and decentralization, it has long been equivalent to American government. Indeed, in popular parlance, whenever the glories or defects of the peculiar American form of government is discussed, federalism is its name. Whatever it is, federalism is American government. When American government appears to be doing well, the cause is found in its federal arrangements. If those arrangements include the separation of powers and checks and balances, are not these also modes of dividing and containing power? If there are two of everything—legislatures, executives, courts, levels of government—is not it wonderful that the competition this creates produces order out of chaos? No, when we like it, this Noah's Ark of ours is a marvelous zoo, the Garden of Eden of modern governments. When things are going badly, and the parliamentary is preferred to the Presidential model, a unitary to a federal form, the blame is placed on federalism. Then there are too many rather than too few governments, confusion instead of cohesion, redundancy instead of rationality, so federalism is found wanting. When, for instance, a President finds a

# **"From its beginnings until this very day, there have been two classic criticisms of the structure of American federalism—it is too strong or too weak."**

malaise in the country, we know he is finding it hard to govern. He has too little, not too much power, too many, not too few competitors, i.e., federalism is failing.

From its beginnings until this very day, there have been two classic criticisms of the structure of American federalism—it is too strong or too weak. Either the structure is a sham (federalism as a front for nationalism) or the structure is stultifying (federalism as an obstacle to effective government).

These criticisms have been countered by two styles of argument—political geometry and political sociology. The geometers take the structural thesis head on, only their geometry is different, non-Euclidian perhaps, so that in their construction parallel lines do meet. They would argue, for example, that federal structure is built into national policymaking so the central government is effectively prevented from subsuming state governments. Or they would say that the diversity of state governments aids implementation of policy by providing a proper variety of responses to local conditions. Or they would argue that federal structure tames conflict by diverting it into many small ones, occurring at different times and in various places. The argument from political sociology, by contrast, simply states that structure need not and does not equal function. Between structure and function, they say, lies society, which both bolsters federalism, by representing social differences within geographic locations, and mitigates its excesses by connecting the Constitutional parts. The institutional form of political sociology was political parties. The tendencies to formal dispersion of power would be met by informal concentration in parties.

The ideological embodiment of political sociology, again the informal underpinning of the doctrine of dual federalism, was patriotism. State patriotism apparently assured state loyalties; and national patriotism, national loyalties. The implicit assumption, which certainly after the Civil War settled by force the question of whether the Constitution was a confederation, was that in times

of crisis (hopefully few and far between) Americanism would override parochialism.

All these perspectives, however, whether structural or social, supportive or critical, centralizing or decentralizing, shared a set of assumptions that have increasingly come under question. As usual, the main assumption was that life would remain unchanged. Government would remain small. For most of American history, the question of federal finance was what to do with surpluses not deficits. Until sometime in the 1960s, fiscal drag, raising too much revenue, was considered the big problem. Governments that used up one-third or more of citizen income or employed one-fifth or more of the people or operated hundreds of programs and bureaus was unthinkable. So was the welfare state. So were modern technology, communications, and mass mobility. Most unimaginable of all, these technical and demographic changes resulted in a fundamental change in the direction of political causality.

Until recently, everyone's model was that citizens

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(alone or in groups) put pressure on government, which then responded well or badly. It was not government that pressured the people but the other way around. Of course, a great leader might manage to rouse people to a pitch of patriotism, but this was a sometime thing, saved for special occasions, like the good family china, lest through overuse its essential fragility lead to a break. No one, it is safe to say, contemplated government setting up institutions to put pressure on it.

Before our eyes, the time that waits for no one destroyed the traditional arguments pro and con about American federalism. So swiftly that we barely caught a glimpse of what was happening as it passed us by, the premises of the debate shifted. In a phrase, plane political geometry became solid. The theory of dual federalism, in which the parts never penetrated except by benefit of Constitutional clergy, was in disarray. So long as the image of the layer cake prevailed, a platonic arrangement if there ever was one, Constitutional lawyers knew they should ask not only what was to be done, but also who was to do it. Parallel play, a space for states, a space for national government, a space for them together, was the neat theory. When Morton Grodzins observed that this parallel plane was really a triangle, a marble instead of a layer cake, there was confusion but not consternation. As Daniel J. Elazar demonstrated, cooperative federalism was the norm virtually from the outset. There remained the good feeling that American pragmatism had apparently triumphed over arid theory. The question of what exactly to call it was, for a time, superseded by calling it good. So long as a few bands of dark were still visible against the white, there was sufficient resolution to say it was something. We could have our federal cake (color me marble!) and eat it, too. But as government grew, and as research became more sophisticated, bands of marble gave way to veins going every which way, so crisscrossed that no one could say what was up or down or who was (simultaneously?) on top or bottom. How could we enjoy federal structure if we did not know what it was? The seemingly arcane disputes about a formula for designating the degree of federalism hid a deeper dilemma.

For the political sociology of federalism fared no better, indeed worse, than the political geometry. After all, there was still the structure—states existed; Senators would only come from states; and Representatives ran in districts within the states or the District of Columbia. But where was the social glue?

The special subject of political sociologists (whatever their departmental affiliation) has been political parties. The decline of parties has not so much left them unemployed as bereft of a rationale for why the unadorned

structure should work as well as some of them supposed. Although national parties were weak by European standards, parties were the only national social support for the institutional structure. If parties did not always do the best, they were supposed to avoid the worst. They alone had an institutional stake in the good name and adequate performance of party officeholders beyond the term of any particular incumbent. Parties did, as their radical critics claimed, organize issues out of as well as into politics.<sup>1</sup> They did mitigate conflict and direct public attention to a narrower range of less extreme alternatives. In the interests of winning of office, they did encourage moderate candidates. Since radical parties have not appeared to organize politics around their own issues, and moderate parties no longer mediated to make coherent presentations to voters, the question of how the function of making politics understandable would be carried out remained unresolved.

Instead of a minimum of political articulation, there is a maximum of public policy. The spheres of policy sectors, such as housing and transportation, contain specialists at local, state, and national levels of government, including legislative committees, as well as interest groups, universities, and think tanks. They all know each other. But who, the question is, knows them? They unify policy in their own sectors. But who, if anyone, unifies the sectors? Thus, the old and persistent critique of federal structure as discombobulated—parochial, narrow, self-interested, uncoordinated—comes to the fore. The claim is made that single-issue special interest groups are running (or is it ruining?) the country. The cry goes out that “veto groups” are preventing anyone, including the last great hope, the President, from running the country. A federal system that used to glory in its diversity, is now criticized for lack of unity; openness to the outside becomes confusion; competition becomes consternation.

What has happened to make the old-time glory of the American political system—its openness, its variety, its very unity in diversity—appear to be its principle defect? Before jumping to conclusions, it is well to remind ourselves of what the argument over federalism used to be about. The old argument was that federalism did not work well because it created numerous veto points that frustrated majority will. By the time the impetus for change gathered sufficient steam to mobilize support in all the necessary places, it had exhausted its reformest ardor. And even if there were policy, it had been so compromised in passage and so exhausted in administration that the confused child of implementation hardly resembled the sturdy parents of conception. The opposing position was that the modern antifederalists mistook opportunities for obstacles. Their veto points, profed-

eralists argued, were actually, in Grodzins' term, "multiple cracks" enhancing access to the political process. Federalism facilitated majority building out of minority interests. Federalism, therefore, meant more not less legislation.

Who was right? Neither and both. There were more vetoes of proposals but there was actually more legislation. Compromises cumulated almost always in the direction of larger size. The more big programs, it turned out, the greater the incoherence among them. Both sides had been arguing about the quantities of good legislation; both were swamped with quantities—period.

The result, to recast the argument about "bare bones," is federal structure without federalism. The existence of federal structure enhances entrepreneurship in program development. Every officeholder and bureaucrat, wherever situated, is encouraged to catch up with and surpass every other. At the same time, revenue sharing to the states guarantees that the question of what states would do if they had to raise their own money does not come up. Thus, federalism as a doctrine for assigning functions to areal entities, or as a process of diversification through competition, goes by the boards. Competition for the same subsidies in substantive spheres of policy—the "picket fence" federalism about which Deil S. Wright has written—increases uniformity. In this "mishmash" which I call "fruit cake federalism" (that is, being bogged down in governmental plums and puddings), federal structure serves to multiply the offices and opportunities for increasing the quantity but not the quality of public policy.

Slowly the suspicion dawns that the old divisions may not be the new ones. As the states, the cities, and the "feds" fight over policies and payments, the people observe that they all grow larger. Perhaps what they have in common as governments is more important than what separates them. Perhaps the proper division is (on the left) citizens versus government or (on the right) the public versus the private sector. The growth of governments rather than the growth of which government thus becomes a major public issue.

The first clue to the appearance of a fruit cake federalism is the difficulty everyone has in deciding whether states, localities, or the "feds" have gained or lost power vis-a-vis each other in the era of big government. All possible answers, it turns out, are true in regard to some policies at some times but not in regard to others at other times. Can the federal government do without the states or vice versa? Not really. Will states and localities refuse federal funds? Hardly likely. Will the federal government be able to cut the states out (unless they want to give up on activity)? No. A lot of noise is created by disputes

over the (lack of) uniformity of regulations. In the end, however, even as the participants wrestle, it proves impossible to separate them. And where they began the first round as lightweights, in the final round they are heavyweights. Perhaps, then, their relationship is not competitive but symbiotic. If they live off of one another, the pieces of the puzzle would fit together: instead of more for one being less for another, as a static cross section of time might suggest, an historical, developmental model would show that more for one at hour "x" leads to more for both at hour "y."

Feelings about government *per se* begin to dominate public discussion. On one side, procedures for making public policy—from nominating Presidential candidates to holding open meetings—appear to be more and more democratic. Equality, majority rule, due process, representation of practically everyone, all appear to have increased. Why, then, if procedures are purer, we wonder, are outcomes unsatisfactory? If sheer participation in primaries is the criterion, for instance, then the Presidential nominating process of 1980 should have led to universal satisfaction. Could there be a connection between pure procedures and what appear to be unsatisfactory structures for making decisions?

The procedural changes of the 1960s and 1970s seek to remove or weaken intermediaries between citizen and government—parties, unions, corporations, even families. If these and other forms of intermediation were an essential component of American government in general and federal structure in particular, we would begin to understand why the difficulties of one appear indistinguishable from the other.

Single-issue interest groups, for instance, have been around a long, long time. Perhaps it is not their appearance but the disappearance of national parties able to confound and contain them that make the difference. By striving so strongly to separate structure from function, by encouraging federal structures to live pure lives, unsullied by party or other political mediators unmentioned in the Constitution, essential social connections have been attenuated. Federal bones rub against each other in the governmental closet. The skeleton scares us. Remedial action is undertaken. The center does not hold; shore it up. The periphery is weak; build it up. As government grows larger, however, the center seems to disappear. The greater the centralization, the less anyone seems to be in control. The periphery apes the center; it too grows larger; it also improves its human and technical capabilities. The more competent it becomes, however, the less competent it appears as the tasks it has undertaken grow faster than its ability to cope with them.

This growing discrepancy between resources and ob-

## **"... we have created a governmental system that is less reliable than any of its parts."**

jectives, between the requirements for control of policy generated by big government and its capacity to cope, explains an apparent anomaly in American public life. At all levels of government, especially among states and localities, government gets better. It is marginally more capable than it was and the people who run it are better than they used to be. How can it be, then, that government is getting smarter and public policy dumber? Because, my answer would be, we have created a governmental system that is less reliable than any of its parts. Taken one by one, most of its programs make some sort of sense; taken together, each appears to exacerbate the evils of the others.

Just as two negatives may make a positive, too many public goods add up to a public bad. No better illustration of how the whole can be worse than the parts can be found than the requirements inserted into every federal grant-in-aid program of a series of other objectives, from access for the handicapped to environmental impact statements. There are over 30 such sets of objectives, all of which, in and of themselves, are desirable.<sup>2</sup> Roughly speaking, each set of objectives contains several (say three to six) subobjectives. Our program managers, therefore, have to consider something like 150 to 300 objectives for each program in addition to whatever leading objectives the program in question is supposed to be about. No wonder trying to maximize results subject to 150 to 300 constraints has proven elusive!

That we need to strengthen the interstices, sinew as well as bone, articulation as well as representation, is part of my thesis. Although there is yet time to do (and undo) things that will strengthen political parties, no one seems disposed to do them. Yet, growing gargantuan governments seem more like the problem than the solution. While we wait for social developments that may never come (will party lightning strike twice?), we must work with what we have: the size, the structure, and the relationship of governments.

It may be that the size of all governments is more important than what they do. If that is so, students of federalism should look not only at the balance between levels of government but, more importantly today, at the

relative proportions of the public and private sectors. If federalism is institutionalized competition, increasing rather than limiting citizen choice among service providers is its contemporary key. By sponsoring service providers of all kinds, by separating political demand from public supply of services, competition among governments may be enhanced. Citizens may be better served if we ask how to improve their choices rather than if we worry over which level of big government should monopolize a service.

Once we substitute "American government" for "federalism," we know where we are. The confusion about federalism is a complaint about American government.<sup>3</sup> Failing to understand or approve of the one implies the same about the other. Disentangling the two is like asking whether the egg of governmental performance comes before or after the chicken of federal structure. We shall be better informed if we ask what has happened to American government rather than to call into question its federal structure.

## **DOING IT TO OURSELVES, OR WHY GOVERNMENT GROWS**

Why does government at all levels keep growing and what are the consequences of this increasing size for public policy?<sup>4</sup> Explaining the growth of government in terms of demand for policy certainly explains why it increases absolutely, but does little to explain why it increases relative to the private sector. There are always things people want from government. These wants are potentially infinite. If defense goes up in one period and social welfare in another, we know something about what was politically popular at particular periods but we know nothing about why total spending was subject to so little limitation. From the turn of the century until today, spending at all levels grew from around 6% to approximately 33% of gross national product. Comparative measures will hardly suffice to place in perspective the current \$200 billion in national tax expenditures, \$450 billion in loan guarantees, \$100 billion in direct loans, and \$30 billion in off-budget items, quite apart from similar state spending. Although someone somewhere evidently approves of the elements of this spending, it is not clear that anyone approves of these totals. Why has resistance to taxation not resulted in lower limits? Why has deficit spending (or the equivalent in end runs around state and local limits for New York City, Chicago, etc.) been allowed to loom so large? Why does government grow so much faster than the economy? Why, in a word, have demands been dealt with by addition instead of (at least some) subtraction?

Perhaps the answer is simpler than anyone suggests: Working their will through democratic procedures, people are doing and getting what they want. Conspiracy theories—the bureaucrats or the politicians are doing it to us—fail to explain why we, the people, do not stop them.

A desire to limit spending, of course, does not necessarily mean that citizens or governments dislike all or most or even any individual items of expenditure. They may well like each and every one considered separately and yet dislike the total to which their desires add up. The people's preferences on totals may well be at variance with their preferences on individual programs. Indeed, so far as one can judge from opinion polls, this is precisely the state of the public mind: Most expenditures are approved but total spending is disapproved.

We the people (including citizens, politicians, and civil servants) are doing this to ourselves. Expenditure increase is a cooperative game. We do not like it—who said that people necessarily like what they do to themselves—but we do it. How? Why?

Citizens like some of those programs, indeed they do. Not all, of course, but enough to want to see them go up. Unfortunately, the only way to do that is to push everything up, partly because that is the price of support from other citizens—you provide the scratch for my program and I will provide the scratch for yours—partly because that is the necessary exchange with politicians who support our programs and others as well, partly because there is usually no way to express a position on total spending more than others; they want their priorities to prevail. Among these priorities is a preference for lower expenditure. Only the existence of the referendum route in California permitted voters to say that real estate taxes were too high without simultaneously having to repudiate their political parties or their representatives in the state legislature whom they may still have preferred on other grounds. Public policy requires not only an aim but an avenue of redress. Why do citizens, politicians, and bureaucrats, for that matter, find it so difficult to bring their preferences for lower total spending in line with their preferences for higher spending on individual items?

The most obvious and direct mode of expenditure limitation is acting intelligently on major items of expenditure. If you and I believe that expenditures are too high, the argument goes, we should say specifically which ones should be cut and by how much. If you want to cut expenditures, you must cut programs. Simply stated, these words have much to commend them. I know, I have used them myself.<sup>5</sup> Talking about improving efficiency, reducing overlap or duplication, perfect-

ing procedures, may be valuable as far as it goes, yet ordinarily they do not involve substantial sums that quickly cumulate into large savings. You only fool yourself if you think nibbling at the edges is a substitute for the main meal. I do not regret having gone along with this argument on micro matters, but analyzing individual items is misleading as a general guide to limiting expenditures.

For one thing, that is what we have always done; “item by item” got us where we are today. There must be something wrong with it or we would not want to change. For another, the lack of a limit, especially since the decline of the balanced budget ideology, means that items need not compete with one another. Comparison of increments at the margins might indeed be intelligent if it ever happened. But we know better. What really happens is that each item is not compared but added to the others. How might we substitute some subtraction for all the addition?

Who would take the lead in reducing expenditures? Each sector of policy is concerned with its own internal development. More money makes it easier to settle internal quarrels. Those who believe more is better for their agency or their clientele come to this position naturally. Those who favor radical restructuring of programs soon discover that this is exceedingly difficult to do without sweetening the pie. The price of policy change is program expansion. All internal incentives work to raise expenditures.

Suppose you and I agree to cut our preferred programs in the common interest. What good would that do unless everyone else does the same? If “our” loss is “their” gain, why should we play this game?

The political process is biased against limiting spending item by item. Were substantial spending desired by strong and lasting majorities, the rules of the political game permit this preference to be registered in budgetary decisions. Spending is simple. Even in the face of indifference, letting things go on as they are automatically leads to increases. But should there be an opposite opinion, reflecting a desire to slow down spending, it does not have an equal opportunity to manifest itself in the budget. There is now no way for slow spenders to get together to enforce equal sacrifice so that the general rule becomes part and parcel of the calculus involved in individual spending decisions. To increase spending, no coordination is necessary; to decrease it, an enormous amount. Given these built-in advantages, why has higher spending not been evident or dominant until the 1960s?

## DECLINE OF MADISONIAN THEORY

In what he called the theory of a “compound repub-

lic," James Madison expressed his hope and belief that the large geographic size of the country, as well as the variety of its peoples, would retard the formation of factions (which we would call pressure groups) acting adversely to the interests of others. It would, he thought, be too difficult for them to organize, confer, and act unless they were numerous and until they had secured widespread agreement. Organized interests would be few in number but large in size, reflecting in the very process of formation a general interest likely to be in accord with a shared view of justice. In his own words:

The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interest, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.<sup>6</sup>

Modern technology has undermined these Madisonian premises. It is far easier and cheaper for people to get together than ever he could have imagined. Groups aiming at government are more numerous and specialized than they were, and this process of differentiation shows no signs of stopping. All around the western world, articulation of interest increases with size of population, frequency of interaction, and growth of government, which makes it worthwhile to get together.

The Madisonian world, it seems, has gone topsy-turvy. The factions defined as "... activated by some common interest . . . adverse to the rights of other citizens or to the permanent and aggregate interests of the community," have become sectors of policy.<sup>7</sup> And, so long as there is more for both, states do not counter but are coopted by them.

The decreasing costs of access to government have been accompanied by an increasing sense of the virtue

of government spending. Until the 1960s in the United States, budget balance was a prevailing ideology. If the budget was left out of balance, bad things would happen to the economy. An aroused electorate, what is worse, would rise up and wreak vengeance against the politicians who perpetrated this horror. No longer. For the balanced budget was busted by the rival ideology of the Keynesian full-employment surplus. At long last politicians were told what they always wanted to hear—higher spending was good in and of itself. It was not the budget but the economy that was to be balanced at a level (no one knew how high) of full employment. Of course, spending was to decline after full employment was reached. But that never happened. The political system was good at going up but bad at coming down.

Now none of this meant that every new program was accepted. On the contrary, many more were rejected than accepted. Once the governmental gold rush was on, however, so many new programs were worth initiating that the end result was much bigger government.

If modern means of communication were unanticipated, the reversal of political causality, comparable perhaps to redirecting magnetism, was not even dreamed about.<sup>8</sup> Factions exerted force on government, not the other way around. Government might resist but it could on no account create factions. These might, in Madison's famous phrases, be sown in the nature of man, but not at the behest of government. Yet, this is exactly what happens when you get big government. The more government does for or to industry and individuals the more they have to do to it. Instead of imagining industry instigating action by government, for instance, we now know that often government acts and industry reacts, its organization being a response to an interest government has, by its behavior, newly created. So too do other levels of government organize after they observe incentives created by the central government.<sup>9</sup> Indeed, government now pays citizens to organize, lawyers to sue, and politicians to run for office. Soon enough, if current trends continue, government will become self-contained, generating (apparently spontaneously) the forces to which it responds.

The larger government grows, the more policies be-

**"In an era of big government, policies increasingly become their own causes."**

come their own causes. The more government does, the more it needs to fix what it does. The larger government gets, the less it responds to events in society and the more it reacts to the consequences of its past policies. In an era of big government, policies increasingly become their own causes.

Think of public programs as spheres existing in policy spaces. When these spaces are unoccupied, new programs have only their own consequences to consider. As these programs grow larger and are joined by others, they bounce off one another. The larger the number of big programs, therefore, the more they bang into others, the more varied and indirect their consequences become. The larger government grows, therefore, the less its operators understand the consequences of their actions. What can they do? They can grow smaller so as to be smarter or they can grow larger so as to cover over their errors.

If evolution were accompanied by devolution, the size of problems might be reduced to an intelligible scope. And if evolution took place in the midst of competition, the politically or economically fittest might survive, leading to public approval. Instead, what you see is what you get: the Dinsosa Syndrome operates so that every solution increases the size of programs without simultaneously increasing the intelligence of those who design and administer programs. And, instead of being part of the solution, state spending soars symbiotically with national spending to become part of the problem.

## **SYMBIOSIS INSTEAD OF CONFLICT, OR WHY STATES INCREASE SPENDING**

I have been arguing that policies feed on each other; the more there are, the more there have to be in order to cope with new circumstances, effects on other policies, and unexpected consequences. New legislative amendments and new administrative regulations become a growth industry as each makes work for the others. The policy sectors to which I have been alluding include not only the bureaucracies (federal, state, county, and city) that necessarily enlarge with the proliferation of programs as well as the interest groups and collective “peak” associations that lobby for whole industries, but also the burgeoning Congressional staffs on legislative committees, appropriations committees, and the new House and Senate budget committees as well as the Congressional Budget Office. Bureaucracies generate corrections to old programs and ideas for new ones; lobbyists add their own. Congressional staffs make mod-

ifications as well as feed in ideas from policy communities outside, thus assuring a steady stream of initiatives. What part do state and localities play in spending?

Looked at cross-sectionally, at a moment in time, local-state-federal financial relations are a mixed-motive game. Each player wants the other to pay, yet each needs the other to implement the program. From time to time, one side or another appears to be in a better or worse position. In the 1950s and early 1960s, for example, state and local revenue appeared low in regard to federal revenue. Indeed, the surplus in the Social Security trust funds, the increase in economic growth that multiplied the tax take, the running down of defense in relation to GNP, all worked to the advantage of the national government. A new term—fiscal drag—came into prominence. It purported to explain that the tax receipts of the central government grew so fast that this excess of revenue exerted a restraining influence on economic growth. In order to get more spending into the economy, lower tax rates and revenue sharing with states were advocated. Switching, for contrast, to the mid-1970s, it appeared that states were coming into surpluses while the national government was in deficit. Thus, state assumption of certain costs was advocated. In between time, one side would steal a march on the other as when certain states learned how to exploit social services payments. Thus, the picture portrayed is one of a semicooperative and semiantagonistic posture, varying, to the frustration of neat categorizers, with the policy area, the time, the technology, and other factors too numerous to mention.

Looked at historically over time, however, these federal-state-local financial relations appear mutually supportive, as if they were part of a positive-sum game. Once the perturbations of particular times are taken out, the fluctuation smoothed, it is upward and onward. All levels end up taxing and spending more. Why is the moving trend over time so different from a snapshot at one time?

Because each financial “victory” is embedded as a base for future spending, and each “defeat” becomes a rationale to catch up, competition over time results in higher spending by everyone. While the players push each other down, it appears, they also egg one another on. The mechanisms are well known; they have merely not been directed at the question of spending totals.

If imitation is the sincerest form of flattery, symbiosis (living off of one another) is superior. Suppose a state finds that federal matching funds distort its finances. The state has gotten into things which, while they may be desirable in and of themselves, lead it to spend more than it otherwise would. By the time this becomes apparent, a clientele has organized around the program.

Entitlements or at least expectations have been created. One always unpopular alternative is to raise taxes, but perhaps a "nuisance" tax will do. Perhaps not. Other unrelated activities may be financed by loans or loan guarantees, thus making room. Or members of Congress may seek a larger federal share. Perhaps revenue sharing will fill the gap. Soon that is also committed. Other programs and other devices come into play. Two things have happened: State spending is higher and so is federal spending.

At the national level, the plight of the states receives attention. Formulas are adjusted, deficits increased, loans raised, and tax rebates given. By and by the national government is hurting. It seeks to pass costs back on to the states. That is not easy to do. The "fiscal dividend" from the end of a war or inflated revenues is absorbed. A special tax, like "windfall" profits on oil, saves the day. Each disaster becomes a rationale to come to the aid of the other and to shift costs across levels. Two things have happened: The "feds" pay more and so do the states.

Sometimes states are in good repute—closer to the people, innovative laboratories, decentralized—and sometimes the national government—talented, consistent, wealthy. Sometimes both are in bad repute. Suppose the national government is suspected of being too powerful. Imagine, also, that the effects of its programs leave a little to be desired. A brilliant idea occurs: Why not have the states take the heat of implementation while the "feds" do the policy design? The federal government does not look as if it is growing quite so fast and the state governments look more robust. Problems are solved by dividing functions but also by adding expenditures.

Budgeting by addition is the norm in state governments. Although they may have a budget balancing requirement, this is easily evaded. And as inflation pushes people into higher brackets, they get more money without raising rates. Addition also applies in intergovernmental relations. As George F. Break puts it:

Although federal grant-making may appear to have progressed from specific-purpose funding to broad-gauge functional aid to general sharing of revenue, the fact is that each successive form has been added to the existing types of intergovernmental assistance.<sup>10</sup>

Evidently, it is possible for some laws and regulations to pass through the supposedly impenetrable maze of government. Which ones? A good clue is provided by the noteworthy number of so-called "accidental policies" that turn out to have much larger cost consequences than anticipated.<sup>11</sup> Why does the opposite error—much

lower costs—not occur? The answer is that when underpayments are discovered, something is done about them. But when overspending occurs, that is accepted as a fact of life. Of course, miscalculation happens. It is what happens to miscalculation that matters. It is not error-making, which is inevitable, but error recognition and correction that counts. Treating overspending as an act of God or, the budgetary equivalent, "controllable" expenditures, is done accidentally on purpose. Since spending *per se* is considered good, and since no expenditure need be subtracted from another, accidents become purposes.

Is federalism, then, also an accident on purpose? Is the current disarray in federalism the result of social changes that happen whether we want them to or not or a product of intention? Naturally, the unsatisfactory answer is "a bit of both."

## **IS FEDERALISM WEAK BECAUSE PARTIES ARE WEAK OR VICE VERSA?**

In ancient times, the ability to name an object or a person was equivalent to controlling it or him. The Bible contains numerous episodes of Jacob or Moses or Manoa trying to discover the name of God and being told, one way or another, that this was improper. I take it that the confusion and concern over what to call federalism is a reflection of a deeper anxiety over what it is becoming. If federalism is out of control, so is our government, and so are we.

Brilliant studies of the definitions and metaphors used to characterize federalism in the past as well as the present, however, suggest that the difficulty may be inseparable from the enterprise. A recent author finds 267 separable designations.<sup>12</sup>

The most visible measure of the vitality of federalism was the party system. If parties (almost always modified by the word "decentralized") were in good shape, so was the federal system. And as long as they existed together, the question of causality need never be asked, or, at least, answered. Did strong parties emerge from a strong federal structure or did strong parties create or maintain a strong federal structure? A look at how we used to think about these things before government grew so fast it appeared incomprehensible, may be rewarding.

In the mid-1960s, I collected a number of the best pieces on federalism in order to give students the advantage of a convergence of thought that had emerged in the literature. This convergence could be described in a single word—party. William Riker put the case squarely:

The federal relationship is centralized according to the degree to which the parties organized to operate the central government control the parties organized to operate the constituent governments. This amounts to the assertion that the proximate cause of variations in the degree of centralization (or peripheralization) in the Constitutional structure of a federalism is the variation in degree of party centralization.<sup>13</sup>

Nevertheless, like other writers on federalism, Riker inserts a "kicker": "It is theoretically possible but practically difficult to measure the structure of the party system."<sup>14</sup> If we cannot measure the structure of the party system, then how do we calibrate it with the structure of the federal system?

Morton Grodzins begins with the same confident assertion:

The nature of American political parties accounts in largest part for the nature of the American governmental system. The specific point is that the parties are responsible for both the existence and form of the considerable measure of decentralization that exists in the United States.<sup>15</sup>

Almost as soon as that sentence has expired, however, Grodzins begins to equivocate. Life is complicated. Demands for action by national government may be attributed on occasion to failure by parties within states to offer appropriate policies. "Thus, even with respect to decentralization, the consequences of parties for government are not simple and do not always move in one direction." Causality is complex. "In the first place," Grodzins continues, "it can easily be shown that the causal relationship between party and government is a reciprocal one."<sup>16</sup> Just as parties may shore up state structure, so may local control over nominations or the electoral college system, which are part of the structure of government, "cause' decentralized government."<sup>17</sup> Although parties aid in achieving a decentralized government, "... governmental (here formal constitutional) factors are partially responsible for the manner in which parties are structured. So government 'causes' the form of party; party 'causes' the form of government."<sup>18</sup> With so many factors potentially contributing to decentralized government, such as local attachments, geographic scope and the wealth of the nation, which makes redundancy affordable, party can be only one of a number of causes.

By now we are not surprised to find a strong initial

statement on the subject endlessly modified. No one does this with greater sophistication than David Truman. He says in one place that:

In a federal system, decentralization and lack of cohesion in the party system are based on the structural fact of federalism. . . . Three factors derived from the existence of the states as separate and largely self-sustaining power centers—channeling the claims of local socio-economic interest groups, inviting their use as leverage against federal action by interests which are only tactically local, and providing for competing and frequently incompatible nuclei of decentralized intraparty conflict—. . . go a long way toward indicating that there is something inherent in federalism which induces decentralization and lack of coherence in a party system.<sup>19</sup>

Soon enough we discover that ". . . the interdependence of constitutional forms and types of political party is a fact, obvious enough in its simple statement but complex and baffling when the observer undertakes to explain these interrelations as they bear upon past changes in the political life of a people or to anticipate the form and direction of developments in the future."<sup>20</sup> In contexts characterized by multiple and reciprocal causation, where "the cast has altered the mold," we learn that "[a] search for origins and for trends is thus bedeviled by the tendency to treat in linear, cause-and-effect terms a relationship which is circular and elusive."<sup>21</sup>

So concerned is he with complexity, that Truman refuses to speak of the "party system" saying that would prejudge the question of whether there is one or not. A dive into the watery depth of federalism leaves everyone gasping for air. Truman writes that:

The structural scheme of parties in the American federalism thus displays a confusing complexity, both in its formal aspects and in its informal operation. The system, to the extent that it can be given the name, is composed of a tremendous variety of elements imperfectly and rather unpredictably articulated, capable of showing a remarkable degree of separatism and autonomy. Moreover, the degree of articulation which exists to make the system is of a peculiar sort. The relationships between the more obscure and the more prominent elements in the system show a defensive, unilateral quality. In areas where general elections mean anything, it is a rare local or state party

unit which, personal and factional feuds aside, is indifferent to the vote-pulling power of those occupying the principal positions on the ticket. But the concern is in a sense parasitic, to derive support from the leading figure on the ticket rather than to supply it.<sup>22</sup>

Yet, there are one or two things to which we can grab hold. Up through the 1950s, at least, parties still performed the distinctive function of nominating candidates. Even as Presidential campaigns became more centralized, "the power over nominations remains decentralized."<sup>23</sup> In understanding federalism, however, answers only lead to further questions. "The American party system," Truman continues:

thus tends to be characterized by decentralization of power with respect to its most crucial function, by structural confederation, and by a lack of coherence in matters of major policy. What have the facts of federalism to do with this? To what extent is this an inescapable consequence of the federal system itself?<sup>24</sup>

To this question, however, Truman has an answer, which soon enough turns into its own question:

The basic political fact of federalism is that it creates separate, self-sustaining centers of power, privilege, and profit which may be sought and defended as desirable in themselves, as means of leverage upon elements in the political structure above and below, and as bases from which individuals may move to places of greater influence and prestige in and out of government. . .<sup>25</sup>

Truman concludes that:

In a federal system decentralization and lack of cohesion in the party system are based on the structural fact of federalism, but, it has been argued here, the degree to which these become the dominant characteristics of the distribution of power within the political parties is a function of a variety of other governmental and social factors which are independent of the federal structure or are merely supportive of its tendencies.<sup>26</sup>

How weak or strong that "irreducible minimum" is or becomes compared to social forces cannot be ascertained.

Although federal structure alone encourages "an irreducible minimum of decentralization and disruption in

## "What has happened to our political parties that they have ceased cementing the American political system?"

the party system," Truman tells us other factors in society must also be taken into account.<sup>27</sup> While it is easy to show that federalism has some sort of an influence on the party system, Truman concludes, "The important question of how much effect it has remains unanswered and to a precise degree unanswerable."<sup>28</sup>

I have taken the reader through this maze of quotations in order to show that in the study of federalism, every author takes two steps backwards for every step forward. They all agree that party is the most important institutional force sustaining federalism, but how strong it is or why it is strong or how to appraise the various factors contributing to or detracting from its strength, no one knows.

Party stands for the social support, the "political sociology" I called it earlier, undergirding federal structure. When we ask how parties contribute to federalism or how federal structure supports parties, we are actually asking: (a) whether there is social support for federalism, and/or (b) whether there is anything more to federalism than the bare bones of its structure? If the answer to the first question is "no," so is the second. No wonder students of the subject have become worry warts. What, then, will become of federalism if it has lost social support but retained its formal structure?

Putting the question this way, as if federalism were at the mercy of unknown but unfriendly forces, entirely apart from human volition, is like going to the Delphic Oracle for a clear answer. In an ultimate sense, there must be more forces at work in the world than anyone can comprehend. Assuming that we citizens had something to do with it, however, we can ask what the people have done to their parties and whether these actions, of which there are many, may not have something to do with their dissatisfaction.

What has happened to our political parties that they have ceased cementing the American political system? Better still, we might ask not what our parties have done to us, since we now allow them to do so little, but what we have done to them. In words of few syllables, we

have deliberately and by design separated parties from society.<sup>29</sup> In every way we could think of, we have cut parties off from social support. First and foremost, direct democracy through primaries has taken the nominating function, everywhere regarded as the primary purpose of parties, away from party leaders. Why work in a party year-in and year-out if one has little or no say in who will be nominated? Expression by independent political entrepreneurs, attracting a temporary array of supporters replaces deliberation by party leaders. Discussion in party caucuses and conventions among people who know the candidates is replaced by staged media events or citizens voting in primaries who do not know one another, who do not know citizens in other states, and who certainly do not know the candidates. Caucuses are replaced by "cash register" primaries, ringing up the results as if they were untouched by human hands. A sense of place among people rooted in local party affairs and connected through them to national candidates gives way to a sense of frustration at not knowing enough about the candidates and not, through a string of primaries, being able to keep track of them.

Campaign finance laws have cut campaigns off from their contributors. The other side of the coin of downgrading financial "fat cats" is that there is no one who contributes enough to have a say. Instead of a constituency of contributors to add to other constituencies of accountability, there is another kind of specialist—the expert in campaign law and accounting, whose advice must be heeded for fear of not getting on the ballot or even going to jail. Something in society has been traded in for nothing.

All of us have noticed that campaign buttons and stickers are disappearing along with neighborhood headquarters run by neighborhood people. For this the financial restrictions are partly responsible, as the only way to reach people is to use the limited funds for television, radio, and other public media.

When we get to the primaries themselves, we discover that local notables who might be known by voters disappear. Their names are not on most ballots, only the candidates. The selection of delegates, moreover, is dictated by national rules on quotas for this or that group so that voters can have but little idea of why they are selected. The formulas for counting votes, moreover, have become so complicated that it would be difficult for any voter to calculate how his or her vote affected the outcome.

It may well be true, of course, as candidate Jimmy Carter claimed in 1976, that he owed no obligations to anyone. By the same token, it was also true that no one owed anything to him. When he got into trouble, there

was a paucity of defenders. When he needed advice outside his own circle, there were few party leaders on whom he could rely, just as there were few on whom he was dependent.

Like other Presidents, to be sure, Carter could set up a White House office for Governors and mayors. But, under the guise of protecting pure local government from corrupting contact with (shudder!) national party politics, their elections have almost entirely been switched to non-Presidential election years. So they all have less reason to guide and constrain each other. What price purity?

There is no need to ask why parties have lost their social roots, since it is the purpose of public policy and national party rules to do just that. Were there states determined to do otherwise, they would be prohibited from doing so, at least in the Democratic party, by the enforcement of national rules. The federal principle, insofar as it relies on national parties based on independent territorial units, no longer exists. But the federal structure of government still survives. Because federal principles no longer infuse national parties, restraining, by the necessity of compromise, state ambition, but insisting upon state independence, the task of defending what used to be called states' rights is left to Congress. The result, as one might expect, is unadulterated state interest without the necessity of consulting national parties with a national constituency. Thus, nationalization of parties leads to sectionalization of policy. Nowhere does sectionalism show its face more clearly than in the efforts to assure that each state or region receives benefits in proportion to the taxes it pays.

## **REGIONAL DISPARITIES AS WELFARE FOR POLITICIANS<sup>30</sup>**

Avoiding the adverse impact of federal policy on regions takes its place with environmental, urban, inflation, employment, and a host of other "impact" statements designed to insure against damage to one or another basic value. Singly considered they were manageable; our main value must remain constant, they say, while other values are altered to suit it. But when virtually all values become basic, the country is faced with the prospect of a policy equation composed of all constants and no variables. This is a formula for immobility. The only way of protecting everyone equally against risk is not to do anything at all.

Now most of the "decisions" that affect our lives are not decisions at all, but rather the results (or resultants as I shall call them) of other choices made at various times and places, often with different purposes in mind. No one directly decides the distribution of income or the

size of families. Both outcomes are results of a wide variety of private and public choices. Converting a resultant into a decision, which is what happened when the level of unemployment became a governmental responsibility, is fraught with momentous consequences. The type and intensity of social conflict, the scope and depth of governmental involvement, and more depend on the agenda of politics—what is decided affects who is interested and how hard they struggle. The larger the number and the more fundamental the nature of direct decisions, of course, the greater the danger of government overload and social suspicion as winners and losers become evident to everyone. So why, in view of the obvious dangers, is there so strong a movement for confronting case by case the regional losses and gains of public policies?

The clientele for these concerns is not the ordinary citizen, who knows little and could not care less, but state and local officials whose life is made easier or harder by the distribution of federal largesse. In a word, the growth of government has created a constituency of, by, and for government. Since the cooperation of local officeholders is helpful in mobilizing support during elections and channeling support in between, regional patriotism pays off for national politicians.

Regionalism steps in where parties fear to tread. The decline of the major political parties leaves a void in the structure of political conflict that may be filled by regional caucuses. Soon they discover their region is well off in certain respects and not in others. What to do? Arranging trade-offs from one program to another is difficult and likely to be misunderstood: Why is welfare arranged to make up for transportation or *vice versa*? Rewriting each program to obtain equal regional expenditures is cumbersome, departing as it does from whatever substantive merit a proposed policy is supposed to have. The clue is that equality is not pursued because it is desirable but because it is doable, for then official constituencies can be shown that their Congressmen are working for them.

Since there were states in America before there was a nation, all federal officeholders either have a regional base or are selected in part on a regional basis. The structure of conflict along regional lines has occurred when economic development was the major issue, at the beginning and end of the 19th century, and in the middle

## **“Regionalism steps in where parties fear to tread.”**

as well, because slavery had a geographic base. Today, it is the uneven rates of development among our people (often more pronounced within regions, even localities) rather than between them, that is cause for concern. A *finding of regional equality in expenditure, therefore, would signal failure in helping those most in need*. This fixation on aggregate measures is likely to leave us as a people equal in only those things that can be shared out equally, that is, in everything uninteresting and nothing that matters. If the federal government treats New York City equally, for example, it will get very little help indeed.

One wonders whether the welfare state, by making political leadership into social workers, has promoted a regionalism in which politicians can line up for their share just like everyone else. Not quite everyone who seeks to redistribute federal monies on a regional basis is passionately in love with the public policies whose benefits they wish to shower ever more equally over their constituents. Not at all. On the contrary, were politicians to decide that the policies are pretty much worthless, but that they cannot be terminated, the obvious conclusion is for regions to get as much as they can and to pay as little as possible.

Hence comes the concern with what a state or a region gets back from the “feds” compared to what it gives in taxes. Here we have a hidden attack on the welfare state: What is being said (subliminally but sharply) is that a locality loses when it exchanges its tax dollars (that generate higher paying jobs) for lower paying government jobs, whether these are called welfare or by another name. Should aligning the northeast and the midwest against the “sunbelt” states lead the losers to desert the coalition, the south being central to the survival of welfare legislation, only a few crocodile tears would be shed. Supporters of welfare state programs still may be mollified as they observe their members of Congress battling for their fair share of whatever is going. For the politically mismatched, moreover, who need a noncontroversial connection with their opponents—liberal politicians with conservative constituencies and *vice versa*—regionalism is its own reward.

Concern with the distribution of federal resources on a regional basis is an example *par excellence* of policies becoming their own causes. Originally, the uneven economic development of regions led to efforts, especially aimed at the south, to aid the worst off. Today the debate is not about inequalities in society but in policies, many of which were introduced precisely in order to provide better treatment for poorer areas. Since one would expect (by random perturbation as well as by design in a federal system) some policies to favor some regions and other

policies to favor different ones, it might be thought that the various forces would even out over time. And, as far as anyone knows, in a highly interdependent and strongly interactive federal system, where the input of one element is difficult to distinguish from the output of another, that is roughly how things turn out. But the doctrine that "if it ain't broke, don't fix it!" has fallen into disuse.

In his latest effort to show how New York State has been shortchanged, Sen. Daniel Patrick Moynihan lets the cat out of the bag.<sup>31</sup> His favorite state, it turns out, gets more of some things and less of others, with the totals, as usual, murky. The "glass darkly" through which we all look hardly lets in any light. But enough. The Senator observes that New York gets a lot of "soft" welfare money to support people who are not working but little "hard" money that creates or provides jobs. He may be right in believing that big government is a bad bargain for the good people of New York State, but that is not because they do not get their fair share of funds, but because they gain welfare and lose jobs. This is a quarrel with current conceptions of the welfare state masquerading as nation-state fiscal equality.

At a time when social processes are distrusted and only conscious control manifesting good intentions is a sure sign of virtue, calculating regional disparities, with the consequent "fine tuning" of legislation having regional impact, leading to recalibration of everything and change in nothing, appears obligatory. Regional disparities bid fair to become the WPA of the 1980s. The only possible basis for agreement that everyone has been treated fairly is not less for some but more for all. Thus, regionalism may reward politicians, but it has no payoff for citizens. A lot more than "party bosses" has been lost by severing political parties from their social connections.

## FRUIT CAKE FEDERALISM

In its final peroration, a summary of its summaries, on the "Federal Role in the Federal System," the staff of the Advisory Commission on Intergovernmental Relations concludes on a plaintive note. Harking back to its desire to name (if not to tame) the federal beast, the ACIR staff says that the intergovernmental system "has become too big, too broad, and too deep for effective operation or control. Where all responsibilities are shared, no one is truly responsible. And, if everyone is responsible for everything, none can fulfill their obligations."<sup>32</sup>

What kind of federal cake is this? Apparently, the layer cake and the marble cake have been succeeded by

the fruit cake. Dual federalism (the layer cake) and co-operative federalism (the marble cake) now give way to fruit cake federalism.

At budget time it is always Christmas. The season is festive with anticipation. There are plums to be had for the picking. The closer one approaches the cake, fumes rise and the atmosphere becomes slightly alcoholic. One is sober enough to pick out the goodies but too drunk to notice how much one is eating. What has happened to these fruits of government spending? "Nutty as a fruitcake!" is not an inappropriate answer.

Have you ever tried to make your way through the morass of a fruit cake? A nut or a cherry here or there hardly separates this congealed mass. And it has the right consistency. It is well preserved; it is virtually indestructible; and, wherever you cut into it, it looks and feels the same. Of glutinous texture, it hardly seems to diminish by the cut, falling back into its former shapelessness as the earth into its primeval void. And, for suitable social occasions, when it becomes a collective enterprise, added to as it is diminished, it grows, like the appetite, with the feeding. Simmered, suet style, just short of boiling over, it accommodatingly absorbs all inputs, its bubbled surface conveying glimpses of goodies, soon disappearing beneath the not quite comprehensible outer form that appears to change only as it remains the same.

Who wants to be a fruit cake? This may not be the federal system Americans want, but the ACIR staff report suggests it is what they get. How else would one summarize their summary?

- Regarding *national purpose*, the record indicates that federal grant-in-aid programs have never reflected any consistent or coherent interpretation of national needs. . . .
- Regarding *fiscal equity*, the record indicates that federal aid programs have never consistently transferred income to the poorest jurisdictions or individuals. . . .
- Regarding *economic efficiency* and *administrative effectiveness*, the record indicates that there are serious obstacles to the successful implementation of intergovernmental programs. . . .<sup>33</sup>

Purposes are incoherent; equity, in whose name most of this is done, is absent; administration is inadequate; and hostility between levels rises with their expenditures. If this is not fruit cake federalism, what would be?

All that is missing is the symbolic sense of being bogged down, congealed, suffocated, sodden, and shapeless. That, too, is supplied in the staff summary:

Regarding *political accountability*, the record suggests a decline in popular control through state and local governments, as well as rising levels of political alienation, an increasing atomization of national political processes, and a growing overload of national decisionmaking institutions. The entrepreneurial process through which many programs are initiated makes it difficult for the general public to have much influence on legislative outcomes or to fix political responsibility for them. Important issues and interests often are ignored—perhaps particularly in the enactment of regulatory legislation. Furthermore, once programs are adopted, they tend to become self-perpetuating and resistant to major reforms. The process of legislative extension tends to be dominated by policy specialists in the Congress, bureaucracy, and interest groups, while undercutting opportunities for effective leadership by the President or through the political parties.<sup>34</sup>

If Americans do not want to get stuck with a fruit cake, they might try changing the cook, but, in my opinion, they would be better advised to change the ingredients of their federal system.

If America were Britain, an English trifle might do: The inebriated lower classes at the bottom, the spongy middle classes one up, the gelatinous upper middle hoping to avoid being crushed, and the whipped cream upper class on top, allowing only the most minute sweetness to trickle down. What are American choices for the future?

## THE FUTURE

The future will be like the past, unless citizens do something about it. Simple extrapolation is the easiest prediction to make. All levels of government will continue to grow, some faster, some slower, depending on time and circumstance. The private sector will be smaller in proportion to the public sector. Alarms will continue to be raised about encroachments by the federal government but, after the shouting has died down, all levels will share in it. As sheer size overwhelms all else, the question of federalism will be replaced by discussion of corporatism as is now taking place in Europe. Fear not; there will be American federalism, only the same benefits (diversity, protection against abuse of power) and costs (confusion, lack of coordination) will be claimed for

spheres of policy, perhaps renamed as public “corporate” sectors.

So long as the short-term forces promoting inflation continue unabated, to be sure, there can be no great increase in federal spending. (The “windfall profits tax” on oil, however, other than Social Security, may well be the nation’s largest single peacetime tax increase, creating hundreds of billions in “funny money” for spending outside regular budgetary processes. Ingenuity, at least, is not lacking.) Since the United States is now subject to foreign forces, which can attack the value of its currency, it must exercise restraint. As soon as the worst is over, however, there is no reason, apart from our own volition, to expect anything other than business as usual.

Should the federal government falter in spending, the states, as they have demonstrated in recent years, are quite capable of taking up the slack. Balanced budget requirements are invitations to increased taxes. But if amendments limiting spending to the current proportion of GNP or personal income prevail, states would be unable to expand beyond the growth of the economy. In that case, any big new increase would imply a corresponding decrease in spending. Competition over resources would occur. If opportunity costs are alive in government, sectoral symbiosis would no longer reign supreme.

The same syndrome would prevail at the national level; if the proposed amendment tying expenditure to a proportionate increase in GNP were passed, there would be less conflict in government and more in society. Government agencies would have to compete with one another for increases above the degree of economic growth. But social forces interested in distribution would have to cooperate with those interested in production if there were to be more to pass around.

The likelihood of a Constitutional spending limit tied to economic growth is slim. Nevertheless, from an unimaginable outcome it has, in my opinion, graduated to some small but finite probability. And should there be another period of great governmental growth, its chances might well improve. The point here, however, is that we are in the midst of making social predictions in which we ourselves are part of the equation. For us the question is whether we want to help fulfill (or defeat) predictions, seeing as we are, willy-nilly, part of them.

There are futures for federalism, of course, beyond the size principle. Will federalism continue to focus on structure, the bare bones of the title, or on ways of connecting people to public choice? Between governmental monopolies, at whatever level, or among competing services lies a large ideological and policy divide.

## BETWEEN MONOPOLY AND COMPETITION

The 1980s will witness a struggle between rival tendencies over the spirit of federalism as the American form of government. The choice will be between monopoly and competition. Will government be based on a bureaucratic division of labor within policy spheres criss-crossing levels of government, or will there be competition over service delivery among a greatly enlarged number of providers? Putting the question in the context of citizen activity, will there be participation via bureaucratic instigation or via citizen choice among alternative bureaucracies?

The French philosopher Alain once said that there is more in common between two parliamentarians, regardless of ideology, than between them and any citizen. Similarly, we may say that bureaucrats at different levels of government may have more in common than they do with any outsider. They share expertise; they make work for one another. Indeed, they cannot exist without each other. They owe their jobs, even their future opportunities to the solidarity of their spheres. Of course, they do not entirely agree or there would be no reason to differentiate themselves. Their task is to adjust the system internally so that national directives are made tolerable to those who must carry them out in the field. As the participants move from and between the executive branch, Congressional committee staffs, state and local governments, universities, and consultancies, however, they are less likely to be concerned about where they live now and more about the good opinion of those in their sphere who will determine how well they will live next year.

As citizens are sucked into spheres of policy, participation becomes cooptation. Hearings are held to soak up citizen energies as well as to learn to mitigate their objections. Intervenor status is granted so that the government subsidizes people to put pressure on it. There may be occasions when intervenors want less done, as in certain environmental matters, but for the most part, the more expert they become, the more they want done in their sphere. Since the bureaucracies devote all their effort to these policies, over time they should be able

**"As citizens are sucked into spheres of policy, participation becomes cooptation."**

to deflect and to shape what they hear from "the voice of the people." Whatever their differences, citizen and bureaucrat will agree that their sphere should be enlarged and that it should deal with its own problems.

Let us pause for a moment to consider the pass to which we have come. The actors are bound together by a common interest in spheres of public policy. The non-governmental actors are organized by responding to governmentally created opportunities. There is music (or is it moolah?) in the spheres. Their operatives move in and out of governmental positions. They want what any red-blooded American interest group wants: government subsidy without governmental control. They bargain out a common set of regulations with which both can live; the price of program change, as we know, is program growth. Individual citizens are also organized, their activities ordered by the demands of due process, sequenced by the requirements of intervenor status, overwhelmed by the facts that become the common language of those whose places they must someday take in order to amortize their enormous investment of time and energy.

Contrast these marriages of convenience among producers of governmental products, including routinized objection to them, with the citizen or state as the unit of action. Here the object is to save time and attention while making choices responsive to diverse desires. If everyone has to participate in everything (or almost), normal life becomes impossible. If everyone has to be expert on everything, citizens would be driven by the demands of government. So would localities. If the same sort of time, attention and expertise were required to participate in economic life, consumption would become all consuming, and no one would have a chance to make a living. Just as prices enable consumers to do well enough, or to comparison shop, so might governmental services be arranged to simplify rather than "complexify" choice.<sup>35</sup>

The basic proposition of big government, running across state and national lines, fortified by conventional administrative wisdom, is monopolist: Governments should control the allocation of services to citizens within their jurisdictions without competition. If they had their way entirely, governmental agencies would all have the equivalent of the Post Office's monopoly of first-class mail.

In private industry the theory is competitive but the practice often is not. Following Niskanen, we may stipulate that, if it could get its way, industry would prefer competition among its suppliers and monopolistic access to its consumers. That is why it is necessary to bring external force to bear to assure competition. The same

sort of pressure must be brought to bear on government if it is to give up its monopolies. Before action can be taken, it is essential to provide an alternative theory justifying competition for governmental goods and services. Public choice theory does just that.

Since the citizen is at the center of its attention, public choice theory arranges everything to make things easy and understandable for him and not for bureaucrats. No one likes competition (after all you can lose) except the consumer whose life is made predictable by the uncertainties imposed on others.

For the citizen, then, overlap, duplication, and redundancy (synonyms, in this context for competition) are not wasteful but wonderful. They enhance reliability of supply; if one supplier won't, another will. They cut down information costs; products may be distinguished by prices; they may be exchanged; and, given diversity, their mixes may be compared at the margins. Redundancy results in suppliers working hard to guess what citizen consumers want rather than the reverse. Competition is the better mouse trap that has a variety of units competing to beat a path to the citizen's door.

Anyone who has to deal with governmental agencies, or who wants to apply for grants, knows that it is useful to have a multiplicity of points of access and largesse. It is then possible to play them off against one another or simply to go to the most receptive place. Thus, individuals can sort themselves out among agencies with different rules, objectives, and personal predilections. Similarly, grievances encountered in one place may be redressed in another. There is no *a priori* mode of action that fits everyone; instead of fitting citizens into a mold, that is, requiring that they be uniform, it is better to demand that agencies be diverse.

Who is to say what is the appropriate scale of activities? Outside of a limited area, including, perhaps water and sewers, many unsubstantiated claims are made for economies of scale. The division of labor facilitated by large size may suit certain specializations but is unlikely to result in more cops on the beat or teachers in the classroom or case workers in welfare.

The major movement in education in the United States after World War II has been the consolidation of rural school districts. Every study ever done shows that the larger the size, the worse the scholastic or social performance, no matter what measure is used. One understands that consolidation may be useful to state and national associations of supervisors or may reduce the number subject to governmental oversight, but it is a bad buy for citizens subject to it.

If producers of goods and services have to compete with one another, however, they may decide to be as

large or small as they like, running the risk of inconveniencing only themselves. They are the ones in touch with production technology; they, not the citizen consumer, have the knowledge to make informed choices. If they deem it desirable to sign additional contracts to extend their service areas, or trade areas at their geographic margins, or agree to emergency support or loan of equipment, they can gain whatever advantage there may be in size without losing responsibility to the users.<sup>36</sup>

A consumer approach will lead to better, if not bigger, state government. Consider, for example, the quandry of state governments in dealing with pensions and disability payments (it is easy enough for the two to merge) for its employees. Given the normal operation of the political process, it is all too tempting to hide the true costs of pension provisions by pushing them into the future when another generation will have to pay. The future apparently is now and the result is huge "unanticipated" costs. The direct way of dealing with this phenomena is to set up special committees to monitor retirement provisions. Several states have done just this. But after the first flush of enthusiasm wears off, a return to business as usual may be expected. Contracting out, by contrast, requires no constant surveillance. Whatever other faults the agreement has, other people—the service providers—are responsible for "fringe" benefits. All the financial costs are on top, out in the open. The relationships are easier to monitor, thus leading to more effective and responsive government.

If this hypothesis has merit, evidence of twin trends should have appeared by now: growing size of all levels of government, and an increase in the number of entities and proposals for producing services that used to be monopolized.<sup>37</sup> And, of course, there should also be opposition to threatened loss of monopoly.

Size is sure. All levels—local, county, state, national—have grown rapidly in real terms in the past quarter century. Part of the puzzle of federalism is that while it appeared for a time that the national level was gaining at the expense of the state and local, the underlying trend is for all levels to grow, different ones spurring ahead then dropping behind but never declining absolutely or relative to national product. Perhaps, as Sherlock Holmes said about the dog that did not bark, the clue is in what is missing—namely, no decline. As a general rule, the more different sources of funds, the more streams that flow into the river, the larger it will be. By competing for control, by challenging the others, total spending is increased. By creating anomalies, inconsistencies, inequities and inequalities, the levels, although this is not immediately apparent, work together to increase total output of spending.

The second trend toward a larger number of competing units, if there is one, requires evidence. In policy proposals, the signs of things to come are there. There are a variety of proposals, seriously entertained in Congress, for competition among medical plans, with savings shared among employers and employees. Voucher plans in education are live issues in several states. California is experimenting with giving welfare recipients a choice of services. And so on.

At a less impressionistic level, there has been a substantial growth in the amount of services provided by special districts, accounting for a decline in the relative position of localities in providing services. In libraries, mass transit, health, housing, urban renewal, hospitals, parks, and recreation services, the number of states with a multiplicity of providers has grown sharply.

An interesting change is taking place in the same 1,800 federally assisted planning units throughout the country. Their original planning functions, other than accumulating huge amounts of data, by all accounts have atrophied or never existed. These COGs (Councils of Governments, as they are sometimes called) or planning commissions or districts have taken on certain middlemen functions between the "feds" and the localities. More interesting for us, however, is a noteworthy tendency for them to become entrepreneurs in their own right, offering for sale a variety of services.

Having identified two trends, one strong and persistent toward monopoly, and the other just beginning to come to competition, which do I think will prevail? And which, more importantly, do I think ought to prevail?

If conditions stay the same, other things being equal (or whatever dodge one cares to use) monopoly will grow. The spheres of policy will solidify themselves. Indeed, feeling their oats, they will attack the remnants of private providers. Monopolistic bureaus will literally not be able to understand why reason and rationality do not demand that like activities be grouped together and dictate that certain classes of activities be provided exclusively through government. Bigger will be better, as, by then, everyone who matters will plainly see.

But the likely is not necessarily the inevitable. A better question would be to ask what we would be willing to help make happen. Unless citizens are in the grip of forces they cannot control, they can help determine whether the federal system will be more monopolistic or competitive. And the more competitive it is, the more choice is available to citizens, states, and localities, the more diversity there can be, which is a *sine qua non* if there is one to a federal system in which things are done differently in some states than in others.

## DECONGESTION REQUIRES LIMITATION

In a memorandum from Executive Director Wayne Anderson to members of the Advisory Commission on Intergovernmental Relations, dated February 20, 1980, he sums up the seriousness of the current situation:

"Overload" of our intergovernmental system, which is predominantly the consequence of our bigger, broader, and deeper federal aid system, is the central and most pervasive intergovernmental problem facing this nation, our research richly documents. Decongestion of the system, we believe, is the foremost need for the 1980s if we are to improve the effectiveness, efficiency, equity, and accountability of all three levels of government.<sup>38</sup>

How are we to achieve decongestion if the government keeps growing? Ultimately, growth at the federal level must be reflected in corresponding catchup spending at the state and local level. Were that not so (and it is hard to see how it could be otherwise with federal structure built into the legislative process), then the spectre of the states being subservient to the central government might become a reality. But this, as social workers say, is not the presenting problem. The time when advocates of a vigorous federalism could take comfort from the sheer growth of state spending is past. True, there has been a much to be commended invigoration of state analytic and executive capacities. They are, in general, more capable than their predecessors. Unless there is action to limit governmental growth, however, the very capability of this new generation, which naturally has an interest in its own survival, will convert a virtue into a defect.

Anderson's next comment deserves to be taken seriously: "In the staff's view, this federal role subject makes a very different kind of demand on the Commission than usually is the case because it necessarily involves discussion of our whole political system."<sup>39</sup> The two problems—perpetuation and reinvigoration of the federal system, on the one hand, and making government at all levels less monopolistic and more competitive, on the other—are directly connected. As the song says, you can't have one (independent state and local initiatives) without the other (competition at all levels of government).

Unless the expectation of continuing governmental growth is stopped, there is one thing that is inevitable: the intergovernmentalization of everything. Listen to the voice of ACIR:

ever multiplying number of parochial and even private concerns, into the intergovernmental arena reflects a feeble faith in the problem-solving capacity of the various partners in the federal system.

The Commission believes further that this permits the national government to avoid some of its most basic domestic governmental responsibilities, while cluttering up its agenda with issues that more properly belong on that of a municipal or county council, a school board, or a state legislature.

Finally, the Commission concludes that neither equity (in the sense of giving due attention to jurisdictions or people in need), nor administrative effectiveness, nor economic efficiency, nor above all political, electoral, or administrative accountability are furthered by this tendency to intergovernmentalize practically all domestic questions, nearly all sub-national governmental functions, and the bulk of the national government's own civil governmental obligations.<sup>40</sup>

So long as governmental agencies, and their clientele, can solve their problems by addition, they have no incentive to limit their activities. On the contrary, there is every incentive for policy entrepreneurs to come up with new proposals to distribute benefits—good deeds like virtue being unlimited—that do not appear to have costs in the most meaningful sense of government having to give up something else for them. Given zero opportunity costs, state and local governments also want to share in doing good. The political curse is taken off the federal goliath by turning implementation over to states and localities. The struggle that evolves over execution may lead to minor modifications but does not change the fatal fact that a new or expanded program exists and is generating additional support.

Without spending limits, the federal government, which was instituted to protect citizens, will end up by overwhelming them. Without limits, the access to government offered by federal structure will dwarf the citizens it is supposed to serve. What will become of government of, by, and for the people when most of us are employed by government? If government of, by, and for its own clients and employees is not exactly what we want, some form of limitation is necessary. What might that form be in a federal system?

The virtue of the central government is uniformity; its laws would be loathsome if they were to treat citizens differently, depending on where they lived. The virtue

of state governments is diversity; their laws would be redundant if they repeated themselves regardless of locale. Stamping out carbon copies is something the center should do but states should not. What can we say about the conditions for these two virtues?

The first thing is that each maintaining its own virtue is a condition for attaining the virtue of the other. If states maintain diversity, this gives the center a stronger rationale—its lack is being made up elsewhere—for sticking to uniformity. And so long as some things are done on a uniform basis, there is a stronger rationale for varying others.

Thus, the second point states it is all right for the central government to limit expenditures, which facilitates a uniform rate of spending, but not for the states as a class. It is desirable for some states to impose limits but not for all. Even for those who impose limits, it is preferable that they choose different levels (higher and lower) and different modes (limits as proportions of national product, or personal income, or as balanced budget requirements, etc.). By stressing diversity among states, lessons may be learned that would otherwise not be possible. By maintaining diversity, citizens may sort themselves so that they live with the kind of government they want.

Will the national government not be encouraged by limitation to abandon revenue sharing? Indeed it will (although, of course, only after a number of years of transition). In one respect, the demise of revenue sharing is justified on the surface of events. Why should a poorer central government be giving funds to richer state governments? And why should the national government engage in this procyclical economic policy, which does not vary according to economic circumstances?

But the defects of revenue sharing go deeper than mere macroeconomic perversity. By divorcing expenditure from revenue, what people want is separated from what they are willing to give. Revenue sharing distorts state citizenship. Revenue sharing distorts state responsibility. No longer is it possible for citizens to have determined what they would have wanted or for them to hold states accountable for what they have done with “foreign funds.” Might revenue sharing, however, actually increase diversity among states? It might but it does not. The poorer states ape the richer and the richer do more of the same. Both become accustomed to larger levels of spending.

The result of block grants is not state independence to spend as it sees fit but state dependence on federal largesse. What William E. Hudson says about El Paso, TX, could be repeated throughout the nation:

Instead of promoting local autonomy, the

New Federalism grants—[General] Revenue Sharing (GRS), Community Development (CD), Comprehensive Employment and Training (CETA), and Counter-Cyclical Revenue Sharing—have helped to reduce city government autonomy. Since the early 1970s, El Paso's dependence on federal funds as a source of revenue has increased dramatically, local officials have become politically dependent on continued high levels of federal funding, and federal 'strings' in the form of federal mandates affect local government activities more than ever before; the New Federalism has thus reduced rather than increased the city's independence from Washington.<sup>41</sup>

## REPRISE

If there are to be priorities, including a division of functions among levels of government, there must be a reason and a mechanism for doing them. Limitation leading to competition would constitute a reason. But what would be the mechanism? Strong political parties, built on a federal basis (an important qualification) might provide the necessary guidance together with the ability to arrange compromises. But they are not on the horizon. While advance partisan registration, funneling federal funds through parties instead of candidates, and reducing the number of primaries might help, no one believes any of this is likely in the near future, if at all. At the same time there is no universally recognized theory or formula for a division of functions that could command assent. When there is agreement on spending limits but not on how to divide the money by level of government, the cognitive or planning approach, under which correct decisions flow from agreed premises, is not feasible. Instead, I have been recommending an interactive approach designed not only to implement but to discover what works best. The greater the number and variety of organizations for providing goods and services from government, which constitutes a competitive, citizen-centered approach, the better able the system will be to go one way in regard to this and another to that. The people do not have to postulate either the optimal size of producing units or the optimal pattern of spatial structure. Rather these would be seen as the outcome of citizens, states, and localities getting the best deal they can, correcting errors as they go along, provided there is an effective financial constraint. Because one cannot predict policy outcomes (for if we could, we could also achieve the optimum by planning) or posit the most appropriate

governmental structures, the uncertainty may prove unattractive. Some of us have been proceeding on the assumption that nothing good occurs unless some bureaucracy is in charge of making it happen. Well, we have been down this road and it is a dead end. An open-ended competitive approach may make former monopolists more nervous but it should also leave consumers of services more confident. If it is a question of who should bear the costs of change, citizens as sovereigns should pass them on to those who are supposed to serve them. The alternative to hearing the federal skeleton rattling in the governmental closet is to provide the federal structure with cartilage in the form of competition.

As Mark Sproule-Jones concludes in a similar argument:

The key requirement for institutional reform is to separate the physical production or supply of public goods from the jurisdiction that articulates and aggregates the demands for such services. The economic benefits from reorganization, in terms of internalizing jurisdictional spillovers and exploiting economies of large scale production, may then be harmonized with the advantages—both in economics and in responsiveness—of exposing urban bureaucracies to the threat of potential rivals in production. This reform also offers the potential of enlisting citizen participation in the implementation of public policies from which they have been largely excluded.

The political feasibility of such an institutional reform rests on the relative power of public officials to maintain the monopoly status of their organizations. It would be sanguine to believe that such a reform could be instituted without a struggle.<sup>42</sup>

Would an approach focused on expanding choice of services be antifederal? Since this consumer-oriented approach does not rest directly on strengthening state governments, the question is bound to arise. To appreciate its relevance one only has to ask whether federalism is about structure alone and whether structure itself is about maintaining strong state governments? As posed, the question comes close to the position that federalism is allied to large government, the only consideration being that states grow apace with the national government. Thus, we are led again to consider what we conceive to be the essence of federalism, American style.

There can, of course, be no definite answer to a question that asks as much what we would like American government to be as what it may once have been. My answer, it should now be evident, is that the genius of

American federalism is competition, not monopoly. American history, origins, and development, I think, is misconstrued if it is conceived to be about monolithic structures—national and state—clashing by day, cooperating by night. Its key terms are separation and division. There never was a question about whether there would be states, only whether there would be a national government. The cost of this national cohesion was containment through separation of powers within government and division of authority between different levels of government. Again, the key term is competition within and among the levels of government. Thus, if one is so disposed, and I am, a competitive approach may be viewed as an effort to recover the operative principles of American federalism under altered circumstances.

## BIRTHDAY CAKE FEDERALISM

State and local governments compete to get the federal government to pay for their programs, and compete with each other indirectly for grants, etc. Competition in the system occurs between states and between local governments to provide the best service/tax mix. This competition is *horizontal*. But policy integration is *vertical*, reducing accountability at every level. For what would state governments compete with the federal government? Responsibility for programs? Only if the other would pay. We can understand state versus state competing for taxpaying citizens or businesses—that is the diversity of the federal system. But the only competition between states and the federal government would be over who pays the piper and who calls the tune? What would be the incentives or rules for intergovernmental (i.e., vertical) competition? The relationship between states and the federal government is one of tension between rights and responsibilities. How is a balance to be struck? A formula is not in the offing. Bargaining appears to be the alternative. Governors are now thinking about taking less money in exchange for fewer federal restrictions. How long this sense of self-restriction will last no one knows. Not very long, probably. The incentive structure still favors the states seeking federal dollars and the federal government seeking its way without paying excessive political penalties.

Spending limits at the federal level, however, would alter not only horizontal relationships among federal bureaus, but also vertical relationships between levels of government. States could still get as many constant dollars as they got before but no more. Thus competition among states for federal dollars would be intensified. At the same time, since there could be no larger totals, the

excessive concentration on federal largesse would decline. States would have to look more to their own resources. How would they fare? Let us try the two toughest cases—the uneven distribution of energy and of poor people.

Since some states have oil, gas, and coal and others do not, the resource rich are going to be better off in many ways, among them the ability to collect taxes paid, in effect, by consumers in other states. How about that? Some people are born beautiful, others ugly. That's the breaks. Still states have alternatives other than holding out the tin cup to the federal government. Resource poor states can acquire synthetic fuel or nuclear energy plants. But these are dirty and may be dangerous. Oh, my, we cannot have that. Doesn't the equal protection clause protect each state against unpleasantness? No, but they can choose to be poor and pleasant and people can decide whether they want to live under such circumstances.

What would happen to poor people under regimes of stronger state competition? There is good news and bad news. Under the good fairy, the poor go where the jobs are and those who cannot work go where states are best able to afford high levels of welfare. The system is self-regulating—the rich support the poor, as states choose to be richer with fewer environmental amenities or poorer with a pleasanter physical environment, people with low income are treated to what they really need most—money.

Now for the wicked fairy. The richer states may be more individualistic, in which case they may lower welfare. Poor people may be left in poor states. And the Mathew effect works its will. Should that happen, the federal government might pay poor states a subsidy for each person on welfare. Would people rather have jobs? Then there are states that provide work.

Suppose, to bring these speculations to an end, environmentally rich states seek federal support to maintain their amenities. These funds would have to come out of other programs. Suppose environmentally rich states seek subsidies to enhance their economic growth, the same syndrome would occur. Most likely, rival demands would cancel each other.

And that vision, after all, might not be so bad. A federal government learns to perform its tasks better as well as to fend off raids on its treasury. States learn to live with widely varying styles of life. People vote with their feet for the kind of life they would like to live. In our time, perhaps that kind of active personal choice among life styles may be as good as we can get from government.

What kind of federal cake would that be? For mature men and women that would be “birthday cake federal-

ism," for they would be allowed to choose how many candles and calories would fit their self-image. Birthday cakes are individualized. Each person chooses the one he wants. If he overeats, he pays the penalty. He does not eat other people's cakes and others do not eat his. Birthdays come at different times and are celebrated in different ways. I always thought that was what feder-

alism was supposed to be about.

If we do create competition for citizen favor, it may confidently be predicted that as government gets better, federalism, whatever it is, will be said to have a fine future. If we do not, our government, i.e., federalism, will be said to have failed.

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## FOOTNOTES

- <sup>1</sup> See, for example, Elmer E. Schattsneider, *The Semi-Sovereign People: A Realist's View of Democracy in America*, New York, NY, Holt, Rinehart and Winston, 1975.
- <sup>2</sup> Advisory Commission on Intergovernmental Relations, *Categorical Grants: Their Role and Design* (A-52), Washington, DC, U.S. Government Printing Office, 1977, pp. 233-71.
- <sup>3</sup> When James Madison wrote of a compound republic, as Martin Diamond observed, he had in mind a scheme of government that was partly national and partly federal. For the framers, the federal elements comprised both the division of powers and the structural elements in the national government that were based on the division of power, e.g., equal state representation in the Senate and counting of electoral votes by states. But, as Diamond also says, we, the current generation, do not make this distinction, using the word federal for good government. Martin Diamond, "The Federalist on Federalism: Neither a National Nor a Federal Constitution But a Composition of Both," *The Yale Law Journal*, Vol. 86, 1977, pp. 1273-85. I think that current usage tells us something important about how Americans have come to think about federalism.
- <sup>4</sup> This section has been adapted from Aaron Wildavsky, *How to Limit Government Spending*, Berkeley, CA, University of California Press, 1980.
- <sup>5</sup> See Aaron Wildavsky, *The Politics of the Budgetary Process*, 3rd Edition, Boston, MA, Little, Brown & Co., 1979.
- <sup>6</sup> Alexander Hamilton, John Jay, and James Madison, *The Federalist*, New York, NY, The Modern Library, 1937, pp. 60-61.
- <sup>7</sup> For further discussion, see Karen Stromme Christiansen, "Delusions of Certainty in Complex Intergovernmental Systems," doctoral dissertation, Department of City and Regional Planning, University of California, Berkeley, CA, 1980.
- <sup>8</sup> Portions of this section are taken from Aaron Wildavsky, *Speaking Truth to Power*, Boston, MA, Little, Brown & Co., 1979.
- <sup>9</sup> Samuel H. Beer, "In Search of a New Public Philosophy," *The New American Political System*, ed., Anthony King, Washington, DC, American Enterprise Institute, 1978.
- <sup>10</sup> George F. Break, "Intergovernmental Fiscal Relations," in *Setting National Priorities: Agenda for the 1980s*, ed., Joseph A. Pechman, Washington, DC, Brookings Institution, 1980, p. 250.
- <sup>11</sup> See, for example, David R. Beam, "The Accidental Leviathan: Was the Growth of Government a Mistake?" *Intergovernmental Perspective*, Vol. V, No. 4, Fall 1979, pp. 12-19.
- <sup>12</sup> William H. Stewart, "The Function of Models and Metaphors in the Development of Federal Theory," paper prepared for the 1979 annual meeting of the American Political Science Association, Washington, DC, August 31-September 3, 1979.
- <sup>13</sup> William H. Riker, "Federalism: Origin, Operation, Significance," in *American Federalism in Perspective*, ed., Aaron Wildavsky, Bos-
- ton, MA, Little, Brown & Co., 1979, p. 56.
- <sup>14</sup> *Ibid.*, p. 59.
- <sup>15</sup> Morton Grodzins, *The American System*, New York, NY, Rand McNally, 1966, p. 254.
- <sup>16</sup> Morton Grodzins, "American Political Parties and the American System," in *American Federalism in Perspective*, *op. cit.*, p. 137.
- <sup>17</sup> *Ibid.*, p. 137.
- <sup>18</sup> *Ibid.*, p. 138.
- <sup>19</sup> David Truman, "Federalism and the Party System," in *American Federalism in Perspective*, p. 107.
- <sup>20</sup> *Ibid.*, p. 81.
- <sup>21</sup> *Ibid.*
- <sup>22</sup> *Ibid.*, p. 85.
- <sup>23</sup> *Ibid.*, pp. 87-88.
- <sup>24</sup> *Ibid.*, pp. 91-92.
- <sup>25</sup> *Ibid.*, p. 92.
- <sup>26</sup> *Ibid.*, p. 107.
- <sup>27</sup> *Ibid.*, p. 105.
- <sup>28</sup> *Ibid.*, p. 96
- <sup>29</sup> See Byron E. Shafer, "Politics and Society, Reform and Alienation," draft, Fall 1979.
- <sup>30</sup> Adapted from Aaron Wildavsky, "Regional Equity as Political Welfare," *Taxing and Spending*, Vol. II, No. 2, April 1979.
- <sup>31</sup> Sen. Daniel Patrick Moynihan, *New York State and the Federal Fisc: IV Fiscal Year 1979*.
- <sup>32</sup> Advisory Commission on Intergovernmental Relations, *An Agenda for American Federalism: Restoring Confidence and Competence* (A-86), Vol. X of *The Federal Role in the Federal System: The Dynamics of Growth*, Washington, DC, U.S. Government Printing Office, forthcoming.
- <sup>33</sup> *Ibid.*, pp. III-168-169.
- <sup>34</sup> *Ibid.*, p. 170.
- <sup>35</sup> See Aaron Wildavsky, "Citizens as Analysts," *Speaking Truth to Power*, Boston, MA, Little, Brown & Co., 1979, pp. 252-83.
- <sup>36</sup> See Robert Bish and Vincent Ostrom, *Understanding Urban Government*, Washington, DC, American Enterprise Institute, 1973.
- <sup>37</sup> An excellent introduction may be found in M. A. Sproule-Jones, *Public Choice and Federalism in Australia and Canada*, Research Monograph No. 11, Centre for Research on Federal Financial Relations, Australian National University Press, 1975.
- <sup>38</sup> Advisory Commission on Intergovernmental Relations, *Docket Book, Sixty-Ninth Meeting, March 13-14, 1980*, Washington, DC, ACIR, 1980, Tab C, p. 1.
- <sup>39</sup> *Ibid.*
- <sup>40</sup> ACIR (A-86), *op. cit.*, p. IX-19.
- <sup>41</sup> William E. Hudson, "The New Federalism Paradox," *Policy Studies Journal*, Vol. 8, No. 6, Summer 1980, p. 901.
- <sup>42</sup> Mark Sproule-Jones, "Urban Bads and the Structure of Institutional Arrangements," Vancouver, BC, University of Victoria, 1979.

# **Federalism in the Courts: Agenda for the 1980s**

**Lewis B. Kaden**

**Columbia University School of Law**

**I**n our federal government, the political branches bear most of the responsibility for adjusting the relations between the national government and the states. The framers of the Constitution prudently left to the Congress the task of accommodating national power to the preservation of state autonomy, but assured the states a significant role in the composition of the national government, and thus a significant influence in its decisions. The federal courts, and especially the Supreme Court, perform what Paul Freund aptly called an umpire's role between the national government and its constituent states,<sup>1</sup> intervening on occasions when the balance shifts beyond that anticipated or desirable under the Constitution.

The Court's intervention is most often required to preserve the integrity of national policy against state actions that threaten to impede the attainment of a national legislative goal. As Herbert Wechsler has pointed out, this judicial responsibility of measuring state legislation against the secured enclave of national authority was substituted at the Constitutional Convention "for the earlier proposal to give Congress a veto of state enactments deemed to trespass on the national domain";<sup>2</sup> it was soon confirmed by the Court in *McCulloch vs. Maryland*.<sup>3</sup> From time to time, however, the judicial authority is asserted to check the obverse danger to federalism: national actions that imperil the states' sovereignty. While the existence of the Court's power to invalidate federal legislation in the interest of preserving state autonomy is unquestioned, its exercise is both more infrequent and often far more controversial.

As Wechsler explained a generation ago, the Court's traditional hesitancy to interpose its judgment against

that of the Congress on an issue of state autonomy doubtlessly has stemmed largely from the fact that the states' representatives "control the legislative process and, by hypothesis, have broadly acquiesced in sanctioning the challenged act of Congress."<sup>14</sup> The infrequent occasions in the 19th Century of judicial intervention to defend the states' interests against assertions of national authority on such issues as slavery in the territories and the imposition of an income tax did not mark a high point in the annals of the judicial branch. When in this century the Court attempted systematically to limit national authority by an expansive reading of the powers reserved to the states, the result was a crisis of both Constitutional government and economic stability. In 1937, with a sharp shift in the dominant Constitutional interpretation, the Court effectively withdrew from the debate over the reach of federal power vis-a-vis the states, dismissing with dispatch all subsequent challenges to the enormous expansion of federal legislative efforts to affect the public welfare over the next four decades. During the period from 1937 to 1976, only once was a Congressional action upset on the ground that it invaded state autonomy; like the income tax, slavery, and civil rights cases before it, *Oregon vs. Mitchell*<sup>15</sup>—involving national power to prescribe a minimum voting age for state elections—was quickly countered by Constitutional amendment.

Like other political institutions, however, the Court in its own way follows economic and political developments in the society of which it is a part. As George F. Break and Aaron Wildavsky clearly demonstrate, the past decades bear witness to important changes in the federal system. Recently these changes have been reflected, perhaps sometimes anticipated, in a renewed judicial solicitude toward the states, and more vigorous interest in the allocation of authority in the federal system—or at least in the ways the exercise of federal authority affects the states' separate identities within that system. It is certainly premature to declare the arrival of a Constitutional watershed; the Court's decisions have been tentative and groping, and do not betray any consistent theme or articulate conception of a new federalism. Taken together, however, they do disclose a new concern that the forces of political and economic change may imperil the autonomy of the states. The concern is not misplaced, for the states' autonomy was and continues to be vital to our Constitutional system of government.

## A CASE FOR FEDERALISM

Although the unfortunate experience under the Articles of Confederation tended to focus debate at the Con-

stitutional Convention on the necessity of forming a more effective union, popular sentiment obliged the delegates to provide protection for state sovereignty in the new charter. The result, as many have observed, was a Constitutional structure containing both national and federal features, and drafted with a wary eye toward the state legislatures and the electorate who would determine whether to ratify it. Yet, however little choice there was at the time, subsequent experience has affirmed the value of a federal system. In essence, federalism has been a device for forging the national power needed to build an effective economy and to defend the nation against external threats, while preserving the advantages afforded by smaller units of government.

One clear virtue of the federal form is that it provides in both the process of representation and the process of policy determination broad opportunities for the public participation that are critical to a viable notion of accountability. Representative government depends upon maintenance of the connection between the governors

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and the governed, not merely in the sense that elected officials reflect the popular will, but also in the assurance that public preferences are communicated to the public officials whose own expressions help shape popular opinion. A fundamental advantage of local government is the opportunity it affords for this kind of communication. Simply put, proximity increases accountability by increasing access.

Experience also supports the traditional claim that federalism promotes variety in political choice and counters the impulse toward social and ideological homogeneity by allowing cultural differences to find expression in different places. Despite the homogenizing effects of media and mobility on 20th-century American life, the existence of separate state and local governmental units still provides avenues for expression of the variations in style in different parts of the country. Tax burdens, public services, habits of living, and patterns of tolerance do vary as one moves from Maine to Alabama or New York to New Mexico, reflecting in part the differences in the political choices made by subnational governmental authorities.

The aphorism that a federal system permits the states to serve as laboratories for experimentation has also been borne out in our experience. Traditionally, federal government initiatives have drawn on the experience in the states. Unemployment compensation insurance began in Wisconsin in 1931, and programs of income assistance to dependent families grew out of earlier state efforts to provide general relief to supplement private philanthropy. The *Wagner Act* was framed with the aid of experience under state laws protecting employee rights of organization and collective bargaining. More recently, state experiments in matters as diverse as public financing of political campaigns, regulation of hospital facilities, protection of health and safety on the job, and requirements for open meetings by public agencies and public access to official records have laid the foundation for similar national legislative actions. And as Congress today considers proposals to implement no-fault insurance, consumer advocacy agencies, voter registration by mail, national health insurance, hospital cost containment, and financial disclosure in municipal securities, it can look to the states for evidence of the effects of alternative approaches. Even on issues affecting the distribution of power among the federal branches—for example, the recent debate over executive input into administrative rulemaking—the states' experiences can provide guidance.

Beyond these values of participation, accountability, diversity, and experimentation in government, however, the case for a federal form rests most fundamentally on

**"If the sole purpose of forming a nation had been to promote economic progress or efficient government, there would have been no need for federalism, then or now."**

the capacity of a federal system to enhance and protect individual liberty. If the sole purpose of forming a nation had been to promote economic progress or efficient government, there would have been no need for federalism, then or now. But if national goals are to be attained in ways consistent with the integrity of the individual, efficiency must be tempered by safeguards for liberty. The ultimate justification for federalism, therefore, must be found in its potential to merge the advantages of localism for enhancing liberty with the necessity of a national government to cope with threats to security and prosperity. Preservation of the states' separate identities may have been a truism to the delegates to the Constitutional Convention; it was also their enduring contribution to our reconciliation of the classic tension between order and freedom.

The concept of liberty here at issue is not the freedom to be left alone, but the freedom to become involved in the public life of a policy. Political liberty—the freedom to participate in the community's political life—is the core of democratic government. It encompasses a freedom to influence by a variety of techniques that same process of political choice that defines the essence of sovereignty. The effectiveness of this political participation turns on accountability, the connection between the representative and the represented, a connection reinforced in our system by certain fundamental rights such as access to the voting booth and ballot, rights of expression through lobbying, and contributions of time and money. But beyond these specific guarantees, political liberty requires that the electorate have information about the process of choice, including the range of alternatives and their probable effects. The voter may or may not view his representative's position on a particular matter as critical to his ongoing support; he may judge an unwelcome decision outweighed by other decisions that he endorses, or by the shortcomings of the available alter-

natives. The critical point, however, is that he must at least know whom to hold responsible.

To the extent accountability is diminished by reason of the electorate's lack of knowledge or understanding of the lines of authority, the value of effectiveness of participation is necessarily reduced, and the protection of political liberty is necessarily jeopardized. By fostering participation and accountability in the political process, a state's autonomy thus serves this primary Constitutional value. One of the risks of contemporary federalism is that the techniques adopted by Congress to promote its objectives tend increasingly to blur lines of accountability for the activities that follow and, hence, to undermine the capacity of the states to realize the virtues of the federal form. Judicial action to protect state sovereignty when the political branches fail adequately to safeguard it may be seen then as a component of the traditional judicial assignment to protect individual liberty against majoritarian abuse.

## FEDERAL-STATE RELATIONS

Recent developments have combined to increase the states' interdependence with the national government while decreasing their influence over its processes. As Daniel J. Elazar's work has shown with such clarity,<sup>6</sup> the notion of separate sovereigns populated by the same persons but acting in independent spheres has always been a fiction. Cooperation, interaction, and interdependence always marked the relations, particularly the fiscal relations, between the central government and the states. In the past quarter-century, the magnitude of these connections has taken a quantum leap.

First, government in general has grown dramatically. Federal domestic expenditures in 1929 amounted to only about 1.5% of GNP, and state and local outlays were 7.4% of GNP. By 1979, total domestic expenditures were 25.9% of GNP—a threefold increase in the public sector. More important, federal payments to subnational governments grew from only \$1.48 billion as late as 1949 to more than \$83 billion in FY 1980.

The nature of the changes in fiscal relationships between the federal government and the states is as significant as the dollar amounts. As federal payments reached into every corner of state and local activity, the degree of federal supervision was bound to expand as well. Federal support of state and local services was justified Constitutionally, as well as politically and economically, on the ground that money raised through the more efficient methods of federal taxation could be expended in ways that promoted the general welfare. This

interpretation of the spending power had been advocated by Alexander Hamilton at the Convention, but it was not until 1936 in *United States vs. Butler*<sup>7</sup> that the Supreme Court confirmed that Congress' capacity to spend federal tax receipts was not limited by the national powers specifically enumerated in the Constitution. Thereafter, national expenditures would be constrained only by the obligation to determine that their purposes were general rather than local, and by new economic limits.

Gradually, but inexorably, Congress has sought to promote the "general welfare" by combining federal funds with state administration. The national purpose may be to use the fiscal dividend of the more efficient federal tax system for the benefit of needed local services; it may justify spending as the purchaser of collective goods, with benefits extending beyond the borders of individual governmental recipients; or it may offer a grant to counter the effects of national fluctuations by stabilizing or stimulating the economy. Federal legislation often recites the goal of equalizing fiscal capacity among the states, but the record indicates very little income redistribution as a result of federal spending. Unlike federal systems in Canada, Australia, or West Germany, the United States has no grant system specifically aimed at equalizing either income or fiscal capacity. Whatever the federal purpose, the effect is to enlist the states' governmental apparatus in support of national policy. The states must implement the program according to federal design. The instrument of this form of "co-operation" is the conditional grant.

The earliest conditions attached to federal payments provided for regular reports and audits to ensure use of funds in a manner consistent with the federal statute. The *Hatch Act* added conditions preventing state officials from engaging in partisan political activity. In *Oklahoma vs. United States Civil Service Commission*,<sup>8</sup> the Supreme Court validated this condition on the theory that the states were not coerced, but voluntarily sought the federal funds; thereafter, as a legal matter, the way was clear to attach virtually any condition related to the purpose of a grant so long as the states remained nominally free to reject the federal aid.

Much of the same test of coercion versus voluntariness had been used by the Court earlier in *Steward Machine Co. vs. Davis*,<sup>9</sup> reviewing Congress' tax and credit device to induce states to adopt unemployment compensation schemes in line with federal requirements. The federal statute imposed a payroll tax on employers with offsetting credits for compatible state taxes; employers in nonconforming states would pay the tax without the benefit of a compensation system. It was not much of a choice—the states quickly fell into line.

Thus, by the time the Great Society propelled the federal government more deeply into matters such as health care, education, transportation, and job development, well settled authority supported the imposition of a vast array of regulatory conditions on the states. Many requirements bore the familiar features of earlier programs, but a closer look at the recent aid statutes reveals a much more elaborate range of conditions and penalties for noncompliance by recipients of the federal bounty. Taken together, these measures, and others like them, have altered the shape of the federal system.

The *Urban Mass Transportation Act* (UMTA) provides grants for operating subsidies and capital improvements for transit facilities. Among conditions attached to the Secretary of Transportation's determination to make a grant, the law requires certification by the Secretary of Labor that "fair and equitable arrangements are made . . . to protect the interests of employees affected by such assistance." These labor protective arrangements must be included in the contract of assistance executed by the recipient state or local agency with the federal government. Further, UMTA specifies minimum standards for the content of the labor protective agreement. Although it is apparent that the original aim was to protect employee interests against the effects of investment in automation or labor-saving technology, the requirements of the statute have been interpreted to extend grants needed to avoid service reductions or termination through bankruptcy of a private transit operation.

In the *Highway Beautification Act of 1965*, Congress sought to promote control of billboard advertising by inducing the states to implement regulatory programs meeting the standards set by the Secretary of Transportation. The Secretary's regulations oblige the states, among other things, to pay just compensation to owners who remove their signs, and the federal government provides grants for 75% of the removal costs. A state's failure to establish such a program subjects it to a 10% reduction in all categorical federal highway aid.

In *Vermont vs. Brinegar*,<sup>10</sup> the state issued directives for the removal of signs without compensation. The Secretary applied the penalty and withheld 10% in highway aid. A federal district court sustained the Secretary, concluding that control of advertising was a legitimate national objective, the payment of compensation was reasonably related to that aim, and that in view of the federal contribution to the compensation provided for sign owners, the penalty amounted to lawful inducement and not duress or coercion of the state's participation. "[W]e cannot say," Judge Coffrin stated, "that [the statutory scheme] irresistibly compels a state under threat of economic catastrophe to embrace the federal plan."<sup>11</sup>

The *Rehabilitation Act of 1973* authorizes federal grants to the states for the cost of specific vocational services for handicapped persons. The act follows a typical pattern: States electing to participate must submit to the Secretary of Health, Education, and Welfare (HEW) (now the Secretary of Health and Human Services) an annual plan that meets 19 separate requirements, including a typical provision that the Governor designate a "sole state agency" to administer the plan for rehabilitation services. The *Rehabilitation Act*, however, goes further to require that the sole state agency must be "primarily concerned" with rehabilitation, or that it be the state education agency of "a state agency which includes at least two other major organizational units each of which administers one or more of the major public education, public welfare, or labor programs of the state." In addition, if the state agency is not limited to rehabilitation services, it must include a unit primarily concerned with this work, with a full-time director and staff.

When the State of Florida chose to designate its Department of Health and Rehabilitative Services as the "sole state agency" for the purpose of the act, the Commissioner of the Rehabilitation Services Administration in HEW disapproved that state's plan for FY 1976, because of the lack of adequate authority for the program director over the state's district officials, who were responsible not to the rehabilitation director but to an assistant secretary for operations in the Florida department. The state then challenged these requirements, contending among other matters that they unconstitutionally infringed upon state autonomy. In *Florida Department of Health vs. Califano*,<sup>12</sup> the federal district court upheld application of the requirement, again relying on the choice ostensibly available to the states of whether or not to participate in the grant-in-aid program. The Court found that the grants-in-aid for rehabilitation services were an inducement to participation but were not coercive, since "any state which objects to the 'strings' attached to receipt of the federal funds has the option to refuse both the grants-in-aid and the objectionable conditions."<sup>13</sup>

The Medicaid program provides federal matching funds to pay part of the cost of a wide range of medical services for needy persons. The law obligates the state to include certain services such as doctor and hospital care and permits coverage under the same formula for other "optional" services, including nursing home services for the elderly.

Congress delegated to the states the administrative responsibilities for Medicaid, to be fulfilled pursuant to regulations issued under detailed requirements set by the

Secretary. Among these regulatory conditions is a provision that states choosing to include nursing home care in their Medicaid plan must provide for licensing of nursing home administrators by a board on which no "single profession or category of institution" supplies a majority of the members. Florida's plan as submitted entrusted licensing of nursing home administrators to a board of examiners required by state law to include a majority of licensed administrators. Again, the condition disallowing this arrangement was challenged by the state on the ground that it interfered with the state's autonomy over its own governmental structure. The lower federal courts rejected the challenge, arguing that "[o]nce a state chooses to participate in a federally funded program, it must comply with federal standards." The effect of the regulation, which the court found within the Secretary's power under the statute, was "to induce, but not require, a state to license its nursing home administrators in a specified manner."<sup>14</sup>

In the *National Health Planning and Resources Development Act of 1974*, Congress also attempted to influence the governmental structure of the states, but it provided harsher penalties for noncompliance. Congress obliged the states to organize a new structure of agencies for health planning and resource allocation, each with a system of governance and responsibilities specified in the legislation and accompanying regulations. A state's failure to comply jeopardizes its entitlement, not just to planning funds available under the act, but also to other categorical grants for health resources. Thus, a state must designate a health planning and development agency (HPDA) responsible for state health planning and for the administration of a required "certificate of need" program, form a state health coordinating council (SHCC), with the powers to approve the state plan required by the act, to advise the HPDA, and to review all applications for federal grants for health care and to organize local health systems agencies (HSA) for health planning functions at the local level. The statute and regulations, thereunder, determine with specificity the composition of these agencies and their relationship to other governmental bodies.

Challenges claiming Constitutional infringements upon state sovereignty have been addressed to various aspects of this scheme. In North Carolina and Oklahoma, suits were brought seeking to invalidate the requirement of the certificate of need program.<sup>15</sup> Montgomery County, MD, took issue with the extent of authority over grants and certificates of need for institutional services that it was obliged to cede to local HSAs and the SHCC.<sup>16</sup> All these sovereignty-based challenges were rejected with the familiar recitation that federal legislation properly

enacted under Congress' power to spend for the general welfare, which induces the states to act in a particular way by the promise of federal funds, does not offend the Constitution. Since the states had the option to forego the federal payments rather than meet the federal standards, the statute induced but did not compel the state response. In the case of this act, the funds at risk for a noncomplying state are not merely the aid provided for state health planning, but also other categorical grants under the *Community Mental Health Centers Act*, or the *Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970*.

A final illustration of Congressional use of the spending power to mold the administrative structure of state government is afforded by the *Education for all Handicapped Children Act of 1975*. Like others discussed above, this statute was enacted in response to prodding from a combination of legislative proponents, national groups interested in special education, and public administrators in Washington and in the states. In this instance, however, Congress was also responding to Court decisions establishing a right secured by the 14th Amendment to equal educational opportunity for handicapped children. The act provides formula grants to participating states that develop and submit plans meeting federal requirements based on the number of handicapped children requiring educational services.

Conditions for receipt of the funds include compliance with standards for their in-state use, an obligation to provide individualized programs of education for the handicapped in the least restrictive environment suitable to the child, observation of specified procedures for classifying handicapped children and for administrative and judicial review of classifications and other determinations made by education officials, designation of the state education agency as the body responsible for education services for handicapped children, and appointment by the Governor of an advisory council including categories of members set forth in the statute, as well as detailed provisions controlling the relationship between the state agency and local education officials. If a state or local agency fails to comply either with the general obligation to provide all handicapped children "a free appropriate public education," or with the specific requirements of the statute, regulations, and state plan, the Secretary may withhold from the grant recipient not only the funds available under the act, but also the portion of federal funding provided under certain other education aid programs that pay for services to the handicapped. In one recent case, a federal judge in New York invalidated a state rule for determining a child's eligibility for special educational services. New York expends more than \$1

billion on handicapped education programs, of which the federal government contributed \$44 million. State officials anticipate the cost of compliance with the decision may exceed the value of the federal aid.

The federal government's involvement in state administrative procedures is not limited to conditions attached to aid payments. Recent federal initiatives have imposed obligations directly on the states by exercise of the commerce power, or have attempted to induce a state response in order to avoid the assertion of federal regulatory authority. For example, environmental controls in the *Surface Mining Control and Reclamation Act of 1977* encourage legislatures in coal-producing states to enact enforcement machinery according to national standards so as to avoid elaborate federal controls. Another example of a federal regulation directing a state governmental response is the *Natural Gas Policy Act of 1978*, under which administrative agencies in states producing natural gas must implement federal pricing policies for intrastate sales. This technique of federal administrators promulgating rules for implementation by state agencies, an increasingly common feature of environmental protection statutes, is also seen in laws regulating water pollution and the transportation of hazardous substances.

Forms of federal intervention affecting the governmental processes of the states are perhaps best illustrated in the *Clean Air Act*. In 1970 Congress authorized the Environmental Protection Agency (EPA) to set air quality standards for both direct and indirect sources of pollution. The EPA promulgated these standards, but left to the states the initial responsibility to design plans for their implementation. As air quality is influenced by virtually every kind of activity occurring in an area, the scope of these implementation plans was vast, covering matters as diverse as emission equipment for factories, power plants, and other direct sources of pollution; trans-

portation facilities intended to reduce utilization of private automobiles or encourage use of mass transit; and regulatory actions to control specific sources of pollution, such as automobiles. If the EPA disapproved part of a state plan, it was authorized to promulgate revised plans with which the state was obliged to comply. According to the agency's initial interpretation of the law, failure of the states to comply with such regulations could have subjected state officials to a variety of civil and criminal penalties.

A dominant feature of the contemporary federal system is thus the centralization of fiscal power and administration direction. While much has been made of the "new federalism"—the introduction of block grants and General Revenue Sharing to increase state and local control over service delivery, while taking advantage of the more efficient federal tax system—as George Break quite properly concludes, the effort to decentralize fiscal arrangements has "made very little difference." General Revenue Sharing has been funded at constant levels with steadily deflated dollars for eight years, and, for now at least, the states' share is phasing out. Block grants have proven little more than packages of categorical aid, with the number of conditions growing over time and the "block" concept eroding.

Another characteristic of the present fiscal federalism is the proliferation of grant recipients. More and more, the federal government is dealing directly with thousands of substate units and nongovernmental groups. This development stemmed in part from the suspicion, no doubt justified in some cases, that the goal of targeting aid required special federal efforts to circumvent the anti-urban bias of state governments. It also reflected the Great Society notion of direct citizen involvement, a concept now largely discarded in aid and payment programs, whereby representative governments were bypassed in order to build political participation by the ultimate recipients of public aid. One consequence of this approach was, of course, the further erosion of normal governmental procedures and the Constitutional position of the states.

In politics, as well, a series of forces continues to diminish the influence of the states in the federal system. In the structure of government established by the Constitution, the states enjoyed a significant role in the composition of the federal government. Three elements in particular combined to assure sensitivity to states' interests in the national legislature. Equality of representation among the states in the Senate, even after Constitutional amendment provided for direct election, meant that sentiment in a majority of states could block action supported by a majority of the people in the country. This

**"A dominant feature of the contemporary federal system is thus the centralization of fiscal power and administration direction."**

veto power was enhanced by Senate rules governing debate, and by the traditionally disproportionate representation of small southern states in positions of influence on critical Senate committees. Further, the Constitution was thought to give the states substantial control over the qualification of voters for Congressional elections by specifying that the electorate would consist of those persons who met the standard "requisite for electors of the most numerous branch of the state legislature."<sup>17</sup> And while the states enjoyed their discretion as to apportionment at the sufferance of Congress pursuant to Article I, Section 4, control over Congressional election districts was left to the state legislatures until 1964.<sup>18</sup> Districting discrepancies, combined with limitations on voter participation such as the poll tax to increase state and local party control over the selection process and heighten the effect of local interests on Congressional policy apportionment patterns favoring rural areas over urban centers or suburbs, further magnified the impact of localism in the national legislature.

These structural elements drawn from the Constitution were complemented by political forces that tended to ensure a strong hearing for claims of local autonomy in national legislative deliberations. Political parties were organized locally, and political clubhouses maintained their influence as providers of local services and organizers of social life in small towns and city neighborhoods. While the local political leader, then as now, was more involved in the affairs of the courthouse or county administration building than in events in the White House or the committee rooms of Congress, his hold on the precinct workers and the electorate, and particularly the primary electorate, contributed to the local sensitivity exhibited by members of Congress, many of whom traced their political roots to the local clubhouse.

In the past quarter century, many of the structural and political factors affecting sensitivity to localism in the Congress have changed dramatically, with the result that opposition to "federalization" of the state governmental process in the name of state sovereignty is less likely to prove compelling in Congressional debates.

Some of the changes in the structural elements of federalism are by now familiar. Commencing with *Wesberry vs. Sanders* in 1964,<sup>19</sup> the Supreme Court began to limit the states' ability to control the process of Congressional election districting. District lines must now be drawn to approach numerical equality among the constituencies. Neither municipal boundaries nor attempts to avoid political gerrymandering will excuse even slight deviations from mathematical equality. The courts have also scrutinized state plans to ensure continuity and to prevent use of the districting power to ex-

clude minorities from political representation; although only this year the Court limited this standard by requiring challengers to show discriminatory legislative motives before a plan would be invalidated.

Next, the Court, the Congress, and the Constitutional amendment process combined to limit state control over the qualifications of voters in elections for Congress. The decision in *Harper vs. Virginia State Board of Elections*<sup>20</sup> ended, in one swoop, years of fruitless Congressional debate over proposals to abolish the poll tax. Soon after the *Harper* decision, the Congress widened the electorate even more drastically through the *Voting Rights Act of 1965*, suspending the application of literacy tests and other qualification devices in specific states. Although ten years later the United States Commission on Civil Rights reported only limited success in achieving the objectives of the act, much of the change in southern politics and the pattern of representation from the "New South" both in Congress and in the states reflects the impact of this critical legislation.

In 1970 Congress attempted to broaden the electorate still further by extending the franchise for federal and state elections to persons over 18 years of age. In the subsequent challenge to this legislation, eight members of the Supreme Court divided equally on the question whether the statute exceeded Congress' Constitutional power to regulate the time, place, and manner of elections and to effectuate the equal protection guarantee of the 14th Amendment.<sup>21</sup> Justice Black broke the impasse, upholding the 18-year old vote in federal elections, but finding a prohibition on Congressional determination of voting qualifications for state ballots based on state sovereignty. The consequence was, of course, prompt submission and ratification of the 26th Amendment, guaranteeing the 18-year-old the right to vote.

Congress has also recently considered proposals for national standards to ease voter registration. Enactment of requirements that permit registration by mail, or even automatic registration such as exists in some European countries, would further diminish the significance of both local party organizations and the major interest groups, such as labor unions, who have a history of involvement in registration efforts. While the national legislation has not yet been adopted, the drive for easier registration has been successful in the state legislatures; several states now provide some form of mail registration. Other changes at the state level facilitating participation in a party's primary elections without regard to a voter's prior membership or involvement in party affairs have contributed further to the decline of party control and the development of personal constituencies by successful candidates for Congress.

The effects of the various structural modifications tending to erode sensitivity to state interests have been intensified by more subtle changes in the political process affecting national election campaigns and the internal workings of Congress. The past 25 years have brought enormous changes in the types of persons elected to the Senate and House, and in the techniques used in their successful campaigns. The core element in this transformation has been the decline in importance of state party organization, itself a product of several related forces—the effect of money on politics, the changing use of media in campaigns, the phenomenon of celebrity success in politics, and the substitution of welfare state programs for the community service functions of the neighborhood political organization. The consequences are varied, but clearly point in one direction. As Senators and members of the House develop independent constituencies among groups such as farmers, businessmen, laborers, environmentalists, and the poor, each of which generally supports certain national initiatives, their tendency to identify with state interests and the positions of state officials is reduced.

Once in Washington, the same characteristics that have distinguished the new member of Congress from his predecessors have also contributed to changes in the internal procedures of the national legislature. These modifications in Congressional rules and practices also tend to reduce the force of the proposition that the separate states generally acquiesce in acts of Congress interfering with their sovereignty. On the desirability of reelection, there is little to distinguish the contemporary Congressman. Most want to stay and their wish is seldom denied. But the same strains of independence that mark their election have also characterized the service of Congressional members in Washington. The old rule that "to get along in the House, you go along," while still of some importance, belies the increasing assertiveness of junior members. The most notable consequence has been the rising influence of the party caucus in the House and the consequent decline of strict seniority in the selection of major committee chairmen.

Recent studies of the relationship of incumbency to party loyalty in Congressional elections demonstrates further the decline of state party influence. A steadily increasing proportion of voters—from 9% in 1956 to 18% in 1974—have departed from their usual party line in Congressional elections. One political scientist explains this increase in defection by concluding that "incumbency has become a more important voting cue and party identification a correspondingly less important cue."<sup>22</sup> The combined effects of incumbency, direct access to the electorate, and declining adherence to se-

niority in the Congress contribute to the relative independency of members of Congress from the state party and state officials.

At the same time, there has emerged a new system of representation and mutual influence in the federal system, comprised of two classes of public administrators who work closely with the interest groups and constituencies affected by the programs they administer, as well as with individual legislators and committee staff. Collectively, they shape and implement legislation that imposes administrative obligations and fiscal burdens on the states in return for increased federal aid.<sup>23</sup> Individuals in the federal and state administrative bureaucracies often move back and forth between them and share common backgrounds and ambitions, most particularly the commitment to maintain and expand the public services they supervise. Although Governors may testify at public hearings and speak with members of the cabinet and Congress from time to time, the day-to-day contact between the states and the federal government is maintained through their administrative network—the routine, ongoing communications between health, education, or transportation officials in Washington, for example, and their counterparts in the state capitols. Thus, in the central process of federal policymaking, a state's views are represented increasingly by public officials with a direct stake in ever expanding national programs, even if expansion entails greater regulation and the imposition of more onerous burdens on the state.

Taken together, the new relationship of the states and state administrators to the federal government and the new politics of Congressional representation have dramatically changed the workings of the process of federalism. It is now far less likely that the states' interest in their continuing autonomy will consistently receive expression within the political branches of the federal government, or that the political process will yield dependable lines of accountability between the governed and the government. As Congress increasingly implements national policy by directing the governmental activity of the states, the people in whom sovereignty ultimately resides are left without a clear sense of the persons they may call to account—the national legislators who conceived and ordered a program, or the state officials charged with its implementation. And as the states find their resources and energies increasingly consumed in meeting obligations imposed by the national government, they confront a system of federalism more coopting than cooperative, in which the basic values of pluralism, creativity, participation, and liberty are progressively undermined.

## THE COURTS AND FEDERAL FISCAL RELATIONS

American courts confront issues of federalism in many settings. In actions for federal injunctions against state court proceedings allegedly infringing individual rights secured by the Constitution, the doctrine of "abstention" obliges a federal judge to stay the exercise of the court's equitable powers until the state has had a full opportunity to deal with the Constitutional claims. Similar concerns about "comity" within the federal system arise when objections are asserted in federal court to state executive conduct, and in collateral attacks on state criminal convictions through petitions for *habeas corpus*. In these and many related varieties of cases, federal judges must balance the right of access to a federal forum for vindication of Constitutionally secured individual rights against considerations of state sovereignty.

Of greater significance for present purposes, however, are certain categories of cases in which federal courts must directly confront the issues of fiscal relations in the federal system in order to resolve disputes arising under the Constitution. This can occur in various contexts, three of which have furnished the subject matter for important recent developments in the jurisprudence of federalism. The first has been an array of state claims that federal legislative requirements—either direct mandates or conditions to the acceptance of federal fiscal aid—unduly threaten the states' own sovereignty. The second is a mounting list of lawsuits seeking federal judicial intervention to reform state governmental institutions in order to protect individual rights. The final category is a group of actions alleging that state legislation initiated in response to changing economic circumstances—to protect local or regional economies, or to take advantage of local economic opportunities—unconstitutionally infringe national interests, chiefly the need for uninterrupted commerce among the states.

In each of these settings, changes in the political economy of the federal system have compelled federal courts to address novel questions respecting the adjustment of state and national interests. Collectively, they mark the frontier of federalism in the courts. The judiciary's response to date suggests that these issues will remain on the Supreme Court's agenda throughout the 1980s.

### Federal Mandates: A Threat to State Sovereignty

With the passing of the Constitutional crisis of the New Deal period came a series of Supreme Court de-

cisions confirming a legislative power in the Congress that seemed to exceed any realistic prospect of its exercise. Congressional regulatory authority over interstate commerce was deemed broad enough to reach farm produce grown and consumed on a prison farm in Ohio;<sup>24</sup> it was similarly sufficient to subject small luncheonettes to antidiscrimination laws on the strength of the likelihood that the proprietors purchased goods produced in other states,<sup>25</sup> and to support vast new regulatory programs to curb pollution and to control the risks of injury or illness. More pertinent to the inquiry here was the conclusion that this plenary commerce power could be used to constrain the states no less than the activities of private parties. It mattered not that a railroad fell under public ownership, that a water treatment plant was operated by a county sewage authority, or that an institution for the mentally retarded was a municipal facility. If the Congress chose to impose regulations to promote safety, to allocate liability, or to enforce a minimum wage, these public agencies were as fully subject to the federal mandate as private entrepreneurs. Neither the financial burden of responding to federal directives nor even the obligation to use state governmental processes to enact new laws or to create new administrative agencies to conform to federal requirements limited the reach of Congressional authority.

To be sure, the Court occasionally alluded to the possibility of judicial protection against federal overtures endangering a state's separate existence. Such references usually cited the 1911 case of *Coyle vs. Smith*,<sup>26</sup> which struck down an act of Congress conditioning Oklahoma's admission to the Union upon a change in the location of the state capitol. And in more recent cases such as *Maryland vs. Wirtz*,<sup>27</sup> upholding the extension of the *Fair Labor Standards Act* to state-owned hospitals and prisons, and *Fry vs. United States*,<sup>28</sup> affirming the application of federal wage and price controls to state and local governments, there were hints that circumstances might arise in which an objection to the intrusion upon state sovereignty could prevail over federal authority to regulate state activities under the commerce power.

In a celebrated case decided in 1976, the Supreme Court finally drew something of a line, striking down by a five-to-four vote the extension of the minimum wage and maximum hour rules of the *Fair Labor Standards Act* to all state and local government employers, in the process overruling *Maryland vs. Wirtz*. As Justice Rehnquist explained in *National League of Cities vs. Usery*,<sup>29</sup> the federal commerce power must give way to the Constitutional interest in state sovereignty where a challenged regulation "directly displace[s] the state's freedom to structure integral operations in areas of traditional

governmental functions.’’ Judges, legislators, and academic commentators have since offered varying readings of this elusive standard, but within the Court itself, Justice Blackmun supplied the decisive vote by interpreting the plurality as inviting a judicial effort to balance the relative weight of federal and state interests affected by the disputed regulation. And the plurality opinion itself attempted to distinguish *Fry*, the wage control case, on the ground that the regulation there at issue was temporary in duration, responsive to an emergency in the economy, and offered net budgetary savings to the affected governments, all factors suggesting that a balancing test had indeed been announced. By contrast, prior rulings involving regulation of publicly owned railroads were preserved on the dubious theory that transit is not a ‘‘traditional’’ function of government.

Although important questions as to the states’ Constitutional protection against federal action under the spending or war powers were not reached by the Court in *National League of Cities*, the controversy was joined. I have elsewhere argued<sup>30</sup> that the *Fair Labor Standards Act* was probably a poor target for the application of this new constraint on Congressional power, and its sources in the Constitution were certainly ambiguous. Nevertheless, after 1976 there was a new obstacle of uncertain dimension to the exercise of Congressional authority impinging upon the states, and an important suggestion of possible future judicial confinement of the legislative branch in the interest of protecting the state’s autonomy.

The decision in *National League of Cities* did influence subsequent Congressional debates on such matters as no-fault insurance and the extension of collective bargaining rights to state and local government employees. Lower federal courts have tended to focus on Justice Rehnquist’s distinction between traditional and novel functions of government, with some anomalous results—for example, the approval of federal regulations affecting local transit systems, but the invalidation of regulations applied to a municipally owned airport.<sup>31</sup>

But the proliferation of federal legislation imposing significant obligations on the states—‘‘federalizing’’ the machinery of state government to serve the ends of national policy—warrants some broader measure of judicial supervision than the courts have recently supplied. As suggested earlier, the political branches are no longer as well suited as they once were to the task of safeguarding the role of the states in the federal system. Changes in politics and in national policy support judicial intervention to protect state sovereignty. By imposing significant fiscal burdens and coopting the processes of local government, these federal directives have had the effect of stunting the capacity for sovereign choice.

In the area of conditions to federal grants, the problem arises most acutely. Here, the Supreme Court has not spoken. As indicated in the examples above, the lower federal courts tend routinely to reject challenges to grant conditions on the ground that a state voluntarily accepts the aid with the strings attached. But the problem is more difficult than this coercive-voluntary distinction admits. Consider, for example, the case of transit facilities for the handicapped. All of us doubtlessly support the policy of providing transportation opportunities for handicapped persons. But the regulations promulgated under the federal statutes provide in detail for specific techniques to accomplish that goal, with the effect of circumscribing local policy choices and imposing costs well beyond the grants to which the directives are attached. Given that most transit agencies depend upon federal funds for both operations and improvements, to speak of ‘‘voluntary’’ acceptance of these conditions as though in contrast to the ‘‘coercion’’ of direct mandates is pure fantasy. Applying these terms honestly to public decisionmaking in today’s federal system, the realistic conclusion must be that the states have no choice. Moreover, if the Congress may avoid *National League of Cities* by linking the regulation to a grant—for example, by conditioning revenue sharing on state compliance with minimum wage standards—the court’s effort to carve out a zone of protected state sovereignty is easily frustrated.

In the real world of federal fiscal relationships, a less anthropomorphic standard is needed, one more responsive to the delicate adjustment of the states’ interest in autonomy. It is not easy to find one. I have elsewhere suggested that when confronted by a condition with a ‘‘coopting’’ effect, measured not only fiscally but in terms of the public time and attention basic to decision-making, a court should inquire whether the condition serves an important government objective. Such a test would be more rigorous than a requirement of simple rationality, but less searching than a legislative obligation to adopt the least restrictive alternative.

In 1964, well before *National League of Cities*, Professor (now Justice) Hans Linde criticized the courts for failing to distinguish conditions affecting the organizational form and political structure of state government:

Probably no one can say today how much state and local tax revenue—the life-blood of local autonomy—is committed to programs the standards for which are set and controlled under federal law. Yet there must be limits on such conditions if the political values of federalism are to be preserved despite this fiscal centralization. [Justice] Reed’s easy generali-

zations [in *Oklahoma vs. Civil Service Commission*] about conditioned federal spending prove too much. . . . [State officials] increasingly administer programs aided by federal funds; may Congress constitutionally decide which may be elected, which others politically appointed, and which others must be in a non-political career status? Surely a line may be perceived between such conditions that go to the substance of the federally supported project, for instance that it fit a national plan, or be soundly engineered, or meet prescribed standards of hours, wages, or nondiscrimination in employment, or be fairly and honestly administered.<sup>32</sup>

So far, the Court has not picked up this distinction between conditions coopting the political processes of state and local governments, and those directly linked to the service function of the grant. If anything, the thrust in Congress during the past decade was the other way. Proponents of general revenue sharing and block grants showed more sensitivity to eliminating conditions that restrict program use than toward conditions regulating local political processes. For example, Professor Otto Stoltz argued that:

the single most important aspect in determining the [revenue sharing] program's future will be participation of local citizens in the decision-making process. . . [a] requirement of information disclosure and participation at the local level is not inconsistent with the "no-strings" rhetoric.<sup>33</sup>

Of course, an inquiry whether the legislature's chosen technique serves an important governmental objective would inject the courts into an area of motivational analysis which is always perilous. The judicial branch does evaluate Congressional purpose as a normal practice in equal protection cases challenging classifications based on race or affecting fundamental interests like the right to freedom of speech. More recently, however, the Supreme Court has required persons seeking antidiscrimination relief to show an intent or purpose to discriminate in the challenged governmental action, a test which drastically limits the availability of judicial protection. Yet, in earlier cases, involving the denial of public assistance to certain aliens<sup>34</sup> and a challenge to a town's decision to close the public swimming pool rather than to integrate it,<sup>35</sup> the justices rejected invitations to examine legislative purpose. In the alienage case, Justice Harlan observed that:

only the clearest proof could suffice to establish the unconstitutionality of a statute on such a ground. Judicial inquiries into Congressional motivation are at best a hazardous matter, and when an inquiry seeks to go beyond objective manifestations it becomes a dubious affair indeed.<sup>36</sup>

Devising an appropriate standard for judicial scrutiny of grant conditions is a complex and sensitive matter. But if the political process no longer affords adequate safeguards, it may be precisely the link between political liberty and state sovereignty that obliges the courts to look more closely at conditions that threaten the states' interest in autonomy.

## Reform of State Institutional and Financial Systems

A second principal class of cases which recently have enmeshed federal courts in the intricacies of fiscal federalism involve claims that state institutional or bureaucratic arrangements violate individual rights guaranteed by the Constitution. These institutional reform cases have been hailed by some commentators as a new type of "public law" litigation, but whether or not they are different in kind from ordinary lawsuits—and more significantly, whether or not they require a different conception of the judicial process—there can be little doubt that they raise distinctive issues. The relief typically sought contemplates complex changes in bureaucratic behavior, and compliance with the decree may impose large fiscal burdens on the state or local government defendant. The lawsuit itself frequently has many parties and affects many interests; indeed, the actions required to remedy the unconstitutional state activity may have consequences for many groups not directly involved in the litigation. Finding the facts in dispute may inject the judge into the complex and unfamiliar terrain of economics, sociology, psychology, and philosophy; and enforcing an effective remedy may well place the court in direct conflict with elected state or local officials, which tests both the limits of the court's equitable power and the legitimacy and efficacy of its decree. Finally, the federal judge is often obliged to maintain a continuing involvement in the administration of state institutions affected by his order.

This amorphous category of "public law" actions defies precise definition. While some commentators would include within the term all antidiscrimination or

equal opportunity claims, others emphasize the cases seeking judicial reform of custodial institutions. The matter of definition is less important here than appreciation of the phenomenon. Federal judges are increasingly pressed to order sweeping changes in the administration and financing of institutional arrangements affecting large groups of people within the states, changes which sometimes affect the nature and extent of such basic state legislative functions as the obligation to raise revenue through the imposition of taxes. Such petitions plainly test the foundations of Constitutional federalism.

A much discussed example of this type of lawsuit involved a challenge to the statutory scheme for school finance in the State of Texas. Like most other states, Texas relied on local property taxes for a large proportion of education funds, delegating the responsibility for its schools to local districts, and supplying state aid according to a formula designed without much regard for either the property wealth of a particular district or the fiscal and educational burdens of an individual school system. Consequently, a district with relatively little property wealth might find it necessary to impose a tax five or even ten times the effective rate of a neighboring district with higher property value per pupil in its tax base. If the property-poor district had to fund other public services as well—as a result, for example, of a large dependent population not present in its neighbor—or its school children had special learning disabilities due to bilingualism or poverty, the gap between the two districts' respective capacities to provide funds for quality education was all the greater.

Moved by their shared concern over the inequities of this system, a disparate group of plaintiffs from Texas and other states, including local officials, school administrators, parents, and school children, filed a lawsuit in federal courts contending that the state school finance statutes deprived them of equal protection of the laws guaranteed by the 14th Amendment. Some of the remedial implications of such suits are readily apparent. If a court invalidates an existing state scheme for the funding of education, what does its decree provide in the place of an invalid statute? If the substitute requires additional state funds, as well it might, does it also mandate additional state control over schools? Does it mean, for example, that the state should negotiate a single salary schedule with a statewide teachers' union? Does it require new state taxes, or a sharp reduction in some other state services? Is the court to address these issues at all in drafting its decree? Suppose the court orders the state to produce new funds for schools, or a new system for administering local education, and the state legislature refuses to act, can the court itself impose a new state

tax? Can it take property tax funds away from property-rich districts and give them to poorer schools? Are these awesome questions to recur 50 times in cases involving each of the 50 states, with 50 federal district judges groping for effective answers?

Prior to 1973, both state and federal judges took the first step, striking down state school finance statutes as violations of the equal protection clause. The impulse well may have been initially supplied by a proposal from Professors Stephen Sugarman and John Coons in California for at least a superficially attractive potential remedy called "district power equalization" or "capacity equalization." Briefly, the remedy involves state grants designed to ensure each school district a specified level of taxing capacity. Thus, in a state where property value ranged from \$10,000 to \$500,000 per pupil, the districts could be guaranteed any level established by the legislature; the amount of state funds required to supplement local taxes would, of course, increase dramatically as the guaranteed tax base was raised. District power equalization offered the appealing possibility of equalizing local districts' capacities to spend for education without usurping local control over educational policymaking. It was not, however, a panacea; for in the absence of state supervision, the additional funds might as readily be directed to property tax reduction, teacher salary increases, or a new golf course for the local high school, as to improvements in educational programs reflected in output measures such as achievement tests.

In the early school finance cases, the trial courts commonly engaged in a cursory examination of the fiscal and educational policy issues at stake, found a denial of equal protection, and avoided the remedial quagmire by declaring the statute invalid and giving the state legislature time to revise it. No case had reached the point of ultimate conflict between a recalcitrant state legislature and the federal judiciary when in 1973 the Supreme Court brought the effort to reform school finance in the courts to a sudden halt.

In *San Antonio Independent School District vs. Rodriguez*,<sup>37</sup> a bare majority of the justices found that there was no denial of equal protection in the Texas statutory scheme. Traditionally, the Court's analysis of equal protection challenges requires "strict scrutiny" of a legislative technique affecting a "fundamental interest" or a "suspect class;" otherwise, the legislative judgment is sustained if the classifications created by a statute are "rationally related" to a "legitimate" governmental objective. As one would readily surmise from this formulation, few enactments can withstand the test of "strict scrutiny," which obliges a state to demonstrate

that no less restrictive means are available to achieve its lawful objective; but few statutes fail to pass the test of simple rationality. In *Rodriguez*, the Court held that education is not a "fundamental interest" in Constitutional terms, and that the classification created by the Texas statute—most likely, the distinction between persons living in relatively property-poor districts and those in relatively property-rich districts—was not "suspect." Writing for the majority, Justice Lewis Powell further concluded that the system of reliance on local taxation for the funding of schools was rationally related to the states' purpose of promoting local control over educational services.

Analytically, the majority's treatment of the equal protection claim in *Rodriguez* is open to doubt on both counts. Justice Byron White in dissenting thought the system lacked the necessary rational link between local control and the gross disparities in spending capacity permitted by the statute. Other dissenters, including Justices William Brennan and Thurgood Marshall, thought education sufficiently related to express Constitutional rights of citizenship, such as the right to vote and the rights of free speech and assembly, to warrant a more searching inquiry into the state's purpose, an inquiry destined in their view to defeat the existing statute.

One may certainly indulge the suspicion that concerns other than the reach of the equal protection clause played some role in the disposition of *Rodriguez*. For at least some members of the majority, the prospect of injecting the federal judiciary into the heart of state and local fiscal policymaking in virtually every state of the Union, without much guidance as to an effective form of relief, was surely distasteful to contemplate. Given the uncertainties of substantive effect and remedial design in this uncharted domain of educational policy and state fiscal relations, it is hard to think of a better case to remit to the mediating influences of the judicial and political processes in the various states. Although the Court left open the possibility that a case of absolute denial of educational opportunity as a result of state action might justify federal intervention, the niceties of correlating educational quality with money or spending capacity with property wealth, along with the task of designing and supervising effective remedies, was left to other forums.

Subsequent experience in school finance cases has generated protracted conflicts between the courts and political branches in the states, and disclosed the uncertain results of remedial measures such as district power equalization. Indeed, the greater the experience, the less certainty there seems to be about the most effective or desirable method for funding education. Clearly, there is still ample room for state experimentation in this area,

and ample need for continuing dialogue among the branches of state government. Both would have been cut off by a uniform answer by the Supreme Court in 1973. Yet, it is curious that these federalism concerns were barely mentioned by the Court in the opinion in *Rodriguez*.

There is something plainly unfair, and perhaps unconstitutional, about a method of funding that leaves one school district with one-fifth or one-tenth the fiscal capacity of another when it is likely to be more costly to achieve the same results in the poor district. But the difficulties of reforming such inequities, and the implications of externally imposed reforms for the fundamental political processes in the states, justify a measure of caution by the federal courts. Although surely not easy, for a state judge, the matter is different. By declaring the school finance statute unconstitutional, a state's judiciary initiates a dialogue with the political branches of state government which can lead to improvements in the educational system. Some of the difficulties that remain are suggested by the experience in New Jersey, where the state court's decision ultimately required passage of an income tax to produce more than \$400 million in new funds for education, and the state legislature acted only after the Supreme Court issued an injunction closing the entire school system throughout the state. But at least this confrontation occurred without the added constraints of federalism issues.

Institutional reform litigation involving standards of custodial care in hospitals or prisons pose both similar and distinctive issues. As in the school finance controversies, multiple interests are affected; decrees may require ongoing judicial involvement in state administrative bureaucracies; and the fiscal effects of court orders may compel significant changes in state budgetary and taxing arrangements. The cases are infused with the same potential for conflict between federal courts and reluctant state legislatures, as well as the same limitations in the courts' capacities to anticipate or influence ongoing behavior of complex public agencies.

But there are differences. Vindication of the Constitutional claim in a school finance case inevitably requires revision of a basic statutory scheme affecting every district in the state. By contrast, prison and hospital cases ordinarily commence with discreet complaints regarding standards of treatment and confinement, such as access to medical services, allocation of space, distribution of recreational opportunities, or availability of library facilities. Each of these claims raises a distinct question under the First, Fifth, Sixth, Eighth, or Fourteenth Amendments. It is true that such claims may multiply during the course of the litigation until what is really at

issue is the overall administration of the custodial system, and at times federal courts respond by treating such cases holistically, merging the objections into the single question of the Constitutional requirements for institutional care. Nonetheless, these actions remain rooted in sharp controversies between the custodial states and individuals or classes of inmates or patients over the extent to which the Constitution affords them protection in a particular way. While some of the specific remedies sought—e.g., fewer persons in a cell, or greater access to medical treatment—may have significant fiscal impact, a custodial case is less likely than school finance litigation to reach to the heart of a state's revenue-raising and budgetary decisions. This is especially true if the court declines to view the filing of the complaint as an invitation for wholesale judicial reform of existing patterns of institutional care, and obliges the litigants to anchor their contentions in the traditional format for the adjudication of Constitutional issues. When handled with a measure of restraint, the institutional cases afford important vehicles for the articulation and vindication of the rights of persons least able to participate in the political process.

Elaboration and enforcement of Constitutional values otherwise unsecured against political abuse is indeed the paradigmatic function of Constitutional litigation. In this respect at least, the institutional reform cases fall squarely within the courts' traditional role as the guardians of individual rights. Fulfillment of this responsibility does not compel usurpation of legislative or administrative functions, nor require overly confident assumptions about judicial capacity to influence bureaucratic activity. If it has consequences for the fiscal management of state and local government, they ought not to differ in kind from the cost of compliance with an antidiscrimination order or a decision affording counsel to indigent persons accused of crime. It is therefore not surprising that the Supreme Court's recent efforts in this area seem to disclose not so much federalism-based concerns about interference with state governmental processes as substantive differences among the justices concerning the scope of the protection to be afforded under the Constitutional provision at issue—differences equally apparent in decisions regarding federal institutions as in those affecting state facilities.

## The Commerce Clause and Interstate Economic Competition

A major impetus for the Constitutional Convention was the need to create a national authority to deal with

problems of trade and commerce. Regulation of commerce, said the Court in *Gibbons vs. Ogden*, "was one of the primary objects for which the people of America adopted this government."<sup>38</sup> Both Alexander Hamilton and James Madison argued for ratification by emphasizing the importance of the Constitution in assuring a free flow of trade. Hamilton called it "an investment in the commerce between the states . . . [to] advance the trade of each by an interchange of their respective productions."<sup>39</sup>

From the outset, the commerce clause in Article I, Section 8 furnished the principal legal foundation for the efforts to build and sustain a national economy. The Court's elaboration of its meaning contributed to the process in two ways: (1) by establishing the broad reach of Congressional power through an expansive definition of activities "in commerce;" and (2) by reviewing state actions to determine whether they unduly burden the free flow of commerce between the states. In both functions, however, the Court's function is subordinate to that of the Congress. Unlike the case of Constitutional protection of individual rights, where the judicial authority is necessarily supreme, Congress may determine with respect to any particular subject of commerce whether to preempt the regulatory field or to consent to state actions.

Recent developments in our political economy pose new and intricate challenges to the judicial responsibility for adjusting the commercial interests of the nation and the states. One important trend is the expansion of state and local governments into service areas previously reserved to private entrepreneurs. State and substate units of government now commonly operate transit services, recreational facilities, exhibition halls, and landfills; they also engage in or subsidize the manufacture or distribution of goods deemed essential to the local economy. As a state extends its sovereign reach in this regard, questions multiply concerning the application of federal regulations of commerce to state activities. When operated privately for profit, the operation of a railroad or hospital is subject to an array of federal mandates. If the same function is assumed by a state because it serves a public purpose, is uneconomical for the private sector, and requires either public subsidy or public ownership for its survival, does the Constitutional protection of state sovereignty limit the application of the same federal regulations by reason of the change in the "proprietor"? This is, of course, the question addressed by the Court in *National League of Cities*, a decision whose ultimate reach remains to be seen. What is already clear is that as the local government sector expands, the implications of a bifurcated standard for testing federal regulations of commerce are enormous.

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A second contemporary change of even greater potential implication is the increasing balkanization of state economic development policies. The states and regions of the country are progressively dividing into two groups: one with substantial local resources, growing economies, and surplus revenues; the other with declining economies, overextended tax bases, and looming budget deficits. As the nation responds to a low-growth, high-inflation, energy-short economy, this division within the nation becomes more marked. In the older urban areas of the northeast/midwest region, economic deterioration feeds on itself as dependency claims available public resources, and a neglected infrastructure widens the gap between needed and affordable improvements. Cities in the northern states face virtual bankruptcy, and even some of the states themselves foresee dramatic shortages of funds. Exercise of the taxing power is often self-defeating; these states need to reduce taxes simply to retain existing jobs.

At the same time, other states—chiefly those with natural resources on which to levy severance taxes—are building surplus treasuries and testing their ingenuity to find new uses for public funds and new devices to reduce reliance on traditional sources of revenue. The statistics are set forth by George Break in *Chapter 3*: six states collect more than 80% of all severance tax revenues; in the aggregate they will enjoy large surpluses through the 1980s. This economic separation of the country into have and have-not states is exacerbated by diminishing levels of federal assistance. In real terms, federal payments to state and local governments are lower in FY 1981 than they were in 1976, and further reductions are likely. As a result, the poorer states must fall back on their own revenues at just the time when they can least afford to do so.

Among the effects of this divergence in the economic fortunes of the states are a new attention to the exportation of tax burdens and new forms of rivalry for scarce productive investments. Devices for exporting taxes have spread through rich and poor states alike. For example, New York and Connecticut each attempted this year to meet budget shortfalls and maintain basic public services through a gasoline surcharge which could not be reflected in prices charged within the state. A federal district judge in Connecticut struck down the state law on the ground that oil pricing policy has been preempted by the Congress. Another suit challenges the New York law, which is framed differently. The question of a state's power to regulate at least certain aspects of retail gasoline marketing was addressed by the Supreme Court two years ago in *Exxon Corp. vs. Governor of Maryland*,<sup>40</sup> where a majority upheld a Maryland statute prohibiting pro-

ducers or refiners from operating retail gas stations in the state. Justice John Stevens rejected arguments that the regulation discriminated against out-of-state dealers, that it burdened interstate commerce, and that the state's regulatory power over gasoline marketing had been preempted. Presumably, the difference in the current actions is that New York and Connecticut have attempted to influence pricing policies, an area which Congress has explicitly addressed, not ownership of retail stations.

Concurrently with such developments in the northeast, producing states from Louisiana to Montana had increased several taxes on mineral resources to record high levels. If the demand for these products in the consuming states is inelastic, the effect of a high severance tax is to raise the price of fuel exported into the interstate market. By traditional commerce clause standards, these severance taxes are within the states' power because the levies are imposed in a nondiscriminatory fashion on raw materials coming out of the ground before they enter the stream of commerce. By contrast, the New York gas tax surcharge might successfully be attacked both on the ground that it discriminates against out-of-state consumers and on the preemption theory invoked by the Connecticut court.

Be this as it may, these legal formulations of the issues fail to come to grips with the economic reality of federal fiscal relations in 1980. The questions presented are more intricate than the precedents suggest. Faced with the evidence of the regional divisions created by our contemporary economy, the Court will soon be obliged to craft rules of decision that reflect and address the economic circumstances of our times. Some recent cases augur the difficulties that lie ahead. In addition to the *National League of Cities* problem, the Court has wrestled with several cases in which a state's actions in furtherance of some legitimate local interest have been alleged to run afoul of the need to safeguard the free flow of commerce. Confronted by these modern twists on the historic objection that states place no embargoes on exports to the other states of the Union, the Court has

reached diverse results in just the past two years.

First, in *Philadelphia vs. New Jersey*,<sup>41</sup> the Supreme Court struck down a New Jersey statute prohibiting the dumping of out-of-state waste in local landfills. Congress clearly had not attempted to preempt state regulation of waste disposal, and New Jersey argued that any burden on interstate commerce resulting from its legislation was incidental to its legitimate purpose of protecting public health and safety, a power reserved to the states. The Court found, however, that the state's effort to limit access to its scarce landfill resources amounted to a venture at "economic isolation," the kind of protectionism the commerce clause was intended to proscribe. Regardless of the state's purpose, the means adopted violated the clause "by discriminating against articles of commerce coming from outside the state." Much the same reasoning was applied again last year in *Hughes vs. Oklahoma*<sup>42</sup> to invalidate Oklahoma's attempt to give its residents preferred access to minnows obtained from state waters by prohibiting their interstate shipment. In reaching this result, the court overruled a 19th-century case allowing a state to prefer its own residents' claims to game birds on the theory that the state "owned" wild animals within its borders.<sup>43</sup>

These cases contrast with the Court's earlier rejection in *Hughes vs. Alexandria Scrap*<sup>44</sup> of a commerce clause challenge to a Maryland statute which imposed more exacting requirements on out-of-state processors of abandoned automobile hulks than on in-state firms. The practical effect of this law was admittedly the elimination of payment of "bounties" or subsidies to the out-of-state processors, but the Court concluded that the bounty program made Maryland a "market participant" rather than a regulator. "Nothing in the purposes of the commerce clause," said the justices, "prohibits a state, in the absence of Congressional action, from participating in the market and exercising the right to favor its own citizens over others."

Just last month (June 1980) in *Reeves, Inc. vs. Stake*,<sup>45</sup> this notion that a state "acting in the market" is insulated from commerce clause analysis furnished the rationale for a decision upholding South Dakota's right to exclude out-of-state customers from purchasing cement produced by the state's own manufacturing facility. In the Court's view, as a seller of cement, South Dakota was even more clearly a market participant than was Maryland when it acted to subsidize local processors. In an important though puzzling passage in *Reeves*, Justice Harry Blackmun observed:

Restraint in this area is also counseled by considerations of state sovereignty, the role of

each state as "guardian and trustee for its people," . . . and "the long recognized right of a trader or manufacturer, engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal." . . . Moreover, state proprietary activities may be, and often are, burdened with the same restrictions imposed on private market participants. Evenhandedness suggests that, when acting as proprietors, states should similar[ly] share existing freedoms from federal constraints, including the inherent limits of the commerce clause. . . . Finally, as this case illustrates, the competing considerations in cases involving state proprietary actions often will be subtle, complex, politically charged, and difficult to assess under traditional commerce clause analysis. Given these factors, *Alexandria Scrap* wisely recognizes that, as a rule, the adjustment of interests in this context is a task better suited for Congress than the Court.<sup>46</sup>

Put together, these comments yield some surprising and troubling distinctions. As in *National League of Cities*, classification of a state's activity as proprietary rather than governmental once again seems to bear considerable significance. But is "untraditional" the same thing as "proprietary?" Common usage would hardly suggest this to be so. It is a curious twist that while "governmental" functions enjoy some immunity from Congressional regulation of commerce, they are subject to the usual commerce clause analysis of burdens imposed on commerce; yet in the face of Congressional silence, the "proprietary" function which enjoys less (or no) immunity from federal regulation nonetheless escapes the test for undue interference.

The line so sharply drawn by the Court between proprietary functions on one hand and regulatory or taxing measures on the other scarcely seems more realistic than the *National League of Cities* distinction between traditional and novel activities. The practical fact is that states respond to public need with programs and techniques for influencing private market decisions which appeal to them at the time in light of all the circumstances. A Constitutional distinction between direct regulation, tax credits or levies, subsidy payments to private entrepreneurs, and state operation of particular services or production of needed goods may well prove difficult to define and harder still to defend. Certainly the differentiation between proprietary and sovereign activities has roots in older cases on the states' immunity from

federal taxes, decisions which held that state enterprises engaged in liquor sales, for example, or the distribution of bottled water were subject to federal tax.<sup>47</sup> But as Chief Justice Stone observed in *New York vs. United States*, it ought not be the simple fact of nondiscrimination in the application of a tax that supports the federal levy on state activity, but rather a determination whether the tax "unduly interferes with the performance of the state's functions of government."<sup>48</sup> As the current Court itself stated in the South Dakota cement case, the scope of necessary governmental services must be determined not by historical reference, but by the exigent requirements of the times; "the genius of our government provides that, within the sphere of Constitutional action, the people. . . have the power to determine as conditions demand, what services and functions the public welfare requires."<sup>49</sup>

It is simply not satisfactory, then, to determine state immunity from federal taxes, federal regulations, or the strictures of commerce clause analysis on the strength of artificial categories that purport to divide one technique of state activity from another. Nor is it sensible for the reach of state regulatory power to turn on the question whether the state owns the product whose trade is at issue. Yet, that seems to be the only way to distinguish South Dakota's cement from New Jersey's garbage or Oklahoma's minnows. In terms pertinent to interstate commerce, would it matter if the State of New Jersey itself had owned the landfills? If Oklahoma controlled the production of minnows (or oil), could it bar the out-of-state customers whom it must admit to trade with private producers? Surely the Court's further attempt to distinguish the cases based on the difference between natural products and processed goods cannot be the ultimate test. At least where Congress has not acted to preempt state action altogether by occupying the field, commerce clause analysis inevitably compels the Court to adjust the national need for open channels of trade with the state's power to provide for the health and safety of their people by responding to matters of local concern. There is little chance of escaping this burden through classifications that fail to reflect economically significant differences in circumstances.

The prospect of recurring challenges in the courts to state severance taxes underscores this difficulty. As noted earlier, if demand for Texas oil or gas is inelastic, and most of it is traded in out-of-state markets, that proportion of the tax is paid by out-of-state consumers. It can hardly matter that the taxable fuel is in an unprocessed state when the levy is assessed, for as Richard Posner points out, the economic effect is the same as if Texas placed a border tax on exports to other states or a tax

on sale of its gasoline in Illinois.<sup>50</sup> Yet, the discriminatory export tax is as plainly unconstitutional as an embargo on imports from other states would be.<sup>51</sup> And if the principle of nondiscrimination does not suffice to deal with the consequences for consuming states of excessive taxes on extraction, it is no more plausible to rely on a state's fictional ownership of natural resources before they are removed from the ground. Were Texas to take over gasoline extraction within its territory, that development would scarcely warrant the creation of a monopoly over its use.

Perhaps the better course is for these interregional conflicts to be sorted out politically by the Congress. Congressional authority to curtail severance taxes—at least taxes that exceed reasonable revenue raising for local needs—is not entirely clear, but it is surely more likely to be sustained than a lawsuit contesting the measure of a severance levy. If Congress fails to act, however, the Court may be unable to escape an inquiry as to whether the economic balkanizing effects of these taxes in fact work to the detriment of commercial relationship in the federal system.

## CONCLUSION

Are there any general principles regarding the Court's role in the new federalism to be drawn from the disparate recent rulings? I have suggested that political developments have reduced the likelihood of Congressional sensitivity to the states' concern for their autonomy. The technique of achieving national objectives by providing small amounts of aid to the states and obliging the recipients to meet a complex set of program conditions is an appealing way to combine limited federal resources, national directives, and state administration. Its effect is increasingly to coopt the governmental processes of the states—not merely their fiscal resources, but equally important, the public time and attention devoted to the task of satisfying the elaborate strictures of federal requirements. This effect is compounded by the tendency to offer the states a choice between dancing to the tune of federal regulations or subjecting themselves to plans designed by federal agency officials. At the same time, the declining fiscal capacity of the national government and the changing political climate toward social welfare expenditures place ever more responsibility on state governments for funding basic services. The complexity of the current economy; the need for public intervention to revive productivity, rebuild infrastructure, facilitate area redevelopment, replace outmoded plants and equipment, and assure capital formation; and the continuing absence

# **"The Supreme Court's efforts to date do reveal an awareness of the need for renewed judicial solicitude toward state autonomy, but its standards are inchoate, and the distinctions thus far suggested often seem implausible."**

of any consensus as to the most effective methods to achieve these divergent aims while also reducing inflation and solving the energy crisis, all invite resort to the ingenuity of the several governments in a federal system. In sum, the present dilemmas of public policy argue for a more vigorous federalism at just the time when the

political process seems least likely to maintain the sovereignty of subnational governments.

Meanwhile, the states are responding to their economic problems by leaning toward protectionist policies such as excessive severance taxes, attempts to exclude out-of-state customers, and efforts to export taxes. These balkanizing measures also compel more decisive judicial intervention to adjust the balance in the federal system. The Supreme Court's efforts to date do reveal an awareness of the need for renewed judicial solicitude toward state autonomy, but its standards are inchoate, and the distinctions thus far suggested often seem implausible. At times, as in *Rodriguez*, the federalist justification for staying the federal hand is masked by substantive Constitutional doctrine that is less than fully persuasive.

It is fair to say that the Court has yet to come to grips with the federalist fallout from our rapidly changing economy; but safe to predict that for the rest of this century, the justices will be occupied with the problem of securing individual liberty not only against direct governmental abuse, but also against the more insidious erosion that would follow an enduring decline in the strength of our federalism.

## **FOOTNOTES**

- <sup>1</sup> Paul Freund, "Umpiring the Federal System," *Columbia Law Review*, 54, 1954, p. 561.  
<sup>2</sup> Herbert Wechsler, "The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government," *Columbia Law Review*, 54, 1954, pp. 544, 559.  
<sup>3</sup> 17 U.S. 316 (1819).  
<sup>4</sup> Wechsler, "The Political Safeguards of Federalism," *Columbia Law Review*, 54, 1954, p. 559.  
<sup>5</sup> 400 U.S. 112 (1970).  
<sup>6</sup> Daniel J. Elazar, *The American Partnership: Intergovernmental Cooperation in the Nineteenth Century United States*, Chicago, IL, University of Chicago Press, 1962.  
<sup>7</sup> 297 U.S. 1 (1936).  
<sup>8</sup> 330 U.S. 127 (1947).  
<sup>9</sup> 301 U.S. 548 (1937).  
<sup>10</sup> 379 F. Supp. 606 (D. Vt. 1974).  
<sup>11</sup> 379 F. Supp. 606, 617 (D. Vt. 1974).  
<sup>12</sup> 449 F. Supp. 274, 284 (N.D. Fla.), aff'd *per curiam*, 585 F. 2d 150 (5th Cir. 1978).  
<sup>13</sup> *Ibid.* at 284.  
<sup>14</sup> *Florida vs. Mathews*, 526 F. 2d 319, 326 (5th Cir. 1976).  
<sup>15</sup> *North Carolina vs. Califano*, 445 F. Supp. 532 (F.D.N.C. 1977), aff'd mem., 435 U.S. 962 (1978); *Goodin vs. Oklahoma*, 436 F. Supp. 583 (W.D. Okla. 1977).  
<sup>16</sup> *Montgomery County vs. Califano*, 449 F. Supp. 1230 (D. Md. 1978).  
<sup>17</sup> U.S. Constitution, Art. I, Sec. 2. See *United States vs. Classic*, 313 U.S. 299 (1941).  
<sup>18</sup> *Wesberry vs. Sanders*, 376 U.S. 1 (1964).  
<sup>19</sup> 376 U.S. 1 (1964).  
<sup>20</sup> 383 U.S. 663 (1966).

<sup>21</sup> *Oregon vs. Mitchell*, 400 U.S. 112 (1970).

<sup>22</sup> Candice J. Nelson, "The Effect of Incumbency on Voting in Congressional Elections, 1964-1974," *Political Science Quarterly*, Vol. 93, No. 2, 1978, p. 665.

<sup>23</sup> See Harold Seidman, *Politics, Position and Power: The Dynamics of Federal Organization*, New York, NY, Oxford University Press, 1970, p. 37.

<sup>24</sup> *Wickard vs. Filburn*, 317 U.S. 111 (1942).

<sup>25</sup> *Katzenbach vs. McClung*, 379 U.S. 294 (1964).

<sup>26</sup> 221 U.S. 559 (1911).

<sup>27</sup> 392 U.S. 183 (1968).

<sup>28</sup> 421 U.S. 542 (1975).

<sup>29</sup> 426 U.S. 833 (1976).

<sup>30</sup> Lewis Kaden, "Politics, Money and State Sovereignty: The Judicial Role," *Columbia Law Review*, 79, 1979, p. 847.

<sup>31</sup> *Amersbach vs. City of Cleveland*, 598 F. 2d 1033 (6th Cir. 1979).

<sup>32</sup> Hans Linde, "Justice Douglas on Freedom in the Welfare State," *Washington Law Review*, Vol. 39, No. 4, 1964, pp. 28-31.

<sup>33</sup> Otto Stoltz, "Revenue Sharing—New American Revolution or Trojan Horse?," *Minnesota Law Review*, Vol. 58, No. 1, 1973, pp. 117-18.

<sup>34</sup> *Flemming vs. Nestor*, 363 U.S. 603 (1960).

<sup>35</sup> *Palmer vs. Thompson*, 403 U.S. 217 (1971).

<sup>36</sup> 363 U.S. 603 (1960).

<sup>37</sup> 411 U.S. 1 (1973).

<sup>38</sup> 22 U.S. 1, 190 (1824).

<sup>39</sup> *Federalist 11*, Jacob E. Cooke, ed., Middletown, CT, Wesleyan University Press, 1961, p. 71.

<sup>40</sup> 437 U.S. 117 (1978).

<sup>41</sup> 437 U.S. 617 (1978).

<sup>42</sup> 441 U.S. 322 (1979).

<sup>43</sup> *Geer vs. Connecticut*, 161 U.S. 519 (1896).

<sup>44</sup> 426 U.S. 794 (1976).

<sup>45</sup> 48 U.S.L.W. 4746 (decided June 17, 1980).

<sup>46</sup> 48 U.S.L.W. at 4748-4749.

<sup>47</sup> *South Carolina vs. United States*, 199 U.S. 437 (1905); *New York vs. United States*, 326 U.S. 572 (1946).

<sup>48</sup> 326 U.S. at 587-588.

<sup>49</sup> *Helvering vs. Gerhardt*, 304 U.S. 405, 427 (1938), quoted in *Reeves,*

*Inc. vs. Stake*, 48 U.S.L.W. 4746, 4749 note 11.

<sup>50</sup> Richard Posner, *Economic Analysis of Law*, 2nd Edition, Boston, MA, Little, Brown & Co., 1977, p. 510.

<sup>51</sup> *H.P. Hood and Sons vs. DuMond*, 336 U.S. 525 (1949).

# The Future of Federalism: Views of a Roundtable

**Carol S. Weissert**

**Advisory Commission  
on Intergovernmental Relations**

**A**ny attempt to predict the future of American federalism is fraught with difficulty. As noted in an earlier chapter, "it is clearly impossible to specify what the conditions of American federalism will be ten years hence—just as present circumstances were not foreseen ten years ago."

So why bother? For several reasons. First, responsible policymakers must be concerned with the future because every vote, every budget, every statute, every agency or court ruling made today will affect, and be affected by, the future. Thus every politician and every citizen is a futurist, like it or not. Any exercise that provides these policymakers some guidance and sense of options about the future should assist and even improve that policymaking and thus is likely to be worthwhile.

A second, and more immediate, reason is that Congress in 1976 mandated ACIR to look specifically at the "forces likely to affect the nature of the American federal system in the short-term and long-term future and possible adjustments to such system, if any, which may be desirable in light of future developments."

This assignment inherently demanded some type of effort to draw on the thinking of others who had devoted considerable attention to the course of federalism, past, present and future. The chosen device was a short, intensive, informal roundtable session where leading observers of and actors in the federal system could freely discuss its future course.

The persons ACIR invited to attend the day-and-a-half session are varied, indeed. Some are former elected officials, some are currently serving in federal, state, and/or local office. Some are academics, some are consultants



Ralph Widner, left, and James Sundquist

to governments and private concerns. Some represent public interest groups and environmental or urban interest groups. Others work for the Congress or state or local government. A couple of "futurists" and one journalist also attended the conference.

All the group had in common was an agreement to spend time thinking together about the forces affecting the future of federalism and to develop alternative views on the prospects for federalism in the future. They were also to suggest some adjustments in the system that might aid federalism's performance in the 1980s.

By assembling this particular group, the Commission determined to some extent the nature of the outcome. The group, by and large, was not made up of professional forecasters. If it had been, this chapter—indeed the entire document—would be considerably different. The group was made up of practitioners or those thinkers whose work is used by practitioners and as such was considerably constrained by economic, social, and, most importantly, political realities. Indeed, in its charge to this group, ACIR asked that the scenarios considered should be plausible, "representing the outcome of a conceivable series of economic, political, and social events and major policy choices."

Thus, few participants seriously contemplated far-reaching changes, such as redrawing state boundaries or adopting a parliamentary system. Incremental changes that amounted to "tinkering" with the system were the primary order of the day—not so much because everyone agreed that tinkering was the best approach, but rather because it was familiar, feasible, and might help move the nation in the direction of optimal change. No one believed that a shakeup in intergovernmental relation-

ships would occur and no one predicted that disasters face the nation.

The participants were far from unanimous in their views on other points, such as the nature and extent of the problems. Assessments ranged from "it's a pretty good system," by Jesse Unruh, California State Treasurer, to "it's not written in stone that democratic societies will work," by Donald M. Fraser, Mayor of Minneapolis. Unruh lined up with several academics in forming an "optimists' school," which was aligned against a more negative teaming of practitioners and those who work closely with them, such as Edward K. Hamilton, a governmental consultant. Hamilton warned that "the tide of optimism is hard to support with the facts."

Those who believed the system "works well" stressed especially the ability of individuals and organizations to shop around for "responsive" government. As stated by Ralph Widner of the Academy for Contemporary Problems:

When you look at the chaos and the pluralism of the American system, maybe it isn't so bad after all, because you have a lot of options. If you bomb out in one direction, you can always go to some other level of government and get help. You can play the pluralist's game and find some way to tackle the problem.

James L. Sundquist of the Brookings Institution put it another way:

I think it boils down to a rather simple proposition which can be put into the words of the economists: We have been operating in a very free, competitive market place. The people who have needs, or wants, have been looking around for responsive governments. They have tried the local governments, and they got what they can there; they have tried the state governments, and they got what they can there. And then they come to Washington, and why not?

**"Yet it was the  
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overloaded—who seemed  
to carry the day."**

"What's so wrong with a few market places politically?" asked Ralph Widner. "It certainly describes one of the most responsive political systems in the world." Besides, said some participants, with more and more problems crossing jurisdictional boundaries, varying intergovernmental responses are inevitable.

Yet, it was the pessimists—or those who believed that the current system was distressingly overloaded—who seemed to carry the day. They claimed that the entire intergovernmental system is awash with duplication, lacking in clear functional focus and bogged down in paperwork. The Congress is the most overloaded, they said. The political system is confused and accountability is difficult to pinpoint.

Similar disparate views were expressed regarding the future. The optimistic view, expressed by Walter Heller, former chairman of the Council of Economic Advisers, forecast improved productivity and impressive economic growth in the 1980s. Edward Hamilton again represented the more pessimistic cadre when he cautioned: "Until we have some vision, systematic cooptation will take place." Others, including James Sundquist, supported change but saw no change constituency strong enough to counter successfully interest groups and political forces that like the system as it is.

Most observers did feel, however, that there would be some changes made to streamline our governmental system and to make it more effective and that these changes would be of an incremental, rather than of a dramatic or wholesale, nature. As expressed by Sundquist: "We're on the verge not of national change but of more enthusiastic tinkering."

The question remained whether the changes would lead to more or less accountability, greater or lesser intellectual clarity, and strengthening or weakening the roles of state and local government. No real breakthroughs in these key areas were expected, however.

Most agreed that the task of reform—even of the incremental variety—would be difficult at best because of a variety of reasons, including strong political forces at work to keep the *status quo*. Interest groups, along with their compatriot "iron triangle" partners on Congressional committees and in the bureaucracy, tend to like the system the way it is. Congress as it is made up today—even with more stringent budget processes and structures—is still largely free to pursue "entrepreneurial" politics, starting and supporting programs with little or no concern for the impact on governments or governance. Political parties—a possible source of consensus building and system improvement—are currently too weak to provide any impetus for change. The judiciary frequently impedes change because it traditionally up-

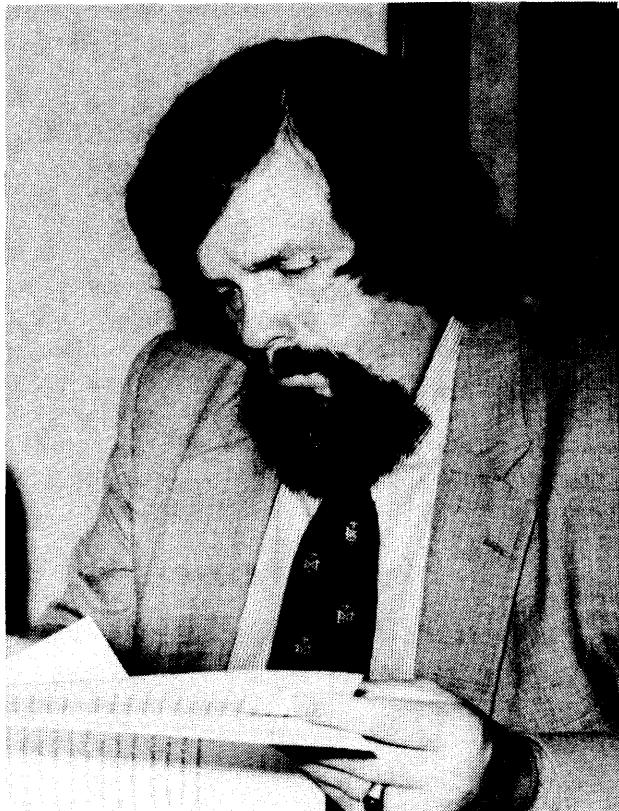
holds federal legislation, even the seemingly most preemptive, often ignoring past and current federalism arguments.

Most felt the old challenges to the system would remain. Poverty amidst plenty, mandates without dollars, and spillover functional problems, they believed, would probably be even more troublesome in the future than they were in the 1960s and 1970s.

In addition to these and other challenges to our current federal system, other serious emerging conflicts that might well engender major changes were identified. These include the conflict between rich and poor states as exacerbated by the disparities in their respective ability to tax natural resources; conflicts over use of scarce resources, some of which pit potential economic uses against environmental concerns; and a deepening conflict between states and the federal government. As Edward Hamilton summed up the situation:

If one takes the tests to which the system is going to be put in the next 25 years and compares them with the tests to which the system was put in the last 25, it is very hard, it seems to me, to emerge with the conclusion that the

Edward Hamilton



tests in the next 25 years will not be several times as difficult.

Yet the group seemed to feel that, in general, the fiscal situation merited more optimism than the more intractable political milieu where major structural and functional overhaul appears unlikely.

Although during the next few years the country may experience slower growth than in the immediate past, it will continue to grow and many predict more favorable conditions by the mid-1980s. Several economists at the conference felt that the national economy would soon recover. In addition, although the federal government may well need a new revenue source because inflation discredits the income tax, few doubted that Washington would be able to devise some way (such as imposition of a national value-added tax) to meet future needs. State governments with their diversified revenue systems are generally in good shape for the decade ahead. The governmental unit with the murkiest future, as always, is local government, which relies heavily on regressive and unpopular property taxes.

On the political front, participants were less sanguine, noting the complexity of structural and functional relationships and the absence of a strong political force demanding change.

The remainder of this chapter focuses on issues raised by the participants and the scenarios and alternatives proposed to deal with the future forces affecting our federalism.

## FISCAL AND SOCIAL CHALLENGES

Even the most optimistic among those who thought the intergovernmental system was now in "pretty good" shape admitted their concerns about the difficulties facing it in the early 1980s. Many of the longstanding problems, such as poverty, race-related differences, and basic inequality will remain. Some existing problems are becoming more severe—such as national dependence on foreign oil, and clashes between goals of environmental protection and economic development. And other new, and potentially system-straining, if not wrenching, problems are developing—such as severe differences in the

**"Fiscal concerns highlighted much of the conference discussion about the challenges of the 1980s."**



**Walter Heller**

wealth or tax base among states and regions of the country because of the ability of oil or coal-rich states to export taxes on this natural resource.

## Fiscal Challenges of the 1980s

Fiscal concerns highlighted much of the conference discussion about the challenges of the 1980s. In macroeconomic terms, using the gross national product and various productivity and economic development measures, several prominent economists at the conference, including Walter Heller and Henry Aaron of the Brookings Institution, voiced optimism about the future.

Aaron predicted that the nation will return to positive productivity growth, although not at the rate experienced during the 1950s and 1960s, and "that the fiscal resources for dealing with a variety of problems are going to be at hand." Heller noted that in the 1980s, primarily because of lower birth rates during the 1960s, "demographics will be working for us, as they had been working against us in the 1970s." He noted that the number of people entering the labor force in the 1980s is expected to be 12 million, in comparison to something like 21 million in the 1970s.

Although the early years of the decade might be difficult, both Aaron and Heller felt the national fiscal situation would improve once the decade got its second wind. Prognostications about several other subnational fiscal issues were not as cheery. The most ominous cloud on the intergovernmental horizon is clearly the regional competition of natural resource-rich states and regions

against the less rich states and regions—a new, and potentially nation-rending issue that was a major concern at the conference.

### THOSE THAT HAVE IT AGAINST THOSE THAT DO NOT

The regional competition issue was first addressed in a paper prepared for the conference by George F. Break of the University of California at Berkeley. He noted that during the 1980s, regions rich in natural resources, and particularly in sources of energy, will prosper while others will struggle just to maintain accustomed standards of living. Regional windfall gains derived from severance taxes and oil and gas rents and royalties "are not the stuff of which domestic tranquility is made," he noted.

Neal R. Peirce of the *National Journal* called the regional schism "a really serious split between rich and poor, growing and declining areas of the country, and one that apparently is increasing in magnitude as a really divisive problem in the country."

The federal role in the current situation involves the billions distributed in federal grants to states and localities—distribution that does not take into account the ability of some states to tax valuable natural resources, but focuses mainly on such measures as per capita income and population. Professor Break suggested that "we ought to look at the way in which federal money is distributed to the different regions, and pay close attention to their ability to look after themselves given their resource bases and their needs."

Lewis B. Kaden of Columbia Law School called the energy-based regional fiscal disparity "an alarming development," citing "the separation of the country increasingly into rich and poor states and rich and poor local governments against a backdrop of federal policies that never intended much redistribution or much need-based distribution of federal aid."

Is there a federal role—probably through reallocating grants-in-aid—in lessening the growing disparity? Probably yes, said Peirce, a role in "trying to find ways to assure that we don't end up with some parts of the country in a great economic boom and other parts of the country in deep recession." One way to do this, he suggested, would be through a redistribution process (such as ACIR's representative tax method) which takes into account the ability of states to raise additional revenue.

Mayor Fraser suggested that there might also be a federal role to play in limiting the amount of severance taxes levied on coal, at least the coal mined on federal land—a situation that would likely survive a Constitu-

tional challenge more easily than would coal mined on state or private lands. Former Utah Governor Calvin L. Rampton objected to such a proposal, citing the importance and value of state and local discretion to tax and the choice of some, including his home state, to forego the imposition of severance taxes.

Governor Rampton and Professor Kaden cited another player in the interregional drama—the courts. According to Professor Kaden, several suits have been initiated relating to efforts of two states (New York and Connecticut) to tax oil companies' revenues while preventing the passing on of those taxes to consumers within their states. If the legislative purpose were achieved, he said, the tax would have to be paid only to consumers outside those states. He noted that the Governors of the northeastern states are examining the question of whether some kind of Constitutional challenge can be brought against the level, if not the existence, of resource-related revenues.

There is little doubt that the regional schism heightens competition between the states. The remaining question is where that competition will be played out. Will it result in intensified competition over new industries or businesses? Or will the states end up going to Wash-

**Calvin Rampton and Doris Dealaman**



ton and the courts for assistance in grappling with an ever increasing revenue disparity? The irony is that they will probably take the latter course, in spite of a now familiar litany calling for more autonomy and decentralization. And the likelihood is that they will not like what they get in response.

Some participants, however, including Aaron Wildavsky of the University of California at Berkeley, looked on the situation of interstate and interregional competition with more hope. Professor Wildavsky's optimism related to increasing competition among states—a competition "for people and resources, so that over time, everybody is encouraged to be as intelligent as they know how, to make mistakes, to learn from them." But in order to achieve this competition, he said, the states "cannot pass their costs on to other people," through a federal redistributive aid system or whatever. Under a competitive system, he said, "we probably won't have regions of the country which want to consume energy but not to produce any of it." Those regions would build nuclear plants, create synthetic fuels, or whatever, but would not wring their hands in despair, he said.

## ENERGY VS. ECONOMY

A related energy issue pits somewhat different combatants over the use of shrinking natural resources or what William G. Colman, a governmental consultant, calls the "collision between environmental and economic objectives." Colman believes that over the next decade, such a collision "undoubtedly is going to be much sharper and much more heatedly debated than in the past."

During earlier eras in our country's history, there was plenty for everyone and for every use. In recent years, however, the "last frontier" has been filled with tract houses and tricycles, and once plentiful water supplies are nearing depletion thanks to booming western economies. Some choices, therefore, have to be made among a variety of available uses and some tradeoffs must be considered, particularly relating to the long-term impact of the choices.

The interests and the issues vary. Sometimes they are public-versus-private uses of lands, such as the recent Congressional debate about takeover of large areas of Alaska by the federal government, thereby removing the possibility of using that land for private economic development or other uses. Sometimes they are federal-versus-state uses, perhaps best illustrated by the "Sagebrush Rebellion," where western states are attempting to regain ownership of federal land ceded to Washington

as a prerequisite for statehood. And sometimes they are private and/or public environmentalists versus private and/or public developers. For example, local land-use ordinances frequently conflict with state or national urban development or public works projects.

These areas were cited time and time again during the conference as forces that are shaping, and will continue to shape, our intergovernmental system. Decisions related to natural resources are made by and affect several governmental levels, according to Emery Castle of Resources for the Future, who predicted that land-use issues will be a source of considerable intergovernmental conflict during the 1980s. "Here is a case where local, state, and national interests are going to come increasingly into very sharp contrast; the national interest is involved because of energy development and broad areas of environmental quality. State and local interests are fairly obvious." Use of agricultural land was an example used by Castle to note where the national interest might be ensured by giving energy development top priority, but by encouraging energy exploration and recovery, prime

Emery Castle



agricultural land may be destroyed—land that local officials feel is best used for food production or recreation.

## AN ERA OF LIMITS

While fiscal resources are not generally termed "scarce," they are currently in a period of questionable supply, most recently at the federal level. Although inflation's interaction with the federal progressive income tax automatically puts more money into Washington's coffers, there also is a seemingly almost irresistible political demand for tax relief or tax cuts. At the same time, expenditures from "indexed" federal entitlement programs are rapidly rising, and pressures are increasing to expand these existing programs and to initiate new ones.

There was some discussion of the value-added tax as a possible new federal tax source and some optimism about the overall nature of the economy which could relieve some of the pressure on the revenue side. Many felt, however, that there were additional pressures on the Congress to reduce expenditures, or at least to avert the current flow of funds.

As expressed by William Colman:

In the opinion of a great many people, the level of fiscal transfers, both intergovernmental and individual transfers, has reached a scale, in terms of numbers of beneficiaries, number of different kinds of beneficiaries and level of benefits that are no longer supportable actuarially, economically, or fiscally, making an ultimate day of reckoning absolutely inevitable.

Delphis C. Goldberg of the House Intergovernmental Relations Subcommittee contended that due to "continuing inflation, decreasing productivity, and reduced money available for expenditure, Congress is going to have to make much harder choices than it has ever made before." For example, it must weigh funding Social Security from general revenues against "handing out money for new, or continuing old programs that may serve the purpose of the special interest groups that just won't let go."

John J. Bosley of the National Association of Regional Councils agreed, saying that "Congress by its very nature will have to start making choices, establishing priorities. Whether it does it under the budget act or in a less formalistic but nevertheless necessary way, I think it will have to be achieved."

The impact of these choices on states and localities is apt to be severe. The loss of the state share of federal revenue sharing was only the first step, according to

several participants, who felt that in the fight to secure or maintain federal programs, those offering the greatest discretion to states and localities would be the first to go.

Particularly hard hit might be the nation's older cities, which are suffering population declines and deteriorating infrastructures and tend to be affected especially by recession. Like smaller cities across the country, heavy reliance by central cities on property taxation is also debilitating in times of high inflation and taxpayer revolts.

## SEVERE FISCAL IMBALANCE

Some at the conference—notably Stephen B. Farber of the National Governors' Association—were unimpressed with the potential fiscal difficulties in the nation's Capitol. He was more concerned about what he called a "fundamental mismatch" among the levels of government, with the federal government clearly in an enviable position. He cited as an example the increase in federal revenues from fiscal year 1980 to 1981—between \$80 and \$100 billion, an amount equal to about two-thirds of the sum total of all state general fund budgets, he said. This "aggregate mismatch, as between the federal government revenues and state and local revenues," he continued, "is a key issue and unless it is addressed, we will not clear up the problems with the system either through tinkering or more dramatic means." Edward Hamilton agreed:

In the 1980s, it will be even more evident than it is up to now, that what the federal government is really superb at is raising money. It is an excellent instrument for that purpose; it does produce over time, with probably more efficiency per unit effort in that area, than in anything else it does.

An additional problem of concern to Hamilton and others was the mismatch of money and responsibilities. Washington has the money and states and localities have the responsibility for carrying out programs and providing services. Hamilton likened the situation to a "scissors-like" action, where on one side we try "to devolve power, expenditure power in fiscal terms, lower and lower in the system, and on the other to raise higher and higher in the system the revenue decisionmaking, the revenue operation." What this does, he said, particularly in a period of increasing disparity between regions in terms of basic resource wealth, is "tend to grind the poverty deeper where it is, and keep the wealth where the resources are generated."



William Colman, left, and Jesse Unruh

"When we say decentralization, we really mean decentralization of functions, not revenues," explained Jesse Unruh. "We don't want to admit that we are building a big federal bureaucracy, so we shove this back to the local level. We'll probably all be better off if we admit this hypocrisy, and figure it is a basis of federalism."

Yet, few predicted any change in this situation during the 1980s or beyond. Layer-cake federalism, where revenue and expenditure functions coexist at the same levels, will not return, said Hamilton, citing three reasons:

- a) because of the history we have already gone through; b) because of the natural comparative advantage the federal government has as a money raiser; and c) because the effect would be so blatantly regressive in terms of income redistribution, particularly in the context in which we are going to have these great regional schisms, I think, in the next ten years.

So, Hamilton concluded, the "feds" (and the states) will continue their roles as bankers, albeit with fewer dollars to distribute. He feels that the amount of money will stabilize, "which means that the operating level of the banker governments will shut down in terms of their growth, and the interesting issue is, can the operating level of governments find ways to tap revenue sources,

to increase productivity indices, and one way or another to manage the process?"

Some felt that a cutback in revenues would mean a cutback in spending. Others felt that such a reduction could be better assured by a Constitutional limit on spending. Efforts to promote productivity would benefit all governmental levels and the economy as a whole, said participants.

Intergovernmental fairness—an issue that permeated much of the discussion—could be aided by use of two measures: a fiscal note on all federal legislation estimating its cost to state and local governments, and a provision calling for reimbursement for any federal mandate requiring state and local action. To help alleviate the imbalance in fiscal ability among the three governmental levels, indexation of federal income taxes was proposed as a way to prevent Washington from automatically collecting escalating inflation taxes without commensurate public scrutiny. Stephen Farber pointed out that eight states are now indexing their income taxes and suggested that Washington could well do the same.

### Societal Demands

Fiscal, political, and societal forces and challenges, of course, do not work in isolation. Fiscal forces affect the way people in our society work and live, and societal forces determine the kind of government they want and ultimately get. There was little doubt in the views of most participants that the kind of government they have now is not something of which to be proud. In fact, as Neal Peirce said:

the country is very confused, very concerned, and very worried.

I come up with a lot of very, very deep depression and worry in people's minds, including concern that we will have a real depression. I hear them starting to talk about the underground economy because of the weight of taxation or simply the desire to get around the real worries about the amount of money that is flowing from the energy-poor states to the energy-rich states and what that can work out to in terms of locally very serious economic problems. And I hear a worry about the overall manageability of the system as it exists. Added to that are things like concern for deferred maintenance and the immense bill that offers and how do you pay that bill at the same time that you try and maintain the wide number of programs that you now have in place.

Aaron Wildavsky expressed the frustration of the public with this question: "How come if you and I are markedly better trained, more capable, and simply better than those who came before us, how come we're not doing so well? How come, with all the good things we have now, things don't turn out as well as we would like? Have we succeeded in creating a system less reliable than its parts?"

If the people want change, however, they will get it, most participants agreed. They simply have not demanded it thus far. In fact, according to William J. (Pete) Page, Jr., formerly of the Council of State Governments, "that powerlessness attributed to elected and major appointed officials is possibly expressive of the will of the people. This is not a doing, major changing kind of time, and I would guess that we are not going to see that over the next few years."

Some, including Willis W. Harman of Stanford Research Institute, were more hopeful. He saw a reappearance of what he called "social glue"—the traditional social ethic that "holds things together" so that individual choices fit together reasonably well. Over the past several generations, this social glue was disappearing, he said. However, it appears that a new shared social value system is beginning to emerge and will have a significant impact on the future of federalism and of our society.

### THE BABY BOOM COMES OF AGE

If, indeed, some social glue is reappearing, this may be largely due to the coming of age of the country's postwar "baby boom," members of which are now moving into leadership positions in politics and business. This group has what Sallyanne Payton from the University of Michigan Law School calls "a certain taste in government that will have a great impact on what federalism will be like over the next decades." For one thing, members of this large group "don't start with a hostility toward the federal government," she said. "They have learned what the feds can do." Yet on the other hand, they are skeptical about the value of "bigness" and tend to object to the size, the complexity, and what they might call the oppressiveness of large organizations, or governments.

The fact that this group is probably the most educated, best trained cohort to come through the system is also some cause for optimism. They seem to be most capable of understanding even rather sophisticated questions of intergovernmental relations. They also read, and what they read about governments is also important in how they make decisions about their governmental future.

### THE ROLE OF THE PRESS

Media coverage of governments and governance is an important linkage between people and their political institutions. Yet the current linkage is weak, or nonexistent, according to several participants who bemoaned the coverage of intergovernmental relations by the newspapers and the electronic media. According to Mary Eleanor Wall, an ACIR Commission member:

The media can communicate politics, but not government; it can communicate simple issues and maybe simple answers, but it cannot and does not communicate the complexity and the interrelatedness of the issues we are now dealing with. It is a major factor in how government is perceived by the public. So we come to a public now that seems to be quite disenchanted, and I think that that disenchantment comes from viewing three-minute reports on very serious issues from a very superficial level.

Jesse Unruh underscored the simplicity point: "The press, because it usually portrays only one thing at a time, gives people the idea that government is a very simple thing." Yet, intergovernmental relationships are not so simple.

**David Martin, a conference observer, and Sallyanne Payton**



## POLITICAL PARTIES

Another important linkage between people and governmental institutions should be national political parties—a subject of considerable discussion and some agreement at the conference. Almost everyone felt that currently the parties were weak and should be strengthened. Almost no one offered any real hope for such strengthening, at least in the near future. Former Congressman Joseph L. Fisher of Virginia described the current situation when he said that the parties do not provide any significant financial contributions; the party at the state level is nonexistent in terms of campaigns, and the party at the national level in the sense of financing is unimportant.

Arthur Naftalin of the University of Minnesota described the nation's need for a party system as "a mechanism that can achieve consensus:"

We need to have some kind of mechanism that will make it possible for this enormously pluralistic nation to arrive at some kind of consensus over the basic economic questions, environmental questions, questions pertaining to the future of the nation, and addressing the problems in the world, in some kind of significant consensual way. We need now to re-establish, or establish, a party system.

State Representative James P. Ritter of Pennsylvania stressed the accountability argument for parties. "When problems occur and people attempt to place blame somewhere, they can't look at a political party because the political parties aren't really running this system any longer."

Many elected officials have discounted party affiliation because of public antipathy and because it is now "less than desirable to be called a politician." Ritter described some:

who get into this business and stand up and say: I'm not really a politician. My first response then is: What are you doing here? Why are you running for office if you are not really a politician? If you are not a roofer, I am not going to let you fix my roof; if you are not a schoolteacher, I am not going to let you teach my kids; so why is it that you can't be proud of whatever it is that you are?

Perhaps the nation needs to strengthen and restructure the political parties, Ritter said, so that they are a "focal point again, for criticism, for discussion, and, perhaps in some cases, some praise."

Ritter, Unruh, and others talked of the impact of interest groups on campaigns—an impact that has upstaged the party role to a large degree. When interest groups substitute for the party, said Unruh, general party discipline is lost and only the discipline of small, articulate, and often wealthy groups remains. "And finally what happens," said Unruh, "is that we just wash the powerless out of the system totally."

## "Despite the general agreement that parties should be strengthened, a question remained: How to do it?"

Aaron Wildavsky answered his own question—"What has happened to our political parties that they have ceased cementing the American political system?"—with the answer that "we have deliberately and by design separated parties from society." Through a series of reforms, including widespread use of Presidential primaries, passage of various campaign finance laws, and adoption of strict delegate selection rules, "something in society has been traded in for nothing," he said.

Despite the general agreement that parties should be strengthened, a question remained: How to do it? There simply is no constituency for strengthened political parties, some stressed. According to James Sundquist:

When you begin to talk about strengthening political parties, you really are talking into the wind. If we could will stronger parties into being by reaching a consensus that we ought to have stronger parties, it would have happened long ago because the people who run the political parties certainly want them to be stronger. Nobody has a handle on how to do this and the reason is obviously this: Political parties reflect what people want.

Right now they don't see the need for political parties. They certainly don't want the old kind of political party and when people talk of strengthening political parties, you always have to ask, do they really mean that we ought to go back to the "machines?" If they do, they aren't going to take many people with

them. If they're talking about creating a new style of political party, the kind that maybe the Democratic Farm Labor Party represents in Minnesota, there is a question of how you do that.

Parties are strongest at a time when great issues arise and excite a lot of people and when people decide that they need a political instrument to achieve an objective. So we form a party and for a while the party system has real vitality. The last time it happened in this country was in the 1930s.

There is nothing much that people can do to strengthen political parties except wait and hope that sometime a movement like that will come along and people will wake up to the need for the use of the government and the need for political parties as a means to that end.

Interestingly, discussion did not revolve around what would constitute the reformed political parties. Sundquist posed the question and there were few takers. They knew that they did not like the old system of "bosses"; the new system was cumbersome and as Jesse Unruh said, at least half in jest, "ruthless." But there was no consensus about composition of a new party system.

## CONFLICTS IN THE COURTS

While the courts have played a major role in defining and guaranteeing individual rights over the years, they have frequently done so at the expense of politicians and the political institutions that they serve. The courts have dealt with issues ranging from voting to schools, from state prisons to health planning. The courts have restructured local government, cut off millions of dollars in federal aid, and in one instance closed all public schools in a state until the legislature approved an income tax.

The courts do not operate in a vacuum but are affected by national fiscal and political trends and events. In the intergovernmental arena, however, they seem relatively unaware of the increased capability of state and local government, the growing complexity of the grant system, and the intricately interrelated nature of the three governmental levels and their executive and legislative branches.

The number of cases involving state and local government has increased substantially over the past few years. The largest increase has occurred in the federal

grant arena, where more than 400 cases were initiated over the past five years alone.

George Brown of Boston College Law School noted two instances where the volume of grant litigation has mushroomed. One is when plaintiffs, frequently third parties, go to the federal courts and succeed either in altering a federally funded project or in stopping it altogether. Most of these cases do not represent Constitutional issues, he said, but rather whether there has been compliance with the statutory conditions of the federal grant program. "It has become one of the major, or certainly a major, piece of business of the federal courts," he said. "A lot of people think they do it very badly because they don't understand the grant-in-aid system."

Another cause for increased intergovernmental traffic in federal courts is a series of recent decisions opening up municipalities, in particular, to tort suits in federal courts. According to Brown:

The bottom line is that while we teach the notion that the federal courts are courts of limited jurisdiction, that is simply not true any more, any more than is the notion that the federal government is a government of limited jurisdiction. One of the forces one has to consider is whether the role of the federal courts in the day-to-day working of intergovernmental relations has become simply too great and the Congress, if the courts won't do it themselves, has to step in and cut it back.

Interestingly, several participants cited Congress as the cause of some of the judicial problems, not as the solution. William Colman noted the increasing generality of legislation, "which creates a vacuum which later the judicial branch, both federal and state, are called upon to fill." Yet some argued that specificity can also invite litigation as can conflicting legislative goals.

No one at the conference predicted the courts' role would be reduced over the next decade or so. If anything, it will be increased. Professor Kaden delineated three categories into which the issues of federalism fall: the judiciary's role in imposing limits on the national legislative power as it affects states and localities, its role in reforming the way state and local bureaucracies function, and its role relating to the functioning of the national economy.

Activity in the first two categories is well established, although sometimes controversial. Particularly at issue now is the courts' reliance on the decades-old precedent relating to federal grants—namely that if grant recipients voluntarily accept federal dollars, they also accept the

conditions attached to those dollars. The popularity of crosscutting regulations that apply across the board to all grants undercuts the validity of the contention. As stated by Professor Kaden:

I suggest, as others have, that that distinction makes no sense in the world of federalism in the 1980s. It is meaningful to inquire whether the state of New York voluntarily accepted all the conditions that are attached to the Medicaid program by its participation or California voluntarily accepts rehabilitation act conditions by its acceptance of other forms of federal aid. Court rulings in these and related areas simply swept aside the most important inquiry, which is the extent to which those conditions affect the functioning of state government, and the extent to which they are connected in some meaningful way to the federal fiscal and governmental purpose.

In 1976 the Supreme Court did strike down a law extending federal wage and hour standards to state and local employees in *National League of Cities vs. Usery*. However, the decision was based on the commerce clause, not on the spending clause, the Constitutional element underlying the legality of most grants, thus it has not proved applicable to federal grant cases. Professor Kaden feels that in the 1980s, the Court will have to deal with questions of state sovereignty in connection with spending clause cases.

The most judicial interest in the 1980s, however, will probably be in the economic area, according to Professor Kaden:

As the states grapple with the economic realities that have been described today—energy, inflation, slow growth—they will increasingly reach for techniques such as export taxes and raise a serious threat to the functioning of the federal economy. . . . I think the courts are increasingly going to find themselves involved with these tough economic issues. We don't know the kinds of standards that will be developed. It suggests that the courts in our system are increasingly dealing with disciplines that they little understand and fact-gathering problems that are quite different than what they faced at an earlier time. No doubt it will make the judicial task as exciting as it does the political task during the next decade.

Sallyanne Payton also linked political and judicial con-

cerns, but in the context of explaining to the courts what the interests of states are and:

why they are so central that they require the kind of Constitutional intervention that to this point has only been reserved for the highest order of Constitutional rights. And those highest orders of Constitutional rights have to date been free speech rights, individual rights. We have got to put the states and local governments in something like that position.

To make this argument, she continued, we must provide a "coherent theory of what a state does and is and why state and/or local autonomy is such a central value or ought to be such a central value." The role of the federal government is viewed as collector of revenue, redistributor of income, instrumentality for spillovers, and regulator. But in placing more and more power and authority in the hands of the federal government, the nation has lost the view of just what it is that the state is and does, she said. Unless we can provide such a theory, she said, "we cannot realistically expect the courts to intervene, nor can we realistically expect the people to revise their Constitutional system to give states more autonomy."

Few proposed changes in this area. William Colman did suggest one new process that might ease some of the current judicial overload, whereby the Office of Management and Budget in its review of any proposed legislation emanating from the executive branch would ascertain the legal sufficiency of the proposed legislation and its susceptibility to effective administration without having to resort to the judiciary to resolve statutory ambiguities.

## HOW CAN WE DEAL WITH THESE PROBLEMS?

The fiscal and social challenges facing us now and in the 1980s are difficult indeed. Are our governmental institutions strong enough to effectively meet them? The views from the conference were not reassuring. First, there is the difficult question of measurement—or more precisely of our ability to gauge "badness" or "goodness" of something like the intergovernmental system. As stated by Austin Ranney of the American Enterprise Institute:

How do we measure whether things are going pretty well? What constitutes "things going on?" Do we measure it by the state of



Aaron Wildavsky, left, Henry Aaron, and Austin Ranney

what experts tell us, do we measure it by productivity rates, or the size of the gross national product, or what? And I have a feeling that from hearing the discussion, we have lots of different measures used and that they really aren't the same thing to all of us. I think that that's pretty important.

Pete Page made the same point in connection with use of the term "system overload" to describe our current intergovernmental network. "When we use characterizations like these, we imply that there is some standard, that there is a reasonable way of determining what the load-bearing capability is. . . . We further imply that we know what the load consists of and I suggest that we don't necessarily."

The participants generally did not expand further on these questions, important as they might be. Discussion of these points after all could well have taken up the entire conference—and there were other issues at hand.

### Who Does What and Why?

By and large, most felt our political system is not in good shape for tackling the tough issues of the 1980s. One of the reasons, said participants, is the complex, overloaded intergovernmental system we have where

Washington makes decisions about the day-to-day functioning of some of the most traditional of state and local functions and where there is no consensus on what the real role of states is in the system. There was no answer to the question posed by Sallyanne Payton, "Why are states so terrific?" She maintained that we need a current theory of states and what they do.

Henry Aaron responded that we would never so neatly categorize states because "there is no theory that explains precisely what level of government is appropriate for what kinds of service and if you had, if there were one that we could somehow evolve, that theory wouldn't match up with state boundaries."

Nevertheless, there were others, including Delphis Goldberg, who felt the nation should attempt a better allocation of functions in the federal system. Jesse Unruh called for "a better division of labor." Such a reallocation would ideally include a stronger financial base for states so "they might have something to think of as their own," according to Aaron Wildavsky. Still, the necessity for a national role in some important areas was widely recognized. According to Aaron:

What has happened over the past 200 years, and with increasing speed in recent years, has been that the interaction among the various units within our country, the impacts that the

decisions of one have upon another unit, and the impact that economic units residing in one have upon the economic units residing in others, has increased. In short, interrelatedness has grown. Not everywhere, and not even formally, but on the average, there are more problems that are interstate, that cross city boundaries and county boundaries than there used to be. And the result of this has been an increasing recognition that in order to capture those effects within a decision, the responsibilities for those decisions have had to be moved to a higher level.

I doubt very much whether the problems relating to modern technology and environmental questions are capable of being dealt with correctly, taking account of the interrelatedness, at any level below the superstate level.

Several participants talked about the proclivity of Washington to mandate that services be provided at the state and local level through regulation and statute, but without providing federal appropriations to cover the costs of those mandates.

"Mandates, without corresponding funds to take care of them, are devastating, particularly in these inflationary times," said Representative Ritter. But as Congress attempts to constrain its spending, it may well rely more and more on mandates as a way to accomplish these national goals.

James Sundquist noted that crosscutting regulations serve much the same function as other programs without costing the federal government an extra penny and that "unless you abolish all the grant programs so that there is nothing to which you can attach a crosscutting regulation, you're going to keep getting those requirements."

There was more optimism about structural change at the local level. Edward Hamilton, in particular, talked of the need for subnational surgery on the substate jurisdictional architecture, particularly in metropolitan areas, which frequently cross state and county boundaries—surgery that is difficult to accomplish, if history is any guide.

## **Responsiveness or Overload?**

Few at the conference questioned the responsiveness of the current intergovernmental system. What was in more dispute was its effectiveness. Was the responsiveness a sign of health or the underlying cause of what ACIR has termed our "system overload?"

"I don't think this nation can continue on the course it has been going and have the federal government trying to address every social problem," said Governor John N. Dalton of Virginia.

"The U.S. Congress is the most overloaded institution in our federal system," said Del Goldberg. The Congress is not able to be fully informed and able to make national judgment on 500 grant-in-aid programs. It does not have "the time and capacity to evaluate how programs are working and to assess the results," he said.

William Thurman of the General Accounting Office added that federal administrators are also badly overloaded. Jesse Unruh felt that "the generalist ought to be able to shove off this overload and take advantage of enough people under him, but when you have only specialists running things, all of them are going to be overloaded." Bob Goss from the National Conference of State Legislatures said more of the same was "simply not acceptable."

One of the key problems related to this overload is its effect on governmental accountability. With many different governments having fiscal and programmatic responsibilities for nearly every conceivable service or program, the citizen is understandably confused. "As the intergovernmental system has gotten more and more complex, with more and more federal intervention, it has gotten increasingly difficult to know who is accountable for making the decision on many, many subjects," said Ralph Widner. "A lot of the confusion and delay and frustration we encounter now is really attributable to the fact that we don't know who is really responsible for getting the decision made and acted upon."

Walter Heller noted the increasing use of "other" entities to carry out governmental functions—terming them third-party governments—and warned of their role in obfuscating responsibility and accountability. "If the trend toward using third party government—not just states and cities but banks and nonprofit corporations, hospitals, universities, manufacturers and others—continues, we must find some way to coordinate and get accountability."

According to Professor Naftalin:

We have this sense of powerlessness. We watch what goes on in Washington. We are not able to develop an effective foreign policy; we are not able to develop an effective energy policy; we can't control inflation; our budgets get larger; one major political party wants to run the government with mirrors and the other political party doesn't seem to know how to hold fast to one line of thinking. We need to

establish some kind of way of making our government accountable, and if it's not accountable, we need to have a way of expressing our protests, our oppositions and to bring that government down.

Yet, a counter notion also was raised. Some felt that governments and elected officials are already too accountable, thus resulting in a system overloaded with responsiveness.

Aaron Wildavsky noted that seemingly laudatory societal motives, when collected on a nationwide basis, have resulted in a major societal overload. "Everyone's busy doing good," he said, and soon "runs headlong into some other person's notion of doing good." The result to the intergovernmental system is what he called "fruitcake federalism"—"the sense of being bogged down with all kinds of raisins and goodies—and doing good—but not getting very far."

Yet there were some who disagreed. "If the circuits are so overloaded, presumably the fuses will soon blow, and then we will have a complete change," said Walter Heller. "If governments are so inefficient and smothering, why has there been such a notable wave of reform and innovation? Is the system really that bad?"

Ralph Widner felt there was no question that there is an enormous overload on the system at this moment, but the system itself works pretty well. Jesse Unruh said, "Our system is messy and dysfunctions a lot, but by and large, as someone who has practiced it now for 30 years, I think it is a pretty good system."

**ACIR Chairman Abraham D. Beame, left, and David B. Walker, conference moderator**



## A TINKERING APPROACH

Over the years, most change in intergovernmental relationships has been incremental in nature. Our federal system has survived dramatic changes, including wars, economic upheavals, and (most recently) a sudden resignation of a President. While certainly everyone at the conference was aware of the possibility of some system-wrenching development, the participants did feel that the likelihood of drastic changes suddenly engendering systemwide reforms was not great. There can and have been changes of a more subtle nature—certainly of the type that have transformed our federal aid system from the tame and tiny pawn early in the century to the towering Leviathan of latter days.

Some participants were attracted to the tinkering approach chiefly by the lack of other viable options. Others felt much more comfortable with and place considerable confidence in incremental measures.

Henry Aaron and Ralph Widner were less than dissatisfied with the current messy system and were not unhappy with an incremental approach. As expressed by Widner:

Maybe we ought to look at the virtues of pluralism, the virtues of redundancy and conflict to some extent, the competition between levels of government to some extent, but recognize that enough is enough, but somehow we've got to balance this or the whole thing will crack, and that leads us into a tinkering frame of mind.

"Unless we're prepared to give up some of the services and rights that are provided and assured," said Aaron, "we're stuck with a degree of interaction between the federal government and all levels of subsidiary governments, something like the one that we now have, and we are going to have to tinker and fix up and get rid of the ridiculous requirements and problems."

William Cassella of the National Municipal League noted that his organization had been "tinkering a long time" and had found it a useful strategy. James Sundquist also felt tinkering was the correct approach—but not because he was optimistic about the current system. Although he would like fundamental change in the national political system, Sundquist does not see it happening for several reasons:

Our political system is embedded in the Constitution in the first place, which is virtually impossible to change in any fundamental respect, and second, it is embedded in the tra-

ditions that have grown up around the Constitution which we can work away at through agitation, but you can't expect to get quick results. And for the rest, our political system is the result of forces that are quite beyond anybody's control or manipulation.

"We have done everything conceivable in this nation to disaggregate power—consumer movements, initiatives, referendums, Proposition 13, and all the rest—with the result now, that we have disaggregated power to the point where we are unable to confront these enormously strong forces, generated by a high technology and an enormous strength in our corporate society," said Arthur Naftalin. "Now we need to redress the balance, we've got to reexamine our institutions honestly, candidly and confront the realities. . . . I think at some point in this nation, thoughtful people have to begin to think in creative new terms to adjust our institutions to make them adequate for these times."

The ideas that fell into the tinkering category ranged from adoption of sunset legislation to establishing governmental priorities; from a Constitutional amendment that limits federal spending to a law requiring federal reimbursement of state and local government funds for federally imposed mandates. Ralph Widner suggested an executive branch agency that would impose "a kind of discipline on executive side decisionmaking" and give "some kind of coherent picture of what is happening to the system and to the country in a way that each decision can be put into proper context." Several suggested "doing something about" crosscutting requirements on federal grants, such as simplification and standardization of certain policy requirements that generally apply to federal grant programs.

William Colman supported two functional changes proposed by ACIR: federal takeover of welfare and state assumption of all education financing. One question he raised about such allocations, in addition to their feasibility, related to the problems of regional disparities. In assuming responsibility for welfare, Washington would greatly relieve the fiscal burden of New York City and states in the northeast. It would also relieve the not-so-great burdens of Houston and Alaska. In addition, as Colman noted, the payment levels would "tend to be set on the high side" to accommodate those recipients in the most generous states, resulting in "forbidding" costs, at least in the near term.

Realists, such as Steve Farber, noted that even incremental tinkering changes were very difficult to implement. He described the snail's pace and general lack of Congressional interest in one current "reform" measure—

a bill to make several important changes in federal aid dealing with crosscutting requirements and grant consolidation. The fact that this measure is not making any kind of progress is instructive, he said. "I think that there is no question but that we have serious overload problems, but I think the iron triangle problem is one that is a real one and any attempts to unravel the mess or any efforts at devolution will run into it directly."

## **Decentralization: Possibility or Pipedream?**

A number of the tinkering recommendations made by conference participants fell into the realm of decentralization or ways for states and local governments to assume more responsibility for key governmental programs and services.

Governors, state legislators, county officials, and Mayors have been calling for decentralization for a number of years. Indeed, passage of general revenue sharing and enactment of a number of block grants were in part an answer to those pleas. Perhaps it is ironic that at a time when these programs are weakened, if not dismantled, the idea of decentralization again comes to the fore, with the Governors and state legislators offering to take less federal money for more discretion in how to use it, and more and more state and local policymakers questioning the notion that federal dollars are always desirable.

Several participants cited a resurgence of interest and activity in neighborhoods as a decentralizing activity that was impressive and noteworthy. Neal Peirce called the number of small, self-help projects "very impressive."

"At the neighborhood level, with reflections at the city level and some instance at the state level, we're seeing more interest in economic control, in doing more for oneself, and less dependence on large national systems," he said. Even though the situation is rife with contradictions because they also look for federal grants to fund their local self-help projects, the fact that those efforts are underway indicates that "something is developing that we do not yet understand fully, but in a real federal sense, would have to be seen as a good and optimistic development . . . that there is a capacity to begin to put the world back together for yourself, if you feel that the disintegration is going to be happening elsewhere."

Clifford Graves of San Diego also cited the "tremendous dynamic, a tremendous change in the amount of optimism about the future among individuals, neighborhoods, and at the local level that you don't see at the top." Willis Harman described a general trend, "not just decentralization of government but of business, of tech-

nology, of mass culture, of population, and so on."

Clifford Graves broadened the decentralization scenarios to one he called "disentanglement," including government disentanglement from the private sector. In fact, he said, existing elements of disentanglement are now primarily in the area of government deregulating or disentangling itself from private industry. Signs indicate that there is some interest in further disentangling, he said, but it will take a decade or so to see a significant amount taking place. "I do think it is going to occur," he said, "if only because of the public's desire for some clarity."

Several participants touched on what are long-standing problems relating to governance of our sprawling, interjurisdictional metropolitan areas. Regional governance was proposed as one way to deal with those problems that cross state lines but are not of national concern. Others, such as Edward Hamilton, felt the states must play a key role in what he called "surgery on jurisdictional architecture" to better align servicing demands and fiscal capabilities at the local and substate regional levels. So far, it has been (at best) minor surgery and primarily through federal inducement, which he conceded is likely to be absent in a period of fiscal retrenchment of the 1980s.

Multistate regional governance was urged by several participants, including Edward Hamilton, who suggested that "we have a need for something subnational, but larger than states, to deal with a series of problems which are not essentially, I think, ones which we can handle at the national level." He did not overlook, however, "our abysmal history of interstate compacts, or attempts at interstate compacts, or any kind of regional level administration."

Strategies that might be employed to encourage decentralization ranged from establishing and operating under a set of priorities to a recommendation by Governor Rampton that all categorical grants be phased out after five years. After this period of time, he said, the localities and states can pick up a program if it is con-

**"...there are some hopeful signs for intergovernmental relations in the coming decade, particularly on the fiscal front."**

sidered worthwhile. If not, the program would simply be discontinued.

Doris Dealaman, an ACIR Commission member, felt improved working relationships among governmental levels would aid decentralization. "We've got to get the four levels of government working together, constructively, and creatively, doing the job for the citizens we all serve," she said.

## **SIGNIFICANT CHANGE OR BUSINESS AS USUAL?**

Although it is hard to be quite as optimistic as one recent forecast, heralding the "Exciting 1980s," there are some hopeful signs for intergovernmental relations in the coming decade, particularly on the fiscal front. The national economy will likely improve over its performance in the late 1970s, with optimism relating to productivity and expanded economic development seemingly the best placed. Demographics will work for us throughout the 1980s, with baby boom citizens coming into their own as young adults and leaders in our social and political lives.

Probably the darkest cloud on the intergovernmental horizon relates to what will likely be increased interstate and interregional fiscal disparities because of the ability of some states to tax natural resources. This development is not without irony since it occurs at a time when the prime measure of interstate and interregional comparability—per capita income—has been converging over the past several decades.

The impacts of this rivalry are already being felt in Washington and in the courts. The debate over formulas will take on new intensity in the 1980s as representatives from the high tax, low natural resource states present their cases that they should be the beneficiaries of the aid, not the boom economies of certain parts of Texas and California, for example. Perhaps there is a federal regulatory role as well, although in this area many states and localities are highly critical of Washington's past record. Is there a federal role in limiting the amount of money procured by the states? Some might even say there is a federal role in curbing such disparate taxation, although such an action would immediately be subject to judicial interpretation.

The courts have already intervened in several cases relating to state taxes or fees that fall only on out-of-state residents. The odds are that they will also be called on to adjudicate other related state-state and federal-state issues in the 1980s.

Another cloud on the intergovernmental fiscal horizon

relates to inflation. Even the most optimistic participants could not in good conscience say that they could see an end to inflation's ravaging of the economy and what Mayor Fraser called "the enormous havoc it is wreaking politically and in the way people think."

On the political front, the optimism fades even more. Some felt that the severe fiscal constraints will force governments at all levels to take a serious look at what they do and how they do it and might well force some readjustment of responsibilities and reallocation of priorities. Others were more pessimistic. Aaron Wildavsky, for instance, believes the present system will continue to grow. Edward Hamilton said structural change will be difficult, if not impossible. And James Sundquist and others noted the distinct absence of a constituency for basic change. The demanding public described by Sallyanne Payton and Clifford Graves might make a difference, but only if they are sufficiently informed, insistent, and less self-indulgent. If our past history is any guide in this area, political reform will be maddeningly slow and often unrewarded.

Finally, on the judicial front, there is little room for optimism except the likelihood that the court will be confronted with the federalism issues that it has so assiduously avoided over the past few decades. The sheer number of grant-related cases and severe fiscal implications of a number of court actions may force the courts to reevaluate and update long-standing arguments such as the "voluntary" nature of grants. However, in other areas, the courts are likely to get further and further involved in settling intergovernmental disputes and in defining intergovernmental roles and appropriate actions.

All in all, the decade described by most conference participants will be quite similar to the one that just ended. Yet a report on the future could not be complete without some speculative consideration of a decade different from the ones preceding it, of one ushering in tremendous change in society and our intergovernmental system, such as one described by Alvin Toffler as *The Third Wave*.

Willis Harman believes we are "entering a period of change more fundamental than anything since the end of the Middle Ages." He believes that what economists presently call "another recession" is not a recession like the other five since World War II, but rather the beginning of a wrenching transition. He suggests then that it is desirable to think in terms of separate transition and long-term strategies. "The goal of the former is to reduce the disruptiveness of the transition period. The goal of the latter is to make the new order work."

Arthur Naftalin also sees immense change on the horizon:

I believe we are living in a time that is seeing the destabilization of world and national society, and the forces that we have described here today, and many other forces that we could add to this, are simply present in the world. It's extremely dangerous, we all know that, and we all know that these forces could lead to a total breakdown of the fabric of our civil life.

Thus, at its end, the 1980s might be characterized by significant change or by business as usual. The decade might have seen major institutional overhaul or simply more "enthusiastic tinkering." These years might be very different, or very much like the decade they succeeded.

Whatever course federalism pursues in the 1980s, the challenges to the intergovernmental system will be great but probably not insurmountable. Over the years, the federal system has bounced back from fiscal, social, and political setbacks in a generally altered and sometimes strengthened form. The nation would not have it any other way. Our system is dynamic, and thus, almost by definition, messy and a little dysfunctional. The alternative—more sterilized, but more static government—seems out of the question. Somewhere between the messiness and government-by-Washington decree lies the future of federalism.

## **The Future of Federalism: An ACIR Agenda**

**T**he Congressional mandate that directed the Advisory Commission on Intergovernmental Relations to examine the future of federalism also asked ACIR 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. In response to that mandate, the Commission undertook an extensive analysis of the federal role in the federal system, comprising 11 volumes and including case studies of the historical development of national programs in seven functional fields: public assistance, environmental protection, libraries, local fire protection, unemployment, higher education, and elementary and secondary education. An overview of this study appears in *An Agenda for American Federalism: Restoring Confidence and Competence*,<sup>1</sup> the tenth volume in the series, as well as in a shorter *In Brief* report.

This federal role study is principally historical, rather than futuristic, concentrating especially on the dramatic growth of national intergovernmental programs over the period 1960–80. It is also oriented far more toward prescription than toward prophecy. Still, the two mandated tasks heavily overlap. Views of the future are always colored by interpretations of both the past and present. Furthermore, an adequate probe of the allocation and coordination of public services among governmental levels inevitably must grapple with the political dynamics that condition those assignment patterns—a central focus in the federal role report. In turn, these dynamics will be very much a part of the future of American federalism in the 1980s.

## SUMMARY COMMISSION FINDINGS

The Commission's assessment of these historical trends and contemporary conditions was deeply disturbing. It found strong evidence that as the federal role has grown "bigger, broader, and deeper" in its fiscal, programmatic, and regulatory dimensions, intergovernmental relations have become "more pervasive, more intrusive, more unmanageable, more ineffective, more costly, and above all, more unaccountable." The summary findings, adopted by the Commission in March 1980, underscore the point:

- The Commission concludes that the current network of intergovernmental relations has become dangerously overloaded, to the point that American federalism's most trumpeted traditional traits—flexibility and workability—are critically endangered.
- The Commission further concludes that this threatening condition largely has come about 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; because of the erosion of various political, judicial, and fiscal factors that formerly disciplined the national political process; and of the emergence and growing strength of interest groups—both public and private.
- The Commission obviously recognizes that while certain governmental activities necessitate an intergovernmental approach, it believes that the almost unbridled tendency on the part of the national government and the political process that sustains it to thrust nearly all of the nation's most national domestic concerns, as well as an ever multiplying number of parochial and even private concerns, into the intergovernmental arena reflects a feeble faith in the problem-solving capacity of the various partners in the federal system.
- The Commission believes further that this permits the national government to avoid some of its most basic domestic governmental responsibilities, while cluttering up its agenda with issues that more properly belong on that of a municipal or county council, a school board or a state legislature.
- Finally, the Commission concludes that neither equity (in the sense of giving due attention to jurisdictions or people in need), nor administrative effectiveness, nor economic efficiency, nor

above all political, electoral, or administrative accountability are furthered by this tendency to intergovernmentalize practically all domestic questions, nearly all subnational governmental functions, and the bulk of the national government's own civil governmental obligations.

## COMMISSION RECOMMENDATIONS

These five key findings provide the foundation for the development of a Commission strategy of reform—a strategy that supplements, but goes well beyond, its many relevant prior recommendations.

Although rooted in an analysis of the past, the Commission strategy has a future orientation. It reflects a belief that continuation of the programmatic and political trends of the past decade will not suffice to meet the challenges of the next. Hence, the Commission rejected the views of those who hold that the system is already responding adequately to intergovernmental concerns. At the same time, it also rejected the counsel of those who argue that drastic Constitutional revisions are now in order.

Instead, the Commission accepted a realistic, but still far-reaching school of reformist thinking, with six key components. Each constitutes a separate approach to a distinct problem of the contemporary intergovernmental system, but they combine to form an overall strategy because basically they are interrelated and interdependent. Action on only one front will not be sufficient, but a persistent push on all will go far toward achieving a decongested, disciplined, administerable, and accountable system—a worthy goal for a nation soon to celebrate its Constitutional bicentennial.

The first component of the ACIR strategy addresses directly the prime problem identified in this study: the overloading of the intergovernmental network. Hence, it insists that a determined federal-state-local effort should be mounted to decongest the grant system and to disengage in certain program areas. To achieve this, elements of both centralization and devolution inevitably come into play in the functional tradeoffs called for, even as certain major program areas remain heavily intergovernmentalized.

The second basic reform proposal moves beyond the Commission's earlier recommendations (grant consolidation, sunset legislation, and indexation) for injecting greater discipline and managerial sense into the operation of the national government. It goes on to stipulate ad-

ditional ways of achieving these goals, including the implementation of fiscal notes for federally mandated costs on state and local governments, the temporary suspension by the President of difficult to implement or unimplementable national policy conditions attached to grant programs, and the use of regulatory impact analyses.

The third plank in this strategy addresses some of the more obvious defects in our major national parties: their weak policy development process, the reduced role of their elected officials in party conclaves, and the proliferation of Presidential primaries. Strengthened parties, the Commission believes, are a necessary counterweight to the persistent, penetrating, and even paralyzing pressures of the growing number of interest groups.

The fourth component in this agenda for the 1980s centers on the public interest groups and in diverse ways seeks to enhance the "public" and the system-saving roles they sometimes, but more often should, assume. The overriding purpose here is to dramatize the fact that the national organizations representative of state and local elected officials have an obligation to help decongest and discipline the system and this now involves a bold defense of their jurisdictional integrity as well as a determined effort to address the critical servicing assignment question. Cooperative federalism and its many derivatives, in fact, have become cooptive federalism, and the public interest groups have paramount responsibility to help reverse this 'destructive course.'

The fifth and sixth planks deal with Constitutional issues. In the former, the Commission, recognizing the need for a better public and official understanding of what Constitutionalism and federalism mean in theory and practice, recommends a Presidential convocation of key federal, state, and local officials at the earliest feasible opportunity to consider ways and means of eliminating or at least curbing the politically imposed inflexibilities and the other dysfunctional features of the current intergovernmental system. In the latter, the Commission calls for a complete clarification of the Constitutional amending process "and urges a raising of the state initiating option to the same level of dignity and legal certainty as the familiar Congressional alternative possesses."

Decongestion, discipline, and greater managerial dependability are the hallmarks of this ACIR strategy. While to some these may appear to be restorationist, going back to the early 1960s or late 1950s, the Commission views them as essentially futuristic, in the sense that the intergovernmental relations of the 1980s will have far greater need of them than the far simpler system of 20 years ago.

The Commission believes that the six recommendations advanced in the final volume of its federal role study merit special consideration by policymakers at all levels, as well as by the public. Each in its own way addresses an undeniable defect in our increasingly dysfunctional system. When combined, they constitute a grand strategy for ending the era of fanciful federalism and for beginning a new chapter in the 200-year history of American intergovernmental relations. And this new era could, should, and must be a chapter wherein our system's much admired historic traits of flexibility, functionality, and faith in the essential worth of the American proposition are again dominant.

## **Recommendation 1: 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: (1) to 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) to assess the interrelationships among the full range of programs in each policy field; and (3) to consider the possible use of instruments other than grants-in-aid to realize national objectives.<sup>2</sup>**

**The Commission also reaffirms its earlier recommendation that the federal government assume full financial responsibility for the provision of Aid to Families With Dependent Children, Medicaid, and general assistance.<sup>3</sup>**

**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 that are aimed at meeting basic human needs for employment security, housing assistance, medical benefits, and basic nutrition.\* 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.\*\***

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 that 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.<sup>4</sup> 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 which federal aid amounts to approximately 10% or less of the combined state and local outlays, including federal aid; (c) programs that 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, that have high administrative costs relative to the federal financial contribution; (e) programs that 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.

## **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

\* Representatives 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.

\*\* The 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.

constraints that 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,<sup>5</sup> enactment of “sunset” legislation,<sup>6</sup> and indexation of the federal income tax are,<sup>7</sup> 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 and regulatory 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 2(A): FISCAL NOTES**

The Commission finds that federally mandated legislation often imposes unanticipated burdens and costs on 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 costs that would be incurred by state and local governments in carrying out or complying with such bill or resolution.<sup>8</sup>**

### **RECOMMENDATION 2(B): TEMPORARY SUSPENSION OF CROSSCUTTING POLICIES**

The Commission finds that the implementation of crosscutting 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 as-**

essment 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, the President present to Congress an alternative remedial legislative proposal.

#### **RECOMMENDATION 2(C): REGULATORY IMPACT ANALYSES**

The Commission finds that federal regulations often lack adequate prior assessments of the potential costs imposed on 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.**

#### **Recommendation 3: Strengthening Political Federalism Through the Party System**

The Commission concludes that the current philosophical and organizational disarray of both major political parties has minimized 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 to the 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 Congress, or state legislatures, as appropriate, adopt measures that 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 that 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; and (d) a reduction in the number, dates, and duration of Presidential primaries and the elimination generally of open and blanket primaries.\*

#### **Recommendation 4: Protecting the Autonomy of State and Local Governments in National Policymaking**

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 were few sustained representational undertakings. Hence,

**The Commission recommends that the states and their localities adopt policies and procedures that will strengthen the autonomy of their decisionmaking processes and will protect and enhance their assertiveness 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**

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\* Representatives from HUD and OMB abstained.

associations in Washington, give priority to protecting and enhancing the status of state and local governments within our federal system and to 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) establishing jointly 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.\*

### **Recommendation 5: Strengthening the Concept of Constitutional Federalism**

The Commission finds that the present dysfunctional pattern of intergovernmental relations is partially a by-product of a decline among the citizenry and office-holders 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 con-

temporary federal-state-local relations, the Commission further recommends a convocation by the President of leaders of Congress, the 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 eighties.

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 "tradeoffs" between and among the traditional levels in light of their actual and potential revenue raising and serving 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.

### **Recommendation 6: Ending the Ambiguities in the Constitutional Amendment Process**

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

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\*The representative from OMB 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.

**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).\***

\*The representative from OMB abstained, noting that the Administration has developed no policy on this issue.

## FOOTNOTES

<sup>1</sup> Advisory Commission on Intergovernmental Relations, *An Agenda for American Federalism: Restoring Confidence and Competence* (A-86), Washington, DC, U.S. Government Printing Office, 1981.

<sup>2</sup> Advisory Commission on Intergovernmental Relations, *Summary and Concluding Observations* (A-62), from *The Intergovernmental Grant System: An Assessment and Proposed Policies*, Washington, DC, U.S. Government Printing Office, June 1978, p. 78.

<sup>3</sup> Advisory Commission on Intergovernmental Relations, *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, aid to the blind, and aid to the permanently and totally disabled. Since then, the last three—the “adult categories”—have been federalized into the supplemental security income 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.

<sup>4</sup> Advisory Commission on Intergovernmental Relations, *Categorical Grants: Their Role and Design* (A-52), Washington, DC, U.S. Government Printing Office, May 1978, p. 298.

<sup>5</sup> *Ibid.*, p. 303.

<sup>6</sup> *Ibid.*, p. 305.

<sup>7</sup> Advisory Commission on Intergovernmental Relations, *Inflation and Federal and State Income Taxes* (A-63), Washington, DC, U.S. Government Printing Office, November 1976, p. 9.

<sup>8</sup> Some individual members of the Commission, notably Mayor Tom Bradley, strongly advocate the principle of federal reimbursement of state and local costs in carrying out federally mandated programs, and these proposals were the subject of discussion at the March 1980, and June 1980, meetings. However, reimbursement proposals raise a series of complex legal, fiscal, and political issues that have not yet been explored in sufficient detail by the Commission as a whole to provide a basis for its recommendations. The mandating issue has been identified as a high priority area for future study.



# **Participants in the ACIR Conference on the Future of Federalism**

**Henry Aaron**  
Senior Fellow  
The Brookings Institution  
Washington, DC

**John J. Bosley**  
General Counsel  
National Association of Regional Councils  
Washington, DC

**George F. Break**  
Professor  
Department of Economics  
University of California  
Berkeley, CA

**George Brown**  
Professor of Law  
Boston College Law School  
Newton Centre, MA

**William N. Cassella, Jr.**  
Executive Director  
National Municipal League  
New York, NY

**Emery Castle**  
President  
Resources for the Future  
Washington, DC

**Garland Christopher**  
Policy Analyst  
Urban Policy, Analysis, and Research Unit  
National Urban Coalition  
Washington, DC

**William G. Colman**  
Consultant  
Potomac, MD

**John N. Dalton**  
Governor of Virginia  
ACIR Commission Member  
Richmond, VA

**Doris W. Dealaman**  
Freeholder Director, Somerset County  
ACIR Commission Member  
Somerville, NJ

**Stephen B. Farber**  
Executive Director  
National Governors' Association  
Washington, DC

**Joseph L. Fisher**  
Former Member  
U.S. House of Representatives  
Washington, DC

**Donald M. Fraser**  
Mayor  
Minneapolis, MN

**Delphis C. Goldberg**  
Professional Staff Member  
House Subcommittee on Intergovernmental Relations  
and Human Resources  
Washington, DC

**Robert P. Goss**  
Director, State-Federal Relations  
National Conference of State Legislatures  
Washington, DC

**Clifford Graves**  
Chief Administrative Officer  
County of San Diego  
San Diego, CA

**Nicholas Gwyn**  
Acting Deputy Secretary to the Cabinet for  
Renewal of Federalism  
Federal-Provincial Relations Office  
Ottawa, Ontario

**Edward K. Hamilton**  
President  
Hamilton-Rabinovitz, Inc.  
Los Angeles, CA

**Willis W. Harman**  
Associate Director of the Center of Social Policy  
SRI International  
Menlo Park, CA

Walter Heller  
Professor  
Department of Economics  
University of Minnesota  
Minneapolis, MN

Lewis B. Kaden  
Professor  
Center for Law and Economic Studies  
Columbia Law School  
New York, NY

Arthur Naftalin  
Professor  
Hubert H. Humphrey Institute of Public Affairs  
Minneapolis, MN

William J. Page, Jr.  
Professor  
Department of Public Administration and  
School of Social Work  
Florida State University  
Tallahassee, FL

Sallyanne Payton  
Professor  
University of Michigan Law School  
Ann Arbor, MI

Neal R. Peirce  
National Journal  
Washington, DC

Calvin L. Rampton  
Former Governor of Utah  
Salt Lake City, UT

Austin Ranney  
American Enterprise Institute for Public Policy Research  
Washington, DC

James P. Ritter  
Member  
Pennsylvania House of Representatives  
Allentown, PA

Walter A. Scheiber  
Executive Director  
Metropolitan Washington Council of Governments  
Washington, DC

James L. Sundquist  
Senior Fellow  
The Brookings Institution  
Washington, DC

William Thurman  
Associate Director  
General Accounting Office  
Washington, DC

Jesse Unruh  
Treasurer  
Sacramento, CA

Mary Eleanor Wall  
ACIR Commission Member  
Elmhurst, IL

Ralph Widner  
President  
Academy for Contemporary Problems  
Washington, DC

Aaron Wildavsky  
Professor  
University of California  
Berkeley, CA

Jane Yarn  
Member  
Council on Environmental Quality  
Washington, DC

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# COMMISSION MEMBERS

## **Private Citizens**

Abraham D. Beame, ACIR Chairman, New York, New York  
Bill G. King, Alabama  
Mary Eleanor Wall, Illinois

## **Members of the United States Senate**

Lawton Chiles, Florida  
William V. Roth, Jr., Delaware  
James R. Sasser, Tennessee

## **Members of the U.S. House of Representatives**

Clarence J. Brown, Jr., Ohio  
L. H. Fountain, North Carolina  
Charles B. Rangel, New York

## **Officers of the Executive Branch, Federal Government**

Moon Landrieu, Secretary, Department of Housing and Urban Development  
James T. McIntyre, Director, Office of Management and Budget  
G. William Miller, Secretary, Department of the Treasury

## **Governors**

Bruce Babbitt, Arizona  
John N. Dalton, Virginia  
Richard W. Riley, South Carolina  
Richard A. Snelling, Vermont

## **Mayors**

Thomas Bradley, Los Angeles, California  
Richard E. Carver, Peoria, Illinois  
Tom Moody, Columbus, Ohio  
John P. Rousakis, Savannah, Georgia

## **State Legislative Leaders**

Fred E. Anderson, President, Colorado State Senate  
Jason Boe, President, Oregon State Senate  
Leo McCarthy, Speaker, California Assembly

## **Elected County Officials**

William O. Beach, County Executive, Montgomery County, Tennessee  
Lynn G. Cutler, ACIR Vice-Chair, Board of Supervisors, Black Hawk County, Iowa  
Doris W. Dealaman, Freeholder Director, Somerset County, New Jersey

# 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.