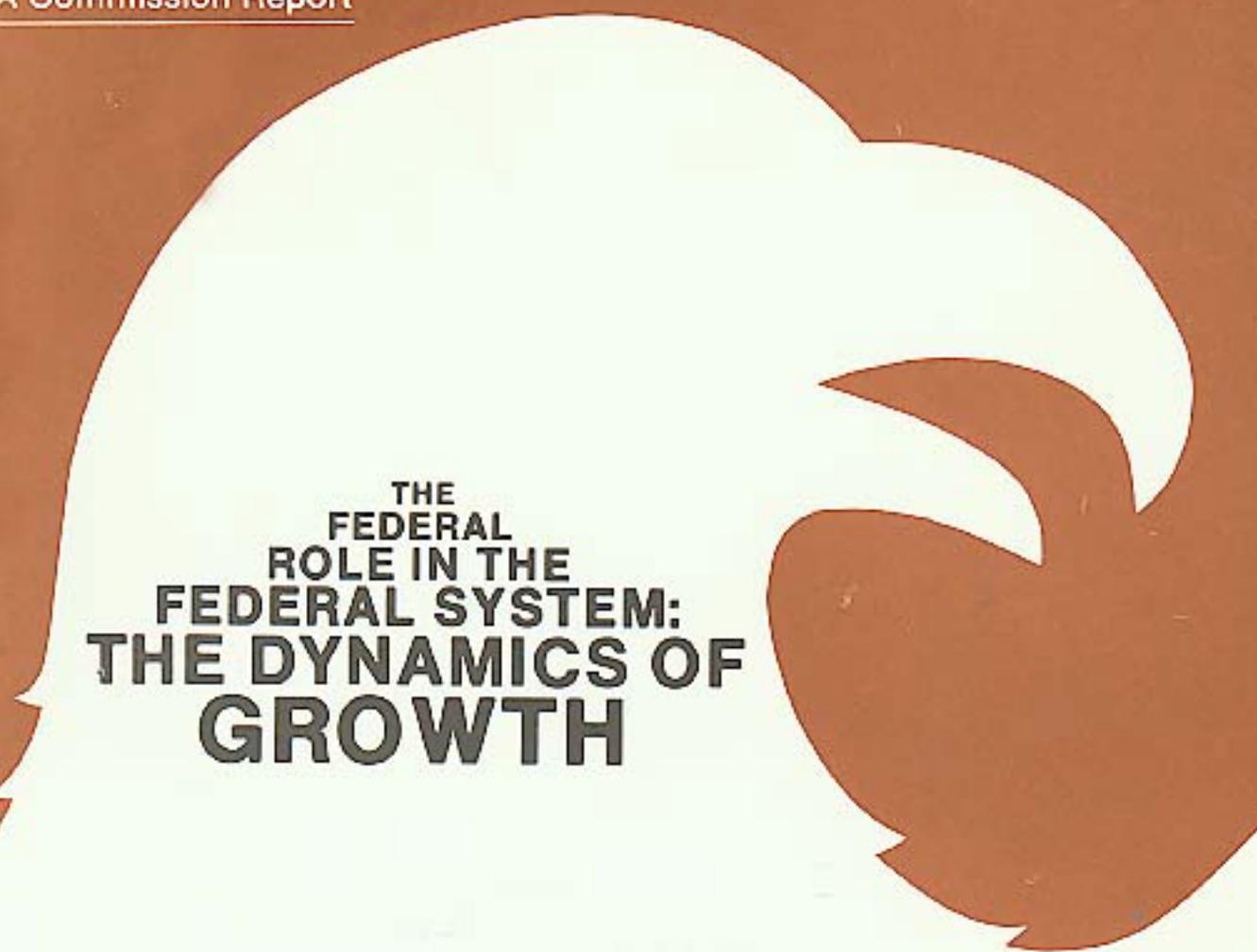


A Commission Report



**THE
FEDERAL
ROLE IN THE
FEDERAL SYSTEM:
THE DYNAMICS OF
GROWTH**

Hearings on the Federal Role

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
Washington, D.C. 20575 • October 1980



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Preface

The Advisory Commission on Intergovernmental Relations (ACIR) was established by Public Law 380, which was passed by the first session of the 86th Congress and approved by the President on September 24, 1959. Section 2 of the act sets forth the following declaration of purpose and specific responsibilities for the Commission:

Sec. 2. Because the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation and coordination of activities between the levels of government, and because population growth and scientific developments portend an increasingly complex society in future years, it is essential that an appropriate agency be established to give continuing attention to intergovernmental problems.

It is intended that the Commission, in the performance of its duties, will:

(1) bring together representatives of the federal, state, and local governments for the consideration of common problems. . . .

(5) encourage discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation;

(6) recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, re-

sponsibilities, and revenues among the several levels of government. . . .

Pursuant to its statutory responsibilities, the Commission from time to time has been requested by the Congress or the President to examine particular problems impeding the effectiveness of the federal system. The 1976 renewal legislation for General Revenue Sharing, Public Law 94-488, mandated in Section 145 that the Commission:

. . . study and evaluate the American federal fiscal system in terms of the allocation and coordination of public resources among federal, state, and local governments including, but not limited to, a study and evaluation of: (1) the allocation and coordination of taxing and spending authorities between levels of government, including a comparison of other federal government systems. . . . (5) forces likely to affect the nature of the American federal system in the short-term and long-term future and possible adjustments to such system, if any, which may be desirable, in light of future developments.

The study, "The Federal Role in the Federal System: The Dynamics of Growth," with which this hearing dealt, is part of the Commission's response to this mandate. Staff were directed to: (a) examine the present role of the federal govern-

ment in the American federal system; (b) review theoretical perspectives on American federalism, the assignment of functions, and governmental growth; and (c) identify historical and political patterns in the development and expansion of national governmental domestic activities.

This hearing was held to elicit the views of four intergovernmental authorities—William G. Colman, consultant and ACIR's former executive director; Prof. Daniel J. Elazar, director of the Center for the Study of Federalism, Temple University, Philadelphia, PA; Prof. Arthur Naftalin, a former Commission member and Mayor of Minneapolis

and now serving with the Department of Public Affairs, University of Minnesota, Minneapolis, MN; and Neal R. Peirce, consulting editor, *National Journal*, Washington, DC—on the summary findings and initial draft recommendations considered by the Commission at its 69th meeting held on March 13–14, 1980. Hence, it serves as part of the Commission's response to the Congressional mandate.

Abraham D. Beame
Chairman

Acknowledgments

This volume was prepared by the governmental structure and functions section of the Commission. Major responsibility for the staff work was shared by David R. Beam, Cynthia C. Colella, and Bruce D. McDowell. Lynn C. Schwalje assisted in editing and provided secretarial support.

This hearing focused on the draft recommendations (see Appendix A) presented for Commission consideration and was designed to help facilitate its deliberations on these proposals on March 14, 1980. Therefore, special thanks go to the four witnesses who helped make this proceeding the lively and informative event that it was: William G. Colman, Prof. Daniel Elazar, Prof. Arthur Naftalin, and Neal R. Peirce. Commission members attending the hearing included Chairman Abraham D. Beame, State Sen. Fred E. An-

derson, Gov. Bruce Babbitt, State Sen. Jason Boe, Supervisor Lynn G. Cutler, Gov. John N. Dalton, Freeholder Doris W. Dealaman, Rep. L. H. Fountain, the Honorable Bill G. King, Mayor Tom Moody, Mayor John P. Rousakis, and the Honorable Mary Eleanor Wall, as well as Deputy Mayor Ray Remy of Los Angeles, representing Mayor Thomas Bradley, and Assist. Sec. Donna Shalala, representing Secretary of Housing and Urban Development Moon Landrieu.

The Commission gratefully acknowledges the assistance and cooperation of the witnesses, both in preparing their statements and in editing their respective portions of the recorded transcript. Full responsibility for the accuracy of the hearing record rests, of course, with the Commission and its staff.

Wayne F. Anderson
Executive Director

David B. Walker
Assistant Director

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A Hearing on The Federal Role in The Federal System

**Conducted by
the Advisory Commission on
Intergovernmental Relations**

**March 13, 1980
New Executive Office Building, Room 2010
17th and Pennsylvania Avenue, NW
Washington, DC**

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Chairman's Opening Remarks

Before we have the hearing on this very important major subject—"The Federal Role in the Federal System"—I'd like to take this opportunity to welcome to the meeting two new Commission members: Gov. John N. Dalton, who had been appointed prior to this meeting but couldn't attend the last one, and Ms. Mary Eleanor Wall, who is the newly appointed public member of the Commission. We welcome you here. We know that we're going to get a great deal of help from both of you.

The program for today, incidentally, does not require a quorum because a hearing under our rules is permissible if two members are present.

The plan first provides for a staff briefing of this long study, and then we will hear from four witnesses whom we've asked to appear, each of whom is expert in the field and is very well-known to the Advisory Commission of Intergovernmental Relations (ACIR). They will be introduced as they are called, and each will make a presentation of about 10 or 15 minutes, or whatever time that is necessary. Following each presentation, discussions and questions from Commission members will be appropriate.

It is expected that no action will be taken at this meeting in connection with this subject, but we will meet tomorrow at 9:00 a.m., as is indicated in the docket book. That meeting will take place in the Rayburn Building, Room 2154.

Now, if there's no question that anyone wants to ask, we can begin by having the staff, led by Dave Walker and followed by Bruce McDowell, Cindy Colella, and Dave Beam, make a brief presentation on the subject of the federal role in the federal system.

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Staff Presentations

INTRODUCTION BY DAVID B. WALKER

Mr. Chairman, members of the Commission.

In approximately 40 minutes, we'd like to highlight two years of work. This will be done in four parts. In a moment Bruce McDowell will highlight major findings as we've discovered them, using some graphics that have been passed out to you. Subsequently, Cindy Colella will summarize a very difficult chapter that she did and which you have received, describing the process, and political dynamics by which the federal role has become what it is. This is largely an input type of analysis that Cindy will get into. Next Dave Beam will highlight the outputs and some of the criteria relating to functional assignment that we've looked at and made judgments on. Finally, there will be a brief windup on my part.

At this point I'll turn it over to Bruce McDowell, who will begin to highlight the graphics that you have in front of you.

PRESENTATION BY BRUCE D. MCDOWELL

This is a little booklet entitled "Briefing on Indicators of Federal Growth." I'll go through it quite quickly, with the idea of simply orienting you to some of the data that we have available. If these data seem appropriate during your discussion tomorrow, we can go into it in more depth, and I'll be happy to answer any questions that might be pertinent.

This is a briefing on Chapter 2 of Volume I of this series—*A Crisis of Confidence and Competence*. Chapter 2 is one of three chapters that was mailed to you in a separate package, at about the same time as your docket book.

The chapter is broken into three parts. The first part deals with the size of the federal government. The second part deals with the increasing scope of activities, the broadening functions of the federal government. The third deals with what we've called "The Depth of Federal Influence"—that is the pervasiveness of the effect that federal programs and policies have on all of us.

Let's start by taking a brief look at "size."

The federal government, obviously, has gotten much larger in many ways. This has happened mostly since the 1930s, but with increasing rapidity since the 1960s. You can see that on page 41 in Figure II-1; those bars indicate the period of rapid growth in current dollars or in actual numbers of employees or whatever the indicator is there. You can see that all of those indicators up toward the top have had rapid growth since the 1930s. As we go down the list, there is more recent growth. But in almost every case, that growth continues right up to the present time in current dollar or actual number terms.

Now, if you take into account the growth in the size of the nation and the economy, as measured by the Gross National Product (GNP) and other relative ways of looking at this growth, there is much less startling growth than you might otherwise think. That's indicated to you on page 57, Figure II-31. The blank space toward the right-hand side of those bars indicates that the rapid growth has begun to level off, or in some cases is even in decline at the present time.

There is therefore quite a difference between looking at these in figures straight out of the budget and looking at them in relative terms—percentages of GNP, of population, of state and local expenditures, of all government, and so on.

I think one of the most startling things you can see on page 63 is that civilian employment in the federal government really passed its peak growth quite some time ago, particularly in relative indicators, which are the four boxes toward the top of the page.

Employment in all governments together—federal, state, and local—is pretty level now. The federal government experienced a jump during World War II, but otherwise has been pretty level.

If we look at federal employment per thousand population, it's been declining for some time. If we look at it in terms of per million dollars of outlays of the federal government, it's really gone down steeply. So there is an awful lot more money than people in the federal government.

The story is beginning to be somewhat the same with regard to federal aid. If you look at page 48, Figures II-19 and II-20, you'll see on the left-hand side, in actual dollars, that federal aid is still going up, as is the number of programs. But if you switch over to page 61, Figures II-38 through II-41, you'll see in every case—percent of GNP, percent of federal outlays, percent of state and local expenditures, and in constant dollars—that federal aid has begun to decline. This has been going on for two or three years now. Some people believe that perhaps we are past the big growth period in federal aid. It certainly seems so this year.

Well, so much for size. Let's take a brief look at the scope of the federal government. If you turn to page 66, Figure II-54, you'll see the point in history at which each of the federal departments was established.

You can see that there are three stages. First is the institutionalization of the federal government—that is, State, Defense, Treasury, and Justice were created early. Then the big middle group was economic development, with Interior, Agriculture, the Post Office, Commerce and Transportation, and Energy later. The more recent kind of department has been in the area that might be termed "social benefits," with Labor, Health, Education, and Welfare (HEW), Housing and Urban Development (HUD), and the new Education Department coming along in Stage III.

Figure II-7, on page 43, includes not only departments of the federal government, but also major agencies. As you can see, although this graph only goes up to about 1974, the 1970s saw a real surge in the development of new agencies. There were some other smaller surges earlier.

On federal aid, prior to 1960, federal aid programs were rather few and far between. Not too many functions were receiving federal aid prior to 1960. In 1978, however, there were multiple programs in almost every category that you can think of. The federal grant programs actually funded in 1978 for state and local governments numbered 492 categorical aids. To that, you add five block grants and General Revenue Sharing for a total of 498. There is really a great deal more

variety occurring in federal aid in recent years than there ever was before.

On page 70, Figure II-59, you can see that not only are there more types of federal aid, but more are getting big money. If you look at the graph at the top, 80% of federal aid went for income security and transportation in the mid-1950s. That has dropped to about 30%. Big new categories have developed for education, training, health, general fiscal assistance, and community and regional development. We've really branched out.

If you look at Table 7 below, in 1950 there was only one program, one type of aid, that was getting over a billion dollars. If you look at 1980, there were seven areas of federal aid that big.

Pages 52 and 68 examine the total budget of the federal government, not just aid. You can see on page 68, Figure II-57, that defense programs really have moved down, while domestic programs have moved up, particularly for income security, health, and education. In types of expenditures on page 52, Figure II-26, you can see that grants-in-aid and domestic transfer payments have been the big growth areas.

Page 50 shows that there's been a tremendous growth in the use of loan guarantees and the use of tax expenditures to carry out federal policy, rather than always using direct grants.

The top graph on page 77 shows how new regulatory programs of the federal government have been established. Economic regulation was big back in the early part of the century. But the ones that have been growing recently have been health and safety regulation—with agencies such as the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Consumer Product Safety Commission—and social equality regulation consisting of programs for civil rights, the handicapped, and the disadvantaged.

The lower graph on page 77 shows that administrative funds to run these regulatory programs have increased only very recently, particularly in the areas of consumer safety and health. That's the really big one. Others have grown, too.

If you turn back just a moment to page 52, Table 4, if you look at the right-hand side of this table, you will see that 30% is for direct federal operations, or what you might term the services that the federal government itself provides. That's only 30% of the total federal financial influence, whereas 70% is in financial benefits that are given

out to others as transfer payments, aid programs, or incentives in the tax system. Thus, 70% of the federal influence isn't through services it provides itself. This means that we have to look in a pretty broad way across the activities of the federal government to see what its full impact is.

Very briefly, concerning the depth of federal influence, federal taxing and spending is affecting everyone. Page 83 shows how it affects individuals. Through income tax, about 80% of us are involved. Through social insurance programs, around 90% of payrolls are subject to Social Security and unemployment insurance. Almost all people 65 years and older are beneficiaries one way or another of federal financial aid. And welfare, of course, has grown quite substantially.

In terms of the effect of regulation, the vertical lines on page 85, Figure II-89, show the traditional kind of regulation—where a regulation affected a single industry. If you look at the horizontal lines, on the other hand, these regulations really affect all of us. The Consumer Product Safety Commission affects all consumers. OSHA affects all workers. Equal employment opportunity affects everyone that is in the job market. Environmental protection affects everyone that lives in our environment. Thus, the effect of these newer federal regulatory programs is much broader than the more traditional, single industry ones.

All this results in a lot of paperwork and compliance costs. These are outlined for you on pages 47, 98, and 100. I don't have time to detail them.

You can see on pages 48, 61, and 85 that federal aid dominates more and more agencies. This data is just for state agencies. But Figures II-21 (page 48) and II-90 (page 85) show that 75% of all state agencies are receiving some federal aid in one sort or another, while about 25% of state agencies receive 50% or more of their budgets from federal dollars.

On page 89, Figure II-92 roughly correlates the enactment of some major federal bills with the growth of litigation. See civil rights in 1961. Around 1970 environmental protection comes in. Around 1974 or so, consumer product safety comes in. There are other laws indicated also. Litigation has continued to increase as these laws have come along, and much of it can be attributed to them.

Despite all this federal growth, a look at some individual functions, on pages 72 and 73, shows

that the federal financial share turns out to be relatively small in most functions. On 72, the only function that shows up with significant federal participation is welfare, where about 50% of the money going out from state and local expenditures has a federal origin. On 73, you can see the two functions in which the federal government really dominates—social insurance grants, as well as housing and urban renewal grants. But, by and large, most programs aren't dominated by federal money. They have more state and local money, more private money, or a combination of both.

Finally, concerning employment, page 76 shows that only one major intergovernmental function has large federal employment in relation to state, local, or other. That is natural resources, where the federal government is a large land owner, with the federal forest and reclamation projects, National Parks, and so on. Most of the rest are run largely by state and local employees.

That is a brief summary of the chapter. I can certainly take questions tomorrow or anytime that you care to pose them.

MR. WALKER: Thank you, Bruce.

Next, we will have Cindy Colella give us a brief description of her chapter from Volume X of the series, which deals with the dynamics and the primary, secondary, and tertiary actors in this drama. This provides a perspective of about 30 to 40 years, really.

PRESENTATION BY CYNTHIA C. COLELLA

Thank you. Bruce has just given us the broad picture or macro view of the current size, breadth, and depth of the federal government. But our study also tried to determine on a micro level how and why this growth occurred, and what have been its effects.

We attempted to do this through a series of functional case studies covering a broad and representative range of federal policy endeavors—from the very large to the very small. These seven case studies, six of which you have received, detail the federal role in public assistance (both cash categorical and food stamps), unemployment, elementary and secondary education, higher education, environmental policy, library assistance, and fire protection.

From these studies, each of which was entirely unique in certain respects, we were able to come

up with a composite picture of the policy process—of the actors, forces, and political dynamics that have shaped the current federal role.

As might be expected, the picture was very complex. Policies are made in an interactive and reactive environment. Yet, despite this complexity, we were able to discern some very clear policy determinants and dynamics that were common to all or most of the cases studied, particularly over the past ten to 20 years.

For the next few minutes, I'd like to present our major findings in the realm of political dynamics—or who and what make government grow.

Since the mid-1960s and continuing at an accelerated pace through the 1970s, two factors or forces have been the major contributors to the growth of the federal government. The first and most important in the sense of program initiation or first generation policymaking has been the widespread existence of policy entrepreneurs within government. A policy entrepreneur is so named because he or she acts in the public sector much like an entrepreneur or producer in the private sector. That is, the policy entrepreneur perceives something to be a problem or a potential national public issue, devises a strategy (such as a regulatory or grant strategy) for solving the problem, and then sees or attempts to see the strategy through to programmatic or policy fruition.

Obviously this sort of entrepreneurship is not a new phenomenon, and in one of our case studies, we identified an instance of individual policy entrepreneurship as early as the 1850s. But in the past 20 years, and even more so in the past ten years, such entrepreneurial activity has distinguished itself in two very important ways, and with profound consequences for the current size of the federal government.

First, although policy entrepreneurs are found throughout government, they are primarily, and especially since the 1970s, found in Congress. In fact, in each of the case studies, Congress played the most consistently crucial role, and in all but one, the Congressional role was manifest most often not in the form of Congress as an institution, but rather in the form of Congress as an individual. In other words, through Congressional entrepreneurship or issue activism.

The other and more significant characteristic of modern policy entrepreneurship, however, is its frequency, and by and large, this frequency has been due to the breakdown of certain traditional

barriers to new program initiation. The weakening of constraints began slowly in the mid-1930s with the virtual demise of Constitutional limits to federal activism. Gradually, this legal unfettering was bolstered by changing public attitudes and expectations and, consequently, the breakdown of most political constraints to program activism in the 1960s. Moreover, in the 1970s, the trend toward widespread policy entrepreneurship was encouraged even further by the dismantling of many institutional and leadership constraints. Finally, the whole process was abetted, until very recently, by the lack of immediate fiscal constraints.

As a result of all these factors, program initiation has become a relatively unrestrained activity. There seem to be no mechanisms left for separating large-scale injustices from small grievances, important issues from trivial questions, or problems of national significance from those of local interest. Every problem becomes a national action item, often with little thought of the practical post-enactment consequences, and quite often with the result that the large array of minor issues frustrate efforts to devise solutions to large, genuinely national problems.

In short, the old complaint about government not being responsive has been turned upside down. Through the process of unconstrained policy entrepreneurship, government has become almost indiscriminately hyper-responsive.

Our second major finding in the realm of political dynamics deals with existing policies. In this post-initiation or second generation policy phase, an entirely different dynamic takes over—one that tends to change first generation hyper-responsiveness into policy intransigence.

It has become nearly common wisdom that new programs are made by, and for special interests. In fact, in most instances, the case studies demonstrated the opposite causal pattern—new special interests are formed, more often than not, by and for new programs. For example, a common policy scenario sees the creation of a program by a policy entrepreneur, and upon creation of the program, groups—often entirely new groups—who perceive themselves to be potential program beneficiaries will rush to fill the newly created policy space.

Having built themselves rapidly around the program and into the policy space, these “resultant interests” thereafter will strive to keep the

program alive, enlarge the policy arena, and/or add on to it with additional programs. At that point, for all practical purposes, the interest, and consequently the policy, will have become entrenched.

Professor Aaron Wildavsky of Berkeley has recently written that, “because policy is evermore its own cause, programs depend less on the external environment than on events inside the sectors from which they come.” In other words, policy, once begun, tends to achieve its own internal momentum. It becomes its own reason for being. After initial enactment, through intense group maintenance and expansion efforts, a program or grouping of programs rapidly tends to become institutionalized, or put less kindly, it becomes intractable.

The fallout from hyper-responsiveness in the first generation of policymaking becomes a kind of policy obstinance in the second generation—an obstinacy in which unworkable programs flourish along with the good, in which the system all too often is overloaded with unmanageable and nationally unnecessary programs.

The practical, the programmatic, and the implementation results of this policy dynamic will now be discussed by Dave Beam.

MR. WALKER: Thanks, Cindy, very much.

From Dave we will hear more on the fallout.

PRESENTATION BY DAVID R. BEAM

There has been an organization that we are trying to follow here in the three presentations. Bruce McDowell was explaining the changes in the size and scope and regulatory depth of the federal role—especially over the past 20 years, but a broader sweep of history as well. Cindy Colella was describing the political patterns we found to be typical in policy development, who the actors were, and how things occurred on the political front.

The chapter I want to describe is the third of the background chapters that were mailed out to you. It attempts to be evaluative and judgmental about the results of the political patterns and the changes in governmental activity that we’ve studied. It’s the only one which really takes an ex-

plicitly normative and explicitly evaluative cast to it.

The chapter is the "Federal Role; Criteria, Assessment, Analysis" from Volume X of the federal role series. If you want to follow along, you can look at the summary bullets that are in the last couple pages.

The question really is: "How well does all of this work?" What are the programmatic implications of the political patterns that we have described, of the entrepreneurial pattern of program initiation, and the rigidities of the second generation policymaking?

I think the summary judgment would be that we found very serious deficiencies in many of the program areas, as well as in the political process that led to creation of many of the programs we studied.

There have been five standards that ACIR has used in previous studies to evaluate assignment-of-function issues. The terms will be familiar to you instantly. One is the concept of "national purpose." Others are the idea of "fiscal equity," of "administrative effectiveness," of "economic efficiency," and of "political accountability"—all standard norms that can be applied to governmental programs and decisionmaking.

In the past we have tried to show or suggest how these might be used to evaluate or assess the proper activities of government at different levels, especially within states—state and local levels, metropolitan, and so forth. Here we try to use them as evaluative standards for the intergovernmental system as a whole and see how it stacks up in the five criteria in that manner. Each standard frequently has been used in political rhetoric and argumentation for the creation of new programs, as well as in the literature on intergovernmental relations.

It's been hoped or thought that intergovernmental programs can be used to advance major national goals and leave other matters to state and local decision; to help equalize income among poor people, as well as among states with lower fiscal capacity; to help equalize service levels; to provide an effective and efficient means for administering services on a cooperative basis; and to assure the responsiveness of the political system and the needs of all other systems. Our findings, however, cast serious doubts on all of these propositions. We found serious deficiencies in these five areas.

I think it's fair to say that in past years, when the intergovernmental sector was smaller, less complex, and less overloaded than it is now, the descriptions were a little more accurate. But as time has passed and as we look at current conditions, all of these norms or ambitions become less and less descriptive. Some perhaps were never really very descriptive of actual existing grant programs, as opposed to what an ideal system might be like. The shortcomings that we found are greatly associated with the problems in the political process or the characteristics of the political process that have already been described.

Let me try to give you an example of a typical grant program. There is no one pattern, of course. Every program in every functional area has its unique features. Still, it is possible to put together a story that has elements in common with many real programs.

A typical program is established, as Cindy Collella suggested, through the activities of one or a small group of entrepreneurs, most commonly in the Congress, perhaps with some support from a few affected interest groups, perhaps with a modest Presidential push—a Presidential endorsement—at one point or another, but with very little consideration of real national needs and priorities, and what would be the best mechanism for addressing them.

There is another way, a reverse way, of stating the same idea. It's been possible to justify an enactment of almost any character in almost any area as in some manner addressing one or another generally accepted national objective or goal; helping to reduce unemployment; helping to advance national defense in some fashion; helping to protect the environment; and so on. Some of the case studies—for example, fire protection—offer a fascinating story. It showed how some global types of national concerns can be intimately involved with a very local service.

The typical program employs an allocational formula. Or if it's a project grant, the funds are allocated by federal agencies in a manner that ends up dispersing moneys very, very broadly among states and localities, rather than targeting funds to the areas that have the greatest fiscal need or the greatest programmatic need. This is necessary, or at least it happens frequently, because it speeds passage in Congress and helps maintain a supportive political coalition. But the

politics of the situation work against the ideals of equity.

A typical program is created without very much attention to its probable effectiveness in solving the problem that it addresses; its possible costs or disadvantages which might be imposed either directly or through various side effects; and the problems that might occur in implementation, either at the federal, state, or local levels. There is little attention as to whether or not the capacity to effectively implement the program is available; what the courts might make of it should they become involved; and little consideration of alternative mechanisms that might be employed for accomplishing the same objective.

Finally, the political accountability point. You remember that we're talking about something approaching 500 grant programs. A few are well-known, but the typical program is largely invisible to the general public; does not get much attention on the floor of Congress, within the White House, or by the political parties; does not become an election issue; and, instead, is chiefly the province of a comparatively small group of specialists—people with expertise who usually have some kind of direct and professional or occupational stake in the issues involved. Each program is a little political arena of its own.

For this reason—Cindy Colella was describing this in the terms of the resultant group or the institutionalization of policy—once a program is in place, it tends to become very resistant to reforms or to termination in the light of changing national needs, because it involves a problem that is of lesser priority, or one that has been solved or reduced, because of actual program performance.

To reverse the logic and state this in a positive way, we found very few programs that have been adopted with a careful weighing of national priorities, in which there was a well designed allocation program that targets funds to the most needy jurisdictions, where the program was very carefully conceived and thoughtfully developed or devised in a manner that takes full account of the problems that might occur in the implementation, and which was adopted in a manner that gave it full consideration by a broad range of affected interests and by the public.

In short, a lot of deficiencies of particular intergovernmental programs or in the intergovernmental arena as a whole are closely related with political deficiencies in the ways in which pro-

grams are adopted and developed in the initial instance and thereafter. The problems of intergovernmental programs and the intergovernmental system, and problems of which we're all aware of in the political arena, in the national policy process, are very, very closely related.

SUMMARY COMMENTS BY DAVID B. WALKER

To complete this presentation on behalf of the staff, simply project yourself back in time to the year 1960, or even as late as 1963, and then place yourself where we are now in the year 1980; observe the changes over the past 17 to 20 years. These, I personally feel, are more dramatic and have had more impact on the system than those of any other 20-year period in American history. Most of this change has occurred in ways that permit us to think we are still pretty much under the same system that prevailed under Presidents Dwight Eisenhower or John Kennedy.

Now, how does one paint this extraordinary picture of change vis-à-vis the federal role?

If you go back to 1960, aware of points that Bruce McDowell made, the federal government then had assumed a significant role in promotional activities, subsidies, and regulation, predominantly in the economic area. Its intergovernmental role was small, and its direct servicing role was minimal. It had only a couple hundred thousand employees less than we have now.

If you look again at the picture in 1960, federal aid amounted to \$7 billion and included about 132 programs, three-quarters of which were focused into four areas. In an administrative sense, those areas really were old ones, ranging from over 50 years in one instance, to 27 for another, to two standing with 33 years in terms of administrative linkages with state government.

These were primarily federal-state relationships. Local governments at that point were caught up in approximately only 8% of the aid in a few programs—urban renewal, public housing, a little bit of airport aid, one or two natural resource programs that reached rural counties. That was it in terms of federal-local assistance. In terms of total dollars, 1% of local revenues from own sources derived was represented by federal aid in the year 1960. One percent!

At this juncture, 20 years later, there's no need to regale you with the numbers. There's no need

to regale you with the cost. There's no need to regale you with the ins and outs of the "explosion in the eligibles." There's no need to regale you with the significant shift in the regulatory role—from the economic into the social. Nor is it necessary to highlight the way in which, at this point—and it's emerged only within the past 12 years—we utilize grants-in-aid as a new regulatory technique.

In the old days, this was the job of independent regulatory commissions or of units within the Department of Justice directly impacting on the private sector, but not utilizing grants in any sense for national regulatory purposes. To put it differently, the conditions attached to grants in 1960 were specific to the program, were of a financial, managerial, or programmatic character. The conditions now encompass these older concerns of a government disbursing funds to another jurisdiction, plus an array of conditions that do not relate directly to the purpose of the program at all. So a new style regulation, in addition to the old style economic regulation, has emerged which utilizes an intergovernmental technique rather than the direct to private sector approach.

If one had to highlight the fallout, I guess one would have to draw back and ponder the way in which the roles have changed. There is the illusion—some would say delusion, but I'll say illusion—that there is, and has been an extraordinary centralization of policymaking as a result of what's transpired in the past 20 years. Among the activities of the courts, of Presidents, or of Congresses, one might have that illusion.

But draw back. Unlike any other system on the face of this Earth that has experienced growing centralization in the past 30 to 40 years, we still rely upon—and more so at this point in history than any other time—the intergovernmental technique to resolve not simply national problems but an array of extraordinary local problems.

If one goes through the listing of current programs that highlight the degree to which we have confused national interest with parochial and minor ones, we run from urban gardening to noise control, to arson, to home insulation, to jelly fish control, to snow removal, to aquaculture, to rat control going back to 1966, to museums, to pothole repairs almost every year in March, to runaway youth, to school security, to art education, and as we mentioned more than once thus far, to rural fire protection.

That's just the tip of the peak in the assistance iceberg in terms of the concerns of the Congress and of some folks in all Administrations. These grants suggest what passes for the national interest and the concern for the national interest.

Immense intergovernmental areas exist that are a source of fundamental, major national concern, but these seem to become trivialized in the same sense that these trivial issues have erupted on the national level. I won't say they are all treated on a par. There's a dollar differential between them, thank goodness, with about 440 on one side aggregating about \$8 billion, and about 56 on the other side, aggregating about \$72 billion.

We have reached, therefore, a point where there are similarities with the past. The politics look familiar. It's mostly the traditional technique by which we get things done in this country. There's nothing particularly new about it. And it's called log rolling. But at this point, to use the grant-in-aid system in the same fashion that we used to treat rivers and harbors—and that's exactly the way in which the aid system has been working—to treat it in the same fashion in which we used pork barrel legislation (and we haven't eliminated omnibus rivers and harbors legislation) is to denigrate the national interest.

It's brought us to a point politically where Congress sometimes resembles a municipal or county council; where Presidents frequently behave, act, and talk like Mayors or neighborhood councilmen; where Governors and Mayors occasionally play President, discussing national policy, without holding the office that presumably deals with such policy.

Finally, if one puts it in political theory terms, the paradox of why things worked in 1960 and do not work now is the paradox of understanding what has been termed by the academicians as "cooperative federalism"—that is, the sharing of program goals, the sharing of personnel, and the sharing of the public purse was relatively modest in 1960, but massive now. And with this triumph came its collapse.

To put it differently, there were significant major elements of dual federalism left in the system right through 1963. Whole areas of governmental services were untouched by federal grants or regulations. At least one-half of the state government departments in 1960 could not get a federal dollar for anything. There was not one judicial or traditional municipal function that could get a fed-

eral dollar for anything. And the array of traditional county functions, other than those which were channeled through state government in the welfare area, couldn't get anything. With the school districts, other than impact aid, nothing. Nothing!

Through the year 1963, therefore, a whole array of servicing activities—the bulk of domestic American government—was fundamentally under the old orbit of dual federalism. These were not encompassed by the sharing of programs, powers, and the purse. Cooperative federalism, then, encompassed very little of the domestic governmental sector in 1960 or 1963. Now it encompasses nearly every program activity one could imagine. Again, the results have brought about a change in role playing by all of the participants.

If federalism historically was meant to mean anything, it was meant to achieve a certain division of labor. That division of labor no longer exists. Everybody is laboring in everybody else's vineyard. And the vineyard is producing a vinegar not a wine if my sensing of the public opinion polls on this issue is correct.

That perhaps is the point to draw in my conclusion, since I have only 30 seconds more. Look at the public opinion polls in 1960. Analyze the summary volume of the surveys of the 1950s that were brought forth in the *American Voter*. Compare the findings with today's polls of public opinion, as they relate to the system as a whole and to the political parties. As of 1960, you find three-quarters of the electorate having very favorable, loyal, and deeply emotional commitments to either one or the other or to both of the parties. At this point, if you can find 25% of the electorate with comparable sentiments, you're doing very well. Faith in the system at this point need not be highlighted. We have chronicled and John Shannon has probed the decline on that particular front.

All this is not simply coincidental. We believe

there is a direct relationship between current popular attitudes and the fact that the system to most people—even those allegedly running it and sometimes running for office—is essentially incomprehensible. In a democratic system, and this is a democratic federal republic, if the system is incomprehensible, not only to the electorate, but also to the vast number of people who are officeholders, where do we stand and where does the system stand?

It isn't, therefore, so much cooperative federalism. Cooperative federalism conquered in the 1960s and collapsed in the 1970s. It's our view that a new descriptive phrase is needed. Perhaps "dysfunctional federalism" best highlights the elimination over the past 20 years of any residuals of dual federalism that were very much present in the year 1960 and that provided the basis then for assuming that cooperative federalism was a viable way of doing things.

Thank you, Mr. Chairman and members of the Commission.

CHAIRMAN BEAME: Thank you very much, Dave. I want to thank the rest of your staff for summarizing what is a very intricate and complex problem. I just wondered whether we shouldn't leave our questions of the staff until tomorrow, when we will again be discussing this topic, and when they will provide some additional briefing. Let's go on right to the hearings. Any question on that?

If not, we have as our first invited witness—Mr. Arthur Naftalin, professor of public affairs at the University of Minnesota, a former Mayor of Minneapolis, and a former member of ACIR (from August 1, 1962, until June 17, 1969). I know that Prof. Naftalin knows our problem as much as he knows the general subject, so that I'm sure he will cast all possible light on it. I want to thank you for appearing.

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Professor Arthur Naftalin

Hubert H. Humphrey Institute of Public Affairs,
University of Minnesota

Mr. Chairman, members of the Commission.

I'm pleased to be back with ACIR again. I recognize a number of people here. If what I have to say sounds like a continuation of Dave Walker's statement, you'll know that I was trained well by him, by Al Richter, and by others on the staff when I was a member of the Commission. I believe, if memory serves right, that the only current Commissioner who was a member when I served is Congressman Fountain. I'm glad to see Del Goldberg, his long-time aide, with us.

I must say, although I'm pleased to be here, I'm greatly intimidated by the assignment, especially to be termed a "thinker!" I can assure you that my being considered a thinker will be of great surprise back at the University of Minnesota and the City of Minneapolis.

The report is superb. I'm greatly impressed with its candor and its passion. It serves us very well to have ACIR make such an unusually clear and articulate statement about the character of our federal system.

Clearly, our federal system is out of control, as Dave Walker said in his oral statement. ACIR's detail in this regard is compelling, but the Commission is better at cursing the darkness than in lighting candles. That's, of course, true of all of us; we are all finding it difficult to work our way through the problem of federalism, because what we are talking about involves a convergence of so many economic, social, and political factors along with philosophical, psychological, and ethical

concerns. Our objective is little short of restructuring the entire political and governmental world. But ACIR has made an auspicious start.

My views concerning federalism were very much influenced by my experience as Mayor of Minneapolis. I early discovered that the Mayor of a major city is trapped in a federal system that in some ways is overresponsive, and in other ways not responsive enough. I discovered that the important problems I had to deal with—whether transportation or waste disposal or finding adequate resources—were beyond the city's control. They were metropolitanwide or statewide or national in scope. Like everybody else, I rushed off to Washington to try to get help.

There's good reason why the federal government has been overresponsive. We need to understand what ACIR has been trying to say ever since it began its work: For 200 years our federal system served us very well. While we were building as a nation, the private interest and the public interest were at one and it was possible for the nation's many wide-ranging private interests to have what the late Morton Grodzins called a "crack" at the system. With our enormous resources, with our boundless frontier, it was possible to respond to the proliferating demands of a restless and energetic people.

The federal government's response persisted, in good measure, because the states and local governments wouldn't or couldn't respond. It's a familiar story; state legislatures were controlled by rural influences at a time when the nation's urban centers were developing and they did not respond. Over the years federal programs and projects multiplied as the national government did respond.

The report speaks convincingly, as did Cindy Colella in her testimony here, of the emergence of policy entrepreneurs. They are familiar figures in American government. We should remind ourselves that they are not motivated by personal mendacity but by the needs of the system. Jet aircraft, television, and computers widen the range of those seeking a fair share of the economy. As more and more groups come into the picture, demanding a response from government, seeking to penetrate a crack in the system, the policy entrepreneur plays a larger and larger role.

In the process, as the ACIR report makes clear, the system has become fragmented. It has become imperative that we find a way to reintegrate it,

and in a way that is consistent with our traditions. The forces at work today have increased specialization, particularization, and individualization. This is pluralism in action, and pluralism is centrifugal in effect. It tears us apart as we seek to respond to all the particularized demands. We need to generate countervailing forces against the centrifugal pressures. We need centripetal pressures that will serve as a brake on our undisciplined use of resources and on the reckless way in which we make public policy.

But where shall we intervene? How can we as a nation achieve some measure of cohesion, of discipline, of reintegration? I give my response most tentatively and with an awareness that much of what I say may strike you as very extreme. I have four observations, the first of which addresses the need for greater internal cohesion at the national level.

For 200 years, our fundamental doctrine of the separation of powers served us very well; it provided the cracks in the system that I mentioned. But now the gaps have grown too large and today we have, in effect, two national governments—the government of the Presidency and the government of Congress. As a result, we are unable to fashion national policies or to develop effective governance.

ACIR addresses this condition with a variety of incremental and specific proposals, and many of them are very good. But some of them move us in an opposite direction. To create, for example, a national referendum that would enlarge public participation in policymaking, as the report suggests, will push us in the direction of greater diffusion. It is important that all of the Commission's proposals be examined against the test of whether they will help us achieve a new coherence as a nation.

I have a modest proposal in this connection, which to my knowledge has never been suggested before, probably because nobody has been quite as foolhardy as I'm about to be. I would propose that instead of selecting Presidential nominees through primaries—which are enormously centrifugal, which I believe destroy rather than build a sense of national unity, and which leave us with candidates that offer only the fuzziest of policies and no proof of their capacity to govern—that the members of the two houses of Congress in each party choose their party's Presidential nominee. I believe this would bring a measure of coherence

to our parties and to national leadership. It wouldn't require a Constitutional amendment, only statutory implementation.

I would hope that ACIR might consider serious attention to proposals of this sort. Even if they are unlikely to be adopted, wide discussion would help to lead the American people to an understanding of the need to achieve some form of political cohesion to counteract the pluralistic pressures that are dividing us. We need proposals that will help us work toward a positive and constructive form of intergroup mediation and policy brokerage. Today there is no party accountability, no party responsibility, and, in the end, no direction for the nation.

My second observation involves states and local governments. For a long time states have been anachronistic in our system. In recent years many of them, thanks in part to ACIR's good work, have roused themselves and have embarked on constructive programs. But the fact remains that states lack the capability of coping with the critical needs of their citizens. Their elevation to the status of effective partners in the federal system would constitute a most compelling counterpressure to the forces that pull at the national center. But for the states to become effective, certain fundamental conditions must be satisfied: economic disparities among them must be overcome, and they must make appropriate and equitable use of their own resources.

As part of our national policy, we should seek the reconstruction of local government, giving primary attention to substate regionalism. In many places the city or the county is no longer the natural community. Local governments as we know them can't reach the resources they need to support essential services. The natural planning area is no longer the city but rather the region. Therefore, helping the region, whether urban and metropolitan or rural, should be high on our agenda. Once we have achieved a larger viability at the state and local levels, we can begin to devolve effectively many national programs, and thus begin to counteract the proliferation that gives us so much concern.

Incidentally, the separation of powers problem also afflicts the states. Governors and legislatures tend to be at war with each other; one reflects at-large concerns, the other interests of limited constituencies, and their reconciliation becomes more difficult, as witness the rise of one-issue politics.

I would like to see one state (I would hope it might be mine) amend its Constitution to establish a parliamentary form of government under which the Governor would be selected by a unicameral state legislature and major departments headed by key legislators. It would be an attempt to achieve party responsibility, which we do not now have either in the states or nationally.

My third approach to achieving a new cohesion in the federal structure would involve a reversal of trends that atomize political power. We suffer in this nation from enormous diffusion of political power. We now have, for example, 37 Presidential primaries, and most states use primaries for the election of nominees for state office. Many states have the initiative and referendum, and—I'm disappointed to note—the report suggests that a national initiative and referendum might be a good reform.

I think we should reverse these trends. I believe we should seek to rebuild the political party and make it a responsible agent for policymaking, both nationally and within the states. I think we should abandon primaries at all levels and reestablish the convention system. We should get rid of subcaucusing. We should make it possible and necessary for our political parties to establish policies and platforms that give voters a meaningful choice.

I would go so far as to have total public financing. It is enormously alarming, the amount of money that corporations are now pouring into our political framework. They are making our elected officials their captives.

Finally—and here I may really be soaring—I would like to see us consciously strive for a new political and governmental ethic, to find a way of using our magnificent communications system to internalize a new form of behavior with respect to governmental and political policy.

Alvin Toffler has written a new book, *The Third Wave*, in which he advances the thesis that we may be undergoing a major psychological transformation in reaction to the pressures that are creating individuation. In the process we may achieve a new capability for reconciling our individual interests with our collective needs. At least that is one possible interpretation that gives a measure of comfort to my hope that a new political ethic may emerge.

What happens if the centrifugal forces go unchecked? What happens when the proliferation of interests becomes so engulfing that we're no

longer able to govern? A breakdown in national civility could happen here just as it is already beginning to happen elsewhere.

The answer, as I see it, must involve a new sense of interpersonal relationships, a new sense of the importance of democratic government that is not responsible and effective. This means sustained mutual education in which we come to understand national policies that speak to fundamental issues and to understand how they can be achieved democratically, informed by a national sense of equity, fairness, and basic human concern.

I believe a basic shift in outlook is not entirely unrealistic or beyond realization. In recent weeks we've witnessed the rise of John Anderson as a major Presidential challenger. Whatever the success of his effort, he has demonstrated that shifts in outlook can happen quickly.

It is important, I think, to understand that there is a deep ambivalence in this nation. The people who seek the many programs that create the proliferation are the same people who don't want tax increases; the people who press for more response from government are often the same people who call for a greater measure of governmental discipline and restraint. There is frustration and concern, but there is not despair. The people, I believe, are prepared to support constructive efforts to achieve a new national cohesion. What the public wants is for agencies, such as ACIR, to think in creative and constructive terms and recommend measures that offer some rational response to our dilemmas. I commend ACIR for producing a report that seeks to respond to that challenge. You have undertaken an extraordinarily important bit of work.

Thank you.

CHAIRMAN BEAME: Thank you, professor, for a very interesting and challenging presentation. Incidentally, while you were talking, I just thought that if we had a convention setup, we wouldn't have John Anderson.

PROF. NAFTALIN: Well, that may be true.

CHAIRMAN BEAME: I think it would be appropriate at this time for the Commission to present any questions they might have.

SECRETARY SHALALA: I'm interested in your recommendation for a parliamentary system. As far as I know, the only justification for changing

structure is if you produce different kinds of outputs, a better set of programs, a more rational intergovernmental system.

Is there some evidence, looking at parliamentary systems in other parts of the world, that they both have more compassionate and better targeted programs than we have with our system, or lack the kind of intergovernmental problems that we're concerned about? As far as I know, there is not.

PROF. NAFTALIN: Yes, I think I would concede that. I think what one engages in here is a certain amount of deductive reasoning.

In times of civil disorder and threatened breakdown, we know what has happened in some Presidential countries where there is no sharing of the ultimate authority. We had some signal of the problem in the Watergate episode, where the President was not held accountable to a political party. There is no way for the government to be brought to terms except through an elaborate impeachment process. I think that's highly dangerous, especially in a volatile period.

When I say a parliamentary system, I mean a system in which the government would fall if that government was no longer—in the view of the public's representatives—meeting the nation's fundamental problems. I think that's the case today. If our government were compelled to confront our basic problems in a responsible way, I think it would do a better job.

We give the President and members of Congress an easy ride. We do not compel them to answer for their failure to deal with major problems. We're not compelling them to answer why we don't have an energy policy, why we are not fighting inflation.

SECRETARY SHALALA: I thought that was what the election was about?

PROF. NAFTALIN: Is it? I do not see in the election any coherent relationship to policy, if by the election you mean the Presidential primaries. I see quite the opposite. The premium is entirely upon trying to create some illusion of capability without any meaningful commitment to program implementation, such as a party is compelled to do under a genuine party system. I think that's highly dangerous.

MAYOR ROUSAKIS: Professor, I'm curious as to what sort of reaction you get from other thinkers and students, citizens in general, to these proposals that you make. Before you answer, how many terms did you serve as Mayor?

PROF. NAFTALIN: Four terms, four two-year terms.

MAYOR ROUSAKIS: Did you bring any of these into play?

PROF. NAFTALIN: Well, not these particular ones, but some equally crazy.

I can answer your question by saying this, that in 1961 when I became Mayor, I was an early advocate of metropolitan government. When I would go about the community talking about metropolitan government, there was a lot of feeling that the idea was far out. I was viewed as a nice fellow, but way out.

I am amazed today—there were other forces that converged to produce our metropolitan council—but it has been established and now the feeling is entirely different. I've spoken in many places on metropolitan government, and I find a vast difference today from what it was in 1961. I see a dialectical relationship between leaders and followers. If leaders are constantly handing back what the Gallup poll says, that's all their followers will believe in. But if leaders set out advance positions, argue for them, educate for them, by and by people begin to support and work for them.

The answer to your question is that most people are amazed, sometimes bemused, and at times put off. They will say, "Well, it's a great idea but you can't make it work because it's not feasible and it's just not within the realm of possibility, so let's go on to something that is."

I have often said that I can think of nothing that will serve us well that is feasible. Many ideas I had as Mayor seemed very unlikely, but by and by some of them became feasible because it was clear that action needed to be taken. What once seemed impractical over time became more practical.

I've had a lot of experience with our Citizens League in Minneapolis and St. Paul. Very often the league has shaped proposals and recommendations that are way ahead of public opinion; the proposals have been out there dangling. By and by public opinion has come around to them as the problem worsens and as more and more people begin to think about possible approaches.

This is the function of leadership. I think that's what the President should do. I think that is what the Commission should do. I think that's what teachers should do. Address the problems honestly as they see them. You don't always have to win, but at least you get people talking in realistic

terms. If my ideas aren't so good, come up with yours and we'll have it out. We aren't going to do it if all we do is reflect the Gallup poll.

SUPERVISOR CUTLER: I can always count on our good neighbors to the north to come up with something wonderful.

I am from Iowa, professor. I had to take exception to your suggestion that Congress nominate the Presidential candidates—even as crazy as the current system is, and our having been through what we went through recently in the Iowa caucuses. Frank Mankiewicz came in right after; when everyone else was going east, he came west to do an instant analysis. The thing that he observed were basic changes in behavior because of the process. It's infinitely true that those processes really have moved beyond the realm of, I think, real policy discussions.

I served on the Platform Committee of the Democratic Party in 1972 and honestly believed I was writing national policy and some great document for the future. Nobody paid any attention to it, least of all our nominee. He was not alone in that. I'm not sure anybody's nominee pays attention to it, least of all the members of Congress. I don't recall the last time I heard anybody reference a party platform. It's fun for those of us who care about those things to engage in writing them, and for those people who like to appear before party platform writers.

But I guess my point is: I fail to see how having the members of Congress—who don't appear to be tied into the party platform, that statement of principles of the party—will do anything more to tie the candidate to it.

PROF. NAFTALIN: In my mind it would be a step in the direction of party responsibility. I think that once the members of Congress had the nominating responsibility, we would know where to apply pressure and we would soon be participating in the nominating process in a representative way. When we voted for members of Congress, we would want to know how they stood with respect to the top leadership of the party and the nation. I think it would be a positive step toward achieving party responsibility. But it's not perfect, and I would certainly entertain alternative suggestions. It seems to me that my idea has merit and would be fairly simple to achieve.

SEN. BOE: Professor, would you carry your analogy back to having the state legislatures elect or choose the nominees for the U.S. Senate? I say

that from the historical point of view; prior to the Constitutional amendment that allowed the free and open election of U.S. Senators, the Senate as a body was far more responsive to state and local governments than it has been since that time.

After that time came the domination of the Senate Foreign Relations Committee. They got away from the problems on the state and local level, and were looking at the "big picture in the U.S. Senate." Would you carry your analogy that far?

PROF. NAFTALIN: I would examine it with some sympathy, because I think the reestablishment of that old-time relationship might help achieve a degree of party responsibility. I'm prepared to examine any idea that would help move us in that direction.

FREEHOLDER DEALAMAN: I have a concern about, again, your thrust to reenforce, if you will, the political structure, and get some kind of definitive ideas. What do we do, and how do we respond to the overwhelming number of independents that we currently have who are unwilling, either because they are not involved enough to know the platform or they are just not interested enough to do it? In my state they think they're going to get called for jury duty, so they're not going to sign up. We have got the driver's licenses on them now. How do you weave that into the framework that you delineate?

PROF. NAFTALIN: You're absolutely right. Many millions of Americans abdicate their responsibility as citizens. They say they're independent and let others choose the nominees; they might not even vote in the general election.

I favor a political system in which the campaigns for office provide a genuine educational experience unlike the Presidential primaries, which just obscure the issues. Participation in them is not a meaningful exercise in citizenship. They just throw dust in everybody's eyes. I'd abolish them. Independents by and by would find that the only meaningful participation is involvement in the party caucus.

I want enlarged not diminished participation. Today we have only meaningless participation. It's just a lottery, a grab bag. I want participation through clearly structured and representative party mechanisms, so that people will attend caucuses, ward meetings, and county conventions and be genuinely involved in the shaping of the party program.

CHAIRMAN BEAME: May I ask you one question?

In sorting out the responsibilities of the federal government and local governments, do you see any justification where if any local governments throughout the country are picking up, assuming, national responsibilities, that there would be logic in setting up a class of cities that might be known as national cities, and treatment given to them in accordance with the burdens and responsibilities they carry out?

PROF. NAFTALIN: Mr. Beame, this carries me back a few years ago. When I was Mayor of Minneapolis, I talked in those precise terms. This was during the 1960s, when I felt acutely the threat our cities were under. I believed then and still do that the embattled cities ought to be protected by the nation.

What happens to New York City, Chicago, Cleveland, Newark, and other cities is enormously important to the entire nation. This is not inconsistent with our tradition. The problem is that special help is not consistent with our Constitution, so we may have to add this item to our list of unlikely solutions.

I would, in any event, like to see our state governments develop sufficient capability and commitment so that they would assume the appropriate responsibility.

CHAIRMAN BEAME: Sometimes, it isn't the Constitutional problem, but the political one.

PROF. NAFTALIN: That's true.

GOV. DALTON: Professor, would you limit your Presidential candidates to members of Congress?

PROF. NAFTALIN: In the initial go-around, no. I would permit Congress to choose the candidate from within the entire citizenship that qualifies.

GOV. DALTON: Do you really think that would happen? If they all know each other and see each other every day, do you think that they would pick somebody outside their own ranks?

PROF. NAFTALIN: I think they would very likely pick one of themselves and that might not be a bad idea.

MAYOR MOODY: You know my great affection and my great admiration for your powers.

PROF. NAFTALIN: It's mutual, Mr. Mayor.

MAYOR MOODY: And I do agree substantially with all of your analogies. I almost totally disagree with your proposed solutions.

I would ask for your comments on an exactly

opposite view shared by many people. You mentioned something about the President and the personality and strength of that person. A great number of people, in my judgment, really want a king, but don't want to admit it. To them the Congress or the parliament is essentially irrelevant. They would deny they want a king, and that they want an imperialist, but yet, in practice, they seem to want the imperial kind of leader, until they find that he's abusing the office somehow and not satisfying their needs.

They reach that conclusion on the same evidence that you use to reach your conclusion about the parliamentary system. I am just very curious what your views are on that.

PROF. NAFTALIN: On the monarchy?

MAYOR MOODY: Yes.

PROF. NAFTALIN: I believe in representative government. I believe in enlarging and making citizen participation more meaningful. In a few minutes, it's difficult to spell my idea out fully, but the thrust, the ultimate objective of what I'm seeking is a more coherent relationship between the government and the citizens, a more understandable, rational, and meaningful one.

I completely reject the notion of any authoritarian government, whether it's a monarchy or any other kind. My whole thrust is to make the government more democratic and more representative. I believe that given the pluralism of this nation, what I called its centrifugal tendency, my recommendation would help move us in that direction and in a fashion consistent with democratic principles.

Now I do not say that if you disagree with me, you believe in anarchy or in the politics of the jungle. Some people believe that we should totally dismantle the federal government, that we ought to restrict greatly the scope of government, that we ought to require unusual majorities to increase taxes, that we ought to permit referenda on everything the legislature does. Their purpose is to prevent the government from doing very much.

I reject that just as I reject a monarchy. And I suspect you reject that, too, even though you may have some concern about government becoming too powerful.

MAYOR MOODY: Well, that certainly is true. But we are examining your ideas, rather than mine.

PROF. NAFTALIN: I understand. I'm just trying to illustrate my point. The fact that I suggest one

form of cohesion for our system doesn't mean that I embrace the extreme in that direction any more than your challenging it means that you embrace the extreme in the other direction.

MAYOR MOODY: I'm concerned also about the point regarding a republic. As a matter of fact, I think a large part of the disaffection of our electorate has to do with their distaste for the representative system. For example, all the surveys seem to show that they like their own representatives, but they don't think much of the Congress. They like their own representative in the state, but they don't think much of the state legislature.

You'd rather quickly reject the idea of a pure democracy, I assume, on the basis of the present state of knowledge and an affection of the electorate. Would you care to examine that just a little more?

PROF. NAFTALIN: I'm sorry, Mayor. I don't quite get the question.

MAYOR MOODY: Well, you indicated that you would not like the system where we turned everything over to the people to vote on.

PROF. NAFTALIN: Right.

MAYOR MOODY: I'm a little puzzled about that, because it would seem to me that's a natural conclusion of the direction in which you're going.

PROF. NAFTALIN: I would just say again that I believe that the problems we face are extraordinarily difficult and are getting more and more difficult, requiring careful thought, analysis, and mediation. It gets more and more difficult and places greater and greater premium on leadership that is skilled, informed, and prepared to communicate with the public and to make tough decisions.

I believe that if we are to have effective and meaningful governance, we just can't throw it up for grabs and say come and express your sentiments, your prejudices, and your preferences. The government has to make hard choices and it should make them in a responsible and representative way. If it makes the wrong choices, it falls. Then the people should have the opportunity to try something else. It's going to be an imperfect relationship, but at least it keeps the system open in a way that I think our system is closed.

Take one complicated problem, like hazardous waste disposal. If we leave this problem to an initiative or referendum, we will never arrive at a policy. Government must make tough decisions.

Either we will stop producing hazardous waste or we will put it somewhere. Government must decide; there is no way for the people to decide. The function of government is to moderate, ameliorate, adjust the conflict between our private interests and public necessity, and this involves tough choices. We're not coping with our problems precisely because our government is not held accountable under our political system for making the decisions.

I'm proposing a system under which I think we might get cohesion and coherence and still preserve our basic freedoms. We're not going to solve inflation, we're not going to protect our environment and meet our other problems by putting them on the stump and having 200 million come and vote on them. That's my case in a nutshell.

To restate my basic premise, the centrifugal forces that are fragmenting our nation are going to continue. Our task is to find countervailing

forces that preserve our traditions of individual liberty and at the same time make it possible for us to govern ourselves.

I offer my ideas tentatively with no confidence that they're necessarily going to improve our situation. If they're not acceptable, I'm happy to hear other proposals. That's why I think the debate that the ACIR report is generating is an important one.

CHAIRMAN BEAME: Thank you very much, Professor. I appreciate your presence and your ideas.

PROF. NAFTALIN: Thank you very much.

CHAIRMAN BEAME: The next invitee is William G. Colman. Mr. Colman is known to everybody here. He is a private consultant, and was the first executive director of ACIR from 1960 until January 31, 1970. He's the author of a book on cities, suburbs, and states. Thank you very much for coming.

Statement Presented By

William G. Colman

Consultant

Thank you, Mr. Chairman, members of the Commission.

I have submitted a prepared statement, and in the interest of time, I'll just try to hit the highlights of that statement and make myself available for questions.* I will try to deal with four areas in my comments.

First, to give certain suggestions with regard to making the report that's before you more manageable and somewhat narrowing and focusing its scope.

Second, to point out some additional problems of intergovernmental relations that do not seem, at least in my view, to be addressed adequately in the draft report.

Third, to make some additional suggested criteria for sorting out the grant system and the functional and financial responsibilities among our major levels of government.

Finally, and in my own view most importantly, to recognize the need for basic Constitutional and statutory changes to redress growing imbalances in the structure of federalism, including provision of a stronger framework to tighten fiscal discipline within the national government.

Now, I want to second what Prof. Naftalin said about the quality of this report. I think it's very good. I'm going to be emphasizing criticisms here

* Mr. Colman's formal statement appears as Appendix B, "Reshaping the National Government's Role in the Federal System."

rather than singing praises, but the draft that's before us represents a lot of very good and careful thinking.

Now for the criticisms and suggestions. First, I think the report endeavors to cover too much. I think that it should concentrate on issues that are uniquely intergovernmental. Instead, in at least three areas the report endeavors to grapple with the problems of our whole political system and American politics in general, as the preceding discussion with Prof. Naftalin has illustrated. Those issues range far and wide and are much larger than the issues of federalism and the relationship among national, state, and local governments.

I would respectfully recommend for your consideration that those broader areas dealing with politics, the party system, the general structure of government, participatory democracy, and so on be deleted or narrowed to only the federalism aspects. Room would be created thereby for two or three areas that are really and strongly intergovernmental and that are not addressed in the report.

Finally, with regard to the report in general, there is an inconsistency between the rhetoric that's used to describe the damnable shape that we're in and to set forth the range of recommendations for the Commission's consideration, which are kind of pale if we're in as bad a shape as the report alleges.

I believe that we are in as bad, or nearly as bad, a shape as the report alleges. Consequently, I think there needs to be a greater emphasis on some really basic and fundamental questions about our federal system.

To go now to some two or three areas that need additional attention. I would suggest, and I won't make too much of this, but I think that the role of the private sector as it relates to federalism needs to be addressed in the report. The alternatives as presently given tend to present the options, as far as the national government is concerned, of either performing a function directly or giving grants-in-aid to states and local governments to have it carried out.

I would submit that the provision of economic incentives, the play of the marketplace through some stimulus or deterrents placed by government, and a greater degree of self-financing in a number of areas are alternatives that also should be considered whenever the question is considered of whether or not the national government

or any level of government is to enter a new field. The extent to which the use of the private sector can achieve all or part of the results that are striven for is the initial issue, and only after a negative finding do we consider what level or part of the public sector is to be given responsibility.

I would also agree strongly with the draft report's conclusion that the intergovernmental grant system is overloaded and overcongested, and that in quite a number of areas, transfer payments to individuals, firms, or other nongovernmental organizations need to be considered as an alternative to transfer payments to state and local governments. I could point to the fields of job training, housing assistance, and several others where that might be the case.

Mr. Chairman, and members of the Commission, a very important political fact is at the basis of this suggestion: the demonstrated inability time after time and year after year on the part of the Congress, and to a lesser extent of state legislatures, to legislate selectively among places. On the other hand, these legislative bodies (both the Congress and the state legislatures) have shown themselves much more able to legislate selectively when it comes to classes of people, the handicapped, the hard to educate, the low income, and so forth. This issue of targeting governmental assistance to places rather than to classes of people is a rather pervasive problem of the federal system today.

I have some comments in the statement about the disarray into which economic and fiscal indices in our government has fallen. Although very important, I won't go into those issues here; the Congress has some of them under consideration presently, including the use of the Consumer Price Index (CPI) versus the GNP deflator when it comes to adjusting Social Security benefits, veterans' benefits, federal retirement benefits, and so forth.

Let me move to another area that I think has gotten short shrift in the report and is truly intergovernmental. That is the role of federal and state regulation under the interstate commerce clause of the Constitution, including the preemption of regulatory authority by the national government. There are a great many federalism problems in the regulation area. Examples of those problems are given in my statement.

One current example relates to hazardous wastes, about which Prof. Naftalin was just talk-

ing but in another context. The Secretary of Transportation has published or is about to publish in the *Federal Register* a regulation that preempts to the national government the responsibility for regulating the interstate transportation of hazardous wastes. Now, I would not argue about the merit of national action in this field. But the very idea of preempting state powers under the interstate commerce clause by administrative fiat rather than by act of Congress goes, I think, far beyond the pale of what the founding fathers had in mind in delineating national and state powers in this field.

First, I think that among the alternatives the Commission might wish to consider in regulation is a Constitutional amendment providing that any preemption by the national government must be by statute, and that such statute explicitly state the intent to preempt so that you don't have decades and generations of litigation, with federal judges trying to fathom the intent of the Congress. In essence such an amendment would assure that any future preemption of regulatory power under the interstate commerce clause was explicit rather than implicit.

Secondly, a sorting out process is badly needed in regulatory fields, comparable to what is discussed in the draft report on the grant programs, and some criteria for this sorting out should be proposed. In this connection, let me refer you to a chapter of the 1955 Kestnbaum report dealing with this issue.

Thirdly, we need the enactment of some parts of the Ribicoff-Mathias bill providing for cost benefit analyses of new governmental regulations.

And finally, with regard to this terrible problem of crosscutting requirements in federal grants that is treated in the report, I don't believe it's sufficient to say, as the draft now does, that the regulatory agencies ought to come back to the Congress with some recommendations as to what to do about mitigating their own sins. I think that the Executive Office of the President needs to have a strong role in this. I realize that's very controversial. But there needs to be lodged, either in the Executive Office of the President or at some other point, the authority to lay down simplification proposals with regard to these crosscutting requirements, and have them go into effect unless they're vetoed by the Congress.

I believe that this is a better approach than the one in the current intergovernmental legislation

before the Congress for assigning responsibility to a lead agency. This lead agency business has been tried on many occasions, and it's very sticky to make work with any degree of productivity. Please keep in mind a cardinal principle of public administration: equals cannot coordinate equals!

I would suggest finally, Mr. Chairman and members of the Commission, some additional criteria with regard to this grant sorting-out process, as set forth in my statement. I would particularly encourage the Commission to formulate some new criteria, updated from those enunciated a quarter of a century ago by the Kestnbaum Commission, as to the conditions under which entry by the national government into a new field of enterprise would be warranted.

Now let me move—because I know the time is pressing here this afternoon—to my fourth major suggestion: that is, to address the Constitutional fundamentals of our federal system. Like a lot of the public school partisans say, "Let's get back to the basics."

There are several key provisions in the Constitution that constitute the very foundation of the federal system. One of the most important is Article V, which sets up the procedure for amending the Constitution. This is very important, ladies and gentlemen, because throughout our history, up until the present time, amendments to the Constitution have been initiated solely by the Congress. Under this approach, if any basic structural change is to be made in the Constitution with regard to the federal system, that decision has to be made by the folks at the center who have been centralizing this governmental system for the past 30 or 40 years.

There is another avenue for change provided in the Constitution, emanating from the bottom up, and that is the initiative of Constitutional change by the states. This approach causes members of Congress extreme pain. We are talking about the well-known section on state petition for a Constitutional convention to deal with a particular subject or subjects. Three times in the past two decades, a score or more of states have initiated an amendment petition—on legislative reapportionment, on revenue sharing, and now on balancing the federal budget.

There are three or four key questions on Article V that the Commission ought to address. It is hard to conceive of a study of the operation of the federal system that can duck them. I make no sug-

gestions here about which way the decisions ought to go. Question one is: Should the states continue to have the power to initiate amendments to the Constitution?

If your answer is no, they should not continue to have this initiating power, then you would need to make a recommendation for repeal of that clause in Article V. If they should continue to have the power, should it be strengthened or modified? Is the current provision in Article V the most desirable way for the states to have a role in Constitutional change, or should it be by some other means? Unless you decide that the clause in Article V should be repealed or modified, it would be very much in order for you to reaffirm the urgency of enacting the Ervin bill, which has been before the Congress for quite a long time and which sets up ground rules for handling state petitions for a Constitutional convention.

A second area of possible change in the Constitution for strengthening the federal system is with regard to the uniformity clause in connection with national revenues. The uniformity clause might well be amended to authorize state governments, local governments, and interstate compact agencies to piggyback on the federal personal income tax for financing projects of a strictly regional or interstate nature. This would provide flexibility in the pooling of regional resources for regional projects. Secondly, it would provide more flexibility to the federal government's own financing system, so that if the Congress wants to do something for Appalachia, it can do so without having to do it for the rest of the country whether the other areas need it or not. The Congress would be enabled to legislate and to fund programs on a regional basis rather than covering all 50 states, the District of Columbia, and Puerto Rico under a national program.

Finally, Mr. Chairman—and I'll close with this—Constitutional change of some kind is certainly warranted with regard to the whole problem of fiscal discipline. Again, the Congress has shown itself absolutely incapable, politically and substantively, in managing the national budget in a responsible way. Only once, I believe, since 1968 has the federal budget been balanced. Several times during that period you've had periods of full employment, flourishing economic growth, and general prosperity.

The draft report alludes to a Constitutional amendment providing for a Presidential item veto

in appropriation bills. This clearly is warranted. It is the same power that most Governors have now and that has been exercised very effectively. You see no efforts anywhere in the country to repeal those gubernatorial item veto powers.

Secondly, an amendment prohibiting a deficit except with a three-fifths or two-thirds vote of the Congress, or a majority vote if the nation were at war, has much to commend it. Extraordinary majorities are as old as the Republic. It takes a two-thirds vote to override a Presidential veto. In many local governments it takes an extraordinary majority to adopt zoning provisions contrary to master plans or to make emergency appropriations. In many states, certain kinds of actions must be passed by an extraordinary majority of the legislature. Such a Constitutional requirement would slow down the runaway growth of public expenditures, but it would also enable the Congress to incur a deficit whenever an extraordinary majority of its members felt it in the national interest to do so.

I would suggest also that the *Congressional Budget Act* be strengthened with regard to multiyear appropriations, the off-budget items, the loan guarantees, the tax expenditures, and the entitlement programs. If Congress is ready to bite the bullet, it can amend the *Budget Act* and bring these and other aspects of the budget and appropriation process under tighter control.

Now, these things that I have brought up, Mr. Chairman and members of the Commission, for the most part are neither original with me nor new. Deficit spending has brought this nation to the very brink of fiscal and economic disaster. More than half the states have called for a budget balancing amendment. Several of the serious suggestions in the draft report for decongestion of the intergovernmental transfer system become, unfortunately, largely rhetorical unless placed in a fiscal framework that is conducive to careful choice rather than an atmosphere of a continuing Congressional invitation to all and sundry in this nation to the proverbial free lunch.

Thank you very much, Mr. Chairman.

CHAIRMAN BEAME: Thank you, Mr. Colman. Any questions from any of the members?

MS. WALL: I would like to ask you what, in your own analysis, do you think are the reasons for this proliferation of grants in the past 15 years?

MR. COLMAN: I think one of the major reasons,

Ms. Wall, is that the Congress has not had to count the cost when enacting a new grant program. It has not had to make choices. So, when Congress has been faced with an array of choices, it's chosen everything, not the most urgent.

The ready availability of deficit financing is a very great factor in the proliferation of grants. There are various other reasons that are given in the draft report that are also highly contributory. The report points to what John Gardner has called the "Iron Triangle"—interaction among the bureaucracy, the Congressional subcommittees, and the special interest groups on the outside.

There are a number of other factors that are pointed out in the draft report. But I don't think that the fiscal side of this phenomenon and the ready availability of deficit financing as a primary reason for the proliferation has been given its due in the draft. That is the reason I am pressing on it here.

CHAIRMAN BEAME: Mr. Remy?

MR. REMY: Mr. Colman, in California we've had a redistribution of income through Proposition 13 and potentially another redistribution through Proposition 9, involving roughly \$12 billion. We built into our Constitution by those measures the super majority of two-thirds to modify that system.

In essence, people who I think are losing by the loss of services and other things are not the people who are distributing income. Yet, it's going to be very difficult to undo that system. In light of that, would you support the super majority redistribution of income?

MR. COLMAN: Absolutely. I do not support the Proposition 13 route, because it's aimed at the tax rate rather than expenditures. But I do look at an expenditure level tied, as many other states are doing, to the growth in personal income and so on—a sliding type of scale, but nothing as arbitrary and as drastic as Proposition 13.

In my own county (Montgomery County, MD), where I served in elective office for a while recently, I initiated, got on the 1978 ballot, campaigned for, and got passed a charter amendment requiring an extraordinary majority anytime that the budget increase amounted to more than the increase in the CPI.

Now, the CPI is not the best measure or benchmark. The GNP deflator would be much better. But I had the political problem of explaining what in the devil the GNP deflator was. So I dropped

that and put in the CPI. For FY 1980, the first time in about ten years, we adopted a county budget that did not grow faster than the CPI. It not only got five votes, it got seven on the seven-member county council.

Yes, I support extraordinary majorities for purposes of fiscal discipline, as long as there's a reasonable safety valve, and as long as you've got it tied to a proper measure. But to just slam the brakes on a particular property tax rate and freeze it at a numerical level is highly inequitable, and it produces a lot of bad results.

Now this is hindsight, but I believe that local governments in California made a real bad mistake in poor-mouthing Proposition 13 before it was voted on. They predicted all kinds of disaster, and the disasters did not arise due to the state bailout. Now the lid is about to go on at the state level. The services, probably, are going to be hurt in some cases. Even in California, I would argue that this fiscal austerity that now pervades the state, or soon will prevade the state, is going to force much tougher priority setting than local governments in California have had to face up to for a long, long time.

CHAIRMAN BEAME: Ms. Shalala.

SECRETARY SHALALA: I have only one question. In the report, state and local government is lumped together as one word. Do you think there's a need to sort out the federal role in relationship to state and local governments separately, as well as a need for some insights in relation to the two of them, typically?

MR. COLMAN: Yes, I do. The reason that I didn't get into that is that from time to time this Commission has made recommendations about the channeling of federal grants and the role of the state government therein. A number of years ago, it offered a provision that states could "buy into" federal programs, and if they bought in, then you would channel the federal money through the state with all of the policy and priority setting that goes with that. A number of local officials, particularly Mayors and so on, viewed this recommendation as rather infamous, as did certain Governors and state legislators.

Well, that is one of the examples. I think by implication you raise another question: If the Commission is going to look at some Constitutional restructuring, whether or not local governments should be named, recognized, and so forth, in the U.S. Constitution? That is a very good ques-

tion. There are strong arguments for and against doing that. I would like to see that question added to this list of Constitutional issues that I have been talking about.

REP. FOUNTAIN: Before he leaves, Mr. Chairman, I'd like to take this opportunity to welcome our friend, Bill Colman, back before the Commission. He and I started out together here. As a matter of fact, I was a member of the selection committee that picked Bill Colman as the first executive director. It was a unanimous selection, and we had a lot of highly competent people.

I think, as the years passed, we were all extremely grateful that we had a man of Bill Colman's caliber, because during that time, we felt that had we not had him, the Commission could not have survived. It had to have a strong, intelligent, wise counselor to begin.

I'd like to say it's just delightful, a privilege, for me to see him back. He has kept in touch with the work of this Commission. I would say that whether

you agree with what he says or not, any counsel he gives this Commission, or any part or branch of government, is worthy of objective, very careful consideration.

MR. COLMAN: Mr. Chairman, I appreciate the generous comments of Congressman Fountain. His generosity, I think, illustrates why he has been returned to the Congress so many times.

CHAIRMAN BEAME: I was just going to suggest that I'm sure all members of the Commission would join Cong. Fountain in what he said, but after what you said, it would look as if we are all looking for something.

MR. COLMAN: Thank you, very much.

CHAIRMAN BEAME: Thank you, very much, for coming.

Our next invitee is Prof. Daniel J. Elazar, director of the Center for the Study of Federalism at Temple University. He's editor of *Publius* and author of *American Federalism in the States* and *The American Partnership*. Welcome.

Statement Presented By

Professor Daniel J. Elazar

Director,
Center for the Study of Federalism,
Temple University

Thank you, very much, Mr. Chairman.*

It's a pleasure to be here. It's been some time since I have had that pleasure, and I am very happy, indeed, to have this opportunity. I only apologize for being a little late for the beginning of the session.

I came down from Philadelphia by Amtrak⁴—one of the classic examples of direct federal administration of a service, and perhaps one of the better ones when you consider others. It did not sway me, however, from my earlier position that that generally is a bad idea on the domestic side of things.

Indeed, Amtrak operates on a principle that seems to be a growing principle of government in the United States. It's like the old dart game in the pub—first you throw the darts; then you draw the bull's eye. Their schedule has been lengthened at least four times in the past year so that the trains will arrive more or less on time, and today we were still 40 minutes late.

Chairman Beame, I'm very pleased to be able to compliment ACIR on what I believe is an admirable report—one that certainly in its first section, closely reflects views that I have come to during my own work over the past 25 years in the study of American federalism.

* Prof. Elazar's formal statement appears as Appendix C, "Is the Federal System Still There?"

I have come to such conclusions, very sadly, from what was once perhaps a more optimistic look at the situation. Today one has the sense that one can only be optimistic in Daniel Boone's way—and I'll explain that in a minute—because I think that the American people and their representatives have lost their way, are lost in the woods with regard to what the federal system was intended to be, and what it should be.

Daniel Boone once was asked if he was ever lost in the woods. He looked around and said, "Well, I have never been lost. That would really not be my way. But once I was bewildered for three days." At the very best, I think we have been bewildered for a good while. I hope that perhaps this report will be a first step in dealing with this bewilderment.

I'm not going to repeat the valuable comments in the first section of the report with its analytical section and basic findings. As I indicated, they really square with my own findings and perceptions to a very, very great extent. In fact, I might restate some in even more emphatic terms, because I strongly believe that the cardinal question before us transcends the specifics of this massive effort: Whether or not the federal system in the United States still exists as such?

In that regard, I do have to raise some questions—in some cases minor ones, in some cases serious ones—about the recommendations of the report. Are we dealing with the right questions in the recommendations, and are the results likely to be the intended results?

I'll tell a North Carolina story very briefly to illustrate this point. It's about a North Carolina courtroom after the Civil War in which a case was being tried about a railroad train that killed a local farmer's cow. The farmer's lawyer, a local man, got up before the judge and described the virtues of this cow in great detail—how it gave milk, kept the family sustained in all the good things, and was very friendly to everybody. But it had been killed and the railroad was liable.

The judge was so moved by this argument—considering how important this cow was, how local this family was, and how much of a voting family it was—that he turned to the railroad lawyer and said, "You might as well not even present your case, because there's no point in it. I'm going to find for the plaintiff in this."

The railroad lawyer says, "Look, your Honor, I'm down here from the big city, and my employer

is going to ask me whether I did my job. At least you have to let me present my case so he can think I did my job."

The judge allowed that this was fair. So the lawyer proceeded to give what is known, I believe, as a Confederate speech, evoking shades of Jefferson Davis and Robert E. Lee, "the lost cause," and ending it all with a rebel yell. The judge, being a Confederate veteran, wiped his eyes and said, "If that doesn't beat all. Case dismissed."

Well, we can start with the Confederate speech, but in the end we have to come back and consider the cow and decide whether the cow has really been treated properly when we get right down to it. I have, indeed, some reservations and questions about that.

In this regard, I think I'll be neither as radical as my good friend Arthur Naftalin, nor as specific as Bill Colman, whose words, as Congressman Fountain has said, are always worth listening to closely. I will try, however, to tread some ground in between.

I believe that the essence of the situation is that we have crossed a line—from what once was considered to be the legitimate dimensions of cooperative federalism to an unrestrained process that goes every which way. Unlike the tone of the report and much of the discussion on the subject, however, I don't believe we would fall apart if this situation were to continue one minute longer. I think that there's every possibility for this system to continue and to work for the indefinite future.

The problems that may or may not transform the United States are not problems of the red tape surrounding grant programs, the proliferation of such programs, or the confusion of responsibilities in the narrow programmatic sense. They are not even the problems of ways. For example, *The New York Times* this morning reported a billion dollar overpayment in welfare payments on the part of the federal government. I don't know whether that's an accurate figure or not, but this is not even a problem of ways. (I have had the opportunity to study other political systems around the world in the last number of years, and believe me, we are far from being the worst.)

In nearly all cases, the changes raise one class of entrepreneurs to power instead of another class when it comes to making the system work. The people who learn how to make it work tend to adjust and to achieve the appropriate positions in the legislative and executive branches of the gov-

ernment and in the bureaucracies and the administrations of local government, provisional or state governments, and national governments. Those who do not, sit outside and in some cases rail against the system, saying that it's unworkable.

I don't think, therefore, that the immediate issue is whether the system is going to continue to work. The real question is larger, more important. And that is the question so admirably addressed by the first part of the report: Is this the right way to work? Is this the way to achieve the larger goals for which the American federal system was brought into being?

Here we come to a problem that I think is not one of structures or of procedures, but a problem of people. Here, in effect, we confront the essence of the American problem today—on a whole variety of fronts and not just on this one.

Although it may sound trite, I think we have to start from this point, even if we are frustrated in dealing with it. We are back to the Pogo syndrome: "We have met the enemy and they is us." Without dealing with that question—and I don't think we have the answers, frankly, that we would like to have—all the rest of the report becomes, in a sense, a series of palliatives—some of which are desirable, some of which won't make any difference, some of which, indeed, may be counterproductive. But they are still only palliatives.

I think the comment has been made—by Bill Colman just a moment or two ago—that once one finishes with the Confederate speech at the beginning of the report—and I don't say this in a substantive sense, but only in the symbolic sense—then one reads the recommendations and gets the impression of a large gap between the two. I think the situation has been analyzed properly and critically. We have stated that the problem is a serious one, but we have very little to say. Indeed, the closer we come to the heart of the issue, the less we really can recommend.

For example, the report properly comments on the important role that U.S. Supreme Court has played in this changing circumstance, adding that the Court has moved from being an umpire to being a spectator or a participant. But it's not only the Supreme Court; it's also lower federal courts. I'm not going to tell you some of the horror stories that I have heard from judges in describing their role, which I believe would clearly document this statement. Yet, there's very little that the report says on this matter. Maybe there's very little that

the report can say, given the mandate of the Commission about that problem, but as a result, we are left with something of an anticlimax.

Moreover, perhaps we have omitted the most important recommendation of all. I will get back to that.

I believe the heart of the issue is that somewhere along the line the sense that the federal government was Constitutionally limited has disappeared. The report states this, clearly. I think that it is correct. It is not only the Supreme Court seeking to take its Constitutional role seriously in the same way that earlier courts might have, but also the fact that the executive and legislative branches of the federal government have abdicated their roles as Constitutional interpreters. Nowhere in the Constitution or in the *Federalist*—which comments on the Constitution and is, shall we say, the authoritative commentary on the Constitution insofar as there is one—nowhere does it say that the interpretation of the Constitution is the sole and exclusive responsibility of the U.S. Supreme Court.

Quite to the contrary, in previous periods the President and certainly Congress have understood their functions to include preserving and protecting the Constitution. Indeed, it's in the Presidential oath. I believe there's a similar phrase in all other oaths of those holding high federal office in the United States.

Today we have a situation in which Presidents and Congresses will do anything and say, "Well, if it's unconstitutional, we'll let the court declare it unconstitutional." I don't have to cite chapter and verse to this distinguished body, but once that happens, there's no sense of Constitutionality and everything goes.

The natural history of this situation is easily traced. In the 1950s the federal government became actively involved in a supportive role in virtually every field of governmental endeavor other than the most utterly local. The 1960s witnessed a shift in that involvement—from supporting state and local initiatives to taking the initiative and requiring the states and localities to conform to federally established directions. This, in turn, led in the early 1970s to increasing federal preemption of state and local powers, and in the mid-1970s to the notion that the federal government was the policymaker by right; the states and localities were merely viewed as convenient administrative arms to be subjected to all kinds of

federal regulations, whether authorized by Congress or not. The report certainly addresses this situation.

By the end of the decade, we had reached the point whereby the states increasingly were being excluded by federal preemption, formal or informal, from fields that were considered their exclusive prerogative until relatively recently. It seems to me that this is the key change that has taken place.

Elsewhere I have suggested that at this time, when the rhetoric on behalf of federalism has grown—and the report admirably refers to this—we have a substitution of decentralization for federalism under the slogans of “creative federalism,” “new federalism,” or whatever. It’s been going on since the Johnson Administration. And it is a bipartisan matter. Indeed, I think there is almost no distinction between the parties on this issue. Anybody who reads the hesitations surrounding the statements of even the conservative Republican candidates, or the ringing generalities of even the most liberal of Democratic candidates, will see how little difference exists.

What these slogans masked was an attempt to change a noncentralized system—a system in which powers and functions were really dispersed, not separated. I think they have not been separated significantly since the beginning of the Republic.

In this respect I differ, I think, from the implicit assumptions underlying the report. In my view the old system was one of dispersed, noncentralized powers, and the new is one of decentralization. That is to say, a central government—formerly known as the federal government and still referred to as such in official documents—decides what shall be done at the center, and what shall be given out to the states and localities in the peripheries. Anything in the peripheries, by definition, is peripheral; therefore, it cannot command respect or talent or interests or long-range concern. It can only be treated as one treats branch offices—that is to say, is it working well or isn’t it? Is it productive or isn’t it, based upon a series of measures that are derived from one place or another?

The interesting thing is that this is not noble decentralization. There are those who advocated the change because they wanted noble decentralization for noble reasons. They thought that the states and localities really weren’t doing well, and that a strong federal hand was needed. But what

did we get? We got people. We got people who do what people normally do. What came out was a kind of perversely arranged system. Vulgar decentralization would not be too strong a word for it—maybe even vicious decentralization.

In other words, Presidents and Congresses increasingly acted on the basis of the following principle of decentralization: “What I or we can improve upon, we will do; what is likely to cause us loss or pain or bring dissatisfaction on the part of our constituents, we will give to the states and localities to do.”

That is a normal human reaction in a variety of situations. We cannot fault people for being human. It is for that reason that we established the Constitution in the first place—to deal with human frailties and failings that affect and afflict us.

The end result was, of course, the kind of unedifying controversy that arose during the energy crisis of the past summer. The President was trying to stick it to Governors with the powers, indeed, the necessity, to control prices, set allocations, and so forth. This was explained on the grounds that he was being a federalist and wanted to give responsibilities to the states. But the Governors said, “No, this is a national responsibility, and the President should keep it.”

Having given up the Constitutional theory of federalism, and replaced it with a half-baked theory of decentralization (under whatever name), we have come to a natural conclusion, which, of course, any one of the founders of this Republic, federalist or antifederalist, would have predicted, simply on the basis of being a fairly intelligent judge of human nature. Beyond that, I think we have discovered something else. This will be my last general observation before I try to make a few recommendations. My formal statement cites some other examples.

We have reached the point where even the best arguments on behalf of a greater federal role have become problematic. If all this centralization had led to the desired improvements that originally were touted by its advocates, perhaps even those of us who are committed federalists—who believe that the federal system is one of the fundamental bulwarks of liberty, who support it for that reason and not because of vested interests, who still believe that liberty remains a principal goal of the American experiment—even we might be prepared to pay the price. Alas, the true record is now emerging.

Again, I give you only some immediate examples. The *New York Times* of March 8, 1980, includes an article on the increase in traffic deaths in 1979, which quotes Howard L. Anderson, the recently retired Federal Highway Administration associate administrator for safety: "Much of our present highway design criteria is based on what is now an obsolete design vehicle [the large automobile]. . . Concrete median barriers which safely redirect the two-ton and larger vehicles have shown a disturbing tendency to cause the subcompact car to roll over."

Those of us who are witness to the defacing of miles and miles of highway with ugly concrete barriers, destroying green median strips, at untold costs because the federal government required that change if the states were to continue to receive highway funds, are now faced with the spectacle of those barriers serving as killers rather than the safety purposes for which they were presumably designed. It is important to recollect that those barriers were being erected in the mid-1970s, after the energy crisis of 1973-74, and precisely when the country was being pushed by other federal agencies—quite properly, in my opinion, if not sufficiently—to shift to smaller cars.

One also can talk about the deinstitutionalization policy mandated upon the states. The assumption, of course, was that the best would happen, that the communities would rise up and care for the deinstitutionalized. Now we know this is not the case; there have been a spate of news articles on this in recent weeks. Once again, the assumption that we would get perfection was the enemy of the good.

One can forgive all the well-meaning people who are involved in making these mistakes. None of us can foresee the unanticipated consequences of our acts. I would hate to be called accountable for every decision that I made, nor would I expect anybody else to be accountable in that sense. One cannot forgive them, however, for arrogating to themselves and to the federal government a presumed omniscience that they did not have—all at the expense of the federal system.

So here, I submit, we have a federal government unrestrained in all three branches—one in which the Constitutional issues are never raised and are considered irrelevant by those who presumably have taken an oath to preserve, protect, and defend the Constitution.

Where does that leave us? If we're to accept Alexander Hamilton's minimalist definition of a federal polity in *Federalist Number 9*,

Simply. . . an assemblage of societies or an association of two or more states into one state. The extent, modifications, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members be not abolished; so long as it exists, by a Constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states or a confederacy. . . .

then we can be confident that we still have a federal system.

If, however, we modify that definition with Madison's in *Federalist Number 14*, which describes what the American federal system should be:

The general government is not to be charged with whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects, which concern all the members of the Republic, but which are not to be attained by the separate provisions of any. The subordinate governments extend their care to all of those other objects which can be separately provided for, but retain their due authority and activity. . . .

then we have much to worry about indeed.

We have long since encroached on the Madisonian definition, which if one notes carefully, limits national intervention to those objects that concern all the members of the Republic, but which are not to be obtained by the separate provisions of any. Lately we've been saying that any little thing, because it doesn't concern all the members of the Republic, must be done by the federal government.

Education, for example, concerns all members of the Republic, but under this definition, and according to the founding fathers, it was held to be separately attainable by each state—yea, by each locality—acting separately. It's not simply the national interest, but the national interest that can-

not be attained by separate provisions of any of the constituent units.

We have long since encroached on that stand. The fact is that we are now encroaching on the Hamiltonian definition by indirect means—with federally mandated commissions to implement the latest federally supported fads in governmental structural reform, which are likely to become the concrete barriers and deinstitutionalization programs of tomorrow, and federal executive overrides of legitimate state laws to expedite this project or that.

What would I recommend? Permit me to discuss this for a minute or two. Here, unfortunately, the report and I diverge in our prescriptions. The range of options offered in the report is, in my opinion, incomplete. Indeed, the most important option is missing.

I repeat, the most important point to be made is that the old palliatives will not work. Nor will transferring welfare, health insurance, and social insurance programs to exclusive federal control with the concomitant expansion of a bureaucracy already too big at specific points, even if its total size is no greater than it was 30 years ago. From the perspective of federalism, that will only provide further reason for turning public attention to Washington, something which the report explicitly decries.

Even the case for transfer rests on an unproven assumption. Moreover, in today's climate, such a transfer or any other transfers will simply strengthen the centralizing tendencies—which the report has presented so well—by knocking out the last prop and of maintaining a semblance of the old federalism—namely, the still accepted idea that domestic social functions are primarily the province of the states, and if no longer theirs exclusively, are at least to be treated or handled intergovernmentally. I would be very careful before we knock out that last prop, unless we are confident that other props have come to take their place.

Indeed, the fact is that it is precisely those social program areas which in the United States are taken for granted by many as being naturally national. In most other federal systems, they are naturally intergovernmental, with the programmatic burden falling on the intermediate planes of government, the equivalent of our states.

I would submit that only a restoration of Constitutional good sense can save the situation. Most

of the conditions described in the report—such as the prevalence of individual policy entrepreneurs, state and local lobbies, iron triangles, intergroup pressures—are endemic to American political life and are not likely to be altered by anything that we do. They can only be stopped or restrained by Constitutional barriers, as they have been in the past. What is crucial is which Constitutional barriers are there to stop them.

A campaign to restore those barriers is the only hope that we have. I'm going to recommend a campaign for public education. That must be the last desperate straw, but I think we are down to it. We need to develop a constituency that looks for those barriers; that allows a Congress to say, "Sorry, it's a real urgent problem, but it's not in our bailiwick;" that allows a President, when asked on the campaign trail what he is going to do about the street sign that's down, to say, "That's a wonderful question, but ask me about Afghanistan."

Such a campaign must begin by developing an understanding of what those Constitutional barriers are, and an interest in restoring them. Such a campaign can only be undertaken, it seems to me, by people in institutions disengaged from the interest group struggle.

Those whose main concern is the system—the Whigs of our time—must launch it. The American people and their representatives may not have the interest or the will to respond to such a campaign, especially in a time of alienation, cynicism, and self-indulgence, part of which, of course, are reflected in the very way in which the system has been operating. But those of us who have these Whiggish tendencies can do no less than try.

Somewhere in the report it talks about restoring power to the sovereign citizen. That is precisely the problem. In the founding of the United States, Americans became a sovereign people. We did not develop sovereign citizens, each of whom can go about and do whatever he or she chooses. Indeed, it is the reinterpretation of the notion of popular sovereignty and its transference from the people to individual citizens that has destroyed the very sense of public in this country, that makes it so difficult to talk about the kind of public educational campaign, which I would submit is the only way to deal with this problem.

Specifically, then, in addition to such a political education campaign to advance the understanding of Constitutional federalism, we should

probably do relatively little. We have been, perhaps, too activist, too interested, too unrestrained.

What we can do is rewrite certain aspects of federal legislation that have interfered with the possibility of a more state-centered political system. We can perhaps restrict the scope of conditions attached to federal grants-in-aid. And we can cull federal grant programs to drop those that do not deal with any substantial federal question (along the lines of the Madisonian definition), or that are explicitly directed toward the institutions of state and local government. By being directed to those institutions, they make those institutions themselves dependent upon the federal largess and federal policy direction to far too great an extent.

If we can achieve these great although seemingly modest-sounding reforms, then perhaps we can help along an increasing public-mindedness on the subject—with some even more active steps later.

Forgive me for taking so much time. Thank you very much.

CHAIRMAN BEAME: Thank you.

Questions?

SEN. ANDERSON: May I ask one, Mr. Chairman?

Dan, when you were talking about your education program on restoring federalism, I wasn't quite clear whether you thought that some Constitutional change to better spell out the functional responsibilities of the federal and state governments is required, or whether it's a straight matter of education.

PROF. ELAZAR: At this point, I would say it's a straight matter of education. I don't think that one can undertake Constitutional change unless one has an educated community that can consider those changes.

I don't think we should ever rule out Constitutional change. That is why we have an amendment clause and a long appendage of various interpretations. I think the need now is for a constituency, for a public, that understands the Constitution before it contemplates whether or not changes are necessary.

SUPERVISOR CUTLER: I raised the same proposal with Prof. Naftalin about education. The point is that we need to be educating people.

I'm intrigued by that. I agree with it. I just couldn't help but play with the scenario where the people who would develop that educational program came together to decide which viewpoint they were going to put forth, and how they were going to do it. He mentioned using television. I just cannot imagine—maybe it's the hour and the gloomy day—I can't imagine any coming to a consensus about what should be contained in such a program—the National Advertising Council sitting down to draft a Sesame Street-type, "Know Your Government" program.

I guess I sense that people are giving up; for example, *The Empty Polling Booth*—if you have not read it, I recommend it to you; it will ruin your day. But with the growing influence of single interests, especially interest groups affecting voting behavior, and other people sitting it out, I just wonder if you or Prof. Naftalin have given any thought to the kind of format that it might take.

I guess I still believe—and this may sound really utopian—that only by finding really good people to run and to present the case through candidacies are we going to get people believing again in the system. I'm not sure they would even listen to it if you put it on television. Maybe you have some more hopeful thoughts.

PROF. ELAZAR: I don't think we are ready to put it on television, so I agree with you in that sense. Starting from the other side, people would not listen to it. Again, I think that Prof. Naftalin made a very strong point and a correct point about leadership. That is to say, leadership following Gallup polls or other polls is not leadership. Leaders have to lead.

This is the time, I think, when leaders really do have to lead. There are times when the public is sound enough, perhaps, in its own mind so that leaders could rely on such devices. But this is not one of those times. Indeed, it's more and more Eric Hoffer's old statement that seems to ring true—"only a people that don't need great leaders get them."

I would say then that the first task is not to use television, but to start a public education campaign—not about what the prescriptions should be, not even about what the federal government should do and the states should do in that specific sense, but simply to deal with the Constitutional dimensions of the question.

There are some clear-cut Constitutional prescriptions that in application lead to a lot of varying opinions. But at least the prescriptions are fairly well accepted for what they are.

I said at the beginning, "Lord help me for recommending a public education campaign." I consider it to be a desperate step, even though I'm a teacher by profession. If you have to launch an education campaign, it already means that the problem has gotten extraordinarily severe. And I think it has. But perhaps the initial steps need not be, and should not be, as I said, to jump to the television before we have some sense of what we want to say.

CHAIRMAN BEAME: Gov. Babbitt?

GOV. BABBITT: I'd like to try a little defense of the Commission's position on transfer payments. I'd do it by adding to Mr. Madison's criteria another one, where we'll say that we should leave at the local level—and, indeed, ought to transfer to the local level right now—all the programs in which there is, or reasonably ought to be, broad-based community interest and support. On that basis, I would send back education; I'd send back the arts; I'd send law enforcement back tomorrow; probably highways, and waste water treatment. All those things that benefit the whole constituency.

My concern about transfer payments is if you send welfare back to my state, there may not be any welfare. It's a small constituency, and it's historically not been of interest to the large constituency. I sense that that is the criteria that lies at the divergence here.

PROF. ELAZAR: I have two responses. One is a very narrow, pragmatic response. That is, assuming there's going to be a two-way transfer, as you're suggesting (and the report comes down hard on a transfer of income maintenance, health insurance, and welfare to the federal authority), then it gets very blurred with regard to transfers that should go in the other direction.

My own guess is that the transfers, if they come about at all, would only go one way. The whole history of our experience in the past one-and-a-half generations demonstrates that quite clearly. So this is a strictly pragmatic consideration.

But beyond that, there's another interesting issue to consider. Maybe there would not be the constituency for welfare that would exist for other programs. By the way, I think what is really quite clear is that after the 1935 federal act was passed, there was almost no resistance to implementing

a state-centered intergovernmental program. There was an argument over whether or not there should be patronage appointments in the welfare offices. There was an argument over how high the benefits should be. But no state tried to abolish the program.

This situation was the old federalism, as it were—when the federal government sometimes reflected a national consensus, which somehow had to be stated nationally, as well as expressed through the individual states and localities. So I'm not entirely convinced that welfare should be transferred to Washington.

Beyond that, if, at the same time, Social Security had been set up on a federal-state basis—so that the whole income maintenance framework would have been as it is in other federal systems (routed to the states with federal funding or supplements)—then I think the states would have built themselves up to deal with the range of such problems (just as their counterparts abroad have), because they would have touched the whole community that way.

I would argue that we had the opportunity. We may not want to do that at this stage of the game with Social Security. It probably wouldn't even be considered. But sooner or later we're going to have some kind of national health insurance, I believe, and we have an opportunity for doing this with health insurance. I think it would be a useful thing to do in this area. I think it would provide a better health insurance system than any of the proposed options, which essentially are built upon direct federal control. I don't know if this is the place to go into that, but I'd be happy on another occasion to do that.

CHAIRMAN BEAME: Gov. Dalton.

GOV. DALTON: I was interested in what you had to say, and what one of the other speakers had to say, about forgetting the polls, being a leader, and doing what you think is right. I don't know what the other members have experienced in their states, but certainly in my state, anybody who doesn't conduct a poll before he starts running for statewide office better stay home. Do you really believe that you can ignore what the people think and still get elected, that you can do that in America today?

PROF. ELAZAR: I don't think I said that. If I did, let me correct that.

No, I don't think you can. I'm not even sure if you can ignore it and get reelected. Unfortunately, many of the Governors who have been leaders—

and Governors are a particularly vulnerable group; Mayors too, perhaps a little less so, because they've had a little less opportunity—have suffered as a result. That is a sad commentary on the present attitudes of the American people. And it has to do with some things the report highlights.

As I mentioned, today we talk about sovereign citizens instead of sovereign people. Now, it's easy for me to sit here and say what has to be said. It's much more difficult for somebody who is on the firing line like yourself to have to confront the reality of it. I'm perfectly aware of that. But I think the job, at the very least, involves having to say it.

Sooner or later, we must note what Thucydides warned of in his Peloponnesian Wars: "At every crucial case, the people of Athens chose the popular course rather than the necessary course, which lead to their destruction."

Maybe Thucydides' formula is going to be ours. But if that doesn't happen—and I have faith in the American people that it won't—at some point

people are going to say, "We want some leadership. We need it because we don't have the answers to this. And we can't even judge what the answers are, because we're not privy to everything that we need to do so." At that point some people hopefully will come along who will be real leaders, and we'll say, "By golly, he's a leader." That's nice, you know. It hurts for a moment, but it's like when you put medicine on a sore: It feels good afterwards.

CHAIRMAN BEAME: Thank you very much.

GOV. DALTON: I think you can be a leader, but without relying entirely on what the polls show you. I think if you get too far out front from what the people are looking for, you're going to be retired.

PROF. ELAZAR: I couldn't agree with you more.

CHAIRMAN BEAME: Our final invitee is Neal R. Peirce, a contributing editor of the *National Journal*, a nationally syndicated columnist, and author of several books on state governments.

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Statement Presented By

Neal R. Peirce

Syndicated Columnist,
Contributing Editor,
National Journal

This afternoon I will not be taking issue with the Commission staff's basic analysis of the present-day ills of the American federal system. You are fortunate to have on your staff David Walker and other persons who have watched, analyzed, and red-flagged the evolution of American federalism in the past few years—more and better, indeed, than any other group in American society. In that sense, the experiment of having an Advisory Commission on Intergovernmental Relations has proven its worth.

Part of my admiration of the staff work is also gratitude, I might add. Late last year, for instance, I was able to write a four-part series on the mounting problems of American federalism by relying to no small degree on ACIR materials and staff wisdom.

Now, having said a complimentary word or two about your Commission, I will also suggest this afternoon that ACIR is going to have to take at least one very bold, innovative, high-visibility step if it hopes to gain the broad national attention necessary for any serious consideration of reforms in the federal system. But more of that in a bit.

Your briefing paper defines two extreme schools of thought on possible change—either “the system requires drastic Constitutional change” or “the system is already responding.” The paper implicitly rejects both; I would too. I read over “Alternative Strategy A—Incrementally Improve the Present Intergovernmental System,” and found it terribly weak tea; about equivalent to the status

quo. On the other hand, "Alternative Strategy C—Toward a Second Constitutional Convention" seems both unnecessary and far too likely to raise fears. The very idea of a fresh Constitutional convention causes people to quake, as we learned in the debate over a balanced budget amendment to the Constitution. Moreover, I'm not sure that the specific reforms a convention might adopt—short of a parliamentary system of government—would make all that much difference in the year-to-year functioning of federalism.

The most interesting ideas are in what your staff paper calls "a more surgical school of thought that calls for fairly drastic change" in specified areas, or "systemic reforms, short of total overhaul." I'll comment for a moment on those reforms brought up in the paper, and then irreverently add a couple of my own.

Recommendation 1 is for some sorting out of the grant system by tradeoffs. This is a bully idea, and one with which I assumed ACIR already identified itself. The present-day "marbleization" of government functions does make it virtually impossible for a citizen to know which level of government can be held definitively responsible and accountable for any function. The management efficiencies flowing from a sorting-out process could also be quite impressive. And I find it quite healthy to acknowledge that some functions, such as income transfer, must be federal, while others, education included, are intrinsically local. Sorting out should be attractive to elected officials, because they would have clear, unimpaired authority over an activity assigned to their level of government. Of course, they could also be held more clearly responsible, so that some might shun the privilege of clear authority!

Recommendation 2 is for strengthening the internal processes of the national government and includes the Presidential authority to institute categorical consolidations subject to Congressional veto, sunset legislation, clearer definition of "national purpose" in new legislation, reducing the number of Congressional subcommittees and subcommittee assignments, and fiscal notes on new bills. All are stellar ideas.

At a federalism conference held at the Woodrow Wilson International Center for Scholars a couple of years ago, Elliot Richardson noted that when he was Secretary of Health, Education, and Welfare, only a handful of persons from Capitol Hill and the executive branch even began to un-

derstand HEW's 300 categorical grant programs—from adult education to the needs of handicapped children to research funds to combat leukemia—well enough to weigh seriously the claim of one program against another.

The problem, said Richardson, is compounded at the state and local levels, where programs are actually delivered. Their profusion, he added, "makes a responsible, democratic system impossible" because Congress, in its "distrust" of Mayors, county executives, and Governors, has insisted on "the piling up of reporting requirements, systems of oversight and audit, and creating new agencies regardless of whether they make sense."

Richardson alleged that because of proliferating subcommittees, "the claims on the time of the Senate and House have multiplied to the point where Senators and Congressmen don't have time to discharge their duties." That, ladies and gentlemen, seems to me to be a pretty serious charge. Yet when I have spoken personally with members of Congress, all confess to an enormous overload in their work.

Recommendation 3, on the Supreme Court as a neutral arbiter, sounds alright to me, but I would be amazed to see the Justices taking a new turn in decisions because of a recommendation by any outside source.

Recommendation 4(a)—to strengthen the party system—I hope might be possible. We are suffering because of the atomization of the parties, the proliferation of single-purpose interest groups. We could stand a strong, fresh infusion of party discipline.

I shudder at your alternative Recommendation 4(b), to increase public participation in national policymaking, because the specifics therein—a national initiative and referendum process, for instance—would be destructive of representative government in this country. I am distressed that the staff has listed preservation of the current electoral college as one way to strengthen parties, and a direct popular vote for President as a way to strengthen citizen participation under 4(a). As you may have concluded from my remarks, I believe strongly in American federalism. But I think that using the electoral college as a way to preserve federalism is foolishness in the extreme. Federalism has suffered a lot with the college in place. If the electoral system blew up in our faces, federalism would be blamed, because there would be no rational way to explain an election outcome

that defies the popular vote plurality—where votes in Wyoming for some reason are more important than those in California or New York. I believe the electoral college should be abolished to strengthen federalism and our political parties. I would totally reject the method in which it is treated in your staff paper and suggest you simply excise all mention of the electoral college in this debate.

On the other hand, I would say “right on” to your Recommendation 5—“a more assertive response on the part of states and localities to the overloading of the system.” There are clear-cut, sound, specific proposals in the paper: for states and localities to assess short and long-term fiscal costs and benefits of federal programs with a view to withdrawing from those found to be cost-benefit negative; a joint state-local legal defense foundation to fight off coercive elements of federal policy; identifying in two years 25 federal grant programs for recommended termination; and so on.

Concurrently, I would hope states and localities would move rapidly to make their national-level associations independent of direct federal funding. There is a kind of soapbox hypocrisy about state and local spokesmen proclaiming their independence, state sovereignty, and so on, and then not even coming up with the modest amounts required to run their national-level lobbies and research arms.

So much for the specifics of the staff paper. Again, let me say it contains many most valuable ideas. Let me now add two of my own before closing.

One I would label “negotiated federalism.” It seems to me that the present forms of federal aid to states and localities undermine accountability in two ways. The categorical, with their countless rules and regulations, weaken the accountability of state or local officials to their own constituencies. But block grant programs, to the extent they aren’t tied down with various “strings,” offer no assurance that important national goals—the sustenance of cities, land conservation, social equity—will be respected by the recipient governments.

A possible alternative lies with active negotiations between the federal government and its state partners, and concurrently between states and localities. In a major grant area, such as economic development or social services, for instance, the federal government might invite a state to draw up a comprehensive general plan, consolidating

elements now found in multiple categorical programs, and reflecting that state’s own particular needs and priorities. A team of federal officials might then negotiate with state officials: to agree on the state plan as reasonably responsive to national policy goals, to set down benchmarks for state use of the federal funds as well as use of its own funds in a complementary manner, and to establish in later years that the state is living up to the performance standards it has agreed to. There might possibly be a “carrot and stick” funding formula, with states that live up to their negotiated goals receiving a bonus in subsequent years’ funding, while those that do not are penalized to a degree.

Such a process would allow substantially different plans in different states or regions of the nation, recognizing the vast social, economic, and political differences among states. It would permit the targeting of funds and effort to areas of legitimate need in states, obviating the flow of money (as the present categorical dictate) in ways that distort state or local priorities and generate the growth of unneeded state and local bureaucracies. The negotiation of a clear-cut state plan would permit citizen groups to hold state governments clearly accountable for the use of federal funds that they are receiving.

You may say, the federal government still maintains the upper hand under such a system of negotiated federalism. Ultimately, of course it would—and so it will until the states say “no” to federal funds and determine to collect their own revenues. From this Commission’s own strong support of federal revenue sharing, I gather that even you are unwilling to contemplate such a revolution.

Finally, I believe that if reform is going to achieve any significant advance in the 1980s, there must first be a convocation of the Constitutional partners to identify the problems in the system and to chart out paths of reform. There is presently a glaring absence of any highly visible “neutral” forum in which the key partners in American domestic policy—the Congress, the President, Mayors, county executives, and Governors—can meet to thrash out problems in the operation of the federal system. White House meetings, Congressional hearings, and meetings of Governors or local officials all have obvious, severe drawbacks as a neutral setting in which a relaxed conversation and planning for the future can take place. And the meetings of this Commis-

sion, as its history has shown, simply do not attract enough public attention.

Yet we see the crying need, implicit in all ACIR research, for some form of negotiation between the partners, addressing areas such as sorting out of functions, forms of negotiated federalism, and other ways to return clearer authority to all levels of government.

So I believe serious consideration should be given to a convocation of the federal partners, requiring the personal participation of the President himself, Congressional leaders, and state and local government leaders, early in this decade. The meeting should be planned to last several weeks. It would be an ideal forum to start some hard-headed bargaining and trade-offs, to see just which functions of government should be the responsibility of what levels within the federal system.

Your own Commission would be the ideal group to do the background studies and staffing. The product of the convocation should be an agenda for reform of American federalism. Out of this, a principal goal for the years leading up to the 200th anniversary of the Constitution in 1987 could be the effort to implement the reform agenda. Indeed, to underscore its importance and relationship to the Constitution's bicentennial, the convocation might well be held in Philadelphia rather than in Washington.

Any political realist knows the odds are high indeed against getting such a convocation called, and then against any proposals it might make to change existing power relationships. But who can argue, as your own studies have shown so clearly, that the fundamental nature and operation of American federalism has been radically altered by the events of the past 20 years? And, if that is so, what could be more appropriate than to have the highest leaders of the branches and levels of American government gather together to examine and debate those changes and hopefully map out an appropriate reform agenda?

At a minimum, the convocation would provide a bully forum for the airing of the problems of American federalism. At a maximum, it could be the first step—perhaps with subsequent meetings during the decade to check on progress—toward a number of timely, important, systemic changes.

No lesser proposal from your Commission is likely, in these confused and hectic times, to generate a sufficiently high level of public attention. What could be the harm, I would ask, if ACIR

were to formulate a proposal for some type of Constitutional convocation, to throw that idea out like bread upon the waters, and to wait for citizen groups and political leaders to take the bait and start the process of reform moving forward on a fast, visible, and thus potentially effective track?

These are my remarks. I thank you.

CHAIRMAN BEAME: Thank you, very much.

SEN. BOE: First of all, let me compliment you, as I have before, on your filling the void in national publications on state and local government. We are appreciative of it.

I must take issue with you on at least one of the points you covered. I go back to Bill Colman's testimony. I don't know if you were here.

MR. PEIRCE: Yes, I was here.

SEN. BOE: I guess I asked the question or made the comment that it was a rather cavalier manner in which you threw out the idea of a Constitutional amendment. Other than by the Congressional method, as I understood your remarks, you are ignoring that part of the Constitution that provides the state legislatures with an opportunity to initiate amendments because of the actions that you see down the road that this unbridled, unprincipled body might or might not take.

MR. PEIRCE: Might I interject. I was saying that others are very fearful of a convention. I'm not so sure whether that is a terrible idea. I believe probably if you had a Constitutional convention that came up with a bunch of kooky ideas, they'd be turned down.

SEN. BOE: That is the safeguard. My point is that the 75% ratification process of whatever the convention does is a tremendous safeguard. Yet, I would say that the very heart of the reason we're here discussing this report is that the system isn't working, or at least isn't working very well anymore. It very well may take a tremendously visible Constitutional convention, whether the proposal is ever adopted or not, but the visibility of that Constitutional convention idea. And it would have to be called by the state legislatures, because I think Congressman Fountain would agree with me that it wouldn't be called any other way.

So I would take issue with the tenor of your remarks with respect to the possibility and the probability. In my mind, before this century is over—in fact, much sooner, whether it's the balanced budget or some other item that comes up under this agenda that we're on now—that there

will be a Constitutional convention called by the state legislatures.

MR. PEIRCE: That is an interesting point. When the balance-the-budget amendment was being pressed by a number of persons, including yourself, it was made quite clear to everyone that the convention would consider that one matter alone. If one wants to have a convention that is going to look into the broad nature of the system, I guess it would have to be proposed in that manner. That would raise, I suppose, more fears at the outset, although it presumably would gather more attention than any other step you might take.

SEN. BOE: I think most of us have always predicated the call for the Constitutional convention upon Congressional enactment of the Ervin bill, or some type of a Congressional guideline that presumably would be tested Constitutionally before a convention came. I think that's a given for most of us, at least for what I would call the responsible group of legislators and others who have been calling for this. A call then would be predicated upon that issue, decided prior to the Constitutional convention being convened.

CHAIRMAN BEAME: Lynn Cutler.

SUPERVISOR CUTLER: Now, I'm just wondering, in your idea of negotiated federalism, I can think of one program that begins to get to a little bit of what you're saying—Title XX on social services. Here each state must devise a plan with certain federally stated goals and prove performance. I think it begins to get it, but we are leaving out a layer.

What provision do you see for the further negotiation between the state and locals as to the fulfillment of those goals; how that happens? How far down does the carrot and stick go? From our perspective, which Dan said a little bit earlier about federal mandates to the states, what the states don't like, they pass to the locals. I submit that all this budget cutting is simply passing inflation down to many of us at the local level who are faced with looking people in the eye. What do you see as the intergovernmental play between the states and the locals?

MR. PEIRCE: I haven't thought it out fully, to be honest with you. If the state has gone through the exercise of laying down a fairly well-thought-out plan, and been required to go through the crucible of negotiating with its federal partners and showing how that plan is consistent with the state's own funding and priorities, the state would

then be in a better position to deal with the local governments, talking to them about what their priorities are in their particular localities. The objective of such negotiations would be less duplication of effort than exists in the picket-fence federalism, multiple categorical program approach. But I haven't thought it out more fully than that.

CHAIRMAN BEAME: Mayor Moody.

MAYOR MOODY: I'm sure you have some awareness that the "negotiated investment strategy" is at work in three American cities. While it's too early to draw any conclusions about that process, with the single exception that it's a very difficult process, it does offer some of the hope that you suggest. And it also offers the opportunity for all local governments to negotiate with the state, with the federal government, and with each other.

I would indicate that I'm mildly optimistic that the process offers some of the things that you think it might. One of the difficulties, however, is that the negotiators at the federal and state levels are seldom in a position to keep their commitments. They must always trot back and get approval. I don't know yet what all this means. It certainly indicates, however, that the process would be a difficult one, simply because of the great number of jurisdictions in which the federal government would have to negotiate, unless they give a greater authority farther down the line.

That brings up the question then of whether national purpose is maintained. It's a comment, only, and I don't have any conclusions to draw from it or any point to make, except that it's happened.

MR. PEIRCE: I find the negotiated investment strategy a most interesting development, and I've been writing about it. It seems to me that it is quite different from all of the more grandiose proposals that anyone might make here, including my own convocation idea.

Instead, the negotiated investment strategy moves quietly, surreptitiously, and potentially or hopefully effectively. It seeks to undermine all of the categorical and all the federal rules and regulations by burrowing in at the local level, if possible, without Congress or other major national interest groups noticing until it's gone a long a little ways, creating some rationality in terms of priorities and where the funds flow at the local level, and hoping that gradually that would create

a beachhead of rational negotiation that would not be overturned. I'm afraid, however, that the negotiated investment strategy may also prove politically vulnerable when those who are the guardians of specific federal categorical aid programs realize that what the federal negotiator is being requested to do is to wash out the effective intent of one or more federal programs in order to let something larger and more important go forward at the local level.

MAYOR MOODY: The Feds have rather quickly recognized that, that's right.

MR. PEIRCE: But that raises the other interesting questions. Are those laws real, and can those regulations and all those programs really be effectively applied?

CHAIRMAN BEAME: Any other questions? Ms. Wall.

MS. WALL: A brief comment. The call for public education reminds me of 20 years ago at the close of Eisenhower's Presidency, when we went through a program at the local level called "Goals for Americans." This was what everybody was to do in their local community. Now, I don't know if that was the beginning of this disastrous turn

that we have taken since or just what, but it was a broad-based educational effort. Kind of interesting to think about in terms of what you were getting at.

MR. PEIRCE: Was it related to overall governmental systems or overall goals of society? I must confess I had forgotten about it.

MS. WALL: Well, it's really long ago. I don't think I could be very specific except to say that experience at the local level involved much of the community.

SEN. ANDERSON: It produced a major chapter on federalism.

SUPERVISOR CUTLER: I just have to say, Neal, that I really did not anticipate such harassing as for you to walk in here and suggest that the National League of Cities and the Governors' association and the county officials and the Mayors wean themselves away from federal funds.

CHAIRMAN BEAME: I want to thank you very much for your ideas and suggestions. I again want to thank all of you.

We will break until tomorrow.

(Whereupon, at 5:00 p.m., the meeting was adjourned, to reconvene on Friday, March 14, 1980.)

The Federal Role in the Federal System: Analysis of Basic Findings, Key Questions Raised, and Recommendations*

FINDINGS

In this study, “The Federal Role in the Federal System,” the Commission has identified drastic changes in the system that have occurred during the past two decades. These changes, when combined with some key standpat political attitudes and practices, have produced neither a dual nor cooperative brand of federalism but an increasingly dysfunctional form of federalism. Contemporary intergovernmental relations, our research shows, have become more pervasive, more intrusive, more unmanageable, more ineffective, more costly, and above all, more unaccountable.

The Signs

The prime symptom of this deepening dysfunctionality is the continuing tendency to “intergovernmentalize” seemingly everything that becomes a public issue—and, increasingly, everything becomes a public issue. Its signs are everywhere, as

* The following draft version appears as it did in the “Docket Book to the Witnesses” prior to the hearing on March 13, 1980, and to Commission members on March 14. When it has been revised in light of Commission deliberations, it will be the final chapter in Volume X of this study—*An Agenda For American Federalism: Restoring Confidence and Competence*.

previous chapters have documented; hence, there is no need to detail the degree to which:

- the old line between private and public concerns has been obliterated;
- the very real distinctions between federal and state-local matters of the early 1960s have been lost;
- state and local budgets have become ever more fiscally dependent on grant revenues;
- state and local programs are involved in intergovernmental fiscal transfers, conditions, and court orders;
- state and local regulatory processes are circumscribed by federal statutory and court-sanctioned constraints;
- state and local policies and administrative processes have been affected by the Supreme Court's extraordinary expansion of what is "absorbed" within the orbit of the Fourteenth Amendment;
- federal grants-in-aid have been "used" during the 1970s to serve national regulatory—not promotional, supportive, or additive—purposes;
- state and local governments have been "used" to implement wholly national policies; and
- the federal government has been "used" to further what not so long ago would have been a wholly local or, at best, a state concern.

The details of these manifestations of incessant intergovernmentalization are variously chronicled in the 11 volumes that comprise this ACIR study.

Some Underlying Causes

The underlying reasons for them are highlighted throughout the seven case studies and the two background volumes, and they are analyzed in some depth in the two previous chapters. To recapitulate briefly, it has been the collapse of certain basic constraints in the Constitutional, fiscal, and political areas that have nurtured these troublesome trends, along with the rise of relatively unfettered individual policy entrepreneurs—usually but not always in Congress, each pushing his or her own favorite program initiative from conception to enactment—that has spurred greater

federal involvement, but most always in a regulatory or grant assistance role, not in a direct servicing capacity.

Judicially, the Supreme Court has ceased to be the "umpire" of the federal system, and is more accurately described as either spectator or player. From an intergovernmental perspective, this is reflected in its fairly steady adherence to the old New Deal Court's passivity regarding Congress' seemingly unbridled right to regulate commerce, even for mandating purposes, and Congress' willingness to use it in areas undreamed of before 1960. Only a few decisions of the 20-year period suggest some sensitivity regarding the states' police power and only the *National League of Cities* case suggests an actual judicial willingness to curb the commerce power.

This absence of an umpiring role is even more dramatically reflected in the federal judiciary's unwillingness to check Congress' power to spend for the general welfare, even when some of the conditions attached to grants in the 1970s have amounted to coercion or arbitrary intrusion into the administrative and decisionmaking processes of state and local governments.¹ The Tenth Amendment's basic protection in the grant-in-aid area, the judicial theory still holds, is the presumed capacity of the state and localities to say "no" to a grant.

The third major manifestation of a nonjudicious approach to federalism is reflected in the activist stance of the High Court in its extraordinary expansion of what is subsumed under the Fourteenth Amendment. This includes not only broad interpretations of the "equal protection" and "due process" clauses, but also the steady "absorption" within the amendment of most of the federal Bill of Rights.²

Fiscally, the federal government began the period with a much stronger revenue system than that of the states and the localities. Buttressing the federal fiscal strength in the 1960s were its broad-based income tax, the responsiveness of this levy to conditions of growth and inflation, the growing acceptance of deficit spending, the separate system for financing social insurance, and the ability to shift funds from defense to the domestic sector. These combined to produce the notion in the 1960s that "the resources are there, if only we have the political will to tap them." The myth of the federal cornucopia thus was born.

Politically, the changes in attitudes, in the

mode and extent of participation, and in the process itself over the past two decades probably have been the most dramatic. American political history suggests that the major parties either singly or in combination have provided their own self-serving cluster of constraints on the expansion of the federal role in the federal system. Political forces and factors, after all, made questions of federalism a perennial source of campaign and Congressional debate from Washington to Kennedy, and they combined to keep the federal intergovernmental role a comparatively modest one clear through to the mid-1960s. The Constitutional constraints, after all, had collapsed by the late 1930s, and the fiscal were largely conditioned by the political. Yet, over the past decade and a half, most of these political curbs have disintegrated. Witness the:

- steady decline in the strength of local and territorial interests in the governmental and political processes;
- rapid rise recently of a host of newer types of interest groups based on socio-moralistic (anti-abortion, etc.) and demographic (black, Hispanic, Indian, women, youth, and senior citizen) causes, alongside the traditional economic (business, labor, farmers, doctors) and programmatic (highways, welfare, public health, etc.) groups;
- increased efforts on the part of state and local governments to lobby Washington, even as their own traditional strength at the national level was growing weaker, thanks to this growing array of programmatic, socio-moralistic, and demographic groups that are vertically organized and usually aligned against them;
- steady erosion in the capacity of the two major parties to “absorb” and “reconcile” all of these interests in primaries and in national conventions assembled;
- steady deterioration of the capacity of the political branches of the national government to “pacify” this plethora of pressure groups, especially in a period of ostensibly “democratic” and “open access” Congressional “reforms” and of a populist Presidency;
- steady decline since the early 1960s in the voting differences between Democrats and

Republicans in the Congress on federal role and grant-in-aid issues; and

- the slow, but clear change in the manner that Congress handles grant and grant-related legislation—from a largely partisan and ideologically dominated, usually executive branch initiated, yet geared to reaching a rough consensus process in the 1960s, to a functionally oriented, Congressionally dominated, cooperative process in the 1970s.³

Some explain all this in terms of the Goldwater candidacy in 1964 and the resultant Johnson landslide victory and the overwhelming Democratic margins in the 89th Congress. For the first time, an activist Democratic President could rely, if need be, solely on northern party members. The product by 1968 was over 240 new aid programs and the concomitant piercing of dozens of heretofore impregnable program “legitimacy” barriers.

The causes of these developments, we find, are more varied and more complex. Preeminent among the forces shaping these developments has been the most complex of all our national institutions: the Congress. As Table 1 shows, only Congress played a consistently crucial role in each of the seven program areas reviewed in the Commission’s case studies. The Congressional role was particularly significant in the originating phase of the policy process, for in the initiation of programs, no other actor eclipses the individual Congressional entrepreneur or issue activist. Our findings belie the notion that Congress acts as a great rubber stamp for Presidential, bureaucratic, or interest group initiatives. In fact, in many instances the opposite would be far closer to the truth.

Hence, increasingly over the past 15 years, legislation encompassing every conceivable subject matter has spewed forth from Capitol Hill. Because of this hyper-responsiveness, everything reaches the national agenda: there is little ordering of priorities (the SALT debate rages side by side with debate over federal funds for the repair of local potholes, and jellyfish control succeeds while welfare reform fails), and there is little time or capacity for understanding the consequences of legislation. Policy is made in a “pass now, pay later” atmosphere.

Other key contributing factors include the basic shifts in popular attitudes regarding what is a

Table 1

MAJOR ACTORS AND FORCES IN POLICY DEVELOPMENT AND GROWTH

Functional Fields—ACIR Case Studies

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

¹ Food stamps only.

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

Source: Advisory Commission on Intergovernmental Relations.

public issue and the need for an activist governmental role, especially on the part of the federal government;⁴ the progressive narrowing of partisan differences in the Congress on federal role questions (even as the political rhetoric on the campaign trail seems to get even more polemical and punitively anti-Washington); the ease with which almost every interest group in the 1970s could establish a Washington office and the equal relative ease with which many of them "get a hearing" before Congressional committees and administrators; the pulverizing in the 1970s of the already heavily pluralistic power structure of the Congress, thanks to reforms and a soaring rate of retirements; and the emergence of a totally demythologized Presidency, especially in his roles as policy initiator and program manager. All of these have combined to erode most of the older political constraints that kept the bulk of domestic governmental issues and programs completely out of the Washington arena and to reinforce Con-

gress' role as the master architect of the current anarchic pattern of intergovernmental relations.

What flows from this, of course, is a national party system that no longer can perform its twin historic missions—of serving as an interest group broker and of building (or preserving) national consensus. It leads to the quip that, "The Democratic Party is no party, but merely a collection of antagonistic interests held together for election purposes by categorical grants and their conditions." It leads to a total confusion in official role-playing. Presidents act almost as frequently in a mayoral or a gubernatorial role as in a national Presidential one, and Congress plays municipal and county council, not to mention the state legislative role, as often as it acts as a national deliberative body. All these political changes have combined to produce a process wherein incessant and intrusive intergovernmentalization is the inevitable result.

The Crucial “No Change” Area

Even with the drastic changes in the Constitutional, fiscal, and political areas, the dysfunctional traits of contemporary American federalism would not be as pervasive and as potentially dangerous as they are if continuing elements of “standpatism” also were not present. Where then have there been no basic changes, when seemingly all there has been throughout the 20 years is incessant, if not mindless, change—and always, of course, under the banner of progress? The critical cluster of static attitudes and practices include:

- no basic change in the size of the federal bureaucracy and in the Presidential and Congressional desires (regardless of party or ideological persuasion) to keep it relatively small, despite an ever mounting number of assignments given to it;
- no basic change in relying almost exclusively on grants-in-aid as the primary instrumentality for carrying out the national government’s prime domestic servicing responsibilities;⁵
- no basic change, as the above would suggest, in the national government’s direct servicing role from that of 1960 (or of 1940, for that matter);
- no basic change in the Congressional and Presidential view that relying on state and local governments and administrators even for the most “national” of programs is “administratively convenient,” cheap, a curb on federal bureaucratic growth, and clever politically;
- no basic change in the dominance of the old public administration approach to intergovernmental program management—that with adequate conditions and sanctions, state and local administrators can be rendered properly accountable, hence a part of a “chain of command” whose pyramidal peaks are in Washington;
- no change in the belief of liberals that with the right formula or the right administrator (depending on the form of the grant), equity and “targeting” can be achieved; and
- finally, no basic change in the belief of most state and local officials and their representational groups in Washington that federal aid

is a first-rate way of alleviating their fiscal pressures and that with a few more “push ups” and “jogs around the track,” especially if a President or a key committee chairman is exercising with them, federal aid can be had without federal conditions.

These continuing attitudes and conditions, along with their very real policy and political implications, have complemented extreme individual Congressional activism, the passivity/activity dichotomy of the federal judiciary, the earlier comfortable condition of the federal Treasury, and the almost blinding flowering of fragmenting interests in “explaining” the critical contemporary state of the system. In their own way, these attitudes and practices have permitted the impression that the system still functions pretty much as it did in the Eisenhower and Kennedy years. But anyone who can count the number of state and local bureaucrats, of federal programs, of federal mandates and across-the-board conditions attached to federal grants, and of instances where the federal courts are actually running certain state and local operations, knows better.

Where Stands the System?

In combination, these attitudes along with the changed political and earlier economic conditions, noted above, have led to an overloading of the intergovernmental system. The most national of concerns (income maintenance, health insurance, and welfare) are still intergovernmentalized and the most local of matters (potholes, rat control, libraries, police officer’s pensions, jellyfish control, and the like) have become intergovernmentalized. The most major as well as the clearly minor are all part of what cooperative federalism now encompasses. Yet, in truth, there is precious little cooperation and a lot of inevitable conflict. Cooperation after all rests on shared goals and mutual trust—rare commodities in this period of controversial and conflicting program goals, creeping conditionalism, and chronic buckpassing.

A rather fanciful form of federalism, then, has emerged. Basic policies in most program areas appear to be made in Washington, either by the Supreme Court or the Congress, and their implementation is achieved through decisions, orders, mandates, conditions, regulations, and the lure of

federal loot to 12 million state and local civil servants. All this is fanciful, of course, because the subnational governments, their elected officials, and bureaucracies are capable of a highly differentiated response to all this—in terms of compliance, cooperation, participation, and conflict.

Equally fanciful is any notion that the federal aid system as a whole protects the interests of the needy or equalizes levels of public service. The logrolling style—whether explicit or, more often, implicit—through which most grant programs are adopted simply precludes any careful “targeting” of fiscal resources. “What’s in it for me?” is the watchword for Congressmen (and their folks back home), for special interest lobbies, and for bureaucrats as well. Questions of equity are largely ignored in the scramble for benefits. If they were a genuine concern, direct federal performance of the function at least would be raised as a serious issue, but the last time this occurred was in the mid-1930s.

Matters of operational efficiency also are seldom brought into focus, either before or after the fact. Potential benefits are usually dramatized; potential costs are frequently ignored. Not only are many intergovernmental programs poorly designed to accomplish their stated objectives, most are not “designed” at all; their objectives are seldom specified in operationally meaningful terms. Furthermore, few programs are evaluated once they are in place, and fewer still are modified or scrapped in consequence. Above all, perhaps, no real debate has occurred regarding the questionable administrative assumptions on which grants management rests.

But where does this leave the electorate? *Confused and alienated!* The system has become largely incomprehensible even to those whose job it is to have an overview understanding of it. No wonder the average citizen, who is skeptical of politics and politicians but who still trusts our basic governmental institutions, is endlessly frustrated by the complexity, confusion, and not-so-occasional corruption of the system. If in a democratic federal republic, the citizens—not to mention its key administrators and prime politicians—are unable to comprehend the most basic aspects of policy formulation and implementation (other than in terms of personality appeals, “pork,” and rhetoric relating to leadership), where stands the system? If all of the norms relating to a functioning system—again, effectiveness, efficiency,

equity, accountability, and any operational notion of national priorities—are lost from sight, the same question arises: Where stands the system?

Summary Commission Findings

In light of these various findings and our interpretation of them:

- The Commission concludes that the current network of intergovernmental relations has become dangerously overloaded, to the point that American federalism’s most trumpeted traditional traits—flexibility and workability—are critically endangered.
- The Commission further concludes that this threatening condition largely has come about as a consequence of a rapid expansion in the overall scope, range of specific concerns, and coercive character of the federal role in the federal system, thanks to the collapse of various political, judicial, and fiscal factors that formerly disciplined the national political process.
- The Commission obviously recognizes that while certain governmental activities necessitate an intergovernmental approach, it believes that the almost unbridled tendency on the part of the national government and the political process that sustains it to thrust nearly all of the nation’s most national domestic concerns, as well as an ever-multiplying number of parochial and even private concerns, into the intergovernmental arena reflects a feeble faith in the problem-solving capacity of the various partners in the federal system.
- The Commission believes further that this permits the national government to avoid some of its most basic domestic governmental responsibilities, while cluttering up its agenda with issues that more properly belong on that of a municipal or county council, a school board, or a state legislature.
- Finally, the Commission concludes that neither equity (in the sense of giving due attention to jurisdictions or people in need), nor administrative effectiveness, nor economic efficiency, nor above all political, electoral, or administrative accountability are furthered by this tendency to intergovernmentalize

practically all domestic questions, nearly all subnational governmental functions, and the bulk of the national government's own civil governmental obligations.

KEY QUESTIONS RAISED BY THE RECORD

How then is the system to be rendered more functional, more accountable, and more comprehensible? Both the distant and the immediate past, as well as the present, provide fairly clear reasons as to why this now is the prime issue facing American federalism. We think we understand the dynamics of contemporary change, the prime actors, and the consequences of our recent actions. Yet, we see the future no more clearly than anyone else. The foreign policy imponderables, the domestic political and economic uncertainties, the course of the Supreme Court (and perhaps a possible switch in time to save far more than nine, to revise the old saying) are all problematic. But the present condition of American federalism is clear to us. Our diagnosis is that it is seriously ill.

Sensible prescriptions, however, are not easy to come by, but the following probe of seven of the basic problems generated by these developments can facilitate and focus the effort to identify the proper cures. In this probe, Commission members are urged not only to weigh the merits of the specific proposals advanced under each of the topical areas, but also to add your own recommendations. Empty blanks are left at appropriate places for your additions.

Problem 1: The Federal Grant System Is Overloaded

The national government offers state and local governments nearly 500 separate grant programs. These range in size from nearly a dozen large multibillion dollar programs to nearly three dozen small programs of less than one million dollars, each at the national level.

It is estimated that approximately 63,000 of the nation's 80,000 state and local governments receive one or more such grants. Many states and large local governments receive so many different federal grants that they have hired specialists sim-

ply to apply for them and keep required records. Grantsmanship has become a recognized profession. Many private consultants make a living at it.

Federal grant programs are available for a very wide range of programs. They encompass such fields as agriculture, community and economic development, education, employment and training, fire safety, food and nutrition, health, housing, law enforcement, occupational safety, social services, transportation, and welfare. Many of these fields are traditional provinces of the state and local governments. Federal entry has occurred primarily in recent decades. Now, the federal government simply is into everything.

Although federal grants are voluntarily accepted by state and local governments, as a legal matter, the practical reality is that many must have the federal funds to make ends meet. This necessity for state and local participation in the federal aid system has been used by the federal government to multiply the effects of its policies throughout the nation far out of proportion to the amount of federal funds and personnel committed.

As a practical matter, the federal government has taken over policy leadership in virtually every functional field in which it offers aid, despite the fact that its funding is predominant only in the income maintenance and housing fields. General national policies on matters such as civil rights, opportunities for the handicapped, and protection of the environment—to cite only a few of 30-odd such requirements—are attached to most grants, along with each grant's own program requirements. Thus, even when a grant is small, the national policy component is large. For example, the federal government provides only about 8% of public primary and secondary education funds in the nation, but has heavy influence over nearly every public school.

Administratively, federal grants too often frustrate effective and efficient public service by the state and local governments. Some are so narrowly drawn that what needs to be done is ineligible for funding. Most bear so much red tape as to waste time and resources that should be spent on program objectives. Many are spread so thinly and targeted so poorly that they do not meet their objectives.

Political accountability often is confused when program dollars, policymaking, and administra-

tion are shared so widely. Under these conditions, no one is sure exactly who should be held responsible when the aided program falters. In fact, no single body or official can be tagged or expected to remedy the difficulty single-handedly.

In short, the seemingly endless proliferation of aid programs into areas wholly national (like social insurance programs) and wholly local and even private, as well as to activities that inevitably are of an intergovernmental nature; the expansion of eligibility to reach directly practically all of the categories of subnational government; the advent of more conditions and more national policy requirements; the mounting difficulty of any level or unit within a level to keep track of, not to mention oversee, this system; and the public's growing disenchantment with a system that seems out of control—all suggest an overloaded condition.

Some feel this can be corrected by strengthening the processes in the Congress and executive branch that bear directly on the enactment and reenactment of grant programs and regulations. Others focus on the need for a strong, pervasive, persistent, and popularly as well as public interest group-supported drive for grant consolidations. A third group argues strongly that incremental procedures and even grant mergers are inadequate and call for a dramatic decongestion of the intergovernmental arena. In its view, the functional assignment pattern has become almost totally botched up by the federal aid system, and some sorting out of programs and activities is mandatory if any semblance of an authoritative, sensible, national government and of state and local governments with some genuine discretion is to be resurrected.

To still other observers, the forces that have created the present federal aid system seem irreversible. Increasingly, the nation's economy, sense of community, and debates on public policy issues have been coalescing at the national level, they contend. Airplanes, the national press, television, mass marketing, influential books, the ascendancy of national interest groups of all types, plus other technological and social factors, they feel, are unifying the nation and pushing increasing numbers of public policy issues to the national level where they receive greater attention. This attention comes from the national media, entrepreneurial members of Congress, national interest groups, and the national Administration which is backed up by a professional and well-paid bu-

reaucocracy. This array of potential support for national programs, they point out, often is more effective than that found at the state or local levels. It is not likely, then, in the view of these observers, that the grant system could be made less pervasive. Perhaps its growth may be slowed somewhat, as the new federal fiscal constraints now on the horizon become stronger and as the potential range of federal aid fields is filled, but actual decreases in money amounts or the range of program concerns would not be expected.

Middle-range reformers, however, are less pessimistic about change and claim that real opportunities for improving the grant system could be expected in the realms of program simplification and consolidation. These would reduce some of the administrative burdens now associated with federal grants, and allow greater policy discretion to be exercised by state and local grant recipients.

Critics of these incrementalist and consolidationist approaches believe that, as difficult as it may be to accomplish, considerably more is needed. The simplification and consolidation approach, even with a heavy dose of federal consultation with grant recipients, they assert, will not be enough to convert the present array of grants into a smoothly functioning, manageable system of federal aid. They propose, therefore, a major reassignment of functions, in which the federal government would take full responsibility for certain functions now aided (like welfare, health insurance, and other social insurance programs), while eliminating the federal role and aid in a range of petty grants where the federal contribution is minor, in those programs where the administrative costs are disproportionately high, and/or in those that are funded at \$100 million or less. Such actions not only would reduce the scope of the federal aid, but also would substantially increase the size of the federal budget and bureaucracy, as beneficiary payments are brought up to equitable and reasonable levels and as federal "administration" becomes something more than checkwriting. At the same time, state and some local bureaucracies could be reduced. Moreover, the funds freed up at the state and local levels would be available for the range of activities now aided by hundreds of project and small formula grants. On balance, proponents of such functional trade-offs believe then that the grant system and the nation would be well served by this decongesting strategy.

Despite these differing views about what is realistic and what is necessary, the present overload on the grant system cannot be ignored. The following proposals have been suggested for consideration by, and counsel from, Commission members:

For the Congress

- Full federal assumption of financial⁶ and administrative responsibility for public assistance through the creation of an adequate, uniform, national income support system;
- Creation of a nationally financed and administered system for health, unemployment, and other social insurance;
- A substantial reduction through termination in the number and range of other federally aided activities, with the prime candidates coming from approximately 466 programs that account for less than one-fifth of all federal grant outlays, from those functional fields in which the federal share of governmental expenditures at all levels is less than [5%] [10%], from those programs that lack appropriations, from those whose annual appropriation amounts to \$100 million or less, and/or from those whose authorizations bear no relationship to their stated objectives;
- A drastic decrease in the number of separate authorizations for federal grants through large-scale consolidation;⁷
- A "sunset" review process providing for the automatic termination of grant-in-aid programs at regularly scheduled intervals unless their performance evaluations indicate that reauthorization is warranted;⁸
- _____;

For the Executive Branch

- More conscious use of the executive budget process to reshape and restrain grant programs and to propose appropriate consolidations;
- Use of Presidential reorganization powers and of grant consolidation authority that Congress should provide to help streamline the grant system;
- _____;

For the Parties

- Address the problem of overload in the federal grant system in their platforms;
- _____;

**For the State and Local Governments
and
Their National Associations**

- Participate in developing grant merger proposals;
- Participate in developing grant tradeoff proposals through identification of low-priority programs;
- Working out on a state-by-state basis an equitable formula for allocating any funds freed up as a consequence of a significant functional tradeoff with the federal government;
- _____;

**Problem 2:
Future Congestion of
The Intergovernmental System**

The accomplishment of certain fundamental program trade-offs or decongestive strategies, as described above, does not preclude future re-congestion. Indeed, the undisciplined state (or perhaps more accurately, the lack of parameters) of the national policy process itself is, in large part, responsible for that congestion. Hence, since the 1960s, and continuing at a vastly accelerated pace through the 1970s, the federal role in the federal system has grown not only financially bigger, but also functionally broader and systemically deeper. As was illuminated in the case studies, much, if not most, of this "growth" has been accomplished through legislative and administrative processes that result in generally incoherent intergovernmentalized aid systems.

A major cause of this incoherence has been the increasing prevalence of individual policy entrepreneurs, particularly in Congress, and their fragmenting effect upon the policy process. Relatively unencumbered by any procedural or political constraints at this point, this sort of policy entrepreneurship tends to produce reams of unrelated

piecemeal legislation—responsive in the short run to particular interests or constituencies but often oblivious in the longer run to the broader national interest. Large policies and, even more significantly, small programs are increasingly born in a “pass now, pay later” atmosphere. Moreover, such piecemeal legislating tends to spawn expedient, “quick fix,” and seemingly “cheap” implementing solutions. Ostensibly, grants-in-aid are both easy answers and proven methods of garnering political support.

Yet, these implementing “solutions,” involved as they are in an almost unfathomable array of “national” undertakings—large and small, important and trivial, of national significance and of local interest—have done less to solve problems than to create the over-intergovernmentalized, unaccountable, inequitable, and inefficient condition that faces today’s increasingly alienated American public.

Whether or not any procedural or structural remedies can be devised is, of course, highly uncertain. Process and organization are, by no means, mere sterile managerial problems. Quite the contrary, they are the most political of issues. Procedural strictures, some allege, make even the most genuinely compelling and coherent policies difficult to enact. And, individual policy entrepreneurship—attached as it increasingly is to unprecedented numbers of near-autonomous subcommittee chairmanships—is power not readily relinquished.

Nonetheless, the need for such remedies is clear. Hence, to stem future intergovernmental congestion, legislators need mechanisms through which they may formally appraise the real national purpose and future intergovernmental impact of laws before enactment. Furthermore, they need processes that assure fuller consideration of alternative implementation techniques, and they desperately need ways and means of identifying related preexisting legislation, the altering or expansion of which might achieve the same purpose as proposed new legislation.

Moreover, inasmuch as institutional fragmentation, legislative overextension, and lack of internal discipline have contributed to the intergovernmental policy morass, the structure of Congressional committees requires some functional rationalization and jurisdictional coordination, while the number of subcommittees and

subcommittee assignments requires some absolute numerical reduction.

Nor are Congressional processes and structures alone in need of reform. Policy development and procedures for reviewing the national policy “fit” of proposed legislation in the executive branch have also lacked discipline and effectiveness. Finally, the governments and interests who lobby for additional small programs and the public and party system that condones them all have contributed to the current state of disarray.

Hence, to help prevent future congestion of the intergovernmental system, the following reform proposals, addressed to the institutions and actors in the policy process, are advanced for Commission consideration and debate:

For the Congress

- “Sunrise” legislation which would require formal Congressional consideration of: (a) the “national purpose” or “national objective” of new legislation, (b) alternative implementation mechanisms for achieving that purpose, and (c) the possibility of altering or expanding related preexisting legislation when it may be used to achieve the same purposes;
- Prohibition against enactment of any program or policy [except research], the federal funding of which would amount to less than [\$100 million];
- Adoption of binding rules of germaneness with reference to committee and floor amendments;
- Reduction of the number and autonomy of Congressional subcommittees in related functional fields;
- Reorganization of functionally related subcommittees together under appropriate functional committees;
- Reduction in the number of subcommittee and committee assignments per member of the Senate and House;
- _____;

For the Executive Branch

- Strengthened “foresight” procedures for reviewing legislation proposed by the Congress or agencies;

- Extension, by Constitutional amendment, of the President's veto authority to apply to specific items within legislation;

● _____;
_____;

For the Courts

- In relevant cases coming before it, more balanced Court consideration of the terms and conditions of federal grants-in-aid in light of the "inducement" vs. "coercion" test;

● _____;
_____;

For the Political Parties

- Adoption of measures that would strengthen the parties as forums for the regular consideration of major policy issues;

● _____;
_____;

Problem 3: Excessive Federal Expenditures, Taxes, and Debt

The post-Proposition 13 "tax revolt" has focused nationwide attention on the growing fiscal role of governments at all levels. Many believe that current levels of federal expenditures, taxation, and debt are too high. Federal spending has increased sharply since the mid-1950s, even in constant dollar terms, with most of the increase involving payments to individuals and grants-in-aid. As expenditures have risen, tax and debt levels necessarily have increased as well.

The normal process for the control of federal outlays is the annual budget. In recent years, efforts have been made with some degree of success to improve budgeting in the executive branch (PPBS, zero-base budgeting) and on Capitol Hill (the Congressional budget process). Some believe that these innovations have considerable promise, particularly in the view of popular demands for federal fiscal restraint. Yet to others, the budget process seems wholly inadequate, especially for any restructuring of intergovernmental programs and of the federal role in the system.

Hence, several proposals have been advanced for Constitutional or statutory restraints on federal tax levels, expenditures, or deficits. Most of these would tie spending or tax levels to some measure

of national income or would enforce budgetary balances, and thus impose external discipline on the nation's political actors. A more modest reform strategy calls for the "indexation" of the federal income tax. As matters stand, the progressive structure of the income tax forces taxpayers into steadily higher brackets automatically, without overt Congressional action.

Others contend that the real problem is not the overall size of the federal fiscal role, but poor federal performance. What angers voters, they believe, is not so much that government costs too much as that it provides too little for the money. They note that public opinion polls have supported high and rising levels of expenditure in most major functional fields for many years, and that American government is a low-cost operation compared to that in many other nations. Furthermore, they argue, artificial restraints would thwart efforts to stabilize employment and price levels through macroeconomic policy.

What is more generally conceded is that outlays in many program areas have grown unexpectedly and perhaps excessively, regardless of budgetary priorities. Indeed, three-quarters of federal spending is now beyond effective control through the annual budget and appropriations process. Entitlement programs, including federal payments to individuals (among them Social Security and Medicare) and open-ended grants to states (including Aid for Families with Dependent Children and Medicaid) make large tax cuts, a balanced budget, or the creation of major new federal spending programs difficult, if not impossible.

Although uncontrollable spending has risen as a proportion of federal outlays with each passing year, the problem is not a new one. Traditional reform efforts have focused on reducing outlays by reducing the number of beneficiaries or controlling factor costs in the principal fields of concern. Thus, there have been continuing efforts to reduce the welfare rolls through tighter management, social services, education and training, work requirements, and public service jobs—all largely unsuccessfully. In health, cost control has been sought through regulation, planning, and the encouragement of new forms of medical practice—again, to this date, largely unsuccessfully. Some now view welfare reform and a unified system of national health insurance as essential tools in the cost control struggle.

More recent proposals attack the entitlement

problem in toto, rather than on a function-by-function basis. The *Congressional Budget Act* provided some procedural restrictions on the creation of new entitlement programs, but has not limited outlays for those already in place. Other possibilities include making most entitlement programs subject to the annual appropriations process; the elimination of automatic cost-of-living adjustments; and a movement toward multi-year, rather than annual, budgeting.

All of these proposals face common political difficulties. Entitlement programs are very popular in Congress and among the large number of people who benefit from them. Efforts at control have been, and will be resisted. Especially during a period of general budgetary constraint, entitlement programs have strong appeal because they assure continued funding. Finally, the design of payment programs for individuals that do not utilize the entitlement approach is conceptually difficult.

If entitlement spending is not contained, however, federal tax increases may be more likely than cutbacks. In recognition of the increasing number of elderly, the Congress presently is exploring additional revenue measures, including a value-added tax.

Hence, to control excessive federal expenditures, taxes, and debt, the following reform proposals have been advanced for Commission consideration:

For the Congress

- A strengthening of the Congressional budget process;
- Constitutional or statutory tax, expenditure, or debt limitations;⁹
- Indexation of the federal income tax;¹⁰
- Control of health and welfare spending through programmatic reforms;
- A fully federally financed welfare program¹¹ and national social insurance;
- Further controls on the creation and funding of entitlement programs;
- _____;

For the Executive Branch

- A strengthening of the zero-base budget process;

- Improving multiyear budgeting efforts;
- _____;

For the State and Local Governments and Their National Associations

- More effective control of costs in open-ended federal aid programs;
- _____;

Problem 4: Imposition of Excessive Costs on State and Local Governments

The "pass now, pay later" atmosphere referred to in the description of Problem 2 above means that other levels of government, unexpectedly, do much of the "paying." The continual and even increasing use of seemingly "cheap and easy" grant and regulatory mechanisms may, in fact, impose very "expensive and difficult," though initially hidden, costs upon state and local governments.

Nor are these hidden, often massive, costs part of some insidious plot on the part of the Washington establishment to weaken or financially overburden the nation's Governors, county officials, and Mayors. Rather, the very lack of planning and analysis, which expedites the consideration and passage of national policies and in which broad idyllic goal statements pass for solutions, is to blame. Indeed, it might be said that the political process provides considerable incentives for exaggerating the potential benefits of new programs while minimizing their potential costs. And, if this is true throughout the policy process, it is particularly true in the development of regulations and particularly true of the 1970s.

Hence, Congress often seems to view regulatory proposals and unilateral moral issues as opportunities for "position taking." Yet, as the case studies have revealed, from such symbolic rhetorical commitments flow major enactments—enactments imbued with profound economic implications. Further, while this tendency to ignore potential costs is most visible in overt regulatory law, it is equally as true of the myriad of national policy objectives and conditions now attached to grant programs—all of indisputable moral, social,

and physical worth; some imposing ill-considered costs on recipient jurisdictions.

Whether or not such hidden costs can be identified and mitigated is less than certain. Skeptics argue that preenactment procedures that truly reflected future costs would mean the virtual end of social and environmental progress or, at the very least, reduce the pace of that progress, while lengthy cost-benefit analyses ensued. Others contend that the current state of the forecasting art is simply incapable of accurately or even closely predicting future costs and needs.

Nonetheless, the need for some method or set of methods to ensure more thoughtful prior and current consideration of regulatory costs, particularly as those costs are imposed by federal mandate upon other levels of governments, seems eminently clear. Thus, Congress might institute some prelegislative mechanism for assessing the costs to state and local governments of legislation that affects those jurisdictions and, thereafter, require appropriate agencies to estimate and publish projected costs, benefits, and other impacts of proposed and ongoing regulations.

In addition, to ease their own fiscal burdens, the states and localities might engage in more aggressive legal actions against "coercive" conditions attached to federal grants. And, finally, in such cases, the Supreme Court might attempt a more balanced consideration of the degree to which ostensible inducements actually amount to coercion.

Thus, to ensure that excessive and unforeseen costs are not imposed on state and local governments by federal regulations and grant conditions, the following reform proposals, addressed to the institutions and actors in the policy process, are advanced for Commission consideration and counsel:

For the Congress

- Require an assessment of initial, as well as projected, ongoing costs to state and local governments of legislation affecting such jurisdictions when reported by House and Senate committees;
- Require regular reports by Congressional staff agencies on current costs of ongoing grants and regulations;
- _____;

For the Executive Branch

- Agency estimation and publication of projected and current costs, benefits, and other impacts of proposed and ongoing regulations;
- _____;

For the Courts

- More balanced consideration in relevant cases of the degree to which inducement amounts to coercion when judging the required terms and conditions of federal grants to be met by their recipients;
- More careful weighing of the claims of national necessity and of the counterarguments that state sovereign interests have been impaired by national mandates;
- _____;

For the State and Local Governments

- Assess the short and long-term fiscal costs and benefits of participating in each of the federal aid programs wherein they are actual or potential recipients and establish fiscal guidelines on when participation is not sufficiently in the recipient's interest;
- Establish a joint state-local legal defense unit to monitor and institute legal actions involving "coercive" conditions attached to federal grants and intrusive exercise of the commerce power;
- _____;

Problem 5: Neglect of State and Local Interests in the Political Process

Paralleling the shift in governmental authority toward Washington over the past 20 years has been a shift in political power. The traditional, strongly decentralized political system has become a heavily pluralistic, more national one, with power organized more on a vertical and functional, rather than on a territorial basis. The result is that state and local governments play a

far less authoritative role in national policy decisions than formerly. Although their capacity to say "yes" to federal dollars may have increased, their capacity to say "no" to federal intrusions has sharply declined. And this, despite or perhaps because of their expanded representational efforts.

Until comparatively recently, full consideration of the interests of state and local governments and their officials within the councils of the federal government was assured by the territorial organization of campaign politics. All candidates for national office depended for their election on state or local constituencies, and a strongly decentralized party system. Consequently, for many purposes, U.S. Representatives could be and were regarded as local rather than national officials, and U.S. Senators, as spokesmen for their states. Presidential nominees were selected in national party conventions in which state and local officials were well represented, and of course Presidential campaigns have always been conducted on a state-by-state basis because of the nature of the electoral college system.

No longer does the party system serve as an informal bulwark of federalism, however. Over the past 20 years, the political parties have become weaker functionally and more centralized organizationally. Candidates for national office have come to rely upon personal followings, the media, and campaign contributors in their drive for election. The old coalitions of state and local officials and power brokers are not necessary and, indeed, barely exist.

Formal processes of intergovernmental consultation have been established in the interim. The Executive Office of the President has offered a contact point for state or local officials for some 15 years, and intergovernmental liaison units have been created within most federal departments as well. The ten federal regional councils (FRCs) also have a firm mandate to improve intergovernmental communication. Unfortunately, none of these mechanisms is linked directly to the national policy process, and their record over the years has been mixed at best.

During the past 20 years, all of the major associations of state and local governments have created or strengthened their Washington offices. More than half of the states, and several hundred other jurisdictions, have established their own

lobbying units as well. But for several reasons, they have not been effective in interjecting the full range of state and local concerns into the federal legislative, regulatory, and administrative processes. First, they lack the firm electoral power base which the party system formerly provided. Second, the Washington representatives of state and local governments often seem more concerned with obtaining additional funds than with protecting the autonomy of the jurisdictions they represent. While deploring federal mismanagement and the diminution of state-local autonomy, they eagerly support the creation and expansion of federal aid programs. Finally, the associations themselves have not devised any unified view of the proper operation of American federalism and the role of the national, state, and local governments within it. Agreement on priorities—aside from the renewal of General Revenue Sharing—has been difficult to attain.

Proposals to strengthen the political process face in two directions simultaneously. One approach seeks to bolster the role of the political parties and the position of state and local governments within them. For example, a reduction in the number and duration of Presidential primaries might refocus attention on the national conventions, and changes in convention rules could increase the role of state and local party officials and elected officeholders. The maintenance of the electoral college is an essential component of this strategy, since direct popular election of the President would undercut a major remaining element of political federalism. Yet, all such proposals have but an indirect connection to the condition of federalism and seem dubious in light of public attitudes about the parties and politicians.

Other proposals are intended to increase the autonomy and influence of the organizations that represent state and local governments in Washington. Critics call for improvements in their policy processes, a redoubling of efforts to monitor federal regulations and program implementation, and less dependence on federal grants and contracts to support their own research and training activities. One innovative idea, aimed directly at the growing use of federal aid as an instrument of federal regulation, calls for the creation of a permanent state-local legal defense committee, following the tactic employed so successfully by civil rights and environmental groups, and by state and local governments for a few specific le-

gal suits. Since the mid-1970s, many individual state and local governments have instituted suits against federal policies that encroach on their sphere of authority. Yet the legal battle has been pursued primarily on an *ad hoc* basis, and some cases have not been pushed for lack of financial support or necessary expertise.

Whether or not any of these measures would be effective is open to doubt, however. None would be easily implemented. More importantly, the heavy fiscal dependency of state and local governments on external funds makes it less likely that they will reassert themselves. This is especially true in a period of fiscal constraint and popular demands for state and local tax reductions.

In summary, the following reform proposals are geared to assuring fuller consideration of fundamental state and local interests within the national political system. Commission consideration of and counsel on them is crucial to their proper presentation in the final report.

For the Executive Branch

- Improved opportunities for consultation with state and local governments;
- Strengthening the federal regional council system by expanding its inputs into the national budgetary and regulatory processes, by depoliticizing its leadership, and by placing it on a statutory basis;
- Maintenance of the electoral college system for Presidential elections, but scrapping the one-state-one-vote formula in the House for breaking any impasse in the electoral college;
- _____;

For the Political Parties

- A reduction in the number and duration of Presidential primaries and a strengthening of party conventions;
- Increased opportunities for participation by state and local officials in party conventions;
- Fuller debate and consideration of national-state-local priorities at party conventions;
- _____;

For the State and Local Governments and Their National Associations

- Creation of a state-local legal defense unit to monitor cases that have serious intergovernmental implications and to initiate suits in instances where the commerce or conditional spending powers are exercised in a way that compromises the integrity of state-local policymaking;
- Aggressive efforts to monitor and report on the impact of federal regulations and programs;
- A better sorting out of the basic program priorities of state and local governments and a better reflection of these in their representational efforts;
- Reduced reliance on federal funding sources to support association activities;
- _____

Problem 6: The Excessive Power of Special Interest Groups

“Atomization,” “overload,” and “alienation”—these are the terms that describe contemporary American politics. Over the past 20 years, power has been fragmented among a host of contending interests; policymakers have come to be beleaguered by more numerous and strident demands for federal action on every front; and the public-at-large has grown increasingly dissatisfied with the outcome and disenchanted with the process that produces it. Inside the halls of government, as well as outside them, fears of “special interest” domination have replaced the earlier view that most lobbying was simply a healthy expression of the nation’s social pluralism.

Evidence of this dramatic change may be found in the manner in which the public’s business is conducted in the Capitol, the White House, and on the campaign trail. The two major political parties—always weak by European standards—have become pale shadows, commanding little loyalty anywhere, unable to organize either the government or the electorate. The stature of the old triumvirate of organized interests—business, labor, and agriculture—representing major eco-

conomic classes also has diminished. But new single and multiple-interest lobbies, proclaiming themselves to speak for almost every occupational, social, and demographic sector of the nation's population, have blossomed everywhere. Most now have direct ties to specific federal aid or regulatory programs.

The case study findings suggest that the role of interest groups in the creation of new federal programs is frequently overstated. While groups sometimes do play leading roles in policy initiation, more often they are simply secondary and supportive actors, with entrepreneurs in Congress or elsewhere in government occupying center stage. Yet, the power of interest groups during the "second generation" of policymaking, when programs are renewed and expanded, is incontestable. Regardless of their origin, programs quickly become encrusted in "iron triangles" of beneficiary groups and their allies in the bureaucracy and Congress (and their counterparts at the state and local level). These tripartite alliances usually are able to mobilize effective opposition to proposals, jeopardizing the programs that aid them. What interest groups do, then, is "rigidify" the system, making it unresponsive to political leadership and the prevailing political climate, and resistant to policy reforms.

It is by no means clear that the tight grip of organized interests can be effectively reduced. The process of political fragmentation is now well advanced, and may well be irreversible. "More of the same" does seem the most likely scenario throughout the coming decade.

On the other hand, a variety of institutional and procedural constraints on group activities has been proposed. Aimed most directly at interest group lobbying are calls for tougher registration and disclosure standards and measures limiting campaign contributions from group sources. The latter objective might be most readily advanced by extending the system of public campaign financing for Presidential candidates to members of the Congress.

Another very traditional approach urges the consolidation of decisionmaking authority into larger aggregates: the reorganization of Congressional committees and subcommittees and of executive departments. Reorganization is intended to shift effective authority into broader arenas—arenas which presumably are more responsive to the general public interest.

Another strategy calls for the refurbishing of the political parties as a counterforce to special interests. Only political parties, it is argued, can provide meaningful policy alternatives for electoral choice and assure their execution through the machinery of government. To this end, an extensive range of measures to strengthen the consideration of policy issues within and between the parties and to bolster their role in the conduct of political campaigns have been called for. Alternately, the opportunities for political participation by individual citizens might be increased directly. A range of techniques for greater citizen involvement in the legislative, budgetary, regulatory, and electoral processes have been advanced. Characteristic of these are calls for a national initiative and referendum process to circumvent or overturn the actions of national legislators.

These latter two sets of proposals frequently conflict. Indeed, the "responsible party" advocates often regard the proponents of further "direct democracy" as their most serious opponents. Past efforts to strengthen individual participation in party affairs, they believe, have contributed to the demise of party government. On the other hand, the advocates of "citizen power" fear a return of the smoke-filled rooms and backroom deals that too often characterized party processes in the past. Furthermore, all of these sorts of proposals may be expected to be opposed by those groups which think their status would be threatened. The record of similar populist reforms of the past inspires little confidence.

For this reason, then, it may be that the principal responsibility rests with the public and an aroused electorate. So long as apathy—or a "what's in it for me" mentality—prevails, curbing the power of special interests may be impossible. After all, one person's "special interest" is another's "favorite cause." A shift of attitudes and priorities by the people themselves may be the basic prerequisite to a restructuring of political power.

In summary, the following reform proposals directed toward reducing the excessive power of special interest groups in federal policymaking have been advanced for consideration:

For the Congress

- A reorganization of Congressional committees and subcommittees;

- Public campaign financing for Congressional candidates;
- Tougher lobbying registration and disclosure laws;
- _____;

For the Executive Branch

- A further reorganization of executive departments by major functions;
- Increased periods of service for political executives;
- _____;

For the Political Parties

- A reduction in the number and duration of party primaries;
- More frequent policy conventions and conferences;
- A reinvigoration of party caucuses in Congress;
- Enhanced opportunities for participation by individual party members and small contributors;
- _____;

For the General Public

- A national initiative and referendum process;
- Opportunities to indicate their budgetary preferences on income tax returns;
- Direct national election of the President by popular vote;
- Financial support to citizen advocates appearing in regulatory proceedings;
- Standardized and simplified voting registration procedures;
- A reordering of public priorities in support of primary national needs;
- _____;

**Problem 7:
Bureaucracy, Red Tape, and
The Dispersion of Accountability**

A common description of current intergovern-

mental relations asserts that it is an overbureaucratized, grossly mismanaged "system" tangled together by a maze of red tape. No longer are federal programs thought to be well-oiled tools of efficiency or effective mechanisms for a congenial partnership among levels of government. On the contrary, in field after field, implementation and evaluation studies reveal serious shortcomings in program execution. Increasingly, programs fail to meet their objectives; waste and fraud have become commonplace; regulatory detail has escalated sharply; and relationships between grant recipients and Washington have deteriorated, frequently taking on an adversarial character.

Traditional solutions to these problems have concentrated on improvements within the executive branch. Proposals for departmental reorganization, civil service reform, and tighter management are the stock-in-trade of administrative reformers. Many of these have been advanced in recent years, some adopted.

Although the bureaucracy bears the brunt of criticism for federal mismanagement, the purely bureaucratic "solutions" mentioned above have done little to mitigate the problem, perhaps because the origins of the problem lie elsewhere. Hence, many of the case studies reveal that programs were poorly designed to accomplish their purposes and, indeed, many can hardly be said to have been "designed" at all. Administrative features were often inserted almost incidently, with little regard for ease of implementation either in Washington or at the recipient level.

In the realm of regulatory law particularly, the Congressional tendency has long been to write and pass broad, symbolic legislation devoid of much substantive content. It is, after all, difficult to vote against good intentions. Yet, in recent years regulatory law, like all legislation, has proliferated at a greatly accelerated pace and with that proliferation the problems of such legislation are magnified tremendously. Thus, it falls increasingly to administrative agencies to define the intent and scope of more and more regulatory law.

Such broad delegation of Congressional authority has been called by political scientist Theodore J. Lowi, "policy without law." It is the institutional, often systemic, dispersion of legal responsibility and accountability—dispersion resulting, more often than not, in irresponsible policy and unaccountable administration. Indeed, in a number of cases studied, the substantive results of

nonsubstantive regulatory language “horrified” even the authors of the legislation.

Nor is the problem merely one of Congressional “foresight” or preimplementation specificity. If the prelegislative policy process has become fragmented, so too has the post-legislative oversight process. In Congress, oversight responsibility has become diffused with the proliferation of subcommittees, and agency implementors, for their part, have failed to formally identify implementation difficulties.

Whether or not any concrete remedies can be devised to correct these problems of regulatory responsibility and accountability is uncertain. Needless to say, Congress cannot implement its own laws, nor foresee every potential consequence of its legislation, nor specify every single administrative detail. It is properly in the nature of legislative bodies to delegate. Yet, clearly, that delegation must be surrounded by parameters, by some explicit and understandable set of standards that Congress itself sets forth in the legislation. Moreover, and in the absence of such Congressional self-discipline, there exists a need for more thorough court consideration of the possible invalidity of excessively broad delegations of legislative power.

A number of institutional and procedural remedies have been proposed. One approach urged by advocates of “sunrise” legislation would require the fuller advance specification of the precise objectives of every program, which after all provide the standards by which their performance is to be evaluated, and identification of possible alternative implementation mechanisms. An alternative strategy would assure consistency with legislative intent by strengthening and formalizing Congressional review of agency program regulations, perhaps through the “legislative veto” process. Opponents of these proposals, on the other hand, regard them as inappropriate and unnecessary legislative “meddling” in administrative affairs, even as Constitutional violations of the separation of powers—“violations” whose efficacy has not yet been demonstrated.

An alternative approach concentrates attention on after-the-fact program improvements. In Congress, some feel oversight of existing programs should be strengthened through organizational reforms which would assure complete legislative oversight of a particular policy by a single committee and through procedural reforms such as

sunset legislation. To aid Congress in its massive oversight responsibilities, they contend, its own staff agencies, as well as those of the executive branch, should assess costs, benefits, and other impacts of regulations under their jurisdictions and should report regularly to Congress on implementation difficulties and proposals for legislative clarification of regulatory directives. Critics of these approaches, however, note that the obstacles are numerous. Oversight has never been popular with members of Congress, and resources aimed at this objective often are turned to other ends. Moreover, they emphasize, major programmatic overhauls are politically difficult once the “players and rules of the game” have been established.

Finally, some argue that state and local governments bear important responsibilities for improving the management of intergovernmental programs. First, despite significant improvements over the past two decades, some are still poorly organized and staffed. Second, only state and local governments are aware of many implementation problems, and only they may be in a position to identify potential solutions. Finally, too many state and local governments have regarded federal dollars as “funny money,” to be handled with less care than locally raised revenues.

Hence, to ensure more effective management of intergovernmental grant and regulatory programs, to help assure the administrative fulfillment of Congressional intent, and to guard against the overly broad dispersion of responsibility and accountability, the following reform proposals are advanced for Commission consideration and debate:

For the Congress

- Enactment of “sunrise” legislation;
- Setting of clear standards of implementation in each new piece of aid and regulatory legislation;
- Enactment of “sunset” legislation;¹²
- Reorganization of functionally related subcommittees under appropriate functional committees;
- Oversight by full committee of programs and regulations stemming from separate pieces of legislation;
- Congressional veto of administrative regulations based upon the intent of Congress;

- Greater coordination of oversight among the standing committees;

- _____
_____;

For the Executive Branch

- Periodic Presidential or agency reporting to Congress on the costs, benefits, and other impacts of regulations, as well as on the difficulties in implementing regulations and proposals for legislative clarification of directives;

- _____
_____;

For the Courts

- A greater willingness to declare invalid and unconstitutional Congressional delegations of power to administrative agencies which are not accompanied by clear standards for implementation;

- _____
_____;

**For the State and Local Governments
and
Their National Associations**

- Assessing costs and benefits and potential management problems in each of the federal aid programs wherein they are actual or potential recipients.
- Establishing joint state-local legal defense committees to monitor and institute legal actions involving "intrusive" exercise of the commerce power and coercive use of the conditional spending power;
- Achieving full fiscal support of the national associations;

- _____
_____.

TENTATIVE RECOMMENDATIONS

The Commission's fundamental finding that the system is overloaded and increasingly dysfunctional suggests the need for changes, even drastic changes. The concomitant finding that the ever widening scope of the federal role in the federal system has been the prime creator of increasing intrusion, greater unmanageability, mounting program ineffectiveness, costliness, and the es-

sential unaccountability of current intergovernmental relations suggests that sanguine standpatism is an untenable position to assume. Yet, what should and can be reformed?

The probe of seven basic problems generated by the sad state of contemporary intergovernmental affairs highlighted specific proposals for possible remedial action in each of the seven. It also indicated that a range of viewpoints exists regarding what should be the focus of reform efforts; what specific implementing actions are desirable and possible; and what degree of optimism is realistic with reference to each of these proposals.

For all of these reasons, the following must be considered, at this stage, to be merely tentative recommendation strategies and proposals. The Commission's consideration of the previous seven problem areas no doubt will modify some, if not all, of them and might even produce a recasting of the scenarios.

On the basis of a careful reading of the recent intergovernmental record, however, and a confronting of the critical questions raised by it, three basic reformist strategies do seem to emerge: an incrementalist approach, a more surgical school of thought that calls for fairly drastic change in five basic areas, and a full-scale reform of our basic charter view.

At the two extremes, then, stand the "system is already responding" and the "system requires drastic Constitutional change" schools of thought. The former is based on a reading of recent events that suggests the hyper-responsiveness of the system in the 1970s to the immediate concerns of a plethora of pressure groups also applies to the basic concerns of the majority of the electorate that now seems opposed to such public sector growth. Advocates note the emergence of some elements of fiscal and political constraint. The early 1970s witnessed the disappearance of the "fiscal dividend" that the prosperity of the 1960s had generated and which fueled the expansion of the public sector. Growing pressures for budget balancing as a means of curbing inflation have arisen and inflation is now deemed the number one public finance agenda item. In addition, defense outlays are slated to rise and the Social Security system appears to be in need of alternative sources of funding, both probably at some cost to domestic programs. The Carter budgets for FY 1981 and 1982, Congress' handling of its own reformed budget procedures this past year, and talk

of a revamped Congressional power structure this year are cited in evidence of a new behavioral pattern. These incrementalists also warn that no drastic reform proposals are really necessary and that continuing political pressures will correct the imbalances, inefficiencies, and ineffectiveness of the present system—thus rendering it more accountable and simpler to the electorate.

Opponents counter with the argument that fiscal retrenchment in domestic program areas need not involve intergovernmental program and regulatory reform, but merely a cutback in aid dollars. On the basis of current and projected experience, it only adds up to as many (if not more) aid programs, and more conditions attached thereto, but less money in constant dollar terms. From the state and local perspective, as well as that of the system as a whole, this would be the worst of all possible worlds except for sudden, massive cutbacks. To accept the “system is already responsive” thesis, they claim, is to ignore the dynamics of interest group lobbying and Congress’ recurring tendency when confronted with fiscal constraints to adopt “the parity of pain principle.” This leads to no real assessment of intergovernmental programs and regulations, to avoiding the choice between those grants that make sense and those that are nonsense, of ignoring the differences between those that are fat and those that are lean, of separating those that are genuinely intergovernmental from those that are patently parochial and political.

At the other extreme, the Constitutional reformers contend that the political pressures are too great, that the system’s responsiveness continues to be excessive, and that only Constitutional curbs can foster an environment in which national decisionmakers can say, “No!” The curbs range from the less dramatic, like a Presidential item veto; to the more drastic, like Constitutional limitations on taxing or spending and the changing of the terms of House members (and sometimes of the President); to the most drastic, which involve the instituting of a quasi-parliamentary system, and the redrawing of state boundaries and clarification of state powers.

Opponents argue that none of these is feasible or even desirable, that they depart drastically from the American tradition, and that reforms—short of the Constitutional variety—can do the job. Before any one of these Constitutional reform approaches could muster significant strength,

they contend, the existing system would already have responded without having to tinker with our basic charter.

Between these two extreme schools stands the “basic reform short of Constitutional change” school of thought. Five approaches, however, are encompassed within this school (which raises a number of questions about which approaches are compatible and reinforcing). Each approach rests on a rejection of the extremes and on the acceptance of a particular view of how the system got to where it is. Some of the specific proposals advanced are clearly rooted in the Commission’s research; others rest on the work of others; and still others have no foundation in research or in actual experience because they never have been tried or tested and rest on faith alone.

One of these middle perspectives on how to correct the system’s present deficiencies concentrates on surgical ways of decongesting today’s overloaded intergovernmental network. Advocates of this approach reject incremental methods of reform, contending that these miss the mark. Improved Congressional oversight and procedures, better OMB circulars, effective departmental inspector generals, and more pointed General Accounting Office (GAO) audit reports in no way can cope with a system whose dynamics lead to more government programs, more conditions and mandates, more interest groups,¹³ more political posturing on the part of all the players—federal as well as state and local—but at the same time to fewer dollars.

What is needed, this group urges, is a sorting out of roles and of some of the functions that unwisely have become intergovernmentalized. This is no return to the old-style dual federalism, they caution. Instead, this strategy seeks to place squarely on the federal government’s shoulders the full fiscal and administrative responsibility for key national functions (like public welfare and health insurance) and to recognize the ineffectiveness, the inequities, the inefficiencies, and the unaccountability that the present patchwork approach to these two multibillion dollar programs has produced. This is no call for retreat for the federal government then, but rather is a facing, for the first time really, of its full responsibilities in these areas of clear national concern and obligation. The myths of managerial convenience, of bargain basement administration, of intergovernmental equity must be identified for what they

are, so this group maintains, as myths, just myths.

At the same time and as a trade-off, these surgical reformers also call for a devolution of a range of activities the federal government now is aiding and pretending to "run." But the details at this point become somewhat blurred. Some argue for grant consolidation (and, in effect, the elimination of certain narrow categoricals). Others call for a trade-off: consolidations for a cut in their funding. Still others focus on the 440 grants that account for 10% of the federal aid total and urge their elimination through mergers or devolution to state and local governments.

Using the percentage of state-local outlays that specific federal aids provide is yet another approach, advocated by some. If it constitutes less than 10%, say, of the total of state and local expenditures in the affected program area, this group would say "scrap it." The subnational governments already are the dominant providers and all the federal aid provides is marginal fiscal help with controls and major administrative headaches.¹⁴

Advocates also point out that several functions by their very nature would remain intergovernmental—transportation, the environment, energy, natural resources, and community development, to mention only the more obvious. The goal of this partial sorting-out strategy, they insist, is to decongest the system, to reduce the focus on Washington for a range of secondary public policies and programs, to enhance the discretion of subnational governments, and, above all, to inject greater accountability into the system.

Critics of this approach contend that is totally infeasible, untraditional, and undesirable. Once an issue gets to Washington or an aid program gets started there, it is nigh impossible to push it back into the state and local realm, they warn. Only the elimination in the early 1940s of the public works and relief programs of the Depression years can be cited as the major example of closing down federal aid programs. The effort of the Eisenhower Administration with the Joint Action Committee to devolve certain program responsibilities along with funding sources was a waste of time, they remind us. Moreover, the number of programs and especially the large number of puny aid programs is a small price to pay for political accommodation, for pressure group pacification, for achieving a rough approximation of some consensus. The old theory that

whatever passes muster in the chambers and corridors of Capitol Hill and is signed by a President is still a good test of what is in the national interest, they believe, and arbitrary, across-the-board efforts to reduce the pressures on the national legislative and administrative processes, especially as they are presently conditioned, will come to naught.

Another of these "middle" scenarios focuses on the collapse of internal governmental constraints. Hence, it calls, among other things, for "sunset legislation," income tax indexation, grant consolidation, fiscal notes, a regulatory budget, statutory taxing and spending limits, Congressional veto of administrative regulations, and committee reorganization on the Hill, as ways of building greater discipline into the operations of the political branches of the national government. In essence, all of these are geared in one way or another to making it easier, or at least possible, for national decisionmakers to say "no."

Opponents of this approach contend that procedural changes without basic attitudinal and political ones will accomplish nothing but more end runs and charades, more complex and unfathomable national governmental operations, and more intergovernmental uncertainties.

A third reform approach centers on the role of the federal judiciary and emphasizes that its authoritative power should be utilized to render the system more accountable, more balanced, and more effective. The present system, they note, is in large part a byproduct of Supreme Court decisions relating to the commerce and the conditional spending powers. More balanced and realistic future decisions in these twin Constitutional areas could establish a new climate for, and some enforceable means of curbing the seemingly uncontrollable assertion of national authority.

Critics of this strategy claim that it would lead to even greater judicial intrusion into essentially political matters than prevails now and that it rests on the hope that the Supreme Court can be a neutral arbiter of intergovernmental conflicts rather than a national body which, with only a few historical lapses, has favored national power and growth over its nearly 200-year history.

A second mid-range scenario assumes that the problems are basically political and that if they are corrected, the other difficulties will be resolved fairly easily. One group here focuses on party reform and advocates restrictions on the po-

litical action committees of pressure groups, closed primaries, a reduction in the number of Presidential primaries, enhancing the role of officeholders in all conventions, mid-term conventions, public financing of Congressional candidates but with funds donated to the parties, and retention of the electoral college with minor changes.

A very different group within this political process group centers its attention on the sovereign citizen, not the major parties. For it, a few of the above proposals are appropriate, but the direct election of the President, public financing of Congressional and other campaigns, a national initiative and referendum process, easier and simpler voter registration, the easy creation of new political parties, and public financing of citizen witnesses before regulatory agencies are central points in the reform agenda.

Opponents of the strengthened parties *alternative argue that procedural props are no substitute* for the performance of needed functions and that the national parties perform no functions presently that other mechanisms and groups could not provide. To call for a more responsible, accountable two-party system at this point in history, they claim, is to ignore the reality of contemporary American politics and the attitudes of the electorate toward the parties and the system they pretend to constitute.

Critics of any further focusing on the voter as sovereign policymaker in the system point to recent efforts to enhance his or her direct role in the system and their disappointing results. To project Jefferson's image of the commonsensical, rational yeoman farmer into today's hyper-complex governmental system without at least Madison's supporting concept of factions (interest groups) is, to this group, the essence of a romantic, hence unreal democracy. Recent experience with citizen participation requirements in federal programs (over 150 of them), the decline in voter participation (even among the well-educated), opinion polls on voter awareness, and basic sociological studies on the collapse of intermediate and formerly buttressing social institutions (which permitted the myth of the discerning, dependable, and independent citizen voter to arise in the first place) combine, in the minds of these critics, to suggest that placing any more burdens and reliance on the individual voter is asking the impossible, if not beating a very dead democratic horse.

Periodic pushes for more populism and more participatory democracy, they point out, from Jackson to General Weaver and from Theodore Roosevelt and Hiram Johnson to John Gardner, have done little but to enthrone a new breed of special interest group politics, not the politics of the people. If any contemporary case study is needed to verify this generalization here, California inevitably is dragged out as exhibit number one.

A final middle-range reform strategy concentrates on state and local governments and their *representatives and national associations* in Washington. Its underlying thrust is to challenge the subnational governments to find ways and means of saying "no" (where appropriate) to federal programs, dollars, and conditions. Decongestion should be as much, if not more, a part of the agenda of state and local governments as it should be uppermost with the national government. A somewhat changed role for the national associations is envisaged—one that is conscious of, and vigilant about, the long-term consequences of an ever-accelerating federal role, of the need for trade-offs and bargaining, of the costs as well as the benefits of federal subventions. Moreover, a greater capacity and willingness to resort to the courts, when unjustified or excessively burdensome conditions are attached to grants and when Congress exercises its commerce power in a mandating fashion, is sought.

Critics of this approach claim that the real problem is with the array of interest groups—economic, program, social, and single issue—that have no hesitancy in undercutting and undermining state and local governments and their role in the system if doing so will advance their own causes. The excessive responsiveness of federal policymakers to such pressures, they maintain, has pushed the states and the localities to mount greater representational efforts over the past decade and a half. Moreover, some within this group argue forcibly that the rivalries between and among the subnational governments and their national associations and the differing needs and fiscal positions of some states and many localities assure a continuing focus on Washington—its programs, moneys, and politicians. By now, they argue, it is plausible to believe that state and especially local reliance on federal moneys and policy dictation has become so habitual that no turn-about is feasible.

Alternative Strategy A: Incrementally Improve the Present Intergovernmental System

The Commission concludes that both the national interest and the need to enhance the capacity of state and local governments to meet their responsibilities require the national government's involvement in a broad range of domestic matters. The Commission concludes, further, that the present intergovernmental system represents a realistic and workable response to the nation's needs, despite serious acknowledged difficulties in interlevel coordination, administration, and accountability. The present system does incorporate processes for addressing these difficulties, which over time and with persistent effort can produce a more manageable and accountable intergovernmental system. Hence,

The Commission recommends that the federal role in the American intergovernmental system be maintained essentially in its present form—relying upon General Revenue Sharing, block grants, categorical grants, and other forms of federal aid, plus federal regulatory activities, and other means to address national, state, and local interests in relation to one another. The Commission recommends, further, that present efforts at Congressional oversight, executive and Congressional budgeting, program evaluation and simplification, program consolidation, agency reorganization, federal consultation with national and subnational interests in developing new proposals, impact analysis of such proposals (addressing fiscal, intergovernmental, environmental, urban, and rural policy considerations), and regulatory reform be pursued vigorously in order to accelerate improvement in the intergovernmental system, thus making it more effective, efficient, and responsive to the needs of the nation and of all levels of government.

Alternative Strategy B: Systemic Reforms, Short of Total Overhaul

Some sense the urgent need for some sharp and substantial, not just slow and incremental, shifts in our political system and the federal role in the intergovernmental system—short of basic Constitutional change. But this group divides over which of the critical conditions is most respon-

sible for the system overload, on approaches to an appropriate and feasible reform strategy, and on whether more than one strategy should be pursued simultaneously during the 1980s. The following scenarios, which may be treated as compatible, incompatible, or perhaps mutually dependent strategies, attempt to reflect these differences in diagnosis, in focal points of reform, and in their political feasibility.

Recommendation 1: Some Sorting Out of The Grant System By Trade-Offs

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

The Commission recommends that the federal government assume full financial and administrative responsibility for programs which are of paramount national importance, are national in scope, and which require uniform levels of benefits and [/or] consistent nationwide administration by federal employees, including public assistance, health benefit payments, and other appropriate social insurance programs. At the same time, the number of remaining federal assistance programs should be reduced very substantially, with the primary candidates for termination to include: (a) the approximately 440 small federal categorical grant programs which account for only ten percent of all grant funds [excluding programs supporting research and demonstration], (b) programs in functional fields in which the federal share amounts to less than [five] [ten] percent of the combined national-state-local outlays; (c) programs which do not embody essential and clearly stated national objectives, or which are too small to significantly address the need to which they relate; (d) programs, especially small (\$100 million or less)

ones, which have high administrative costs relative to the federal financial contribution; (e) programs which obtain—or could obtain—most of their funding from state and/or local governments, or fees for service, or which could be shifted to the private sector.¹⁵ The Commission urges that this strategy of full national responsibility for certain programs combined with devolution of responsibilities for others to the state and local levels, or to the private sector, be accomplished by Congress and the President through one or more of the following approaches:

- unilateral federal legislative enactments;
- enactment of legislation after full consultation with the affected subnational governments and with a view toward arriving at a meaningful bargaining over the trade-offs; or
- enactment of legislation providing for a process in which state and local officials from each state, as a unit, would be [allowed to] [encouraged to] negotiate a trade-off package.

Recommendation 2: Strengthening the Internal Processes Of the National Government

In the past, the Commission has recommended certain basic improvements in the operations of the national government. The following recommendations, if anything, are more relevant now than when they were initially advanced and the Commission reaffirms its strong support for them. Hence, in order to rationalize and simplify an intergovernmental system which spawns too many separate and narrowly drawn federal grant programs and is heavily burdened with excessive paperwork requirements, regulations, and controls:

The Commission recommends that Congress enact legislation authorizing the President to submit plans for consolidating categorical grant programs to Congress, that Congress be required to approve or disapprove such plans within 90 days of submission, and that if approved, such plans go into effect upon approval by the President of the Joint Resolution. The Commission further recommends that the legislation authorize

the President to make modifications or revisions of plans submitted to Congress any time within 30 days after such submission.¹⁶

Furthermore, in order that the Congress may more adequately perform its vital oversight function:

The Commission recommends that Congress enact "sunset" legislation providing, at regularly scheduled intervals, for the termination, thorough reassessment prior to the slated expiration dates, and reauthorization, where warranted, of all grant-in-aid programs by functional area. . . .¹⁷

Finally, in order that personal income tax rates should only be increased by overt Congressional action and should not be an automatic consequence of inflation, and so as to make the national income tax system more equitable and accountable to the nation's taxpayers:

The Commission . . . recommends that the Congress give early and favorable consideration to indexation—the annual adjustment of the personal exemptions, the low-income allowance, and the maximum limit of the standard deductions, and per capita credits, and the tax rate brackets of the federal individual income tax by the rate of increase in the general price level.¹⁸

At the same time, the Commission now concludes that additional major improvements in the national legislative and regulatory processes are essential to the development of more effective, rational, and publicly accountable national policies and to the restoration of a more balanced and functional federalism. Hence,

The Commission recommends that Congress or the executive branch, as appropriate, adopt procedural and organizational reforms which will instill greater discipline in the policy development and renewal processes of the Congressional and executive branches, strengthen the internal organization of Congress, and provide for more adequate assessments of the costs imposed by federal legislation on state and local governments and the private sector.

[To instill greater discipline in the policy development and renewal processes of the Congressional and executive branches of the national

government, the Commission urges that consideration be given to the following specific proposals:

- a. When drafting new legislation or reauthorizing existing legislation the effect of which is to expand the federal role in the federal system, the Congress and its appropriate committees and subcommittees should be required to give fuller consideration to the "national purpose" or "national objective" to be attained by the legislation; all alternative mechanisms for achieving the best balance of equity, efficiency, effectiveness, and public accountability in the implementation phase of policy including, but not limited to, direct federal servicing, grants-in-aid, taxes or tax expenditures, loans or loan guarantees, and regulations; and the possibility of altering or expanding related, pre-existing programs when they may be used to achieve the same purposes.
- b. With reference to committee and floor amendments to pending legislation, the Senate and the House of Representatives should adopt binding rules of "germaneness."
- c. In order to provide for the continual improvement of Congressional operating procedures, the Senate and the House of Representatives should institute permanent mechanisms of procedural review.
- d. Extend, by Constitutional amendment, the President's veto authority to specific items within legislation.
- e. In order to provide for greater executive branch "foresight," executive branch procedures for reviewing legislation proposed by the Congress and the agencies should be strengthened.]

[To curb the further fragmentation of the Congress and to strengthen generally its internal organization, the Commission urges that consideration be given to the following specific proposals:

- a. Reduce the number and autonomy of Congressional subcommittees in related functional fields;
- b. Reduce the number of committee and sub-

committee assignments per member of the Senate and House; and

- c. Reexamine and provide for the greater coordination of the general oversight role of four sets of standing committees (operations, budgetary, appropriations, and revenue raising) in the Senate and House.]

[To provide for more adequate assessments of costs imposed by federal regulations and by other legislation on state and local governments and the private sector, the Commission urges that consideration be given to the following specific proposals:

- a. when reporting legislation which will affect state and local governments, the appropriate committees of the Senate and House should be required to evaluate the costs which will accrue to the affected jurisdictions; and
- b. the regulatory arms of the national government—the independent regulatory agencies and the executive line agencies—should report to Congress, on a regular basis, regarding the costs, benefits, and other impacts of regulations under their jurisdictions, as well as difficulties in implementing regulations and proposals for legislative clarification of regulatory directives.]

Recommendation 3: The Supreme Court As a Neutral Arbiter

The Commission finds that the federal judiciary, though to a somewhat lesser extent than the political branches of the national government, has exerted both directly and indirectly a profound influence on contemporary intergovernmental relations and has contributed to their growing imbalance and dysfunctionality by its interpretation of the commerce and conditional spending powers. Hence,

The Commission recommends that the Supreme Court assume the role of arbiter of the federal system. In pertinent cases and controversies coming before it, which involve Congress' power to spend for the general welfare, the Commission urges balanced Court consideration of the "reasonably related" doctrine and of the degree to

which inducement amounts to coercion when judging the required terms and conditions of federal grants to be met by their recipients. In those cases involving the commerce power as a basis for national mandates on state and local governments, the Commission urges careful Court weighing of the claims of national necessity and of the counterarguments that state sovereign interests have been impaired, with a view toward protecting the integrity and discretion of the states' (and localities') political processes while not unduly restricting the ability of the national political process to produce national policies and programs that are genuinely national.

Recommendation 4(a): Strengthening the Party System

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

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

[Specifically, the Commission recommends that consideration be given to the following proposals, among others: (a) mid-term party conventions in both political parties, with procedures assuring adequate representation of those in the non-Presidential wing of the incumbent party, as well as more frequent party issue conferences at the state and local levels; (b) the facilitation of greater participation by national, state, and local elected officeholders in party conventions; (c) the reinvigoration of party caucuses in Congress as instruments for disciplining party members and

for the voting on budget ceilings provided for in the Congressional budget process; (d) a reduction in the number and duration of Presidential primaries either by state actions or by creation of a national primary day, a series of multistate regional primaries, or a single national primary for both parties, while requiring that all primaries be closed; (e) enhanced status and participation of individual party contributors in party affairs by providing, in exchange for a modest dues payment, the right to vote on the selection of a portion of each state's delegates to mid-term conferences and a proportion of the members of the national committees, as well as specifically designed informational services; (f) a system of public financing for Congressional candidates which channels funds through the two major political parties while sharply limiting contributions from interest group sources; (g) the elimination of the electors as such from the electoral college, and the replacement by Constitutional amendment of the present one-state-one-vote formula for breaking electoral college impasses in the House of Representatives with a runoff national election between the two major candidates or with a majority vote of Congress in joint session on a one-member-one-vote basis.]

Recommendation 4(b): Increasing Public Participation in National Policymaking

The Commission finds that the present national representational process generally and the political parties particularly have failed to hold national policymakers closely accountable to the electorate, and that they provide insufficient opportunities for citizens, in contrast to organized interests, to express their views on major issues of national policy. Hence, the Commission recommends that the Congress adopt measures that will provide the general public with more direct and more meaningful opportunities for participation in the federal legislative, budgetary, regulatory, and electoral processes.

[Specifically, the Commission recommends that consideration be given to the following proposals, among others: (a) (an advisory) (by Constitutional amendment, a binding) national initiative and referendum process for key policy issues; (b) federal financial support to citizen advocates participating in executive branch and judicial

regulatory decision processes; (c) direct election of the President by popular vote and the abolition of the electoral college; (d) a single national primary to replace state Presidential primaries; (e) standardized and simplified voting registration processes for all national, state, and local elections; (f) public financing for Congressional candidates; and (g) allowing taxpayers to indicate their own budgetary priorities among major program areas on their annual income tax returns.

Recommendation 5: A More Assertive Response on The Part of States and Localities to The Overloading of the System

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

The Commission recommends that the states and their localities adopt policies and procedures that will strengthen the autonomy of their decisionmaking processes and that will protect and enhance their authoritativeness as governments within the American federal system.

Specifically, the Commission urges the states and their localities to give serious consideration to: (1) assessing the short and long-term fiscal costs and benefits of participating in each of the federal aid programs under which they are actual or potential recipients and establishing fiscal guidelines with a view to withdrawing from those that are cost-benefit negative; (2) establishing jointly on a permanent basis a state-local legal defense organization, with adequate funding, professional staffing, and appropriate assistance from the states' attorneys general and local legal officers, to monitor and to institute legal actions opposing "coercive" conditions attached to federal grants and "intrusive" Congressional exercise of the commerce power; (3) joining through

their national associations during the next two years in identifying at least [ten] [25] federal grant programs based on surveys of the memberships of their associations that they will recommend terminating; (4) participating with appropriate federal officers in identifying those aid programs and conditions that are most appropriate for (a) full federal assumption, or (b) full devolution to state or local governments or the private sector; (5) (authorizing) (requiring) their respective chief executive officers to review and approve all presentations by their line agency spokesmen before Congressional committees and federal agencies and requiring their respective legislative bodies to give specific approval for governmental contributions to national associations of line agency officials; and (6) revising the objectives and policies of their respective national organizations in Washington to give priority to protecting and enhancing the status of state and local governments within our federal system and to "decongesting" the federal aid system and associated regulations, as detailed in (1) through (5), and providing that their national organizations shall accept no federal grants where there may be a conflict with these objectives.

Alternative Strategy C: Toward a Second Constitutional Convention

The Commission finds that the present pattern of intergovernmental relations is inefficient, ineffective, inequitable, and essentially unaccountable, and this is the inevitable byproduct of the growing inability to apply successfully the traditional Constitutional principles of a partial separation of powers, checks and balances, and a geographic division of authority in a post-industrial, interdependent, media-conditioned, mass society. The Commission believes that the Constitution in its formal and informal operations does not meet present day needs or reflect contemporary realities. Hence,

The Commission recommends that the Congress or the requisite number of states call for the assembling of a second Constitutional convention to consider amendments to our basic charter that, among other things, would (1) eliminate the separate, fixed, and overlapping terms of the Presidency, the Senate, and the House of Representatives; (2) provide for a fusion of political ex-

ecutive and legislative authority; (3) redefine the boundaries of the states to reflect current human settlement patterns, common regional interests, and a rough numerical parity; (4) (incorporate a doctrine of national reserved powers, while setting forth a list of expressed powers of the states) (*update the list of Congress' expressed powers, while including a "necessary and proper" clause and a listing of the basic powers reserved to the*

states and their localities); (5) stipulate a Bill of Rights that would be binding on both the national and state governments; and (6) establish a Supreme Court, half of whose membership would be appointed from lists submitted to the President by the Association of State Supreme Court Justices and whose power of judicial review of cases and controversies arising out of interlevel jurisdictional conflicts is detailed in full.

FOOTNOTES

¹ This judicial "passivity" in the commerce and conditional spending areas has had the practical effect of accelerating the activism of the federal political branches, and in the latter it reflects a sustained effort to ignore the great changes in the grant system since the early 1960s.

² Some slight backing off from the expansionist tendencies of the Warren Court, it should be noted, can be detected in some of the procedural due process cases decided by its successor.

³ Most of this has escaped the notice of even the closest Congressional observers, since much of the legislation of the 1970s appears to be merely a renewal of the legislation launched in the 1960s. Yet the dramatic shifts, the major expansions, the much greater role of narrowly based functional interests, the lesser role of federal administrators, and the greater tendency to insert constraining conditions in these renewals, make the process of the 1970s a very different, a less difficult, a more cooptive, and to many, a far less constrained one than its predecessor of the past and all earlier decades. When totally new grant or other novel proposals come up, however, the older "veto group politics" still emerges.

⁴ This continued throughout the period, although the majority now wants the programs at less cost and with less inefficiencies.

⁵ Medicare and the SSI program are the only basic exceptions to this generalization.

⁶ Adopted by the Commission, April 1969.

⁷ Adopted by the Commission, October 1967, and reaffirmed in May 1977.

⁸ Adopted by the Commission, May 1977.

⁹ Rejected by the Commission, December 1979.

¹⁰ Recommended by the Commission, August 1976.

¹¹ Recommended by the Commission, April 1969.

¹² The Commission previously endorsed "sunset" legislation on May 6, 1977.

¹³ Many of the aid programs of 1960s and the 1970s, we have found, were not generated by outside interest groups, but rather by administrative or Congressional entrepreneurs and the so-called "iron triangle" was established after enactment, not before.

¹⁴ Yet, if this approach were adopted, federal aid to education and the Law Enforcement Assistance Administration would be dropped.

¹⁵ Adoption and successful pursuit of Recommendation 2 under this Alternative Strategy B also would be expected to reduce the number of federal grant programs significantly through consolidation, sunset, and reduced rates of new program creation. In that case, this recommendation simply would apply to a smaller set of programs.

¹⁶ Advisory Commission on Intergovernmental Relations (ACIR), *Categorical Grants: Their Role and Design*, A-52, Washington, DC, U.S. Government Printing Office, 1977, p. 303.

¹⁷ *Ibid.*, p. 305.

¹⁸ ACIR, *Inflation and Federal and State Income Taxes*, A-63, Washington, DC, U.S. Government Printing Office, 1976, p. 9.

Reshaping the National Government's Role in the Federal System

Formal Statement of William G. Colman,
Consultant

For the record, my name is William G. Colman, residing at 9805 Logan Drive, Potomac, MD.

For ten years I had the privilege of serving as the executive director of ACIR—from its activation in early 1960 until my retirement from the federal service in early 1970. Since leaving the Commission I have been a consultant in governmental management, growth policy, and urban problems, working mostly with state and local governments and organizations thereof—interspersed with visiting professorships at the universities of Virginia (Charlottesville) and Maryland (College Park) and with service as an elected local government official, first as a member for four years of the Montgomery County, MD, Board of Education and more recently as a member of the County Council, filling out an unexpired term of one of the Democratic seats. The opinions and recommendations that follow are reflective of inevitable biases and other influences growing out of these various experiences in national, state, and local government and in academia.

In this statement I will try to provide some reactions to, and counter-recommendations for, the draft chapter before you, particularly with respect to (1) the organization and manageability of the report, including deletion of certain fields of inquiry that seem marginal to intergovernmental relations; (2) additional treatment of some key intergovernmental issues that are omitted or treated lightly in the report, including private sector interface, skewing of economic and public finance statistics to accommodate political pressures, and

intergovernmental regulatory reform; (3) augmented criteria for sorting out grants; and (4) need for Constitutional and statutory change to redress growing imbalances in the structure of federalism and to provide a framework for strengthened fiscal discipline within the national government.

Let me emphasize here that my statement concentrates upon perceived sins of omission and commission in the draft in the belief that specific criticisms and suggestions would be of most help to the Commission and staff. A great deal of very good work obviously has gone into the material before you; the writing is clear, and for the most part goes to the heart of the federal role in the federal system. Now for a few friendly brickbats.

IMPROVING MANAGEABILITY, ORGANIZATION, AND CONSISTENCY OF REPORT

Problem areas No. 5, "Neglect of State and Local Interests in the Political Process;" No. 6, "Excessive Power of Special Interest Groups;" and No. 7, "Bureaucracy, Red Tape, and the Dispersion of Accountability," deal with subjects of keen interest in the reorganizing and strengthening of national governmental institutions and processes and for the entire governmental system, but for the most part are not uniquely intergovernmental. This is the case especially for changes in the structure of political parties and their conventions, the consolidation of Congressional subcommittees, the deploring of single-issue politics, and various proposals for direct as contrasted to representative democracy. The particular aspects of these broad areas that are of major significance to intergovernmental relations (e.g., electoral college, clear standards of implementation in new intergovernmental legislation, sunset provisions) could be pulled out and treated under other existing or modified headings, and all other material in the three broad areas deleted. This would keep the Commission from getting bogged down in the far ranging fields of political and general governmental reform; it would also create room for added treatment of other issues more central to federalism.

The grouping of alternate "strategies" is a mistake, in my opinion. First, the options of status quo slightly improved, incremental change, and drastic change are not applicable to such a broad

subject as the federal role in our governmental system; one might favor small change on the judicial side and drastic change in the administration of crosscutting grant requirements. Options for the degree of change are better reflected in alternative recommendations addressed to particular issues (e.g., the Presidential veto: status quo, item veto on appropriation bills only, on all legislation). Second, "strategies" invite retreats into generalities so broad as to be meaningless to those concerned with translating recommendations into draft legislation or other implementing instruments.

Finally, there is a serious inconsistency between the rhetoric used to describe some of the problems and the sharpness and fundamentality of several of the alternate recommendations; occasionally, fundamental changes are set up as straw men, couched in such extreme and provocative language as to invite early dismissal from consideration (e.g., Constitutional change essentially confined to a transparently unacceptable wide-open Constitutional convention). Several of the recommendations to the courts could better be stated as Constitutional changes. (How could a recommendation for a different interpretative stance on the part of the courts be translated into an implementary instrument?) In any event, either the range of alternate specific recommendations should be broadened or the descriptive material should be revised to a less sweeping and crisis-laden content and tone. I happen to believe that the problems are indeed serious, warranting a more specific and fundamental attack and focused sharply upon the significantly intergovernmental. The suggestions that follow are directed toward that objective.

ADDITIONAL TREATMENT OF PRIVATE SECTOR INTERFACE, SKEWING OF STATISTICS FOR INTERGOVERNMENTAL PURPOSES, AND REGULATORY REFORM

Through the deletion of material related to campaign finance, primary election and political party reform, and most aspects of Congressional reorganization, room can be created for further treatment of certain issues more basic to federalism, keeping within bounds the "digestibility scope" for both the Commission and future readers.

Public Sector Interface

A major part of the functional sorting-out process set forth in the report is the consideration of alternatives to governmental service delivery through direct performance or grants-in-aid. These additional alternatives include:

- Reliance upon the private sector to provide services or perform functions through the play of the market place, augmented in some cases by governmentally provided economic incentives or penalties (e.g., day care, hospitals, police protection in commercial and industrial areas, health insurance, mental health services).
- Use of indirect governmental assistance (tax credits, loan guarantees, pollution taxes, etc.) with performance and service delivery resting on private profit or nonprofit institutions.
- Increased use of volunteers.
- Self-financing through user charges and greater use of special taxing districts.

Among the criteria for grant initiation or retention at the national level might be a required showing that private sector use or stimulus cannot achieve adequate (not necessarily optimal or maximum) results toward the national objective involved. Such a criterion would be a crucial additive toward the highly commendable and urgent goal of decongesting the intergovernmental fiscal transfer system.

A related aspect of potential decongestion is the substitution of transfer payments to individuals, firms, or nongovernmental institutions for certain existing or yet to be proposed intergovernmental transfers. Such substitutions are especially relevant to training, placement, and employment of the hard-to-employ (especially as the emphasis shifts from public service to private sector employment), to housing assistance, and to certain kinds of education assistance. Experience has shown the consistent inability of the Congress to target assistance to places without unconscionable waste in spreading the funds around to practically every unit of government, regardless of need; on the other hand, Congress has shown a much greater ability to target funds to disadvantaged people—poor, handicapped, etc.

Corruption and Politicization of Economic and Fiscal Indices

Revenue sharing, countercyclical fiscal assistance, governmental pay scales based on “comparability,” cost of living adjustments to Social Security, civil service, and military retirement all are marked by dependence upon increasingly dubious economic and fiscal indices and consequent cumulative unnecessary spending running into the billions. Federal measures of poverty do not count public assistance in kind—only cash. Comparability data on which federal pay is fixed cannot include state and local employment, pay scales of smaller firms, or private industry fringe benefits (because such inclusions would make the statistical result less favorable to the employees). Unemployment data, especially substate, are highly questionable, and pension benefits are tied to the Consumer Price Index instead of to the Gross National Product deflator. The usual but unspoken reasons for all of these kinds of intentional skewing is to achieve a higher level of payout. An important criterion that might well be tied to grant initiation or continuance is the existence or ready availability of statistically reliable data for each formula factor.

Regulatory Reform

Regulatory conflict and overlapping is fully as contributory to intergovernmental imbalance as the increasing “marbelization” of service delivery responsibility and financing and should be accorded something approaching equivalent treatment in the Commission’s report. For example:

- Concurrent regulatory jurisdiction of national and state governments increases costs for those regulated, which in turn raises consumer prices.
- Especially critical is state regulation of product manufacture and product specifications with respect to goods moving in interstate commerce. Several federal regulatory statutes not only permit but encourage states to impose equal or higher standards, thus breaking up economies of scale involved in the mass production for a national market.
- Mistaken striving by regulators for a risk-free society or for incremental levels of protec-

tion, the economic costs of which far exceed the demonstrable social benefits.

- The virtual absence of any machinery at national or state levels for an impartial cost-benefit analysis and decisionmaking to which proposed new regulations or changes are subjected.
- On not infrequent occasions, regulatory fields occupied by state governments are preempted—not by act of Congress, preceded by careful deliberation, but sometimes casually and often cavalierly by administrative regulation. (For example, Federal Trade Commission activities concerning the funeral, eye glass, and hearing aid industries and a pending action by Secretary Goldschmitt of the Department of Transportation concerning the movement of atomic wastes are recent cases in point.)
- As pointed out previously by ACIR, several national regulatory objectives are linked to the intergovernmental transfer system, often with consequent friction, excessive administrative costs, and lowered productivity. Delegation of enforcement powers to each granting agency for governmentwide statutory environmental, civil rights, affirmative action, planning, and other requirements presents recipient state and local governments with administrative chaos defying description.

Among remedial measures that the staff should develop for Commission consideration are the following:

- A Constitutional amendment providing that national preemption of any regulatory field pursuant to the power of the Congress to regulate commerce among the states shall be accomplished by a statute, stating explicitly the intent to preempt and the reasons therefor.
- A sorting-out process (comparable to that proposed in the draft chapter for functions and service delivery grants) to be established by statute for recommendations by the President to the Congress as to respective regulatory fields that should be preempted or vacated by the national government (possible criteria set forth subsequently in this statement). The statute, in addition to substantive

criteria, also should include an intergovernmental consultative process to precede or accompany the Presidential recommendations.

- Enactment of those parts of the Ribicoff-Mathias bill (S. 262) imposing economic cost benefit analyses by regulatory agencies and review by the Congressional Budget Office amended to include an appropriate review and recommendation role by the Council of Economic Advisors (CEA) and any other appropriate unit of the Executive Office of the President.*
- Enactment of legislation authorizing the President to formulate and submit to the Congress grant simplification proposals covering regulatory and other Congressionally enacted requirements applicable to two or more agencies, whereunder varying statutory language is rendered internally consistent and more conducive to effective administration and compliance by recipient state and local governments; any such simplification proposal to become effective within a specified period; unless disapproved by a vote of either house of the Congress.

AUGMENTED CRITERIA FOR SORTING OUT GRANTS

The draft chapter includes proposals for decongesting the grant system by a more clear-cut assignment of functions to either the national or state-local level—a relayering, if you will, of the federalism cake. Unfortunately, in my opinion, ACIR in its numerous reports in recent years has not tackled head on the problem of realignment of functional responsibilities except in terms of structure and process. Some earlier functional studies—welfare, medicaid, poverty programs, education finance, law enforcement, and mass

* Part of the bill is highly controversial, barring any direct or indirect involvement of the President in cost-benefit analyses by the independent regulatory commissions. I believe CEA and Office of Management and Budget concern with economic affairs should be governmentwide and not fenced off from the "independent commissions." For useful commentary on both sides of this question, see Ribicoff, A., "For Effectiveness and Efficiency: S. 262," *Regulation*, Washington, DC, American Enterprise Institute, May-June 1979, pp. 17-20; and De Muth, Christopher C., "Constraining Regulatory Costs—The White House Programs," *Regulation*, January-February 1980, pp. 13-26.

transportation—looked at functional substance and characteristics, but most of these are more or less outdated.

Some functional “case studies” are a part of the present report, but the functions involved are not mentioned in the recommendations. Instead, more general criteria are submitted for someone to apply to the existing grant spectrum. These criteria, as far as they go, are well stated and mostly defensible, but I would suggest substantial augmentation. The agency or official charged with identifying specific functions, subfunctions, and grant or regulatory programs associated therewith for which the federal role should be eliminated, reduced, or redirected must have criteria and other policy guidance sufficiently specific as to make the identification and frame the rationale therefor. The criteria and other guidelines are of at least three levels or kinds:

1. Situations warranting national government entry into a new activity (grant, regulatory, or other);
2. For existing programs, general considerations of a fiscal/administrative character calling for elimination, retention, or other change in the federal role; and
3. For each existing program, question if one or more of the initial rationales still exist and to what degree, and see what other functional and programmatic characteristics call for withdrawal, retention, or redirection of the federal role.

As presently constructed, Recommendation 1 encompasses primarily the second group, relates exclusively to grants, concerns mostly existing programs, and provides no guidelines of a functional-specific character. If the recommendation were adopted, who would be responsible for taking the next step and what would it be? By ACIR, in a future report, finally getting down to brass tacks on a few specific functions? By OMB, in assembling a catalog of grants broken down by the quantitative measures proposed? Or by the governmental affairs committees of the Congress, in holding hearings to ask interested parties what they think?

I would urge strongly (a) the development of some additional guidelines relating to national activities (some suggestions are resurrected below), and (b) the evaluation of the respective program areas covered by the case studies in light of

the first two sets of criteria and additional factors peculiar to the function and subfunction and indicating the direction of the proposed action—elimination, reduction, retention, or other change. The staff members concerned are no doubt rather thoroughly versed in the program characteristics, already having reviewed the history and written up the descriptive detail. (Later in this section, an illustrative rough cut is taken on three elementary and secondary education programs.) The resulting recommendations would constitute a sizeable running start for the implementors and would be sufficiently specific for the drafting of proposed White House recommendations to the Congress and the attendant pieces of proposed legislation.

NATIONAL ACTIVITY ENTRY

Here are some beginning criteria related to appropriate national government activity (grant, regulatory, or other); these are lifted from the 1955 report of the (Kestnbaum) Commission on Intergovernmental Relations.

... the following conditions justify national action within the national government's delegated powers, when the lower levels of government cannot or will not act:

(a) When the national government is the only agency that can summon the resources needed for an activity. For this reason the Constitution entrusts defense to the national government. Similarly, primary responsibility is given to the national government because it alone can command the main resources for the task.

(b) When the activity cannot be handled within the geographic and jurisdictional limits of smaller governmental units, including those that could be created by compact. Regulation of radio and television is an extreme example.

(c) When the activity requires a nationwide uniformity of policy that cannot be achieved by interstate action. Sometimes there must be an undeviating standard and hence an exclusively national policy; as in immigration and naturalization, the currency, and foreign relations.

(d) When a state through action or inaction does injury to the people of other states. One of the main purposes of the commerce clause was to eliminate state practices that hindered the flow of goods across state lines. On this ground also, national action is justified to prevent unrestrained exploitation of an essential natural resource.

(e) When states fail to respect or to protect basic political and civil rights that apply throughout the United States.

The foregoing need to be amended and updated, but they represent the kind of qualitative characteristics that need to be used in addition to fiscal and administrative guides included in the draft recommendations and to individual program characteristics and considerations, as well as comprising benchmarks for the vacation or preemption of regulatory activity.

Illustrative Factors in Three Education Programs

Three of the "larger ticket" grants in the elementary and secondary education field are: Title I of the *Elementary and Secondary Education Act* (ESEA) (P.L. 96-561); impact aid (P.L. 815 for construction and P.L. 874 for operations); and assistance to education for the handicapped (P.L. 94-142).

ESEA TITLE I

Factors justifying initial enactment of this program included (a) pervasive positive and negative benefit spillover of the elementary and secondary function; (b) large and growing number of "poverty children" in the public schools, especially in inner cities and depressed rural areas; (c) wide intrastate and intrametropolitan tax base and per pupil expenditure disparities; and (d) wide interstate disparities in financial resources available for, and devoted to, public elementary and secondary education.

Factor (a) is still present to some degree; (b) is present but somewhat abated in magnitude along with declining enrollment; (c) is substantially lessened due to a wave of school finance reform in many states, often accompanied by weighted pupil formulas and shifts in financing from primarily local to substantial and in some cases to predominantly state level; (d) shows a substantial

and continuing decrease, per capita income ratio between Connecticut (high) and Mississippi (low), down to 1.6 to 1 and dropping, as the Sun Belt continues to economically outstrip the Frost Belt.

In light of substantial decrease in rationale, reduction in magnitude and diversion of much of remainder from direct distribution to districts to incentives for intensified state assumption of fiscal responsibility or other forms of intrastate resource, equalization would be among the promising options.

IMPACT AID

Rationales for construction aid have all but disappeared because of enrollment declines, as have justifications for Category B of P.L. 874. Phasing out or redirecting the money has been recommended repeatedly. Some phasing out of Category B in wealthier jurisdictions already has been voted; perhaps the present budget crunch will kill it off completely.

ASSISTANCE FOR EDUCATION OF THE HANDICAPPED

This is part mandate and part assistance. Federal court decisions, in addition to Congress, are requiring large increases in outlays. Spillover and humanitarian justifications are very strong. These and other factors weigh heavily toward continuance and possible increase when fiscal conditions permit or perhaps drawing from Title I and impact aid in the interim.

The foregoing are illustrative of the kind of additional criteria, specifically related to the function or program, that must be included if the sorting-out proposal is to have any utility other than rather sparse fodder for further study or hearings.

CONSTITUTIONAL AND STATUTORY CHANGES FOR REDRESSING FEDERALISM IMBALANCES AND STRENGTHENING FISCAL DISCIPLINE AT NATIONAL LEVEL

"Let's get back to the basics!" This call to action that resounds through many school districts across the country is equally applicable in another context: to the growing concern about the severe erosion of the American federal system that has been taking place over the past two decades. Here we are talking about the key Constitutional and other

structural principles that distinguish the federal from the unitary form of domestic governance.

In the Constitution, of course, we have (1) state control of election machinery (Art. I, Sec. 4); (2) Congressional power to regulate commerce among the states (Art. I, Sec. 8); (3) prohibition of state boundary changes by national action without consent of the state or states concerned (Art. IV, Sec. 3); (4) authorization for two-thirds of the state legislatures to initiate amendments to the U.S. Constitution via a convention mandatory upon the Congress (Art. V); (5) providing that the U.S. Constitution and laws pursuant thereto are supreme, the constitution or laws of any state to the contrary notwithstanding (Art. VI); and (6) powers not delegated to the national government by the Constitution are reserved to the states or to the people (Tenth Amendment).^{*} Additionally, and especially pertinent to the draft report before the Commission, is (a) the power of the Congress to provide for the general welfare, any spending for such purpose having been given an unlimited green light by Supreme Court decisions, and (b) the uniformity clause in Art. I, Sec. 8, as it may apply to national taxation.

If the foregoing and other provisions of the Constitution are the substantive and legal bases of American federalism, and if federalism is in the dire straits depicted in the draft report, why are not some alternatives provided for strengthening or updating the Constitutional parameters of the federal system? Aside from changes in the electoral college and mention of a Presidential item veto, there are no alternatives provided for Constitutional changes addressed to the problem areas other than a transparently unacceptable proposal for a wideopen Constitutional convention. (The convention would consider such things as a "fusion of political executive and legislative authority," a thoroughly discredited idea of the Council of State Governments in the early 1960s for what it termed a "Court of the Union" to de-

cide cases and controversies of an intergovernmental character; and in general, an attempted overhaul of the complete governmental system, not just the intergovernmental aspects thereof.) Following are some additional alternatives that might merit the Commission's consideration.

Question of State Responsibility for Initiating U.S. Constitutional Change

In Article V the founding fathers endeavored to provide protection against undue national government encroachment upon the spheres of activity reserved for the states and their local governments in two ways: first, by requiring legislative ratification by three-fourths of the states of Constitutional amendments put forth by the Congress, and second, state initiation of Constitutional change through the petition/convention/ratification process, with Congress impliedly in a ministerial rather than a substantive role. Several questions of a key intergovernmental character are involved; these are not theoretical—they are here and now. On three occasions during the past two decades, the number of petitioning states has come within shouting distance of the required two-thirds (reapportionment, revenue sharing, and balanced federal budget).

- Should the states continue to have the initiating power? If not, repeal of the relevant portion of Article V would be called for.
- Should the initiating power be strengthened (e.g., making the ministerial, nonsubstantive role of Congress explicit; eliminating the convention step, with Congress perfecting the proposed amendment and sending it back for ratification)?
- Should the initiating power be weakened (e.g., explicitly giving Congress a substantive role)?
- Unless repeal is called for, ACIR in this report should reaffirm the urgency of enacting the Ervin bill.

Greater Intergovernmental Revenue Flexibility

One of the Constitutional propellants for an unnecessarily wasteful grant system has been the taxation uniformity clause that many argue pre-

^{*} Frank Bane, the first chairman of ACIR, has often emphasized that from a substantive and political standpoint, four powers and functions of state government constitute the pillars of American federalism: Concurrent taxing powers (except for customs) with national government; primary responsibility for public primary, secondary, and higher education; control of election machinery; and, except for a handful of federal crimes and for U.S. Constitutional safeguards as to due process, control of the criminal justice system.

cludes any form of regional taxation earmarked for federal projects of a strictly regional (metropolitan or multistate) character. The local piggy back upon state income and sales taxes has been an outstandingly successful aspect of fiscal federalism. In its absence many more state aid programs would have become necessary, with consequent inequities and complicated administration.

- Amendment providing an exception to the uniformity clause by authorizing Congress to create opportunities for state, interstate, or metropolitan piggy backing on the federal personal income and other taxes in order to finance projects and activities of a regional nature.

Such an amendment would permit special taxation to fund various multistate programs such as Appalachia. (When Appalachia was established, part of the justification for subsequent expansion of regional commissions was that if some states could get money for regional programs, all other states should be in some kind of regional program too! Hence, Four Corners, Ozarka, Upper Great Lakes, etc.)

Strengthening Fiscal Discipline in National Government

One of the major reasons for the growing overload upon the federal aid system has been the ease with which members of Congress can persuade one another to support the launching of new programs, very often concealing the true annual cost under deceptively low first-year startup funding. New programs are easy to launch in Congress, because there is no final point, after the appropriations committees have done their work, at which expenditures must be brought into line with revenues, with the attendant painful review and readjustment of priorities that nearly all state and local governments must undergo. Not since 1969, despite a number of intervening years of economic growth and essentially full employment, has the federal budget been balanced. Only with new Constitutional and statutory fiscal safeguards can the runaway growth in federal grants be slowed, real priority setting among competing needs effected, and current financial waste and fraud in the intergovernmental transfer system re-

duced. The following alternatives should be included in the draft report and given serious consideration by the Commission.

- A Constitutional amendment providing for an item veto of appropriation and appropriation-authorization bills. The item veto has proven to be an effective fiscal management tool at the state level and is contained in many state constitutions.
- A Constitutional amendment prohibiting appropriations in excess of estimated revenue, unless the Congress by a (three-fifths) (two-thirds) vote of each house finds a deficit to be necessary to assure national economic stability. Most states require a balanced budget in their constitutions; to say that such a "detail" *does not belong in the national Constitution* or would hamstring the government in time of emergency overlooks (a) the contrasting state and local experiences where such a stricture is in effect, (b) that requirements for an extraordinary legislative majority are as old as the Republic (any demonstrable emergency condition can be met through such a majority), and (c) the record of the Congress since 1940, proving beyond a shadow of a doubt that statutory enactments and resolutions of good intentions are inadequate for fiscal self-discipline, because of the ready availability of the printing press.
- A Constitutional amendment or statutory amendment to the *Congressional Budget Act* to (a) require inclusion of projected obligational authority for future years in appropriation and authorization bills carrying initial funds for multiyear programs; (b) authorizing pro rata reductions in supplemental funding of entitlement programs if found necessary by each house in order to avoid a deficit; or (c) some comparable provision that would assure appropriation control over entitlement programs and back-door financing unless waived specifically in a particular year for a particular program by a vote of each house.

The foregoing are neither original nor new. Deficit spending has brought the nation to the very brink of fiscal and economic disaster; more than half the states have called for a budget balancing amendment. The several meritorious suggestions

in the draft report for decongestion of the transfer system become largely empty rhetoric unless placed in a fiscal framework that is conducive to careful choice rather than a continuing Congres-

sional invitation to all and sundry to the proverbial free lunch.

Thank you for this opportunity to comment on the draft report now before the Commission.

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Is the Federal System Still There?

**Formal Statement of Professor Daniel J. Elazar,
Director, Center for the Study of Federalism,
Temple University**

I have been asked to appear before you today to discuss the admirable ACIR report on "The Federal Role in the Federal System." So much of the basic analysis in that report squares with my own studies and observations that I must carefully avoid mere repetition of them in my remarks. I have decided to restate some of that analysis in even more emphatic terms, because I strongly believe that the cardinal question before us transcends the specifics of the massive effort before you and goes to the very heart of whether or not the federal system in the United States still exists as such.

Those of you who know me, or know my work, know that during the 25 years that I have devoted to the study of the American federal system, I have consistently struck an optimistic note with regard to developments within it. Indeed, with my mentor, the late Morton Grodzins, I was active in promoting the idea that the cooperative approach to federal-state relations, including the involvement of local governments as partners, was as viable a form of federalism as the older dualistic approach, calling for maximum separation of governments and their functions. When President Lyndon Johnson stated that the "creative federalism" of the Great Society was to be seen not as redividing the same pie but expanding the pie for federal, state, and local governments alike, I appreciated his confirmation of the cooperative view. However, certain very drastic changes occurred along the way—most of which are admirably summarized in the draft report before you.

When I wrote in *The American Partnership* about the way in which cooperative federalism was in fact the standard pattern of behavior during the era when the theory of dual federalism was dominant, apparently I did not sufficiently appreciate the importance of the theory functioning as a restraint upon behavior. As long as there was a pervasive and unchallenged sense of the Constitutional division of powers between federal and state governments, of Constitutional limits on federal action, and of the federal role as supportive rather than domineering—as long as the relatively powerful federal government in all its branches had to be somewhat apologetic about getting involved in any particular function, it was possible for Washington to work with the states and localities on a partnership basis. Somewhere along the line, however—perhaps with the death of the dualistic doctrine—the sense that the federal government was Constitutionally limited essentially disappeared. In great part this was a result of decisions of the U.S. Supreme Court, of its becoming too active a partisan and abdicating its umpire role, as the report suggests. But, beyond that, it was also an abdication on the part of the executive and legislative branches of the federal government, who refused to accept their role as interpreters of the Constitution. Instead, they demonstrated a willingness to reflect any interest that could move them, leaving it entirely to the Court to determine questions of Constitutionality.

The natural history of this change is easily traced. In the 1950s the federal government became actively involved in a supportive role in virtually every field of governmental endeavor, other than the most utterly local. The 1960s witnessed a shift in that involvement—from supporting state and local initiatives to taking the initiative and requiring the states and localities to conform to federally established directions. This led, in turn, in the early 1970s to increasing federal preemption of state and local powers, and in the mid-1970s to the notion that the federal government was the policymaker by right, while the states and localities were merely convenient administrative arms to be subjected to all kinds of federal regulations, whether authorized by Congress or not. Even Governors came to believe that the states could not initiate programs on their own but had to wait for, or seek, Washington's lead.

By the end of the decade, we had reached the point at which the states increasingly were being

excluded by federal preemption from fields that until relatively recently were considered their exclusive prerogative. In recent years Congress has acted with no restraint and the Court with virtually none, despite the efforts of some justices to revive the idea that there are indeed Constitutional questions to be faced.

There were those of us who raised the issues contained in the report at the beginning of the decade, but our words apparently fell on the deaf ears of a Congress whose members no longer seem to know or care what federalism is all about. This occurred despite the fact that every President since Lyndon Baines Johnson has paid obeisance to the federal principle and has claimed to stand four square on the side of a healthy and vital federal system in all its parts. Our warning then, which I would suggest is even more correct now, is that what the Presidents were advocating was decentralization, not federalism.

Once upon a time we had a Constitutional sharing of powers in which each partner was given due respect—"full faith and credit" in a real sense—by every other partner and in which the federal government, as the strongest partner (if only because it has always had an easier time raising revenues, and since 1862, the exclusive power to print money), was prepared to exercise self-restraint in dealing with the states. More recently we have moved to a system whereby it is taken as axiomatic that the federal government shall initiate policies and programs, shall determine their character, shall delegate their administration to the states and localities according to terms that it alone determines, and shall provide for whatever intervention on the part of its administrative agencies as it deems necessary to secure compliance with those terms.

Elsewhere I have suggested that the proper model of a federal system is a matrix of governments serving larger and smaller arenas, with the federal government as the framing institution serving the largest arena, but with no greater legitimacy outside the spheres of its principal responsibility than the other governments serving smaller arenas in the spheres of their principal responsibility. It is most emphatically not a power pyramid consisting of higher and lower levels, with the federal government presumably on top and the states and localities tiered below it (and the people presumably underneath the entire structure). The operative ideology today begins

with the pyramid model and leads to the effort to substitute decentralization for federalism. Even our language reflects it. The American people have drawn the right conclusions—coming to look upon all government as simply a pyramid weighted down upon them; one to be milked for whatever a person or group can get; the lesser of evils or the path of least resistance since there is no way to get it off our backs.

Not only has the Constitutional theory of federalism been replaced by a half-baked theory of decentralization, but it is a vulgar and, at times, vicious theory as well. What it has meant is that Presidents and Congresses have done exactly what common sense would have suggested they would do: namely, used decentralization in an effort to keep the political “goods” for themselves and pass the tough problems on to the states and localities. President Nixon even articulated this approach, indicating that he would keep those responsibilities that brought his Presidency credit but pass on the other ones, the difficult ones, to the Governors and Mayors. Subsequent Presidents and Congresses have done the same thing without saying so.

Witness the sorry spectacle of summer 1979, during the height of the gasoline shortage when the President tried to force the Governors to establish and enforce unpopular control mechanisms, and the Governors refused to accept the political liability of doing so. The President self-righteously proclaimed his devotion to federalism in order to “stick” the Governors with this unenviable task, while the Governors self-righteously evoked the idea of federal responsibility to pass the buck back to Washington.

During the past year, this trend has reached a new high. Indeed, in the first few weeks of 1980 alone we have seen the advancement or enactment of legislation substituting national for state standards for highway truck weight—most assuredly not for the benefit of the highways so much as for the benefit of the truckers; expanding the federal “right” to intervene in the management of state institutions, presumably to protect the rights of U.S. citizens incarcerated within them; providing for federal override of state legislation and local ordinances in certain energy-related matters; and requiring each state to establish a commission to study ways to improve state and local government operations as a condition of receiving its share of federal revenue sharing.

This latter represents another effort in a growing series of attempts to influence the very structure of state and local governments—not merely their functions but touching matters that were sacrosanct even in the heyday of New Deal interventionism. And this is only what has happened since Congress reconvened in January of this year. As PUBLIUS’ *Annual Review of the State of American Federalism* has indicated for the past two years and will again this year, the list of similar examples is growing longer all the time.

Moreover the state and local response to all this seems to be merely acquiescent. Thus, the National Governors’ Association (NGA) *Governors’ Bulletin* of February 29, 1980, reporting on the NGA winter meeting, reports that the Governors indicated their willingness to accept the Carter Administration proposal requiring states to establish commissions to encourage structural change, “but only if such commissions did not hamstring the states with unreasonable and unnecessary controls.” The most they could do is criticize the Administration’s draft proposal, which authorizes the Secretary of the Treasury to intervene in, and approve state procedures and decisions, and the requirement that the commissions be dominated by representatives of the localities.

The Governors were on the defensive in almost every respect. They had to publicly oppose federal efforts to circumvent substantive provisions of state water law and urged that the President, not the Administrator of the Environmental Protection Agency, have the authority over laws issued by Governors to facilitate the use of coal. And so it went. The plaintive cry of the Governors to be included as partners at a time when all knowledgeable observers agree that most states are functioning as well as, if not better than, the federal government itself reflects the present state of affairs all too clearly.

If all of this centralization had led to the desired improvements, perhaps even those of us who are committed federalists—who believe that the federal system is one of the fundamental bulwarks of liberty, which for us remains a principal goal of the American experiment—might be prepared to pay the price. Alas, the true record is now emerging.

Again, looking only at the most immediate examples, *The New York Times* of March 8, 1980, includes an article on the increase in traffic deaths in 1979 which quotes Howard L. Anderson, the

recently retired Federal Highway Administration associate administrator for safety: "Much of our present highway design criteria is [sic] based on what is now an obsolete design vehicle . . . concrete median barriers which safely redirect the two-ton and larger vehicles have shown a disturbing tendency to cause the sub-compact car to roll over." Those of us who were witness to the defacing of miles and miles of highway with ugly concrete barriers, destroying green median strips, at untold cost, because the federal government required that change if the states were to continue to receive highway funds, are now faced with the spectacle of those barriers serving as killers rather than the safety purposes for which they were presumably designed. It is important to recollect that those barriers were being erected during the mid-1970s—after the energy crisis of 1973-74, and precisely when the country was being pushed by other federal agencies (quite properly, if not sufficiently) to shift to smaller cars.

Similarly, *The New York Times* has printed a series of articles on the untoward consequences of deinstitutionalization, another major federal effort, revealing case after case of people wandering the streets or being left to shift for themselves without proper care. Two colleagues at the University of Southern California, Arthur J. Naparstek and David E. Biegel, have written as follows:

Federal mental health planners envisioned the flowering of a network of support services to care for deinstitutionalized patients at the community level through the stimulus of federal seed money. But 1,300 of the 2,000 community mental health centers projected for 1980 have failed to materialize and many that did have failed to service this chronically ill population. *Deinstitutionalization*, an ostensibly humane treatment program, has degenerated into a tragic crisis. Public scrutiny of the situation needs to begin now.

Planners, without real consultation, assumed that strong communities would accept the chronically ill. When few welcomed large numbers of these troubled people, patients were steered to transitional neighborhoods that would not put up a fuss, but the strong community support factor essential for successful after-

care was absent. The result was that city streets became wards of mental hospitals, and it was out of the snakepits and into the gutter for victims of the deinstitutionalization policy.

In more than a few cases, those deinstitutionalized include people who have committed violent criminal acts. But even if that is merely random, we are left with the sadness of the nonviolent suffering from a process that never took into consideration the fact that, given the human condition, perfection was not obtainable either inside or outside of institutions.

The list of federally generated mistakes grows longer and longer every day. One can forgive all the well-meaning people who are involved for making those mistakes. None of us are immune from the laws of overly high hopes and unanticipated consequences. One cannot forgive them, however, for arrogating to themselves and the federal government a presumed omniscience that they did not have at the expense of the federal system.

So here we have it—a federal government unrestrained in all three branches, one in which the Constitutional issues are never raised and are considered irrelevant by those who presumably have taken an oath to "preserve, protect, and defend the Constitution." Where does that leave us? If we are to accept Alexander Hamilton's minimalist definition of a federal polity in *Federalist No. 9*:

Simply . . . an assemblage of societies or an association of two or more states into one state. The extent, modifications, and objects of the federal authority, are mere matters of discretion. So long as the separate organization of the members be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states, or a confederacy. . . .

then we can be content that we still have a federal system. If, however, we modify that definition with Madison's in *Federalist No. 14*, which describes what the framers expected the American federal system to be:

The general government is not to be charged with the whole power of making and administering laws. Its jurisdiction is limited to certain enumerated objects, which concern all the members of the republic, but which are not to be attained by the separate provisions of any. The subordinate governments extend their care to all those other objects which can be separately provided for, but retain their due authority and activity. . . .

then we have much to worry about indeed.

We have long since encroached on the Madisonian definition, which if one notes carefully, limits national intervention to those objects that concern all the members of the Republic but which are not to be obtained by the separate provisions of any. (Education, for example, concerns all the members of the Republic, but was held by the founding fathers to be separately attainable by each state—yea, each locality—acting separately.) The fact is that we are now even encroaching on the Hamiltonian definition by indirect means, with federally mandated commissions to implement the latest federally supported fads in governmental structural reform, which are likely to become the concrete barriers and deinstitutionalization programs of tomorrow, and federal executive overrides of legitimate state laws to expedite this project or that.

I like to think of myself as a perennial optimist and am even on record as such. In that spirit, I would suggest that if this great federal republic has not lost its way, then at the very least we are in the position of Daniel Boone who, when asked if he had ever been lost in the woods, retorted, "Nope, but once I was bewildered for three days." We have been bewildered for longer than that. We are so bewildered that with all their importance, specific palliatives will no longer save the federal system. Only a clear restoring of a sense of Constitutionalism and Constitutional priorities can possibly do so.

Here ACIR and I begin to diverge in our prescriptions. The range of options offered in the report, in my opinion, is incomplete. Indeed, the most important option is missing. I repeat, the most important point to be made is that the old palliatives will not work. Nor will transferring welfare, health insurance, and social insurance programs to exclusive federal control with the

concomitant expansion of a bureaucracy already too big at specific points, even if its total size is no greater than it was 30 years ago. From the perspective of federalism, that will only provide further reason for turning public attention to Washington. Even the case for transfer still rests on unproven assumptions. Moreover, in today's climate, such a transfer will simply strengthen the centralizing tendencies, the report has presented so well, by knocking out the last prop maintaining a semblance of the old federalism—namely, the idea that domestic social functions are primarily the province of the states, and if no longer theirs exclusively, are at least intergovernmental.

The real problem is clear. It is not a question of structures, nor of procedures, but of people—people in government who in certain respects are too activist, too eager to do more; people in and out of government who have too many vested interests; and people everywhere who are too untrained in their demands. It is the problem of people who have lost their public-mindedness, who may no longer even see themselves as part of an American public, not to speak of state publics or civic communities. At one point the report refers to proposals to strengthen the rights of the "sovereign citizen." It is a telling phrase and one very much of our times. In the basic documents of the American founding fathers and their commentaries, there was never any discussion of the sovereign citizen as an individual, although there was full and emphatic discussion of the sovereign people. The American tradition of popular sovereignty, however interpreted, is just that—a tradition that the people as a community, as a public, not as individuals, are sovereign.

Our problem today is precisely that every citizen believes he or she is sovereign to do what he or she wishes. How did this come about? There is no single cause, but no doubt the diminution of local loyalties has played its role. The American people is a people precisely because it is compounded of the several state and local publics. John Dewey, who in so many respects was a precursor of contemporary notions, noted this well in his now neglected classic, *The Public and Its Problems*. When that compounding was lost, we became too diffuse as a people, which is now leading us to become a nonpeople.

This report implicitly recognizes that the issue is no longer simply one of intergovernmental relations. In fact, one of its heartening aspects is

that it concerns itself with the federal system as a whole, moving away from an earlier stage in the Commission's life when it joined in the general trend of trying to reduce federalism to intergovernmental relations. This report helps restore the original Constitutional intentions of the American founders, who understood federalism to be the form of the American polity (John Adams' terminology) pervading virtually all, if not all, its aspects. That is another reason why the recommendations seem so pale in comparison with the problem.

In my considered judgment, the possibility of continuing the governmental system in its present form for day-to-day governance is far greater than the report suggests. If we compare the problems of governing in the United States to those of other countries, one sees immediately that the nuisance problems to which most of the proposals in the report are addressed are hardly more than that. People on all planes of government and in all branches can live with those nuisance elements. They can even live with the waste and inefficiencies. They make life less pleasant and have their costs, but they do not prevent governing. They simply elevate to positions of power those people who are best able to cope with the conditions around them and exclude those who are not, strengthening one class of entrepreneurs as distinct from another. What is missing in such a situation, however, is effective government and, most important, government that serves the ends for which government was instituted in the United States. That is the nub of the problem.

The missing option in the report is that of restoring Constitutional barriers. In my opinion it is the most important option of all. Reference was made in the report to the way in which some quarters strongly believed that the political parties were sufficient barriers to centralization and how this has proven inaccurate, at the very least because of recent changes in the party system. I am reminded of an exchange between Martin Diamond and Morton Grodzins in the mid-1950s, subsequently published in part in *Cooperation and Conflict* (which I and my colleagues of the University of Chicago Workshop in American Federalism edited some 15 years ago). Grodzins was a foremost proponent of this view of the parties' role and seemed to denigrate the importance of Constitutional barriers. Diamond took him to task, pointing out that even the role of the parties

was contingent upon the existence of those Constitutional barriers. Grodzins, who was always wise in such matters, conceded the point, although perhaps never to the extent that Diamond or I would have wished.

Diamond understood what the founding fathers understood—namely, that people will be people and that the only way to make them live up to their better natures in matters governmental is through proper Constitutional structures properly maintained. Only a restoration of Constitutional good sense can save the situation. Nothing less will do. Most of the conditions described in the report—such as the prevalence of individual policy entrepreneurs, state and local lobbies, and interest group pressures—are endemic to American political life and are not likely to be altered where or when they should, to be restrained, or to be redirected by Constitutional barriers as in the past.

In that connection, my recommendations are:

1. Undertake a major political education campaign to advance the understanding of Constitutional federalism. Such a campaign should be directed principally toward those involved in public life who hold or will hold public office, will be employed in the public service, or will be active in the various public institutions and organizations of American civil society. These are the people who are most involved in the consideration of public issues and whose opinions (not in the sense of polling but in the original sense of opinion) have been crucial in bringing the old system to its present state. They will be equally crucial in making any changes in the future. Thus, public education in this case is not a television blitz prepared by the Advertising Council to sell a candidate or a slogan, but a process of opinion formation that does not attempt to suggest a doctrine of federalism so much as to revive a sense of the place of federalism in the American political tradition, to help increase the public-mindedness necessary to make that tradition and the system linked with it work toward the achievement of its proper ends.

2. Write or rewrite federal legislation to restore the possibility of a more state-centered political party system. There are many steps that can be taken in that connection, some of which are mentioned in the report. They do not include moving

toward what has been defined as a more responsible party system based upon nationally set policy guidelines. Indeed, those recommendations out of the grab bag of the past do a disservice to the cause of federalism, because they would only enhance centralization. All the historical and comparative evidence at our command, without exception, leads to the conclusion that the more policy-oriented (read ideological) a political party is, the less open it is not only to new ideas but even to new people.

It is possible, and may even be desirable, to foster responsible state political parties. That is where they have worked best in the United States, precisely because they are part of a larger federal framework that acts as a countervailing force to the centralizing tendencies already noted in the report. Given such state parties, the iron law of oligarchy would tend to work along with them. Responsible state parties can achieve the goals that advocates of responsible parties seek to promote in the realm of policy formulation and citizen involvement. Responsible national parties will defeat the purposes toward which every other recommendation is directed.

So, too, would more federal funding of campaigns. Indeed, there should be less. We are rapidly becoming aware of how the present federal laws providing for the financing of Presidential campaigns discourage party organizations and the activity of individuals, and encourage the power of single-interest political action committees (not to speak of the problems they have created with regard to the length and rigidity of the Presidential races themselves). Short of abandoning any federal oversight over public funds, there is little that can be done about this under present conditions except to make the regulations even more complex and thus entangle Presidential campaigns in the same thicket that ensnares the administration of programs in the federal system. This Commission could hardly recommend that and be true to the findings of its own research. Again, the presumed evils of private financing pale into insignificance before the actual evils of public financing. If anything, we should be moving in the other direction.

I would be so bold as to suggest that there should be greater encouragement of political patronage in certain circumstances. As a native of Minnesota, I know that in some states political parties not only function, but also become great

without any touch of patronage. But as a political scientist, I also know that there are cultural and historic reasons why that is so. In other states the same cultural and historic reasons not only do not exist, but also have little chance of developing, given strongly rooted political cultures and traditions of their own. It is no crime to recognize the existence of those cultures and traditions and to take them into account.

3. Restrict the scope of the conditions attached to federal grants-in-aid. Here I refer particularly to those general provisions attached to all grants-in-aid that have nothing directly to do with the implementation of programs but which utilize the grant mechanism to advance other goals. These other goals may indeed be laudible. I tend to identify with virtually every one myself, but there is a time and a place for everything. The grant system is a convenient but inappropriate mechanism for advancing those purposes, given the other purposes that it abuses in the process.

4. Cull federal grant programs and drop those that do not deal with any substantial federal question or are explicitly directed toward the institutions of state and local government. Here, Madison's definition of a proper federal role becomes very important. Together with some of the concrete recommendations presented in this report regarding program size, it is possible to fashion a basis for doing just that.

5. It would be counterproductive to make any current intergovernmental domestic programs into wholly national ones. On the contrary, for any national health insurance program that emerges out of Congress, efforts should be made to vest primary responsibility in the states, with appropriate federal funding. This is done in Canada, which has one of the most successful national health programs in the world. Past experience has shown that any effort to separate functions by governmental plane is more likely to lead to greater decentralization. All the evidence indicates that it is easier to transfer functions to the federal government than to return them to the states. The draft report alludes to this when it suggests that there is general agreement about transferring income maintenance, health insurance, and welfare programs to the federal government, but no agreement as to what should be returned to the states. I venture to predict that were the

first transfer to take place, nothing would happen with regard to the second. The states would simply lose another and perhaps the final prop in supporting whatever semblance of federalism now exists.

6. All three branches of government, but particularly the U.S. Supreme Court, must be encouraged to reassume their responsibilities as interpreters of the Constitution from a federalist perspective. Although it is possible to narrow broad interpretations developed over the past generation or two (and this should be encouraged) in other ways, we cannot go back to earlier times. It seems unlikely that dual federalism in the 19th Century style could become even a predominant theory, much less a predominant form of practice, which it was not then either. Thus, it is necessary to develop new doctrines or expand old ones.

I would suggest two: First, following Madison's definition from *Federalist No. 14*, we can once again begin to ask of a particular piece of legislation, regulation, requirement, or procedure whether a substantial federal question is involved. Thus, in the right way—one that recognizes the inevitability and logic of intergovernmental sharing in a dynamic civil society located in an increasingly complex environment—new limits can be established with regard to the expansion of federal powers, and real Constitutional

barriers can be developed once again.

Second, I also would suggest the development of a new doctrine based upon a new interpretation of the principle of full faith and credit. This principle, which is included in the Constitution with regard to interstate relations, also could become very important with regard to federal-state and even federal-state-local relations. If the federal government serving the larger arena would, as a matter of Constitutional comity, extend full faith and credit to the actions of the state and local governments, serving the smaller arenas, the problem of federal encroachment would be reduced substantially.

This idea of full faith and credit is something on the order of the principle of *bundesfreundlichkeit*, which the German federal constitutional court has developed into a constitutional doctrine to foster better intergovernmental relations. It is the kind of comity based upon constitutional obligation that prevents overly narrow, self-serving interpretations of constitutional matters by the parties involved. It is another way in which to demonstrate Chief Justice John Marshall's great dictum that, "it is a Constitution we are expounding." Just as that means broad powers of interpretation to keep the Constitution from becoming too narrow a contract, so too should it mean broad willingness to be considerate of one's partners in the federal system.

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What is ACIR?

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

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

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

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

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

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