

**AMERICAN FEDERALISM:
INTO THE THIRD CENTURY**
Its Agenda

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
WASHINGTON, D.C. • MAY 1974

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Preface

The shifting sands of American governmental actions alternately form solid dunes of accomplishment only to be blown into endless deserts of mediocrity. The alternate ebb and flow of these sands has been the subject of intense wonder in the rest of the world—and with reason.

The truth is that this country has established the most significant governmental system yet erected—a Federal system of divided responsibilities in fact as well as theory. A strong national government, with an ever stronger presidency, still has the ability to survive even while pausing in mid-course in a great, rending national debate on the very right of the President to remain in office. At the same time state governors and legislatures, often considered weak and unresponsive, rise to the occasion by exercising strong leadership, with urban affairs and public accountability leading the way. Local governments with all their limitations continue to deliver essential services—some extremely well.

The Advisory Commission on Intergovernmental Relations is the first official “federal” body created since the Constitutional Convention itself. Lacking the action mandate of that great body, the ACIR nevertheless has over the years forged an important agenda as we move into the third century of this vast American experiment. The purpose of this brief summary is to highlight the ACIR agenda, hopefully as a guide to help in unravelling our terribly complex system, and as a help in sorting out our often confused thinking about it.

Robert E. Merriam
Chairman

Acknowledgements

This document was written by Rochelle L. Stanfield and edited by William G. Colman, who supervised its preparation. It was prepared for Federalism Seventy-Six under a grant from the American Revolution Bicentennial Commission to the Advisory Commission on Intergovernmental Relations. The copy was reviewed for Federalism Seventy-Six by Carl F. Stover, Daniel R. Cloutier, Valerie Earle, James Ferguson, Thomas J. Graves, Gary L. Jones, William R. MacDougall and Bruce W. Rohrbacher.

William R. MacDougall
Executive Director

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What's Behind?

What's Now?

What's Ahead?

For nearly 200 years now, Americans have tried to reconcile the twin goals of diversity and unity through a federal system of government, with a sharing of power between a national government on the one hand and State and local governments on the other. This includes fiscal and political accountability at each government level—from the White House to the court house.

This shared-power or “federal” characteristic of our system has been in controversy since the founding of the republic. Today, as at other times, the question is raised, among statesmen, scholars and citizens alike, as to whether such a system of shared and divided powers is equal to the complex and critical nature of domestic government in the United States.

This booklet explains the findings and recommendations of the Advisory Commission on Intergovernmental Relations (ACIR)—a national bipartisan body created by Congress in 1959 and charged with continuing study of the workings of the federal system and with proposing ways in which the system might be strengthened. The Commission’s work over the past decade and a half provides a yardstick against which to assess the past and chart the future of the nation’s form and structure of government on the occasion of the American bicentennial observance.

It was the adoption of the Constitution in 1787, not the Declaration of Independence in 1776, that established the federal system. But the issues of the prerevolutionary period provide the core concepts of the Constitution created at Philadelphia and its federal principle—America’s greatest contribution to the art of government.

Whether it was “taxation without representation,” the authority of parliament to regulate commerce, the legal status of the colonial charters, or the power of the Crown as the imperial link, colonial spokesmen such as James Otis, John Adams, and Thomas Jefferson were arguing issues of governmental centraliza-

The Origins

tion and decentralization—the division of power between the center and the grassroots.

When independence was declared, a compact for confederation was adopted by the new states, in reaction against the unitary structure of British government. But in less than a dozen years, the weakness of the national government became so apparent that many were gravely concerned for our survival as an independent nation. Consequently, the stage was set for the mighty work that was to emerge from Philadelphia and the federal formula that was its most ingenious feature—a feature providing for a strong national government, while reserving considerable power of domestic governance to the states.

As America prepares to embark on its third century, the central goal of the federal system is still “to form a more perfect union,” just as it was in 1776, 1787 and 1861-65. President Lincoln, in his first inaugural, in 1861 eloquently summed up the nature and meaning of the American union:

... in legal contemplation the Union is perpetual . . . (It) is much older than the Constitution. It was formed, in fact, by the Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured, and the faith of all the then thirteen states expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And finally, in 1787, one of the declared objects for ordaining and establishing the Constitution was ‘to form a more perfect Union.’

For nearly 200 years, the federal system has survived and has adjusted to enormous changes in population, technology, living patterns and governmental needs. It weathered the Civil War and the foreign wars, official venality and political foolishness, indecision and lack of action, sins both of omission and commission. It also has had dramatic saviors and unsung heroes, as well as articulate opponents and unknowing subverters.

It is a resilient system that defies precise definition. It has been viewed as both a nation centered and a state centered system; as a competitive and as a cooperative arrangement; as a layer cake, a marble cake, and a “blender cake;” as a three-legged stool, a pentagon, and even an abstract painting (no representational form, shifting shapes and an abundance of color). The image of a juggler has been evoked, trying to keep in the air the many oranges of conflicting objectives while his assistant heaps on apples of economic growth, technological advance, political controversy, and social change.

None of these interpretations or comparisons truly explain the federal system, though all provide some clues to its character. It is a highly complex and infinitely subtle blend of contrasting needs, values, and institutions rooted in a society that is pluralistic, an economy that is diversified, and in political parties that are neither centralized nor ideological.

The goal today may well be a better balance, but true equilibrium can never be reached, for federalism is as dynamic as the forces that shape the society it serves. From time to time, particular events or policies have thrown the system out of balance, and sensitive observers have feared its fate. But for two centuries, federalism has managed to adapt to new circumstances without sacrificing its essential nature.

Here is one oversimplified example, stripped of many of its ramifications, of the kind of pendulum swings that have characterized this adaptability. It might be said that the federal system now—in the mid-seventies—is beginning to recover from a long period of serious disequilibrium.

In the 1930s, the Federal government—which had the financial resources—was forced to take steps to provide citizens with economic protection from the ravages of the Great Depression. The Social Security Act was adopted, and Federal aid to states expanded into many new fields. The results brought economic security to millions but was accompanied by a fallout of increasing centralization and the birth of “functional bureaucracy”—decisionmaking by state and local bureaucrats who applied for, and Federal bureaucrats who handed out the grant money, rather than by those who were “politically accountable” to the people.

By the middle 1960s, stimulated in part by legislative reapportionment, states were beginning to reassume a positive role over their own affairs and those of local government. In 1972, two Federal actions in particular added momentum to this swing of the pendulum. One was the adoption of general revenue sharing—providing relatively “no strings” money to elected officials at state and local levels, thereby bolstering their capacity to set their own priorities and make their own decisions. Although revenue sharing violates the preachment that the government that raises the money should be the one that spends it, on balance, the objective of decentralization seemed more important.

The other Federal action was the beginning of the nationalization of welfare, with Federal takeover of the adult assistance categories (aid to the aged, blind and disabled). On its face, this was a move toward centralization. But the Federal-state welfare system had been characterized by such great disparities among states that the twin goals of equity and national unity made continuation of state based systems untenable. In addition, by removing this fiscal burden from the shoulders of the states, it was hoped they would be able to assume other, more appropriate responsibilities.

Since its inception in 1959, the ACIR has studied specific conflict and tension points in intergovernmental relations; also it has provided an overview of the system as a whole on the occasion of its annual reports to the President, Congress and the public.

The Commission has made well over 500 recommendations to Federal and state governments to resolve specific problems; some of these have been accepted, others rejected, and many others still

Swings of the Pendulum

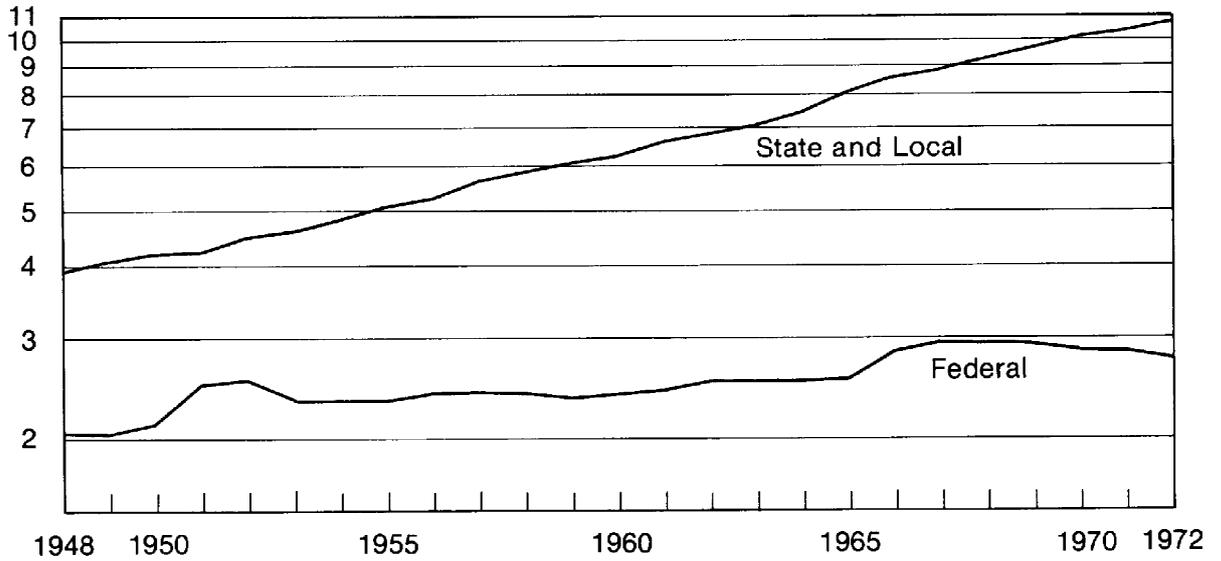
The Tasks Ahead

Government Employment and Payroll, 1948 to 1972

Logarithmic Scale

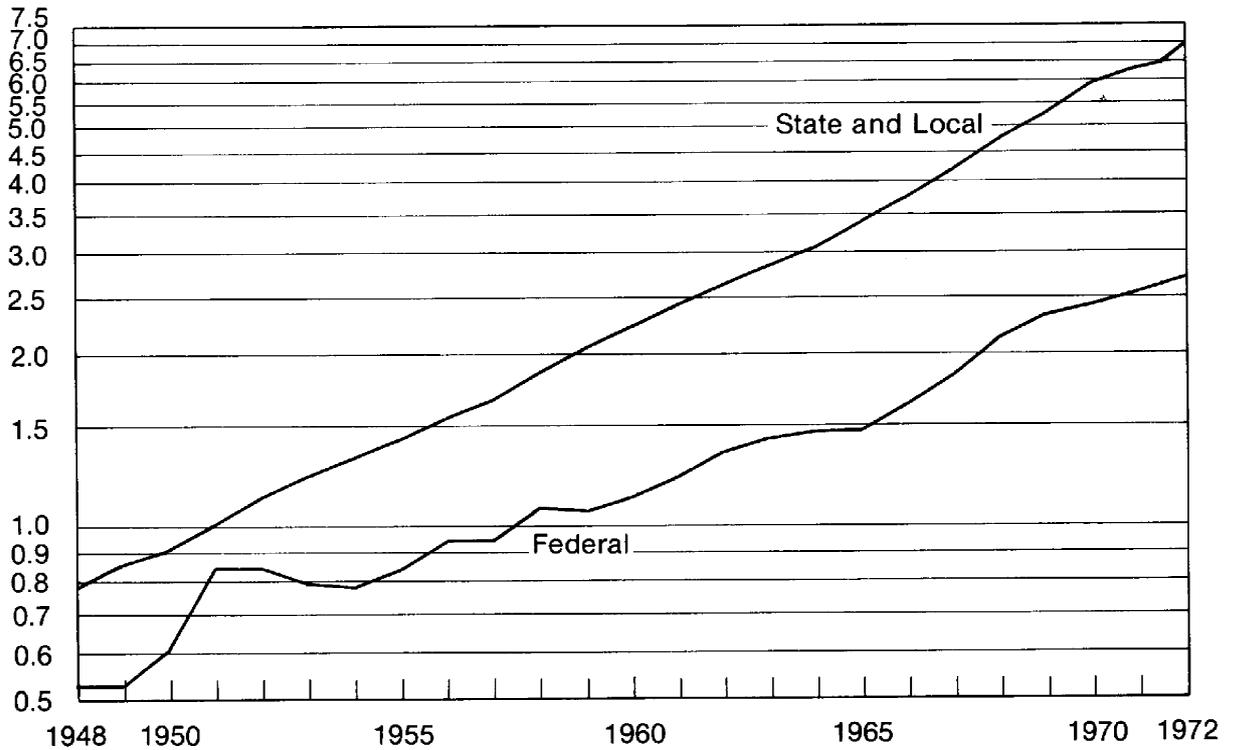
NUMBER OF EMPLOYEES

Millions



MONTHLY PAYROLLS

Billions of Dollars



Note: Data are for month of October; 1957 data were reported for April and have been adjusted for comparability to October.

await action. These recommendations fall into a pattern that emerges as an action agenda for rebalancing and strengthening the federal system. The agenda can be considered in five broad areas:

- Revitalizing local government;
- Building stronger states;
- Achieving balanced population and economic growth, including diversified housing opportunity;
- Streamlining and humanizing the administration of justice; and
- Restoring fiscal balance among Federal, state and local levels of government, including consolidation and simplification of the Federal grant system and massive shifts in intergovernmental responsibilities for the financing of welfare, medicaid, and public education.

Revitalizing

Local

Government

America's grassroots governments—the cities, counties, and towns—today face greater challenges than ever before, with problems and citizen demands emerging and growing at a rate far greater than the legal, structural and financial capacity to deal with them. Here one sees most dramatically the triple mismatch between fiscal resources and human needs, between political boundaries and population settlement patterns and between the states' constitutional role as parents of these units and their frequent unwillingness to “grasp the local government nettle”.

In 1970, 66 percent of the population resided in “metropolitan areas”.¹ Typically a metropolitan area consists of a central city surrounded by suburban municipalities, towns and counties, both city and suburban, containing in turn a sizeable number of school and other special districts.

Since 1950, many central cities have suffered a net population decline. Between 1960 and 1970, suburbs recorded a net population gain of about 27 percent; central cities of little more than 6 percent—and most of that from annexation. The 1970 census showed that for the first time more people were living in the suburban areas than in central cities—although some of the older, fully developed suburbs also suffered a net decline.

Marked disparities in racial composition are evident in the following comparisons between 72 central cities and their suburbs

Metropolitan
Disparities

with regard to age, income, housing, crime, government expenditures, taxes and external financial aid.

Race

The cities are getting blacker and the suburbs whiter. Between 1960 and 1970, the white population declined in 40 of the 72 largest central cities; in all but three of these cities, the non-white population increased. Over 85 percent of all non-white metropolitan growth occurred in the central cities. In 1970, 24 of the central cities were more than one-quarter black while 67 of the suburban areas were more than 90 percent white, although here and there across the country the proportion of black population in suburbia is beginning to increase.

Age

Older people cluster in cities; younger ones in suburbs. In 1970, 11 percent of the central city population was 65 years or older; 8 percent of the suburban population. This meant more school children in the suburbs: 24 percent to 19 percent in the city, but many of those in the city were harder and more costly to educate because of socio-economic disadvantages.

Income

Family units in the suburbs are wealthier. In the northeast, for example, average central city household income was 79 percent of suburban household income in that region. For the country as a whole, 17 percent of central city households were earning under \$3,000; and 33 percent, more than \$10,000. This compares with 12 percent under \$3,000 and 41 percent more than \$10,000 in the suburbs. (It is important to note that central city-suburban disparities of an economic and racial nature tend to be more marked in the northeast and industrial midwest than elsewhere in the country.)

Housing

Housing costs more and is worth more in the suburbs—making it harder for low income people to leave poor central city neighborhoods and making it easier for suburbs to finance their government services through the property tax. In 1970, owner occupied houses in the central cities were worth 84 percent of suburban houses. From 1960 to 1970, suburban houses increased in value an average of 47 percent; city houses only 31 percent. Rental housing followed basically the same pattern.

Crime

In 1970, crime rates in all but one of the 72 central cities exceeded those of the respective suburban areas. The FBI's *Uniform Crime Reports* for the first nine months of 1973 showed an encouraging shift. Total crimes for cities over 1-million population were down 3 percent while crimes for suburban areas were up 5 percent. Violent crimes were down 2 percent in cities over 1-million population, but up 10 percent in suburbs. But the discouraging fact remains that, for 1972, the rate for robbery was eight times as high in cities as in suburbs; for murder, five times as high; and for rape and aggravated assault, nearly three times

Comparing 1957 and 1970 data, central cities in both years spent better than 25 percent more per capita on government services than their suburban counterparts. Central cities have always had to spend a greater portion of their budgets on non-educational services. In 1957, central city areas had 82 percent higher per capita non-educational expenditures than the suburbs. By 1970, this figure had climbed to 95 percent.

Conversely, suburbs have spent a greater portion of their budgets on education. This has meant, over the years, the suburbs could also spend more per pupil on education than the central cities. But this gap is closing, primarily because of state government aid. (In fact, the analysis shows only 20 central cities spent less per pupil on education than their surrounding suburbs and 47 cities spent more; but this comparison ignores the substantially higher per pupil costs in providing education to children from low income or otherwise "disadvantaged" homes.)

Taxes are higher in central cities, but the gap is narrowing. Average per capita tax burden in 1957 was \$117 for central cities and \$80 for suburbs; in 1970, it was \$258 for central cities and \$190 for suburbs. That means that in 1957, central city tax collections were 46 percent higher than suburbs. By 1970, they were down, but still 36 percent higher.

Tax burden or "effort" as measured by the proportion of personal income going for taxes shows that taxes are 34 percent heavier in the cities. This measurement—considered a very rough one by economists—shows people in central cities paying 6.7 percent of their income in taxes while the suburbanites pay 5 percent.

A major reason for the narrowing expenditure and tax gaps is Federal and state aid focused on the cities. On a per capita basis, cities received no more aid than suburbs in 1957; in 1970, they received 31 percent more aid. Expressed differently, in 1957, the central cities relied on aid for 20 percent of their budgets; by 1970 this figure had risen to 32 percent.

However, major exceptions exist. The study found that even as of 1972, 43 suburban areas received more per pupil aid for education than their city counterparts.

Historically, most urban growth has been concentrated on the fringe where there has been vacant land on which to build new houses. Many American cities in the 1800's grew in population and area by annexing these newly building neighborhoods. But beginning in the early 1900's, public concern about municipal corruption began to mount anew. State legislatures began to pass laws to "protect" the people on the fringe by making it easy for them to incorporate into new independent municipalities and by making it very difficult for the large city to annex adjoining territory—at least not without the approval of those being annexed. Here, in these double barreled statutory enactments were implanted many of the roots of what has come to be called

Government Expenditures

Taxes

Federal and State Aid

How the Situation Developed

“the urban crisis,” with the harvesting of their bitter fruits beginning in the post World War II years and reaching flood tide in the 1960’s.

A Fragmented Tax Base

The crucial importance of these legal points becomes clear when one considers the nature of municipal powers. When the residents of a particular geographic area vote to incorporate, the resulting municipality acquires the following powers, among others: (a) Property taxation. The incorporating residents now have their own tax base. (b) Land use regulation. The new city can now regulate the types of growth and housing it will permit. (c) School district adjustment. Many state laws require or permit the readjustment of school district lines in the light of municipal boundary changes. (d) Provision of municipal services. The city furnishes police, fire, sanitation and other services.

This “fragmentation” of local government structure would not have been so tragic for urban America if matters of efficiency and economy in governmental services were the only considerations involved. But the real heart of the matter lies in the *splintering of the tax base*, particularly as it relates to education. Each local unit is able to levy its own taxes to support the level of service it desires. Upper and middle income whites, fleeing from a central city to escape school integration, welfare costs, rising crime, or for whatever reason, have been able to incorporate new units or enclaves on the urban fringe. Furthermore, by zoning in high income people and white collar industry and zoning out other people, they have been able to bring great fiscal resources to bear upon the costly services of education, utilities, recreation and the like. The core city consequently is left with an eroding tax base and an ever increasing proportion of “high cost citizens.”

Throughout the process, the states had tended to keep hands off, delegating to the point of abdication their powers of zoning, building regulation and land use control to the individual local jurisdictions.

These governments—which usually had inadequate geographic reach—misused these powers to their own short range advantage and the long range detriment of the entire area. The inevitable result was a metropolitan landscape marked by disorderly sprawl, difficult pollution problems, and deepening economic, fiscal, and social disparities—harmful both to the environment and governmental ability to deliver public services in an economical and equitable manner.

A Declining Rural America

Meanwhile, the mass flight to metropolitan areas left many remaining rural areas with some of the most difficult, but least publicized dilemmas. In 1790, 95 percent of the population lived in rural areas and only 5 percent in cities of 2,500 population or more. By 1970, this had shifted to 74 percent urban and 26 percent rural. Only 5 percent actually lived on farms, witness to the decline in “family farming” in the wake of agricultural mechanization. The quarter of the population that remains on

farms and in small rural towns has the lowest income, suffers from the poorest educational and health facilities, and lives in some of the worst housing in the country.

With the farm to city migration, rural areas are left with a multitude of governmental units, thousands of towns and small cities below 2,500 population, hundreds of counties below 5,000, and thousands of special districts serving a few hundred people each. These units of local rural government provide fewer services, exhibit less administrative leadership capacity, suffer from more diseconomies of scale, have weaker financial bases, and use intergovernmental cooperation agreements less frequently than their urban counterparts.

Politically, this situation tends to encourage "place oriented" rather than "people oriented" programs of rural development, in other words, the preservation and restoration of county seats and small towns becomes the central objective instead of assisting rural people towards economic betterment.

Population settlement patterns, the resulting citizen needs for governmental services and the physical nature of many of the services themselves inevitably overlap political boundary lines. But transportation, water and sewer utilities and air pollution monitoring are obvious examples. Consequently, Federal, state and local officials often have been forced to resort to special districts with boundary lines drawn to fit a particular problem and the specific geographic area to be served.

The result has been both constructive and chaotic. Services that existing cities, counties and townships were unable or unwilling to render have been provided to the citizens needing and demanding them. But the local government map has grown considerably more complex as a consequence of the creation of a multitude of single purpose authorities and districts. There are now 25,000 special districts and authorities—three-quarters of these overlap municipal or county boundaries and most of them are beyond the authority and control of locally elected general governments, and generally out of sight of the public.

At the State level, 40 states have established substate districting systems embracing 488 regional areas. At first, these were just lines on a map, but two-thirds of these districts are now organized.

At the Federal level, 19 grant-in-aid programs have been enacted that call for regional districts. They have resulted in approximately 1,800 regional districts handling specific programs in a narrow functional manner.

All this activity has resulted in a "typical" metropolitan area made up of 85 units of general and special purpose local governments, including:

- two counties;
- 13 townships;
- 21 municipalities;
- 18 school districts;

The Evolution of Regional Cooperation

—31 special districts and authorities for such purposes as fire protection, water supply, sewers and housing.

In addition, the typical metropolitan area has three-to-four Federally supported areawide planning districts, such as law enforcement, comprehensive health, manpower, transportation; and one council of governments or similar regional organization—usually an organization of elected officials of the municipalities, towns and counties comprising the metropolitan area.

The legal and political responsibility for alleviating this situation rests in large measure with the states, the parents that created or delegated the creation of most of these units. ACIR recommendations call for state action on several fronts: To strengthen general purpose local governments; discourage narrow gauge districts and non-viable jurisdictions; and encourage coordination and cooperation among local units. It should be emphasized that though such steps are politically difficult in the extreme, they represent a consensus among national civic and business organizations that have looked at the American local government picture in recent years, including the National Municipal League, Chamber of Commerce of the United States, Committee for Economic Development, and others.

Running through nearly all of the ACIR reports has been the theme of strengthening the hand of elected officials as decision-makers at each level of government. Locally this means greater reliance upon cities, counties and towns and less upon special districts and other *ad hoc* arrangements.

Parent states historically have been very strict with their “general-purpose children” in some areas where flexibility is needed, but overly permissive in others, where a strong hand is necessary. The states have been rigidly specifying functions to be carried out by counties while handcuffing them further by requiring uniform tax rates (and consequently rigid service levels) through the entire county area, explicitly determining county and city organization structure, and stringently guarding what cities do, and how they raise the money to do it. It was this rigidity in part, that has led to the creation of special districts to perform individual functions, sometimes supported by a tax levy, more frequently by service charges or benefit assessments. On the other hand, the states until recently have tended to neglect their responsibility over land use, annexation, building codes and zoning, delegating these functions *in toto* to local government with few if any guidelines specified as to their exercise.

ACIR has called on states to grant substantial “home rule” powers to cities and counties and to limit the creation of further special purpose units.

States should delegate to the localities all powers not specifically denied them in the constitution, enable them to determine what organizational structure best fits local needs, and permit

The Crowded Local Government Agenda

Strengthen General Purpose Local Governments

local governments to establish and control their own tax and debt levels.

States should stop the proliferation of special districts by making it harder to form them and easier to consolidate or dissolve them, and should increase both the visibility and accountability of those already in existence.

In the last few years, the states have responded to a variety of pressures and delegated greater authority to local government. For instance, at least seven states authorized greater home rule powers for their local governments in 1970, five in 1971 and at least ten States in 1972.

One of the most comprehensive actions to date is Pennsylvania's *Home Rule Charter and Optional Plans Law* of 1972 which gives counties, cities, boroughs and incorporated towns and townships broad administrative and taxing powers (although the state retains the power to decide what is to be taxed, but the home rule units can set the rates).

New Jersey adopted an *Optional County Charter Law* in 1972 that permits counties to adopt one of four optional forms of government after a charter study and a public referendum. Each alternative provides for a legislative body and a strong central administrator to facilitate the functioning of a modern government.

But the people are not always ready for government innovation. The new 1970 Illinois constitution permitted counties to establish an executive form of government and receive home rule powers if the people adopted the idea at a referendum. In 1972, nine counties held referenda on the subject—and it failed in every county.

In viewing city and county government as a whole, however, encouraging progress is being made in strengthening the management capability of county and city government. For example, more than 200 counties now have appointed administrators and nearly 40 have elected county executives. The number of cities with planning agencies responsible to the mayor have doubled in the last decade. And nearly half the cities over 50,000 population have some elements of a planning, programming, budgeting system.

For a variety of reasons—to dodge city taxes, to entice industry, and to avoid certain kinds of neighbors—thousands of independent political subdivisions have been incorporated in the absence of strong state boundary supervision. These areas contribute heavily to metropolitan fiscal disparities, to urban sprawl and to the overlapping metropolitan jurisdictional map.

ACIR seeks State action to discourage the formation of new units and the merger of existing non-viable units with viable general purpose governments through such means as the following:

- permitting the use of liberalized municipal annexation procedures;

Discourage Non-Viable Units

- authorizing state boundary commissions to consolidate or dissolve non-viable units;
- providing rigorous state standards for incorporation;
- amending state aid formulas to eliminate or reduce aid to non-viable local governments.

Six states had local boundary commissions as of 1973: Alaska, California, Michigan, Minnesota, Oregon and Washington. An Iowa law takes effect in 1974. Michigan took about the most far reaching stand in 1970 when its legislature permitted the state boundary commission to order annexation of areas to home rule cities. The cities are permitted to initiate annexation by resolution, but final authority rests with the boundary commission.

The voters of North Carolina were also in the vanguard on these issues. At the 1972 general election they amended their constitution to prohibit incorporation of a new town or city closer than one mile from a city with a population of 5,000 to 10,000; three miles from a city of 10,000 to 25,000 population; four miles from a 25,000 to 50,000 population city and five miles from larger cities. The legislature can disregard these limits only by a three-fifths vote.

From the standpoint of local government modernization, the Federal general revenue sharing legislation adopted in 1972 provides both incentives and disincentives; only general purpose local governments are eligible beneficiaries. On the other hand, the act provides funding for such units regardless of size. At hearings conducted by ACIR on the subject in the summer of 1973, several witnesses from California expressed the fear that revenue sharing funds might hinder efforts to consolidate or merge these tiny governmental units.

Encourage Areawide and Regional Coordination

When a metropolitan area comprises a single county, coordination of services can often be effected through city-county consolidation or, more simply, by county assumption of those functions needing handling on a broader than municipal basis (*e.g.* water and sewer utilities, mass transportation, solid waste collection and disposal).

Since 1945, 13 counties have consolidated with their central cities and outlying jurisdictions—11 of these actions have taken place since 1962. But the going is slow—in 1972 one consolidation was approved (Lexington-Fayette County, Kentucky) while three other proposals were defeated. Given the small number of adoptions and the fact that most consolidations so far have taken place in the south, one must conclude that other mechanisms must be considered if progress is to be other than glacial.

In urban counties generally, ACIR suggests that states let the county perform urban functions. If a particular service is needed in only one section of the county, the county could provide the service and tax only that section to pay for it. (This often requires an amendment to the state constitution to authorize differential property tax rates within a county.) Also, the Commission

encourages interlocal contracting arrangements among cities or between counties and cities for the provision of specified services.

A more comprehensive approach is represented by the regional service corporation which would provide a variety of services on an areawide basis. Colorado's local government service authority act, adopted in 1972, is an example. The stated purpose is to reduce the proliferation of other types of "quasimunicipal" government. The local government service authority may perform any number of services for two or more counties, including water collection, treatment and distribution; sewage collection, treatment and disposal; transportation; parks and recreational facilities; libraries; fire protection; hospitals; gas and electric services; and jails and rehabilitation. The authorities may be formed at the initiative of the local governments involved or by petition of 5 percent of the qualified voters of the area. The new district must then be approved by a majority of the electors voting in each county within the service area of the proposed district.

In the summer of 1973, ACIR adopted five recommendations to establish a coordinated regional strategy at the multicounty substate level. The plan, (parts of which had been proposed or supported by the major national organizations of state and local governments²), calls for an "umbrella multijurisdictional organization" (UMJO) composed primarily of elected officials of all local governments in the area, that has:

- authority to plan and to resolve local governmental conflicts that have a regional impact;
- conditional authority to conduct regional operating programs;
- policy and budget control over those special districts in the region serving an area broader than a single unit;
- decisions either by majority vote of the governing board or on occasion by a vote weighted according to population.

The Metropolitan Council in Minnesota's Twin Cities area and the Atlanta Regional Council already possess most of these powers and functions. In addition, regional councils exist in one form or another in 212 metropolitan and 238 non-metropolitan areas that could serve as a foundation for the kind of organization proposed.

Over reliance on regional mechanisms, on the other hand, can result in further fragmentation of governmental authority and a serious under utilization of the full range of powers of cities, counties and towns. The political temptation is very strong, especially at the state level, to evade the decision as to which type of local government should provide which level of service by tossing the question over to a metropolitan debating society. Legislatures have been slow in unshackling local government and have been hesitant to authorize county performance of urban functions or the exercise of municipal powers on an extraterritorial basis. They have been even less willing to choose between cities and counties as to which is best able to perform particular functions, or to designate specific services as "city dominant" (fire

protection) or "county dominant" (solid waste disposal and sewage treatment). Of course, such a designation is legally and fiscally difficult because of the many differences in population and capacity among classes of cities or counties within a single state. Also, it is much easier politically to grant functional powers to cities, counties, and towns alike, with the admonition that they work out details on an area by area basis, either by special legislation or by contractual or other voluntary agreements among the jurisdictions concerned.

Share the Growth

In the Twin Cities area of Minnesota, an ingenious approach to ease metropolitan fiscal disparities has been initiated. The 1971 state legislative session approved a plan whereby 40 percent of the growth in each jurisdiction's non-residential property taxes would be put into a common pot to be shared by all governmental units according to need. The metropolitan pot would be divided according to per capita assessed valuation—units with the lowest assessed valuation to receive the largest proportionate amount of money.

The idea was to discourage tax competition among local governments over new industry, help jurisdictions incapable of helping themselves, and preserve the environment from over industrialization at the same time. Although fairly well received by many localities in the metropolitan area, the plan has been tied up in litigation in the State courts and has not yet been put into effect.

Initiate Neighborhood Government

At the other end of the scale of government in large metropolitan areas there is growing alienation on the part of citizens packed into densely settled, low income neighborhoods. ACIR has suggested that major urban governments be authorized to create neighborhood subunits. Activities and purposes of these units would include broadening citizen participation, affording reasonable decentralization of municipal activities, providing neighborhood input into municipal decisions, conducting self-help projects, sponsoring recreational activities, on occasion rendering particular services on a small scale, and where necessary, levying a small head tax. Although the full range of these recommended activities are not found in any one city, a survey conducted in 1971 by ACIR staff showed decentralization of some form taking place in cities and counties across the nation. For example, 25 percent of the cities reporting had an ombudsman, 29 percent a special telephone number for citizen complaints; 17 percent of the mayors held meetings in neighborhoods; 32 percent had established neighborhood councils; and 4 percent, "little city halls" for the conduct of decentralized activities.

Sharpen the Federal Role

The Federal government—for all its power and the greatness of its purse—has a very small role in revitalizing the structure of local government. Nevertheless, ACIR has called on the Federal

government to move further to alter aid programs that now encourage special districts and to strengthen regional or metropolitan review of local grant applications.

In the early sixties, ACIR proposed Federal legislation to require review and comment by an areawide body on all applications for Federal grants filed by any local government in a metropolitan area. This recommendation was incorporated in the *Demonstration Cities and Metropolitan Development Act* of 1966 wherein such a review was required. These requirements were broadened through Title IV of the *Intergovernmental Cooperation Act* of 1968, which led in turn to the issuance of budget *Circular A-95* by the President's Office of Management and Budget (OMB).

The general revenue sharing act, while eliminating a population floor, did deny funds to special districts. And administrative efforts are underway in the OMB and several of the Federal departments to strengthen further the review process prescribed in OMB *Circular A-95*, under which metropolitan and areawide clearinghouses review local government applications for Federal grants pursuant to the two above-mentioned statutes.

Building

Stronger

States

15

As the roots of the urban crisis of recent years were being planted and nurtured in the thirties, forties and fifties, many major sins of omission and commission can be ascribed to the states. Cities and suburbs, counties, townships and boroughs alike are the legal creations of the state. Decades of state government non-feasance and malfeasance contributed to the deadly combination of restricted annexation and unrestricted incorporation; the chaotic and uncontrolled mushrooming of special districts; the limitations upon municipal taxing and borrowing powers; the abdication of the all important powers over urban development; and the reign of chaos in the non-system of criminal justice.

But, in the mid-sixties the activity and initiative of the states began to quicken, due in part to the reapportionment decisions and in part to the strengthening of the two party system in many states previously under one party dominance, as well as pressures from the Federal and local levels. With urban areas better represented in their legislatures, states began to take a more active interest in urban affairs. The membership shakeup of the legislatures resulting from reapportionment, including the infusion of much new blood, created a more favorable environment for reform of the legislatures as institutions. More legislatures began to hold annual sessions; yearround professional staffing of major standing committees was begun in a few States; and codes of

ethics, conflict of interest, recorded roll calls and open committee meetings—"sunshine laws"—were enacted in several states. Also, the legislatures began to be much more supportive of constitutional revision (so long feared lest the "Pandora's Box" of reapportionment be opened).

On the management and policy side, executive and legislative salaries were raised to attract adequate talent. Centralized budgeting was instituted, executive branch reorganization became popular, and governors began to get a handle on what was happening. Planning was strengthened, court reform was undertaken, school finance overhaul was begun, and land use programs were born. In brief, although uneven, the modernization of state government has been making considerable progress across the country.

ACIR's Agenda

Recommendations by the ACIR parallel those made by many scholars, practitioners and observers of state government, such as the Council of State Governments, Committee for Economic Development, Chamber of Commerce of the U.S. In brief they are:

- Shortening the ballot to consolidate executive power in the governor;
- Power of the governor to succeed himself to the extent of at least two four-year terms;
- Power of the governor to reorganize executive departments subject to legislative veto;
- Annual sessions of the legislature; and
- Adequate legislative compensation, adequate facilities, and yearround professional staffing of major standing committees.

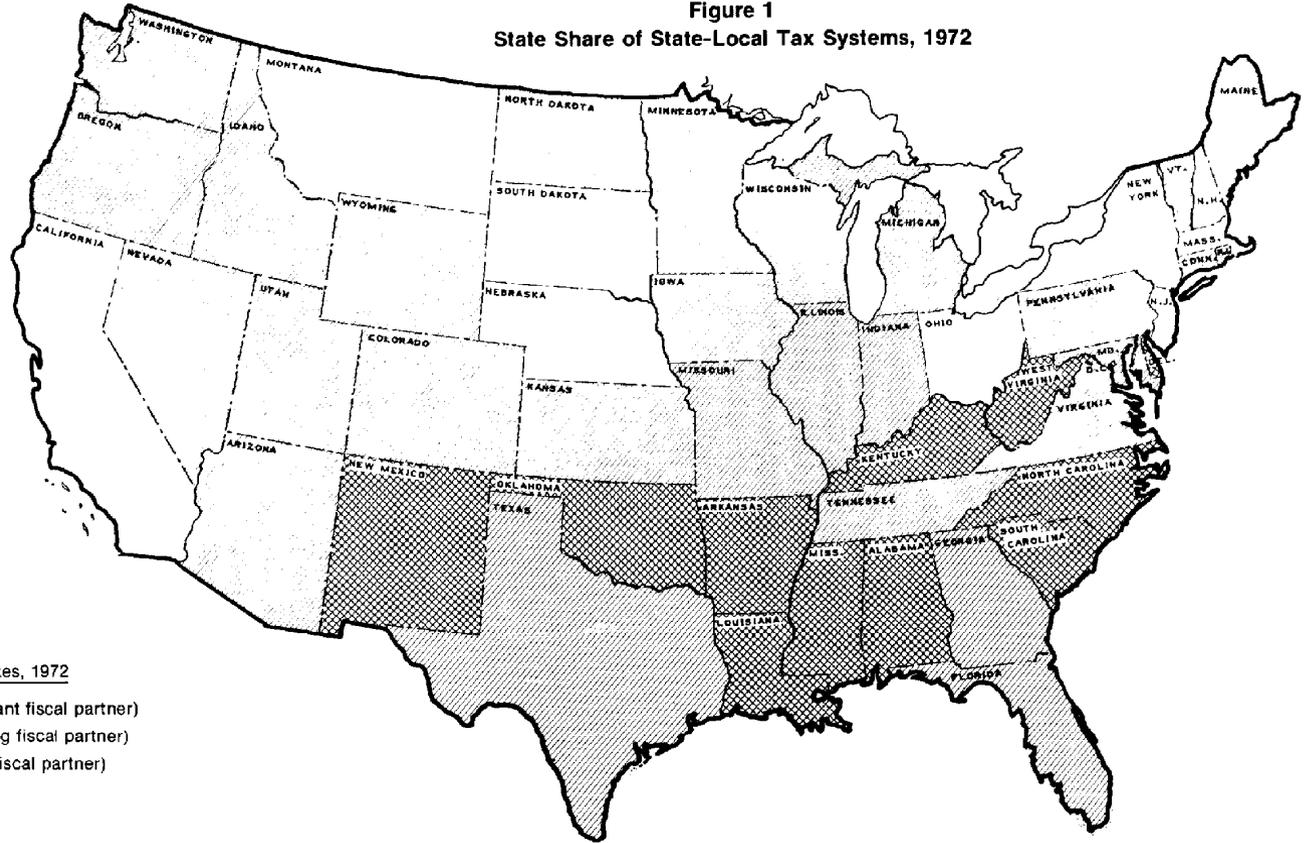
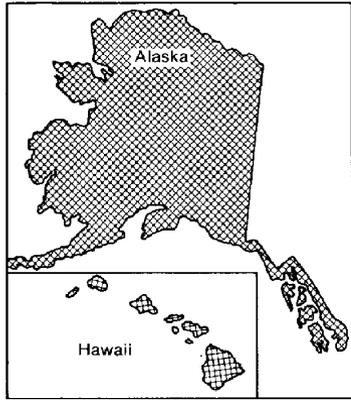
Constitutional revision has picked up over the last few years—and more new constitutions have been adopted. This can be attributed partly to a more sophisticated approach to seeking ratification one, among two or more alternative articles rather than having the voters merely vote up or down on a single new document. It might also be due to greater awareness of the need for reform on the part of the public.

ACIR's *Eleventh Annual Report* in January 1970, compared states in 1960 and 1970:

The picture in 1960—

Although important steps had been taken in a few states to modernize state constitutions, most states in 1960 were functioning under stringent restrictions placed upon both their executive and legislative branches in the wake of public revolt at scandals in state governments that swept the country in the years immediately following the Civil War. In 1960, legislatures of most states were meeting only biennially; a great many governors were not eligible to succeed

Figure 1
State Share of State-Local Tax Systems, 1972



State as a % of State-Local Taxes, 1972

- Over 66.6% (State dominant fiscal partner)
- 50% to 66.6% (State strong fiscal partner)
- Under 50% (State junior fiscal partner)

themselves, and in 16 states the governor served only a two-year term. No state had enacted an income tax since 1937 and a great many of the country's major industrial states were without such a tax.

The picture in 1970—

By the end of 1969 state governments were coming alive. Many had awakened from their long sleep. Most of the major industrial states were becoming involved financially and administratively in pressing urban problems. For example, a large number of states had voted bond issues or otherwise provided funds for water pollution abatement. Several states, including Massachusetts, California, Pennsylvania and Maryland, had voted funds for assisting mass transportation. A number of states including Connecticut, New York, Michigan, Delaware and New Jersey were involved in financial assistance to local governments for housing and urban redevelopment.

In 1972, 36 state legislatures met in a regular annual session, one state used the device of holding a continuation of its 1971 session, and all but six state legislatures met at some time during the year. Also during 1972, 17 states adopted measures to improve legislative operations or to remove constitutional restraints from their lawmaking bodies.

On the executive side, reorganization has been a number one priority since 1970. In the last three years, 11 state executive branches were organized into "cabinet" forms of government to bolster centralized management.

In 1972, virtually every state took legislative or constitutional action to provide environmental protection—although some measures were too little and too late. And legislative attention to problems of health, education, welfare, housing, criminal justice and transportation bore witness to the states' growing determination to face up to their responsibilities across the broad range of domestic government.

With few exceptions, the picture of state government has continued to get better and brighter. The bootstrap operation of state rebuilding has been one of the most heartening aspects of the current pendulum swing in American federalism.

Achieving

Balanced Growth

and

Housing Opportunity

Frontier psychology has long prevailed in America, viewing the land as an inexhaustible resource and the process of governmental planning for urbanization and governmental controls over land use as unwarranted and unconstitutional infringements on property rights. Indeed, until quite recently, courts have been cautious toward land use control actions that have the effect of *decreasing* property values. (This decrease usually occurs when the permitted use of a given tract of land is changed to a lower density—*i.e.*, fewer housing units per acre.) On occasion the courts have construed such actions as “taking” of private property and thereby subject to government compensation of the property owner through condemnation procedures. But the current energy squeeze on the one hand and environmental political clout and judicial victories on the other have transformed the issue of growth policy from one of “whether or not” to the immediate questions of “when”, “how”, and “by whom”.

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In 1968, ACIR called for a national urbanization policy, supplemented and complemented by state policies. (This was followed shortly by a similar proposal by the National Commission on Urban Problems [Douglas Commission], the privately funded National Committee on Urban Growth Policy, and more recently by the President’s Commission on Population Growth and the American Future *National Growth Policy*.)

ACIR’s
Growth Agenda

In 1970, in Title VII of the *Housing and Urban Development Act* (PL 91-609), Congress implemented parts of the Commission’s recommendation and directed the President to issue biennial reports on national growth, beginning in 1972. The 1972 report appeared, but asserted that “. . . no single policy, nor even a single coordinated set of policies can remedy or even significantly ameliorate all of our ills.”

This report was greeted with mixed reviews. Some considered the statement and reversal of the congressional intent if not a partial abdication of the Federal executive branch’s responsibility for coordinating programs having a significant and sometimes conflicting impact on urban and rural growth. These critics pointed to Federal highway and mortgage insurance policies of the postwar years as doing much to preordain the current socio-economic composition of the nation’s metropolitan areas.

However, other observers approved the report's emphasis on the need for an intergovernmental growth strategy. And some found its analysis of population growth, distribution trends and associated problems to be provocative and its chronicling of State and local actions to be illuminating.

It should be recognized that the establishment of Executive Office machinery for the formulation and review of national urban growth policy was the least controversial and easiest to legislate of any of the recommendations in that particular ACIR report.

Other components of a national growth policy were set forth by the Commission in 1968 report, *Urban and Rural America: Policies for Future Growth*. They constituted a series of possible Federal actions in furtherance of such a national policy.

- Federal incentives (tax credits, loans, or grants) for business or industrial location;
- Provision of a percentage preference in Federal contract awards to labor surplus and other areas;
- Promulgation of criteria for the location of Federal buildings;
- A matching program of resettlement allowances for low income persons migrating from labor surplus areas;
- Federal aid for on the job training allowances for employers in labor surplus areas;
- Elimination or reduction of interstate variations in public assistance standards and benefits;
- Expansion of voluntary family planning programs for low income families;
- Federal aid for new communities and other large scale urban development meeting housing-cost-range and other criteria;
- Experimental new community building on Federally owned lands.

While some of these recommendations have been partially implemented since 1969, the hard fact remains that growth policy—whether national, state or local—must be *geographically selective*, and that is very difficult to confront in political terms.

State Growth Policy

The ACIR recommendations for possible state growth policy components are equally important and equally difficult. They include:

- Making credit more readily available in certain areas through loans and loan guarantees;
- Geographical preferences in state procurement;
- Establishment of state and local land agencies to acquire, hold, and dispose of tracts of land considered strategic in the development process;

- Providing county or other regional review of local land use decisions having a regional impact.

The role of state land agencies was recognized in the 1970 urban growth legislation passed by the Congress. In the last three or four years, highly urbanized industrial states, agricultural states, and states with large wilderness retreats have been acting on land use. More than two-thirds of the states have taken some significant action since 1970.

One of the first to take the big plunge was Maine. In 1970, the Maine legislature adopted a site location law, authorizing the state environmental improvement commission (EIC) to regulate any industrial or commercial development at least 20 acres in expanse or a building 60,000 square feet or bigger. The EIC was empowered to disapprove the development if the developers had insufficient financial resources to comply with state pollution standards, if the proposal lacked adequate transportation facilities or if it would have an adverse impact on the environment. The burden of proof was to lie with the developer.

Florida enacted sweeping land use planning legislation in 1972. It reorganized state level planning agencies, called for the preparation of a state comprehensive plan to provide long range guidance for orderly social, economic and physical growth; and provided for a land use plan to be formulated within the framework of the comprehensive plan—to guide development and protect the state's land and water resources.

And Vermont set standards for land development in 1973 *Land Capability and Development Plan Act* which laid the foundation for a more specific land use plan to be considered in 1974.

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Until recently, the typical suburban municipality had been able to proceed pretty much as it saw fit with regard to growth policy and land use regulation. (As noted earlier, the relatively unlimited power to zone has been a highly attractive inducement to new incorporations in many of the nation's metropolitan areas.)

During the past five years or so, however, several new factors have emerged to create real dilemmas for municipal governments and to reduce considerably municipal self determination and "home rule" regarding future growth. These new factors include:

Local Growth Policy

- Court decisions overturning large lot zoning and other local land use actions that tend to be racially or economically discriminatory;
- entry of large corporations into residential and apartment home building and consequent availability of high-powered legal talent for vigorous pursuit of judicial review of local decisions;
- unexpected social and economic heterogeneity arising from success in attracting industry for tax base purposes;
- increasing activity of environmentalists both inside and

outside the municipality in challenging a wide variety of proposed public works projects;

—overload of waste treatment plants and consequent forcing of building moratoria by state or Federal agencies; and

—most recently, shortages of power and fuel. (For example, because of power shortages in Southern California, the City of Los Angeles recently closed its New York office which had been engaged in soliciting industrial moves to the area.)

A combination of these and similar developments has produced a drastic change in previous suburban growth policies:

- Industry is no longer given an unqualified welcome because it brings along heterogeneity, responsibility for providing housing, air and traffic pollution. Also, industry no longer is so badly needed, tax base wise, due to the easing of the school fiscal squeeze through declining enrollments and lessening dependence on property tax for educational financing;
- Municipalities are beginning to limit growth, sometimes by necessity (sewer overflow); sometimes by choice (“we want to keep it as it is or keep it from getting too big”).
- Growth limitations are being questioned on grounds of economic policy and social fairness, especially where they tend to inhibit job creation or to be exclusionary in nature. The latter is the case when a growth ceiling is set anywhere near the current population and housing stock of the jurisdiction.

The major techniques being used currently by local governments to control growth include: arbitrary population or dwelling unit ceilings enforced through the issuance of building permits; water and/or sewer hookup moratoria; limitations on types and kinds of housing (multifamily, number of bedrooms, etc.); mandatory dedication by developers of necessary public facilities; and the phasing of growth to availability of public facilities. This last approach was tested in a well publicized court case in New York State where the action of the Town of Ramapo in tying building permit issuance to the progress of the town’s long range capital program was upheld by the state supreme court.

Housing Opportunity

An important aspect of growth policy is the assurance of a range of housing quality and price, especially at low and moderate income levels. Federal housing programs and the activities of local housing agencies for a long while occupied center stage in public and governmental attention in this field. For many years housing was a subject of neglect by state government. ACIR has called on the states for several major actions in this field:

- To reduce discrimination in housing;
- To stimulate the provision of low and moderate income housing;

- To exercise greater control over building codes and building technology;
- To assure close coordination among city and county housing agencies; and
- To enact uniform relocation policies protecting people and businesses displaced by state conducted or state aided public works projects. (An ACIR recommendation for a national relocation policy was implemented in the enactment of the *Uniform Relocation Act* of 1970.)

Virginia took sweeping action in the housing field in 1972, establishing a uniform statewide building code to cover all types of structures both private and public; creating an office of housing within the division of state planning and community affairs to set policies and develop goals; establishing a seven-member housing development authority empowered to sell tax-exempt bonds to finance housing for families with low or moderate incomes; and enacting a fair housing law, the first state act of this type in the Old Confederacy.

At least 12 other states adopted or strengthened provisions to finance low and moderate income housing in 1972. The previous year, five states had acted on this problem and 12 states did so in 1970. By 1971, 13 states had adopted various forms of a uniform statewide building code. Four more states took action on the subject in 1972.

Streamlining and Humanizing the Administration of Justice

As discussed earlier, state governments are the primary source of most "domestic law" and this is true for crime control as in most other functions. Federal offenses include only those against the U.S. government, or its employees while engaged in official duties, and offenses which involve the crossing of state lines or an interference with interstate commerce. Crimes such as murder, robbery, burglary, theft, assault and rape are nearly all violations of state law, with no Federal law involvement. In October 1970, for example, personnel engaged in two of the major phases of law enforcement (police and corrections) numbered 46,000 Federal (5.8 percent), 148,000 state (18.5 percent) and 605,000 local (75.6 percent).

Obviously, the Federal government can exercise a strong stimulating influence, especially in the areas of judicial and correctional reform. Federal expenditures for criminal justice are climbing, and the bulk of the increase is going to support state and local law enforcement systems. However, even as Federal grants pass \$1-billion, this constitutes only about a sixth of the total national expenditure in this field.

Consequently, as in many other areas of domestic government, the cities and the states are where the action is. In law enforcement especially, dramatic improvement in our approach to and handling of the crime problem will depend in a large measure on an overhaul of state laws and of state and local institutional arrangements for apprehending, trying, and rehabilitating offenders against the rules of society. Success also depends upon a combination of leadership and flexibility by the Federal government in providing assistance to state and local criminal justice efforts. In this connection, the ACIR recommended a continuation of the "block grant" concept in the handling of Federal aid to state and local governments for criminal justice.

Major Deficiencies and a Call for Change

A succession of national commissions, beginning with the Wickersham Commission in the Hoover Administration, and continuing up to the recent National Advisory Commission on Standards, Justice and Goals for the Law Enforcement Assistance Administration, have been remarkably unanimous in identifying major deficiencies in this country's administration of justice and in suggesting the general direction improvements should take. A study of intergovernmental relations in the criminal justice system in 1970 led the ACIR to similar conclusions, but more specific with regard to the relationship between state and local governments. There follows a brief description of the existing situation in each of the four major areas of criminal justice (police, prosecutions, courts and corrections), a summary of the major ACIR recommendations, and a few highlights of recent actions.

Modernizing the Police

Today more than a half-million public employees are engaged in police work; a small fraction of them serve in the FBI and other Federal law enforcement agencies; over 50,000 in state police forces and highway patrols and over 450,000 at the local level, deployed through 30,000 separate police forces, 90 percent of them with less than ten full time personnel.

The average police department is undermanned and overworked; its personnel are recruited by outdated methods and inadequately trained. Where a highly professional service is needed, a politically oriented system rooted in the Middle Ages frequently is offered. In a society where people and crime are highly mobile, the police too often are tied to small and inefficient jurisdictions.

Major recommendations for change by the ACIR, Committee for Economic Development and many other groups include:

- Broadened statewide enforcement authority and a strong local support capability for state police forces;

- A mandatory state system of crime reporting;
- State technical assistance and training for local police forces, with minimum state standards for recruitment;
- Provision by county governments of countywide police services and incentives for merger and consolidation of small local forces;
- State specification of the scope of discretionary policy activity and protection of police acting within such scope from tort liability;
- Provision of extraterritorial (“hot pursuit”) powers to local police forces in urban areas and creation of specialized metropolitan police strike forces operating on an areawide basis, designed to be effective against organized crime, and for other similar purposes.
- Modernization of the county sheriff’s department and placement of sheriff on a statutory rather than a constitutional basis; and
- Local government action to involve citizens in the law enforcement process through vigorous police-community relations and other means.

In behalf of the state, the public prosecutor conducts the prosecution of persons suspected of crime. His decisions affect significantly the arrest practices of the police, the volume of cases in the courts, and the number of offenders placed in the correctional system.

Yet today in a considerable number of states, more than half the prosecutors work only part time on public business. Also, despite much progress in recent years, the public defender function—a most necessary one if justice is not to be denied to poor people—is underfunded and understaffed in many states. Clearly, in the interest of reducing crime, improving efficiency, and assuring equity a thoroughgoing overhaul of the prosecutorial function is in order, including:

- A requirement that all chief prosecutors be full time officials, with the prosecutor serving more than one county where necessary;
- Payment by the state of at least half the costs of local prosecutor offices;
- Strengthening of the state attorney general to oversee the work of local prosecutors and where necessary to intervene in local prosecutions; and
- Full state funding of the public defender system with access throughout the state.

In an address to the American Bar Association two years ago, Chief Justice Burger declared that, “In the supermarket age we are

Overhaul of the Prosecutor Function

Judicial Reform

with few exceptions operating the courts with cracker barrel, corner grocer methods and equipment, vintage 1900." He went on to list, as many others have done, much needed reforms in the system. State progress, in this area is encouraging, but the agenda remains formidable. The ACIR has identified major changes in state-local relations in the judicial field that are minimal to assure reasonably equitable and expeditious operation of state and local courts.

- Abolition of justice of the peace courts and establishment of a simplified and unified court system under the administrative supervision of the state supreme court;
- Judges to be appointed rather than elected and to serve full time with a judicial qualifications body to handle judicial discipline and removal problems;
- Establishment of an office of state court administrator with an administrator for each large urban area court, to handle the administrative and fiscal aspects of the system; and
- Full state assumption of the cost of local courts.

To Correct Rather than Corrupt

It is said that America's prisons today corrupt more people than they correct. In hardly any area of domestic government have the nation's institutions lagged so far behind the imperative needs of the present. The brushmarks of medievalism and impotence in our correctional systems are spread wide for all to see. Over half the country's larger prisons are more than a century old; two-thirds of all released prisoners will commit another crime; prison staffs are small, poorly paid, and inadequately trained; guidance, counseling and vocational education are inadequate, obsolete, or non-existent. Two-thirds of convicted criminals are under probation and parole jurisdiction; only a third are in correctional institutions. Yet, these institutions account for up to four-fifths of total correctional expenditures and a like portion of total personnel engaged in correctional work.

ACIR recommendations for state and local action to achieve meaningful correctional reform include the following:

- Reordering priorities, with emphasis on rehabilitative services and vocational training;
- Strengthening community based facilities, treatment and work-release programs;
- Reassigning state-local roles, with local responsibility confined to short term institutions and juvenile detention and probation, state assumption of both fiscal and operational responsibility for all other institutional, probation and parole activities and facilities.

The Response

Over 40 states took legislative or constitutional action in 1972 to improve their judicial systems. Likewise, major attention was focused on the extremely difficult question of punishment and

corrections with much sentiment for reform of the correctional system and its institutions.

Statewide public defender systems have been established in many states to provide indigents with a more qualified defense. State and local prisons and jails are establishing new and more appropriate methods for handling prisoners, increasing their attention to prisoner rights preparation for reentry into society.

Productive alternatives to incarceration are being used increasingly. Through improved judicial administrative practices, backlogs in courts are being reduced. These are all strong and growing trends in redirecting the judicial and correctional sectors of state and local criminal justice systems. Specifically, in 1972:

- Five states wrote new criminal codes;
- Four states (Minnesota, Ohio, Rhode Island and Washington) acted to decriminalize drunkenness; Nine states (Hawaii, Minnesota, Missouri, Montana, New Jersey, New Mexico, Pennsylvania, Tennessee, Vermont) lessened criminal penalties for marijuana possession while stiffening penalties for trafficking in harder drugs;
- Two states (Alaska, Rhode Island) began limited programs of public compensation to crime victims;
- Four states ratified new judicial articles to the state constitution (Wyoming, South Carolina, South Dakota and Kansas), creating a unified court system and providing for judicial discipline; Four other states (Georgia, Iowa, North Carolina and Minnesota) established new judicial qualifications discipline and removal plans; Six-man juries were authorized in Arizona and Connecticut and Oregon; and
- Twelve states (Florida, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New York, Rhode Island, Tennessee, Vermont and Washington) took action to modernize their correctional systems.

One of the most far reaching measures was a complete overhaul of the corrections system in Massachusetts revising administration, community services, employment programs, security and State-county relations. Considerable portions of the *Omnibus Corrections Reform Act* of 1972 paralleled ACIR model legislation.

Restoring Fiscal Balance

in the

Federal System

A decade ago four areas of fiscal imbalance could be identified:

—A **General Revenue Imbalance** that increasingly favored the Federal government and handicapped states and localities in providing a strong system of decentralized government.

—A **Public Welfare Expenditure Imbalance** that favored states that minimized outlay for public welfare and worked against states and localities that underwrote relatively generous assistance programs.

—A **School District—Local Government Imbalance** under which the largely “independent” school boards endowed with property taxing authority and faced with rising enrollments were gradually crowding cities and counties off the already overburdened local property tax base.

—A **Metropolitan Imbalance** that worked for the wealthier suburban jurisdictions and against most central cities and some poor suburban jurisdictions—a classic mismatch of needs and resources.

The Federal-State-Local Fiscal Picture

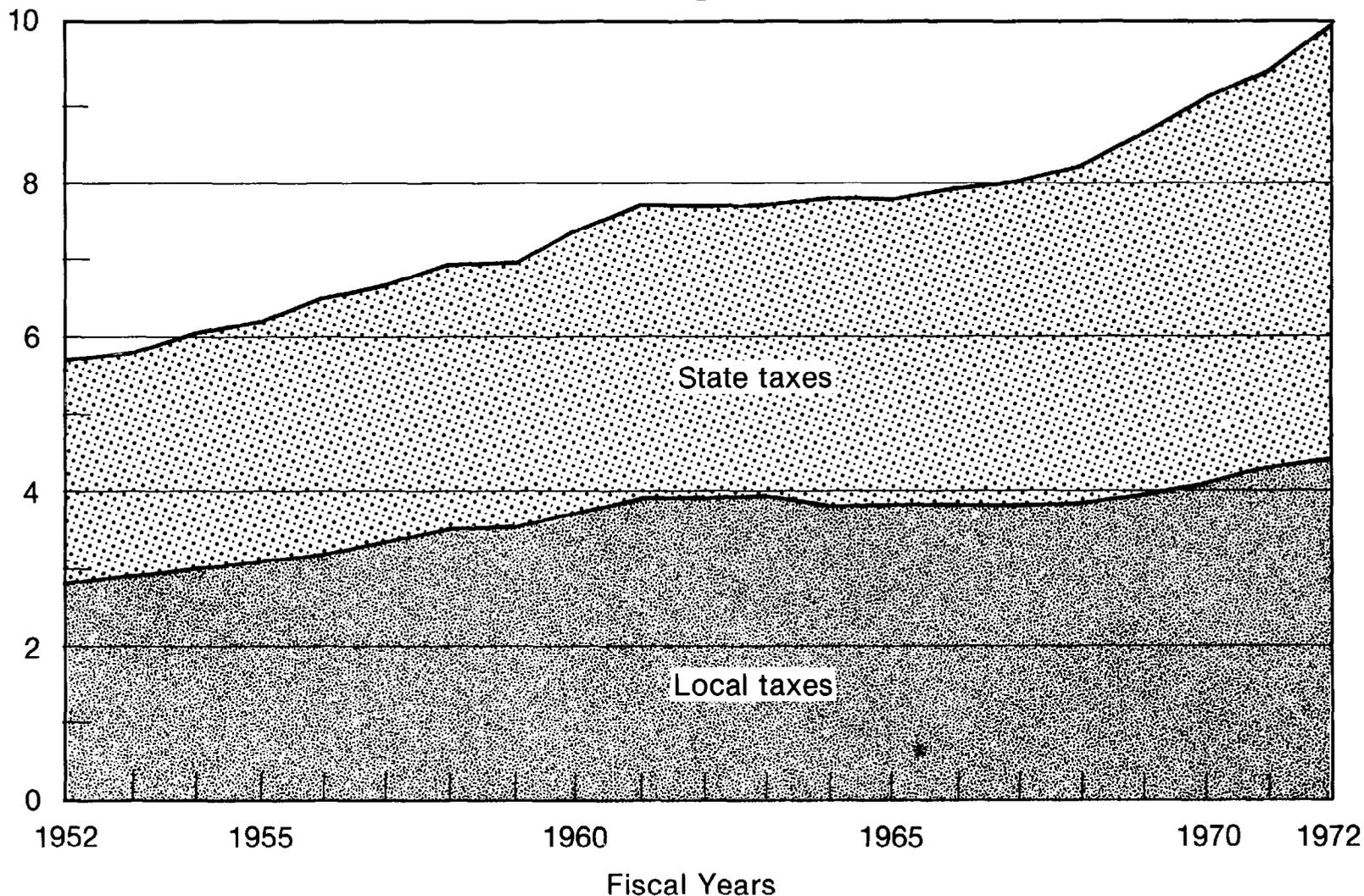
From 1950 onward the Federal income tax with a moderately progressive rate structure—was able to fund a rapidly rising level of domestic expenditures, with actual net decreases in tax rates over the period. State governments, largely dependent upon consumption taxes and moderate to low rate income taxes, frequently had to raise rates and impose new taxes to keep abreast of increasing educational and other expenditures.

Local governments had to do likewise with property taxes and miscellaneous nuisance taxes. Consequently the state-local landscape became marked with monuments to defeated governors, mayors and county officials who courageously committed political suicide by doing what had to be done to increase the resources of government to meet, in part at least, the escalating service demands from an insatiable (and largely unappreciative) public.

Beginning in 1972, many states turned the “fiscal corner” from deficit to surplus. In addition, on a national income accounts basis, state and local government enjoyed a \$14.8-billion surplus by the end of 1972 while the Federal government’s budget deficit hit \$23-billion. The surplus was not the occasion for mass celebrations, however, for most of it was caused by unique circumstances that cannot be repeated. But it did signal the fact

Percent
of G.N.P.

State and Local Taxes As A Percentage of Gross National Product 1952 through 1972



ACIR's Fiscal Agenda

Modernizing the Categorical Grant System

that state revenue systems were on stronger ground. On the other hand, one-third of the states still had to raise taxes during that year.

The ACIR fiscal program embraces seven major components: (1) drastic overhaul of the Federal grant system; (2) revenue sharing; (3) welfare reform; (4) equalization of school financing; (5) a high quality state-local revenue system; (6) property tax reform and (7) selective property tax relief for low income citizens.

One of the major imbalances in federalism today—yet one that is least recognized and probably least understood—is the growing gap between program specialists with their supporting interest groups on the one hand, and elected legislators and executive officials on the other.

This gap is probably inherent in our system of government with its geographic division of powers, three separate branches, checks and balances and functionally organized legislative committees and administrative structures. But this imbalance between elected policymakers and civil service functionalists has grown to dramatic proportions in the last quarter century because of the growth in categorical grant programs and the institutional arrangements that grew up around them.

Functional government reached its zenith in 1970 when categorical grant programs numbered anywhere from 600 to over 1,000, depending upon what is counted as a “separate program”. Since 1970 their numbers have grown more slowly—but little has been done to consolidate the existing programs or to make it easier for state and local legislators and executives to cope with them.

With each new Federal categorical grant program, a new crop of specialists and subspecialists have appeared on the scene at all levels of government. These programs were often enacted at the behest of elected state and local officials; but few, if any counterbalancing efforts were made to strengthen the position of the departmental secretaries, the governors, state legislators, county commissioners or mayors.

In 1967 the ACIR recommended a restructuring of the Federal grant-in-aid system that (a) would restrict categorical grants to new Federal policy initiatives where it was necessary in the national interest to focus the assistance upon a specific program objective; (b) would consolidate older categorical grants into broad functional block grants; and (c) would provide general revenue sharing as the top layer of the three-tier system.

The Commission proposed that Congress enact legislation giving the President authority to consolidate categorical programs subject to legislative veto. But despite repeated introduction and consistent support from organizations representing state and local government, this legislation has not progressed appreciably in Congress.

So far, two block grants have been adopted: the *Partnership for Health Act* of 1966, consolidating about 16 existing categorical

programs; and the *Omnibus Crime Control and Safe Streets Act* of 1968, providing aid in a new area of Federal concern. Both programs have come up against severe obstacles and both have been involved in controversy.

The Partnership for Health program, in most states, was placed in the hands of the functional health officials to administer, and the vertical link between Federal, state and local health functionaries was maintained unbroken in many instances. Most governors and legislatures missed a big opportunity to fold the new program into a comprehensive planning effort, properly relating health activities to other state endeavors.

In this respect, the Safe Streets program has fared better, but it has not been without considerable controversy over choice of priorities among police, correctional and other criminal justice activities. Nonetheless, Congress has now voted for the second time to extend it pretty much intact.

Since 1967, the Commission had been pushing for general revenue sharing and in 1972 it became a reality. By December, the first installment toward the five-year total of \$30-billion was mailed to 38,000 states, counties, cities, towns and other units of general government—without any application forms.

However, to secure the passage of revenue sharing by a Congress very jealous of its authority over categorical grant programs, major compromises had to be made.

—The act was given a five-year life rather than permanency, tending to influence local governments to use the money for one-shot capital facilities projects rather than continuing social service programs.

—The act divided the money arbitrarily between states and localities, with states getting one-third and localities two-thirds regardless of the real division of responsibilities between the two.

—The act provided some strings for local use of the money, requiring that it be used for eight “priority” areas. However, these are so broad and obvious that few if any complaints have been registered on that score.

—The act, in contrast to earlier versions, failed to provide an incentive for the use of state income taxes, though it did contain another ACIR recommendation, authorizing Federal collection of such taxes as an administrative accommodation to states.

—As noted earlier the act provides funds for all but the very smallest government units rather than setting a population cutoff. (However, state legislatures may adopt an alternate formula for distributing funds among local governments.)

A second major fiscal accomplishment of 1972 was the beginning of the nationalization of welfare. ACIR had called on the Federal government in 1969 to take over the financing of all

Sharing Federal Revenue

Federalizing The Welfare System

public assistance programs and medicaid. Welfare presents an onerous burden to state and local government. It is no longer a state or local program, but a national one permeated with Federal restrictions and requirements as well as national implications for economic development and interstate migration. In 1972, Congress took the first step by nationalizing the adult categories—aid to the blind, aged and disabled—the relatively non-controversial programs of assistance. It considered (including House passage) but did not enact a similar Federal takeover of Aid to Families with Dependent Children. It did not deal with medicaid, leaving that for consideration in connection with the general question of national health insurance.

Equalizing School Finance

At the heart of metropolitan disparities, the problem of education has lain for at least a decade. On the one hand, most people want to keep strong local control over elementary and secondary education. On the other hand, local financing of schools has resulted in enormous tax and expenditure disparities within metropolitan areas.

In 1971, several state supreme courts and lower Federal courts held these disparities in violation of state and Federal constitutions. One of the Federal cases was decided by the U.S. Supreme Court in 1973—*Rodriquez v. San Antonio School District*. A divided opinion, overturned the lower court but termed the system existing in most states inequitable and chaotic. The court held that corrective efforts must come at least initially from state legislative or executive action. This decision applied only to U.S. Constitutional issues and did not affect decisions of high state courts as to conformity with state constitutional requirements. (New Jersey courts for instance have since found its system in violation of the state constitution.)

In 1969, ACIR went on record suggesting that states assume substantially all of the costs of elementary and secondary education in order to equalize educational opportunity and ease the property tax burden, but that local policy control be maintained. In 1972, the Commission reaffirmed its opinion that it is the job of the states to correct these disparities, not the Federal government.

In 1971, Minnesota greatly increased its share of school support as a part of a comprehensive tax reform legislation. In that same year Maryland assumed responsibility for full state funding of school construction costs. In 1972, the California legislature adopted a massive tax overhaul measure, providing more than \$1.1-billion in new school funding and property tax relief. In 1973, the Florida legislature overwhelmingly approved the *Educational Finance Program Act* of 1973 to equalize educational funding across the state at about 81 percent, to provide money for compensatory programs and to adjust for cost-of-living differences throughout the state. Kansas and Utah have also acted on equalizing school finances, and North Dakota increased the state share of school costs to 80 percent.

But in two other states—Michigan and Oregon—similar efforts to

achieve state financing of the bulk of education costs did not succeed—a legislative defeat in the former and a public referendum defeat in the latter.

ACIR considers a high quality, high yield state-local tax system to rest on a progressive personal income tax, a strong state sales tax and an effective and fairly administered local property tax.

In 1960, 31 states had a personal income tax, 34 had a sales tax, 20 had both and five had neither. By 1971, only New Hampshire still had neither tax, while 40 states had a full fledged personal income tax, 45 had a broad based sales tax and 36 had both. In 1972, no states adopted either tax, but the Ohio electorate in a referendum rejected an attempt to repeal the personal income tax that had been adopted the previous year.

This history of the property tax is actually two separate stories: tax reform and tax relief. One obviously is much more difficult and less politically popular than the other. In the past decade, reform has moved very slowly, while activity in providing tax relief has been widespread, occurring in some form or other in nearly every state.

A major reason for the unpopularity of the property tax has been the widespread feeling that the tax is not administered fairly. Inequitable assessments have resulted in random and unwarranted tax burden differentials. Poor assessment practices have led to taxpayer confusion and distrust of the system.

In 1963, the Commission adopted 29 recommendations for state actions to improve assessment practices and increase tax equity. The recommendations are based on three principles:

—The prevailing joint state-local system for administering the property tax can work with a reasonable degree of effectiveness only if the state tax department is given sufficient executive support, legal authority, and professional stature to insure local compliance with state law calling for uniformity of tax treatment.

—Professionalization of the assessment function can be achieved only if the assessor is selected on the basis of demonstrated ability to appraise property, rather than elected in a political campaign.

—The perennial conflict between state law calling for full value assessment and the political difficulty of moving assessments upward to 100 percent can be resolved most expeditiously by permitting local assessment officials to assess at any uniform percentage of current market value provided this policy is reinforced with:

A full disclosure policy, requiring the state tax department to make annual assessment ratio studies and to give property owners a full report on the fractional valuation policy adopted by county assessors, and

An appeal provision specifically authorizing the in-

Achieving High Quality State-Local Revenue Systems

Property Tax Reform

roduction by the taxpayer of state assessment ratio data in administrative or court appeals on the issue of whether his assessment is inequitable.

To move from elected to appointed assessors, from partial to full value assessment, and from special privilege for some to equality for all, involves intense political pain. Consequently, the record of recent state achievement in property tax assessment reform is quite low. But Wisconsin did take some far reaching steps to reform assessment practices, New York moved moderately in 1971-72, and in 1973, in Maryland, the state took over the assessment function completely with the objective of making it uniform and equitable statewide.

Selective Property Tax Relief

While property tax reform is lagging in the states, property tax relief has boomed. In its 1972 study, *School Financing and Property Tax Relief—A State Responsibility*, the Commission reaffirmed earlier studies and called upon every state to shield low income and elderly families from overly burdensome property taxes. The Commission asserted that this was a state responsibility, not something to be bucked up to the Federal government.

One reason the Commission considered property tax relief a state rather than a national problem is that the tax and its burden varies greatly from state-to-state and community-to-community. Not everybody is overburdened by property taxes. The average American family—a couple with two children and an annual family income of \$12,000—in 1972 paid 3.4 percent of its income in property taxes. But more than six-million elderly homeowners paid an average of 8.1 percent of their income in property taxes in 1970. And the 1.6-million elderly homeowners in this country with incomes of less than \$2,000 a year paid an average of 16.6 percent of their household income to the property tax collector.

ACIR urged states to phase in property tax relief as the property tax burden mounted and phase it out as the burden decreased. It developed legislation—based on pioneering programs in Wisconsin, Minnesota and Vermont—that would operate like a “circuit breaker” on an electrical outlet, that would cut in when the property tax reached a percent of individual income that the state deemed oppressive. Because a portion of rent is used by the landlord to pay his property taxes, tenants could also be brought into the circuit-breaker program.

State response to this suggestion has been overwhelming. On January 1, 1970, some form of property tax relief program existed in 28 states. By July 1, 1973, every state had some kind of program, and 21 had adopted circuit-breaker legislation.

On January 1, 1970, 12 states were financing the local government costs of property tax relief. This is a major concern of the Commission, for if states make the localities bear the cost of reducing property taxes, local fiscal problems would be aggravated further. By July 1, 1973, 31 states had assumed partial or complete financing of these programs.

Conclusion

The agenda for the third century of American federalism is long and tough. The easy problems and the simplistic solutions never made it onto the agenda; some difficult issues began to be confronted in the middle sixties and early seventies; it is the near impossible tasks that remain.

Local government must be reorganized and simplified; metropolitan areas must become governable and their internal socioeconomic disparities be mitigated; equality of educational opportunity must become a living reality instead of an empty phrase; growth policies must be formulated and reconciled among localities, states and nation, and among economic, environmental, and social values; the property tax must be made equitable and effective; the state governments must perform imaginatively and courageously for both their urban and rural constituencies; the Federal grant system must be made manageable and "grantsmanship" dethroned and the reform of the welfare and criminal justice systems must proceed apace; and ways must be found to assure that the diversity in the federal system continues to operate as a strength and not a weakness.

In short, during its third 100 years, the United States will have to come to grips with new and awesome questions not conceived in its second century. But, at the heart of these challenges and opportunities will remain the original goal and continuing watchword—"to form a more perfect union."

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Checklist

of

Agenda Items

Here is a checklist of ACIR recommendations, most of which are directed to state and local governments. To facilitate their implementation, the ACIR staff has prepared draft legislation that would accomplish many of them. The bill title or number are included in parenthesis after the recommendations. They may be ordered free of charge from ACIR, 726 Jackson Place, NW, Washington, D.C. 20575.

To Revitalize Local Government

- States should clarify the legal powers of general purpose local governments (*Local Government Residual Powers 31-22-00*) and authorize them to determine their own internal structure (*Optional Forms of Municipal Government 31-59-00, Optional Forms of County Government 31-42-00*).

- States should discourage non-viable units of local government by permitting the use of liberalized municipal annexation procedures (*Municipal Annexation 31-53-00*), by establishing rigorous standards for incorporation, empowering boundary commissions to consolidate or dissolve non-viable units (*State Authority over Boundary Adjustments 31-91-60*), and revising state aid formulas to eliminate or reduce aid to non-viable local governments.

- States should help local governments cope with areawide problems by facilitating county consolidation (*County Consolidation 31-41-00*), permitting counties to perform urban functions (*County Performance of Urban Functions, 31-43-10*), authorizing and encouraging interlocal service agreements (*Interlocal Contracting and Joint Enterprises 31-91-00, State Assistance for Interlocal Cooperation 31-91-12*), and encouraging metropolitan study commissions (*31-51-00*) and transfer of functions (*31-91-30*).

- States should facilitate regional coordination by adopting a system of umbrella multijurisdictional organizations composed primarily of local elected officials, which have the authority to plan programs and resolve conflicts, and the potential to operate functions. To stop proliferation of special districts, these umbrella units should become their policy boards and exercise budget control (draft legislation to be released in fall, 1973). States should make it harder to form special districts, easier to consolidate or dissolve them and increase the visibility and accountability of existing ones (*Supervision of Special Districts 31-69-00*).

- The Federal government should move further to avoid aid programs that encourage special districts and to strengthen regional and metropolitan review of local grant applications.

- States should deal with the problems of innercity alienation by authorizing major urban governments to create neighborhood "subunits" (*Neighborhood Subunits of Government 31-58-00*).

To Build Stronger States

- The institutional framework of state government should be modernized to permit a more positive role in the rapidly

expanding sphere of domestic governmental affairs. (Legislative reform bills: 12-11-00, 12-22-00, 12-30-00).

- Congress and the Executive branch should channel Federal grants through those states that demonstrate willingness and capacity to accept responsibility in these various program areas; in other states, the Federal government should deal directly with localities. (34-30-00, *State Financial Assistance and Channelization of Federal Grant Programs for Urban Development*).

- States should pay part of the bill for urban development, (35-60-00, 35-38-00) housing code enforcement, mass transit (38-40-00) and other major urban functions.

- States should adopt a shorter ballot (14-11-00), give reorganization authority to the governor (14-21-00), develop improved and interrelated planning and budgeting processes (14-41-00, 14-42-00).

To Achieve Balanced Growth and Housing Opportunity

- A national urbanization policy should assure that Federal programs do not operate contrary to national goals and should include such components, such as financial incentives for industrial location in poverty areas and rural growth centers, migration allowances to facilitate population movements, preference in award of Federal contracts and public facilities to designated growth areas, expansion of governmental aid for family planning and Federal support for large scale urban development and new communities.

- State housing legislation should provide financial assistance for low and moderate income housing and should assure access to housing without discrimination. (35-70-00)

- State urbanization policies should complement the national policy; state land development agencies should be empowered to acquire, hold, site develop and sell land in accord with urbanization policies (34-33-00).

- States should bring order out of chaos in building codes through model codes (35-10-00), licensing and training of building inspectors (35-23-00, 35-26-00), and state performance of these functions in the absence of qualified local personnel.

- States should actively oversee local zoning to guard against misuse that deepens fiscal and social disparities within metropolitan areas. (*Extraterritorial Planning, Zoning and Subdivision Regulations* 31-31-00, *County Powers in Relation to Local Planning and Zoning Actions* 31-34-00).

To Streamline and Humanize the Administration of Justice

- States should upgrade police personnel practices, pro-

viding technical assistance and training for local forces with minimum state standards for recruitment (44-21-00).

- States should expand the full range of their supportive services to local law enforcement agencies (44-22-00).

- States should make sure that rural areas have adequate police protection. Two approaches are through "resident state troopers" and through consolidation of small local police forces (44-23-00).

- States should create specialized strike forces operating on an areawide basis (44-25-00).

- States should clarify intrastate extraterritorial police powers to achieve maximum efficiency and fairness in metropolitan areas (44-24-00).

- The office of county sheriff should be modernized and statutory rather than constitutional (44-26-00).

- To assure fair and effective prosecution, states should strengthen the authority of the attorney general to coordinate the activities of local prosecutors, prescribe minimum standards for prosecutors. States should make financial aid available for these purposes (*Omnibus Prosecution Act 14-22-11*).

- A unified court system should be adopted in every state. States should specify judicial qualifications, modernize methods of selection and provide for censure or removal. They should assume responsibility for court financing and should provide for professional court administrators (13-20-10; 13-20-20).

- States should expand their administrative and supervisory authority over corrections and systematize the various corrections activities. Rehabilitation and training should be stressed (14-22-20).

To Restore Fiscal Balance in the Federal System

- Federal general revenue sharing should be continued and strengthened.

- Congress should provide new Federal aid through block grants; it should authorize the President to consolidate grant programs subject to congressional veto; and should facilitate the "packaging" of related programs through joint management and funding within or between departments and agencies.

- The Federal government should assume financial responsibility for the dependent children assistance program and medicaid, continuing the welfare takeover begun in 1972 when the adult categories were federalized.

- State government should assume the predominant share

of the costs of elementary and secondary schools, thus fostering equality of educational opportunity and releasing the property tax for other uses (16-12-00).

- States should adopt high quality, high yield state-local tax systems that place greater reliance on a progressive income tax and a strong sales tax. (*Uniform Personal Income Tax 15-21-00, State Broad Based Sales Tax 15-30-00, Equalizing Program for Health and Hospitals 16-14-00, State Highway User Revenues to Local Government 16-15-00*).

- States should overhaul the local property tax to make it equitable and productive and assure its fair administration (*Property Tax Organization and Administration 15-41-20, Assessment 15-41-40*); states should provide protection for the elderly and the poor against excessive property tax burdens (15-47-00).

¹A Standard Metropolitan Statistical Area as used in census and other data sources consists of a county or group of contiguous counties that contains at least one city of 50,000 population or more or twin cities with a combined population of 50,000. Other contiguous counties are included if they are considered socially and economically integrated with the central city.

²Council of State Governments (including National Governors' Conference and National Legislative Conference), National League of Cities, U.S. Conference of Mayors, National Association of Counties, and International City Management Association.

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Edwin G. Michaelian, Westchester County, New York

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¹ Appointed 5/29/73 to replace Edward C. Banfield, U. of Pennsylvania.

² Vacancy created by resignation of Howard H. Callaway, Pine Mountain, Georgia.

³ Appointed 2/20/73 to replace Senator Sam J. Ervin, North Carolina.

⁴ Replaced Congresswoman Florence P. Dwyer, New Jersey.

⁵ Replaced George H. Romney, former Secretary of HUD.

⁶ Replaced Ronald Reagan, Governor of California.

⁷ Replaced Richard B. Ogilvie, former Governor of Illinois.

⁸ Replaced Russell W. Arrington, former State Senator, Illinois.

What is ACIR?

The Advisory Commission on Intergovernmental Relations (ACIR) was created by 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.

Of the 26 Commission members, nine represent the Federal government, 14 represent State and local governments and three represent the general public. Twenty members are appointed by the President. He names three private citizens and three Federal executive officials directly and selects four governors, three State legislators, four mayors and three elected county officials from slates nominated, respectively, by the National Governors' Conference, the Council of State Governments, the National League of Cities/U.S. Conference of Mayors, and the National Association of Counties. The other six are Members of Congress—three Senators appointed by the President of the Senate and three Representatives appointed by the Speaker of the House. Commission members serve two-year terms and may be reappointed. The Commission names an Executive Director who heads the small professional staff.

After selecting specific intergovernmental issues for investigation, ACIR follows a multi-step 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 positions. Commission findings and recommendations are published and draft bills and executive orders are developed to assist in implementing ACIR policies.

