H J R

34

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HJR 34

Const. Amend. State Sovereignty

Received March 10, 1989
by Rep. Boucher

Heard March 29, 1989
Heard April 6, 1989

Passed Out of Committee April 6, 1989
5 Do Pass

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HJR 34: Const. Amend: State Sovereignty

HOUSE COMMITTEE REPORT

(7)
Date Referred: March 10, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: ________

The STATE AFFAIRS Committee considered: HJR 36

HOUSE JOINT RESOLUTION NO. 36

[CONST. AMENDMENT: STATE SOVEREIGNTY]

Proposing an amendment to the Constitution of the State of Alaska relating to the sovereignty of the state.

RECOMMENDATIONS:

[ ] be replaced with ________________ [ ] the same title [ ] a new title

[ ] have attached amendment(s)

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the ____________ Committee

ADOPTS: ____________ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[X] fiscal impact Div of Elections

[ ] zero fiscal note ______

[ ] zero with analysis ______

APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal note(s) ______

[ ] zero fiscal note(s) ______

[ ] zero fn/analysis ______

SIGNING DO PASS:

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend

Chairman's signature

Item 2

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HJR 34
PUBLISH DATE: 3-10-89

FISCAL NOTE

REQUEST:

Revision Date: 3-16-89
Title: Sovereignty of the State

Agency Affected: Office of the Governor
BRU: Division of Elections

Sponsor: Boucher
Requestor: Boucher

Components: II-Elections
Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	2.2*	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	2.2*	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	2.2*	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	2.2*	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

* Costs included cover 2 to 3 pages in each Official Election Pamphlet for printing and typesetting, and costs estimated to cover computer programing requirements for vote (Continued)

Prepared by: Linda Edgeworth
Division: Elections
Phone: 465-4611
Date:

Approved by Commissioner: Sandra K Stuart
Agency: Division of Elections
Date: 3/16/89

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be $51.2.

Under these circumstances the fiscal note would be:

53.4

Item 3

new file. References Alpha

MORE PERFECT UNION

A Plan for Action

Alaska State Legislature
House of Representatives

Representative H.A. "Red" Boucher

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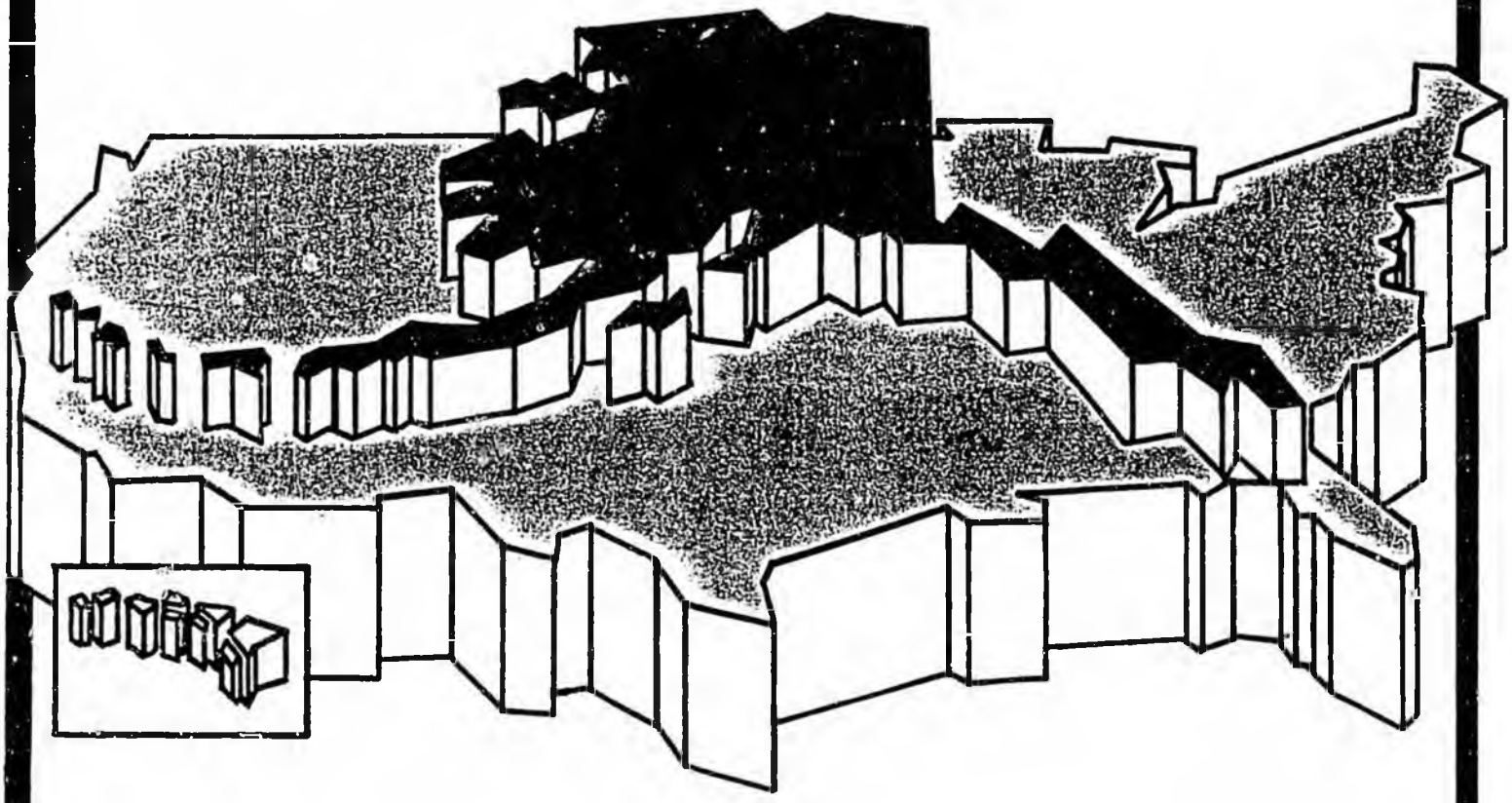

FINAL REPORT

By the Alaska Statehood Commission

January 24, 1983

President of the Alaska Senate
Speaker of the Alaska House

Dear Mr. President and Mr. Speaker:

We submit the Alaska Statehood Commission's final report as required by Chapter 161 SLA 1980 and by vote of the people. This report concludes our two-year study of Alaska's relationship to the United States. It sets forth a plan for action to improve that relationship.

In our first year we studied alternative forms of association that the people of Alaska might seek with the United States. We determined that all alternatives to statehood are now undesirable. We have concentrated our final efforts on the positive contributions that Alaska might make to improve the union. The evolution of our nation is not complete--nor are the promises of Alaska's Statehood Act of 1958 all fulfilled.

Once a forgotten territory, Alaska today is a state unique in size, cultures, and resource potentials. Alaska is a redoubt of the nation's military defense. Alaska daily pumps one out of every five barrels of oil the nation produces.

But with our new prosperity and importance come louder demands from our countrymen. Events of the 1970s and now congressional moves to limit state resource revenues teach us that we cannot afford to ignore developments from the Potomac.

As the least populated state of 50, our hopes lie in persuasion and a commitment to national unity.

When a dispute looms with the federal government, we must be ready to act. We must have research facilities already in place with facts in hand. We must stimulate coalitions of like-minded states. We must bring to Alaska those who make or sway national opinion so that they can see our situation for themselves. We must take our cases to the courts. We must gird ourselves with facts and friends.

We thank the people of Alaska for this opportunity to study and to serve. We submit this plan for action with the conviction that good government can be made better.

Sincerely,

John B. (Jack) Coghill, Chairman

MORE PERFECT UNION

A Plan for Action

FINAL REPORT

By the Alaska Statehood Commission

January 1983

PREFACE

A majority of Alaskans voting on Aug. 26, 1980, authorized the creation of the Alaska Statehood Commission. They directed the commission to study the status of the people of Alaska within the United States, and to make recommendations on that relationship.

It was the first time since the Civil War that citizens of a state have by their vote indicated unease with federal union.

The law provides for 11 commissioners: five appointed by the governor, two appointed by the president of the Senate, two by the House speaker, and two by the Legislative Council. We first gathered on Oct. 22, 1980, in Constitution Hall at the University of Alaska-Fairbanks. In 27 months of work, we met and heard public comment in Barrow, Kotzebue, Anchorage, Nenana, Fairbanks, Juneau, Ketchikan, Sitka and Homer. We contracted for 14 expert studies totaling 2,000 pages, on topics ranging from an oral history of the statehood movement to an analysis of the flow of funds between Alaska and the federal government. Commission staff prepared other research at our direction.

In the final pages of this report readers will find a research bibliography. Full copies of our contract research are available at state legislative information offices and most public libraries.

In January 1982 we published our first findings, entitled *More Perfect Union: A Preliminary Report.* That spring we held statewide teleconference hearings on the report.

In this final report, we set forth 20 recommendations. Some of them do not originate with the Statehood Commission; for example, a legal action fund for the states is a suggestion from the U.S. Advisory Commission on Intergovernmental Relations. Because our enabling legislation charged us to preserve Native interests, we checked to ensure that none of the actions we recommend would interfere with the legal rights of Natives. None would.

Together, our two reports give a complete picture of our duties and how we discharged them. Our preliminary report stressed findings and conclusions--few of which changed after its publication. Our final report recommends deeds: hence the title, *More Perfect Union: A Plan for Action.*

Executive Summary

History, economics and technology have combined to offer Alaska a chance for leadership beyond its borders. Once isolated, but no more, Alaska must become a vigorous actor on the national sce[illegible] eager to dispel ignorance about itself, a state eager to support the powers of all states, a state willing to break new trails with other states in forming new compacts and coalitions to solve mutual problems. Alaska must speak out against abuses of federal power, in the press and in the courts and in councils of the states and of the nation.

In August 1980 Alaskans created the Alaska Statehood Commission to study and make recommendations on the relationship of Alaska to the United States.

We considered the benefits and liabilities of commonwealth, of free association, of territoryhood, and of partition. We studied independence by legal means. None is preferable to statehood.

We have spent more than two years on this work. We compared the government we have with the Constitution we honor. We studied alternative forms of association with the United States.

We considered the benefits and liabilities of commonwealth, of free association, of territoryhood, and of partition. We studied independence by legal means. None is preferable to statehood.

We do believe that our union needs fundamental change, for federal influence has grown without guidance. But one state out of 50 can do little on its own. All states must share in the work: to write rules to clarify Article V of the U.S. Constitution, which empowers states to propose amendments; to take joint legal action to oppose federal intrusions; to sponsor a national gathering to forge a balanced federalism. Gaining [illegible]ntrol of our union will take decades of work

Alaska has the money and the r[illegible] to spur these and other nationwide projec[illegible] We must become an activist state, reaching out for co[illegible]litions obvious (western and resource states) and not so obvious (the fishing states of Massachusetts and Maine). We must defend our regional interests with research, persuasion, and pragmatic politics. We must refuse federal grant money if it comes with conditions that undercut our self-determination.

States cannot passively depend that court decisions will quote the 10th Amendment to stop federal action. The 10th Amendment, which reserves unspecified powers to the states, needs action by the states to flesh it out.

We learned that full statehood has not yet come to Alaska.

The Alaska Statehood Act contains mutual promises between the people of Alaska and the federal government. The federal government in 1959 promised to transfer to Alaska an enti[illegible]ment of 103 million acres of land by 1984. The national government would not meet that deadline and had to extend it to 1994. Alaska sued to get action. The Interior Department promised in a 1981 out-of-court settlement to transfer 13 million acres each year until the total is satisfied. The lesson of the past is clear: the federal government will not honor the land and revenue-sharing pacts of the Statehood Act without Alaska's constant vigilance.

Alaskans also have agreements to keep. When we voted for the Alaska Constitution and for the Statehood act we promised to surrender forever all claims to federal lands in Alaska. We should not now repudiate this "clause irrevocable" to pursue fruitless court suits claiming title to this land.

This report is addressed to Alaskans and dwells on Alaskan particulars. But every state has some problems with federal dominance, be it Hawaii with the Jones Act, Florida with immigration, California with accelerated federal oil leasing of the Outer Continental Shelf, or the New England states with federal treaties that parcel out fisheries.

We studied the powers of the states. We reject the notion that our governmental system forms a pyramid of power with the federal government seated on top. The states and federal government

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are partners. Each has important duties. States contribute new ideas. They train national leaders. States adapt national goals to local realities. We are a federal republic and federalism thrives in diversity, on pluralism. A federal nation will always have variety; states have different needs and incomes, different economies, different penalties for crimes, different kinds of local government powers. And, at any given time, some states once poor--like Alaska--prosper while others count pennies. This is nothing new. Wealth flows among the states under the pull of the fickle but irresistible tides of population, economy, and technology. Some resource-poor states would breast these tides. Their officials appeal for federal laws to cap state severance taxes on energy resources, encouraged by a 1981 U.S. Supreme Court opinion[1] that Congress does have power to limit states' mineral revenues. They call for changes to the Windfall Profits Tax[2] to put a levy on states' royalty incomes. Either law would pull down a pillar of state sovereignty: the power to raise necessary revenues. Either law eventually would hurt the states now advocating them, for the precedent once established would spread to all state revenue measures.

We Alaskans wince at the unfamiliarity the leaders of these states display about our wealth, our resources, our climate, and our needs for the highways and the sewers and the safe-water systems that other states take for granted. We must dispel this ignorance with facts and better press relations. We also must educate our own children about the history and cultures of our state, and its niche in the union. We must teach every schoolchild the rights and responsibilities of American and Alaskan citizenship.

Resource-poor states, mainly those of the Northeast and Midwest, also lobby for new grant formulas which would cut federal aid to prosperous states. Alaskans do not automatically oppose some level of redistribution. Already the federal government collects $3 in taxes on general economic activity in Alaska for every $1 it spends here. It collects 46 percent of the total revenue from the Prudhoe Bay oil field owned by the state. The state collects 31 percent.[3]

We must make clear that a healthy and prosperous Alaska is in every American's interest. From Alaska comes one-eighth of the nation's gold; one-fifth of the nation's oil production; and two-fifths of its harvested fish. Off Alaska is the world's richest salmon fishery. Alaska has 10 of 16 strategic minerals needed for the nation's security.[4] In Southeast Alaska is one of the world's biggest metal deposits: a mountain of molybdenum called Quartz Hill. Alaska--once thought hopelessly distant from arteries of trade --now sits at the hub of international air routes and the Pacific Rim trade. Half the world's population lives on the Pacific Rim.

A federal nation will always have variety; states have different needs...

Alaska's bounty and its trade suffer under such federal laws as the Export Administration Act of 1979, which bans the export of Alaska oil, and the Jones Act, which requires U.S. shipping between U.S. ports. Some Alaska oil fields and mineral deposits will never develop due to the artificially high transportation costs these shipping acts breed. Further, these laws sap revenue from the deposits we have already opened. Lifting the oil export ban could raise Alaska's oil revenues $500 to $800 million yearly, and increase federal revenues $1.2 to $1.8 billion yearly.

Problems like the Export Administration Act need immediate attention. Other tasks--like rebuilding the powers of the states--will take years. Some changes we Alaskans may have to accept for the good of the nation though they do not profit us in the short term. But eventually we will see the states transformed, giving new life to the nation Abraham Lincoln called the "last, best hope of earth."

Therefore, we recommend:

1. Alaska should become an activist state. It should take a lead among states to define the boundaries of state powers in our union.

2. Repeal of the Jones Act will serve Alaska's and the nation's interest, and Alaska should seek repeal. In the short term, the state should dedi-

[1] *Commonwealth Edison v. Montana*, 69 L.Ed.2d 884.

[2] A federal district court judge in Wyoming recently ruled the Windfall Profits Tax Act unconstitutional on the grounds that geographic distinctions in the act exempting some areas of Alaska from taxation violate Article I, Section 8 of the U.S. Constitution. This section requires that "excises shall be uniform throughout the United States." Whatever the outcome of the lawsuit, Alaskans should consider the advantages of dropping the current geographic exemption in favor of an exemption for new oil development regardless of location. Such an approach might answer both the constitutional challenge and legitimate national energy interests. It might strengthen Alaska's role in the federal system.

[3] Industry collects 23 percent. These percentages reflect the *total* take of revenue from the field. They do not reflect the shares which would be taken by each if wellhead price went up. If the wellhead price goes up, the division of these additional dollars is weighted even more toward the federal government, largely due to the federal Windfall Profits Tax. If, for example, wellhead price of Alaska oil went up one dollar after repeal of the Jones Act, the federal government would capture about 60 cents of the increase, the state 28 cents, and industry 10 cents.

[4] These are in deposits believed to be commercially viable. However, the bulk of Alaska's cobalt and nickel ores are located in Glacier Bay National Park, which is not open to mining. Geologists estimate that Alaska has one-sixth of the nation's cobalt reserves and one-fifth of its nickel.

cate itself to getting the Jones Act amended to allow the use of foreign-built ships in the Jones Act trade.

3. Alaska and our congressional delegation should vigorously oppose extension of that portion of the Export Administration Act of 1979 which bans the export of Alaska North Slope oil. This law expires in September 1983.

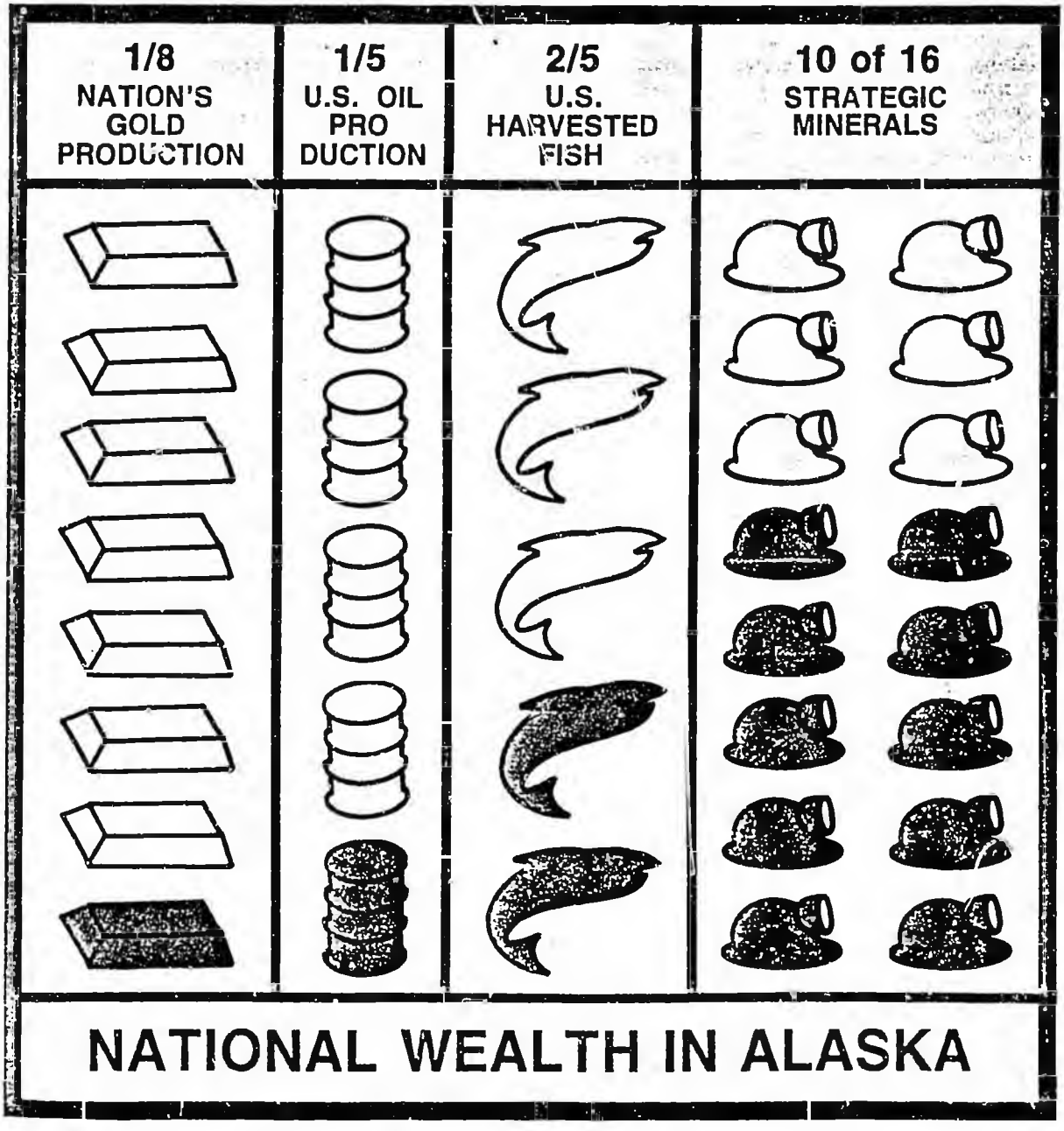
4. Alaska must act immediately to create in Washington, D.C., a research and advocacy institute and ask other resource states to join in supporting it. The institute would combat efforts in Congress to limit or tax state resource revenues.

5. The state Board of Education and Alaska school districts should require the teaching of Alaskan history, citizenship and culture.

6. The Alaska State Legislature should pass a resolution applying to Congress under Article V of the U.S. Constitution for the calling of a national constitutional convention. The convention's sole duty would be to define the procedures governing all future constitutional conventions called by the states.

7. Alaska should take the initiative to establish a legal action fund for the states. Lawyers for this fund would sue to oppose illegal and coercive federal restrictions, regulations burdensome to state and local government, and excessive use by Congress of its commerce powers to override state and local laws.

8. Alaska should provide seed money to the National Governors' Association or like organization to sponsor a national convocation on federalism in the United States.



Shown here are some of the national assets Alaska supplies.

9. Alaska and other states should consider amending the U.S. Constitution to strengthen the role of the states.

10. The governor of Alaska should prepare the political impact statements on proposed major federal actions. Eventually, the National Governors' Association should prepare them on the behalf of all states.

11. Alaska's governor should invite the leaders of northwestern states and the western Canadian provinces and territories to join Alaska in establishing a conference modelled after the New England Governors and Eastern Canadian Premiers Conference. The governor should establish in the executive branch an interagency task force on foreign relations.

12. The Legislature and the governor should immediately invite representatives of Hawaii and the noncontiguous possessions to meet with them to explore setting up a permanent coalition to deal with such common interests and problems as the effects of discriminatory transportation laws.

13. Alaska must vigorously police federal implementation of the Alaska Statehood Act. We should insist that the remaining land transfers be completed within four years, and we must guard against congressional attempts to unilaterally change the Statehood Act or Alaska Constitution. The Legislature should authorize and direct the lieutenant governor to place all such attempted changes in the Statehood Act or Alaska Constitution before Alaskan voters in a ballot proposition.

14. Alaskans should consider two amendments to the state constitution which will clarify Alaska's powers as a sovereign state and its authority to engage in foreign relations.

15. State officials should refuse federal grants carrying particularly burdensome requirements.

16. The Legislature should fund the Department of Revenue or other appropriate agency to make an annual study of and report on the flow of federal spending and revenues in Alaska.

17. The governor should establish an office of external relations on his staff, to be headed by a special assistant charged with coordinating Alaska's expanded relations with other states and with foreign nations.

18. The State of Alaska should explore with the federal government and Native organizations the establishment of a permanent joint fact-finding and advisory body to air and help reconcile problems that arise over land, resources and other interests.

19. The Legislature, in order to give all Alaskans the greatest measure of home rule, should divide Alaska's single unorganized borough into regional unorganized boroughs in accordance with the intent of the state constitution.

20. The state should establish an Alaska information office under the governor's direction to produce clear, objective, precise information about Alaska for nationwide distribution and to arrange for visits to Alaska by members of the national press corps, members of government and other opinion-makers.

The State-Federal Relationship

We on the Statehood Commission believe that the state of Alaska has a special role to play in the nation--one that it must play if it and other states are to preserve their historic and constitutional jurisdictions in the American republic.

Alaska, we think, must become a vigorous actor on the national scene. It must become a state eager to dispel ignorance about itself, a state eager to support the powers of all states, a state willing to break new trails with other states in forming new compacts and coalitions in order to solve mutual problems. Alaska must be willing to speak out against abuses of federal power, in the press and in the courts and in the councils of the states and of the nation--not just for its own purposes but just as much to maintain the relationship known as federalism, in which the states have their important roles to play and the national government has its separate and co-equal role.

Alaska, we think, must become a vigorous actor on the national scene.

This report is addressed to Alaskans and thus dwells on Alaskan particulars.[5] But it could just as well dwell on the problems that New England and Pacific Northwest states have with federal treaty making on fisheries; on Hawaii's difficulties with the Jones Act; on California's concerns about federal oil leasing of the Outer Continental Shelf; on Nevada's complaints against the dominant landlord within its borders, Uncle Sam; on Washington State's battle to prevent Washington, D.C., from overriding state rules on siting energy facilities; or on Montana's efforts to retain some control over how strip mines are developed within its borders.

In our preliminary report we told Alaskans that "Alaska's short history as a state happens to coincide with a 20-year national diminution of the power of all the states through the actions of the federal government," and added that "Our studies on the status of Alaska within the United States have shown us... that the penetration of the federal government into the farthest corners of American life is the rule, not the exception. We share the burden with others" (*More Perfect Union: A Preliminary Report*, p.1).

We still hold to this view. The question is: What can Alaska do about it?

"The states' principal tasks," write Daniel Elazar and Stephen Schechter of the Center for the Study of Federalism in a report prepared for the Statehood Commission and Office of the Governor,[6] "are to govern--to make and implement policies within their respective spheres of jurisdiction, not simply to administer programs developed by the federal government--and to share in the governance of political conduct for the country as a whole.

"This role of the states--as polities, not middle managers--is constitutionally correct and historically accurate." (p. ii.)

Schechter and Elazar call for the states to rebuild their roles in the federal system by practicing "federalism without Washington"--by educating their citizens to what statehood means, by strengthening bonds between citizens and their states, by exercising such constitutional powers as amending the U.S. Constitution, by forming coalitions and making compacts with other states without federal approval, and by entering into relations with foreign governments, notably Canadian provinces.

By circumstance, Alaska now has the financial resources that will allow it to move out of its traditionally isolated position in the family of states to become a catalyst for change in the nation--if it chooses to do so. If we Alaskans choose to become isolated, choose to curse the

[5]Readers will note that some federal-state issues--like state control of fisheries or state authority to give resident preference--do not receive much attention in this final report. This is not to suggest that these conflicts are unimportant or soon to be solved. Rather, we found the key questions in these conflicts either too technical (e.g., the biological justification for the North Pacific Fishery Management Council's cutback in the king salmon harvest) or too quick-changing. As a short-lived study commission with limited resources, we directed our efforts to research which would not go quickly out of date.

[6]*The Role of the States as Polities in the American Federal System*, 1982.

darkness when providence has provided us with a plenitude of candles to light, then we shall make no lasting contribution to the nation which we love. And our particular problems with the federal government, of which also we have a plenitude, will continue to bear sore upon us.

Our charge on the Statehood Commission over the past two years has been to examine our state's relationship with the United States, study alternatives, report and recommend.

We reported that statehood is eminently preferable to any alternatives to statehood. We see no reason to change that conclusion. We also reported that one state among 50 is weak. Only states acting together can determine where the limits to federal power may be.

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Deliberate federal policies delaying the transferral of lands owed the state under the Statehood Act of 1958 did anger Alaskans. Deliberate federal actions shrinking the amount of available lands from which the state might make its choice for transfer also angered Alaskans. That anger cooled recently after the U.S. Department of the Interior, in order to settle a suit brought by the state of Alaska, agreed to complete the land transfers. It promised to be Alaska's "good neighbor."

But as we have warned, these changes in policy are as much political as legal. A later administration may revert to delays and sleight of hand. Vigorous monitoring of land transfers and a resolve to use all legal and political means to enforce them remain our only guarantee that soon the state of Alaska will acquire all of its promised lands of 103 million acres.

We retain our sympathies with those in this state and others who would say state claim to title to the federal public lands. Sentiment for such action is strong in this state, as the results of the November 1982 election show. But we must repeat that making such a claim in court would be futile. It would waste time and money and deliver disappointment. No such claim has ever succeeded in the federal courts.

For Alaska to make such a claim would violate the language of Article XII, Section 12 of the state Constitution, by which "The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union."

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The most dangerous threat to this state and all the states remains the orchestrated efforts of Northeast and Midwest members of Congress to put a federal limit or tax on state resource revenues.

Bills pend in Congress. Pressure, excited by propaganda, builds to pass them.

These measures aim to nationalize, for the first time in the republic's history, the main revenues of resource states. These bills also seek to dictate how resource states may spend any resource-tax dollars left to them. Should one of these bills become law, it would strike away one pillar of the

The most dangerous threat to this state and all states remains the orchestrated efforts of Northeast and Midwest members of Congress to put a federal limit or tax on state resource revenues.

states' sovereignty: the power to raise and allocate revenues within their borders.

All states should fear such a new, radical federal intrusion.

Resource states will need friends in this battle for self-determination. When we Alaskans ponder how to spend our short-lived oil bounty--whether on dams, roads, environmental protection or on checks to all residents--we must give regard to what people in other states think. Residents of other states see oil from Alaska as their oil too. We must respect their opinions by providing them with precise, clear information about how well we are managing our resources:

> "Americans must perceive that Alaskans are managing their wealth in a manner consistent with the national interest. To the extent that Alaskans are seen departing from that national interest, the federal government, responding to public opinion, will intervene to limit or cut off the revenue flow. ....Americans are somewhat tolerant of great wealth but *only* when wed to some concept of stewardship" (Havelock, p. 9).

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Alaska, like Hawaii and most of the other noncontiguous parts of the United States, plays unwilling host to the extra U.S. maritime costs imposed on it by the federal Jones Act--the Merchant Marine Act of 1920. Alaska by itself supports one-third of the Jones Act fleet.

That fleet, protected from foreign competition, takes huge amounts of money from the pockets of Alaskans, individually and corporately. The act adds $41 million a year to the cost of goods coming into the state, and thereby helps raise our cost of living.

But the worst effects of the Jones Act are those on the state's revenues from oil and on the future of state mineral development. Each year, because of the Jones Act, the state treasury is denied from *$63 million to $176 million in oil revenues* (Tussing, p. 25).[7] As Tussing points out, the long-range

[7]See also the Statehood Commission publication *The Jones Act and its Impact on the State of Alaska*, by Simat, Helliesen and Eichner, 1982, and Congressional Research Service, "Effect of the Jones Act on the State Economy of Alaska."

effects of the act will be to chill exploitation of oil fields with high developmental costs--including that of the Ugnu field on the North Slope of Alaska, possibly the biggest oil deposit in North America. Every oil field that the Jones Act prevents from being developed is an oil field removed from the nation's strategic oil reserve. In times of national crisis, an undeveloped oil field cannot yield a drop for the national welfare.

Alaska must exert all of its political and persuasive powers to get national support to amend and then repeal the Jones Act. Hawaii and the U.S. island possessions are natural allies for that effort. But other states will join us when they learn that the Jones Act, written to preserve a national maritime fleet for use in time of war, instead has acted to make that fleet shrink.

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A related and equally major problem is the federal ban on the export of Alaska oil to Japan and other nations. Lifting this ban might ultimately raise Alaska's oil revenues $500 million to $800 million annually (Tussing, p. 27 ff.). Since the federal government earns more than twice as much in taxes on each barrel of Alaska oil than does the state of Alaska, lifting the export ban could also increase federal revenues by $1.2 to $1.8 billion yearly. Exporting Alaska oil to Japan would help balance our country's $16 billion annual trade deficit with that nation.

The Export Administration Act of 1979 imposes the export ban. That law expires Sept. 30, 1983.. Alaska's officials must create the national will to ensure that this portion of the Export Administration Act expires forever. The entire nation will benefit.

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The particulars of Alaska's actual or potential problems with the federal government can fill a catalog. It is no wonder that the state is suing the federal government over federal plans to allow wide-open oil exploration and development of the Outer Continental Shelf (as are California and Washington). *Three quarters of the Outer Continental shelf under the U.S. flag--74 percent--surrounds Alaska. The impact of development will fall on fisheries, wildlife and small vil-*

Economic activity in Alaska puts more dollars into the federal treasury than the federal government spends in Alaska.

lages in remote Alaska. However, the state will derive no major revenues from successful OCS oil discoveries. Nor will other OCS states. That money will go to the federal treasury.

Alaska's large fisheries are finite; the demand on them is heavy. Like other coastal states, Alaska manages streams and manages coastal areas out to the three-mile limit. But the Alaska resource swims in and out of federal treaty areas and international zones of management and the fishermen follow. A host of federal and state agencies and advisory and rule-making bodies involve themselves in regulating the fragile resource. The resulting management complexities fuddle laymen and turn ordinary fishermen into frustrated pilot-house lawyers. Federal treaty-making and management powers require unceasing vigilance from the state's chief officials and virtually dictate that Alaskan fisheries officials seek to make common effort on the federal level with their counterparts from Maine and Massachusetts, and from Washington, Oregon and California.

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The large federal presence in Alaska (one out of five nonagricultural jobs) creates special sensitivities to the gyrations of national budget making. While the federal government spends large amounts in Alaska that benefit the economy, it must be recognized that for every $1 that the national government spent in this state in fiscal year 1981, the U.S. Treasury earned $3 from general economic activity in Alaska (Institute of Social and Economic Research, 1982).

Alaskans must not shy from pointing out that the oil wealth benefiting this state pours huge sums into the coffers of the national government. Alaska is paying its own way in the family of states and could pay more if oil export is allowed and if oil development is allowed without unnecessary federal fetters.

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Our research indicates that problems are bound to flow from the complicated patterns of land ownership developing in Alaska because of federal land withdrawals and because of the federal government's land transferrals to the state and to Alaska Natives.

When the transferrals are complete, Natives and their organizations will have title to 11 percent of Alaska's land. The state will have title to about 29 percent. Private ownership other than that of Native organizations will be about 1 percent. The federal government will own and manage the rest, nearly 60 percent. All these landowners will meet in conflicts over road and other transportation corridors. They will differ over management of fish and game. A permanent way must be found to ease these difficulties and resolve the important factual disagreements.

Frictions also will result from national laws that apply with peculiar force to unique conditions in Alaska. Under the laws the U.S. Army Corps of Engineers is charged with issuing permits to allow discharge of dredge and fill materials into United States waters, including wetlands. Few will argue the necessity for such regulation in general. *But 57 percent of all of Alaska (223 million acres) is wetlands, including 75 percent of the North Slope, where major oil development is centered* (Arctic Policy Review, p. 8). We cannot believe that Congress intended to put more than half of the entire area of a single state under the Corps' permitting procedures.

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We should like to return to the point made at the beginning of this discussion: Alaska shares with other states a general loss of state powers because of recent federal growth into state and local affairs in the past two decades.

This raises an implied question: What are states good for?

When a federal program fails...the shock waves vibrate from Key West to Kotzebue.

States can be excellent problem solvers. In this regard, they have been innovators--"laboratories of democracy." States pioneered open-meetings laws, campaign-reporting laws, pollution-control laws, open-housing laws, and job-safety laws, to mention a few. Not every idea in every state is good. But when a program fails, the state line confines the error. When a federal program fails--witness federal regulations and spending for standardized wastewater treatment plants--the shock waves vibrate from Key West to Kotzebue.

States serve as "fail-safes" when federal action fails to occur or breaks down. In the energy crises of the past decade, the states acted to ration gasoline while the federal government debated. They also enacted energy-saving codes and restrictions and energy-related loan programs, all tailored to their unique conditions.

States train leaders for national office. Of 40 U.S. presidents, 24 had held state or local office; 14 were governors.

States protect diversity. Within the bounds of the Constitution, citizens of a state may impose upon themselves political limits that citizens in other states may not relish. Some states impose a death penalty. All regulate liquor and its use, but differently. All administer a special body of criminal and civil law. Alaskans for instance, have set for themselves stronger rights of personal privacy than people elsewhere.

States, by encouraging citizen participation in the democratic process, provide political access to those desiring a change in national policy. Where a central government controls all governmental affairs, political dissidence is shut out, if not silenced. No better reason exists for maintaining the powers and the health of all the states.

But more than all these, states remain independent governments under the U.S. Constitu-

tion, with independent rights. It is the Constitution which is supreme over the states, not the national government,[8] though the practice of the past 20 years has worked to establish federal supremacy.

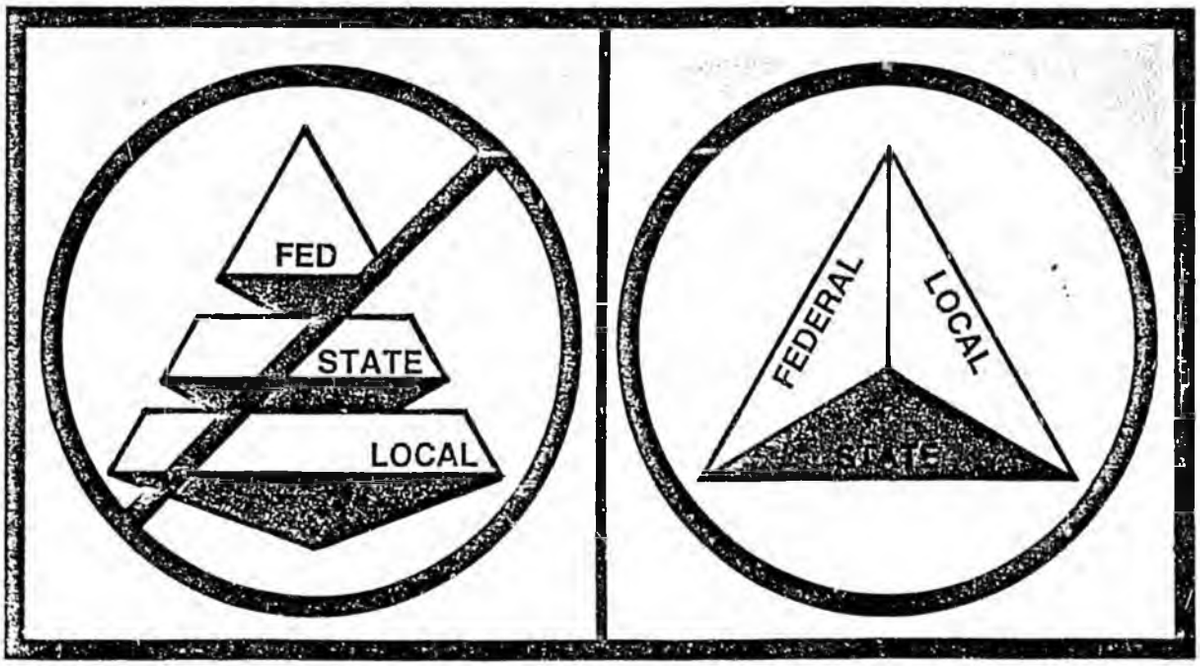
This situation has stemmed from the national government's need to concentrate its powers to meet economic and military crises. It has also stemmed in great part from the federal government's overwhelming ability to create and control money. States, municipal governments, private firms and other special interests have lined up to dip dollars out of the national pool, to water such programs as job training, public housing and mass transit, the upgrading of schools and the studies in them, and to fund a host of new social services.

This federalizing of state and local matters has created a false metaphor. It is that of the intergovernmental pyramid. In this metaphor at broad bottom rests a foundation of municipal governments. In the middle hunch the states. At the peak, at the top of the heap, drawing sustenance from below and dispensing money and orders from above, is the federal government. This model, as Schechter and Elazar point out, perverts history and the Constitution.

The states are not "middle managers," responsible for carrying out the federal directives from above. The states are partners under the Constitution with the national government. They must assert their role in that partnership--manage their own affairs and polish their powers.

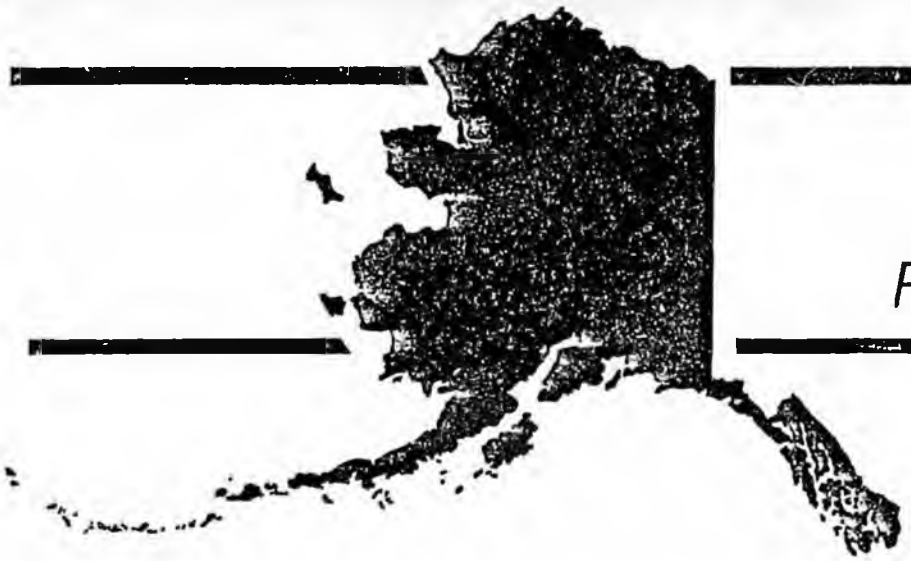
Alaska, to deal with its particular problems, must brandish the benefits of statehood. For the good of the nation, it and other states must resist the federal drive toward supremacy. Our problems cannot be dealt with passively. Alaska should exercise its rights to make compacts with other states; should exercise its power to contract with Canadian provinces and territories; should exercise its voice in urging other states to join with it in coalitions to solve mutual difficulties; should use its weaith to defend its prerogatives and thus the prerogatives of all states.

That is why, after two years of study, we recommend that Alaska become an activist state, one willing to dispel ignorance about itself, one willing to break trails, and one willing to speak out knowledgeably--in the press, and in the courts and in the councils of the states and the nation.



The false metaphor of federal dominance distorts the historical and constitutional basis of the Union.

[8]See *The Role of the States as Polities in the American Federal System*, by Schechter and Elazar, p. 12; and the Constitution's "supremacy clause," Article VI, Section 2.



Recommendations

1 Alaska should become an activist state. It should take a lead among states to define the boundaries of state powers in our union.

In our two years of work, we have studied federal-state conflicts both past and present. We noted the powers at stake. We considered who won each argument, and why. Distilling these principles, we applied them to the state of Alaska.

Our conclusion is that action must force each issue.

If resource states feel threatened by propaganda from the Northeast-Midwest Institute, the solution is to generate our own research and distribute it in the same circles of press and Congress. If other resource states are slow to get underway on this, then Alaska should put up seed money to get a research agency started.

If we need an agreement with another state or a Canadian province, we should proceed to get it. We need not seek Congress's approval. Our research shows that the Supreme Court rarely invalidates such agreements for lack of congressional consent. In fact, seeking congressional approval often produces delay and unwanted conditions tied to this consent.

Some federal grants require a reorganization of state practices as a condition of receiving money. If we do not like to be thus dictated to, we should refuse the grant and take our protest to those who write the conditions.

In government, power flows to those who use it.

Across the nation, state officials moan about federal intrusion. Yet they have shunned using the built-in control the Constitution offers: the states' power to propose and ratify amendments independent of Congress. The framers saw amendments suggested by the states sitting in convention as vital to equilibrium between states and the national government. But the states have never held such a convention.[9] All proposals have seeped through Congress, which consistently favors federal sprawl at the expense of the states.

The greatest hindrance to a convention for proposing amendments is the lack of procedural rules. If the states want results, they should first assemble a constitutional convention solely to set rules for future conventions.

If Alaska or another state feels a federal action violates the constitutional balance of powers, it should promptly sue. As important as the suit is getting support from all states and municipalities affected by the action. The best way to organize this support is through a legal action fund.

Our point is simple: the federal government responds poorly to suggestions from the sidelines. To preserve their powers states must use their powers and accept the risks that such action brings.

2 Repeal of the Jones Act will serve Alaska's and the nation's interest, and Alaska should seek repeal. In the short term, the state should dedicate itself to obtaining an amendment to the Jones Act which would allow the use of foreign-built ships in the Jones Act trade.[10]

Alaskans have long felt that the federal law called the Jones Act, also known as the Merchant

[9]It is important to add that states can--with their resolutions calling for a convention--push a reluctant Congress into action. The U.S. Senate long opposed direct election of senators, but after two-thirds of the state legislatures called for a convention to propose this amendment, Congress did pass a similar proposal which was ratified as the 17th Amendment in 1913. If 34 states call for a convention to propose rules for Article V conventions, Congress will probably propose the rules in legislation to prevent such a first convention being held.

[10]Commissioner Davic strongly disagrees with the commission's conclusions and recommendations concerning the Jones Act. Commissioner Davic submitted additional materials supporting his position which are part of the official record of the commission.

Marine Act of 1920, works to the state's disadvantage. Our research on the economic effects of the Jones Act on Alaska confirms this intuition. We also found that the Jones Act--intended to protect and nurture a merchant marine for the nation's benefit in war and peace--is in fact destroying it.

This is one of the ironies of the Jones Act...our merchant fleet has dropped by half since World War II while the world tonnage has gone up sixfold.

The Jones Act requires that vessels carrying goods between U.S. ports be built in the U.S.; registered in the U.S.; and owned and manned by U.S. nationals. Jones Act vessels enjoy protection from free-market competition by foreign ships, which have much lower construction and manning costs.[11]

As typical of protected markets, higher freight rates result in the U.S. coastwise trade. In the contiguous states, where ships face lively competition from land transport, the coastwise liner trade in most cargoes has priced itself out of business. Rail and truck lines move the goods more cheaply.

This is one of the ironies of the Jones Act. It seeks to build a sheltered environment for U.S. vessels to create domestic prosperity and wartime security. Yet our merchant fleet has dropped by half since World War II while the world tonnage has gone up sixfold.[12]

Because they have no legal alternative to the Jones Act fleet, Alaska and Hawaii and the contiguous territories (except the Virgin Islands, which is exempt from the act) pay the higher freight rates which it imposes. These freight rates amount to a subsidy--the lifeline of the remaining Jones Act fleet.

If the nation feels it benefits from the Jones Act, it should distribute its costs evenly aross the nation. *As matters are, the Alaska trade now supports nearly one-third of the entire Jones Act fleet.*

The Jones Act burdens Alaska in several ways. Its strongest effect is to reduce state oil revenue. The act also raises the cost of all domestic freight coming to Alaska. And it discourages the development of new oilfields and mineral deposits in Alaska.

The Jones Act decreases state oil revenues because the extra shipping costs it imposes decrease the "wellhead" price of Alaska oil. Each extra dollar of shipping costs decreases the wellhead price by a like amount.

Wellhead price is the price upon which Alaska levies royalties and taxes.[13]

Our research shows that the Jones Act, by requiring the use of high-priced American tankers, reduces the wellhead value of Alaska oil by at least $225 million yearly, and perhaps as much as $630 million yearly. Because Alaska would get about 28 cents of each dollar increase in wellhead value (in taxes and royalties), *this means Alaska is foregoing between $63 and $176 million dollars yearly in state revenue.*

In addition to its effect on oil income to the state, the Jones Act adds approximately $41 million yearly to the cost of goods coming to Alaska in the liner trades, mostly consumer goods, building materials and business supplies.

The Jones Act chills the development of oil fields and mineral deposits which would be on the "margin" between profitable and unprofitable. An example is the huge Ugnu/Kuparuk oil-tar deposit west of Prudhoe Bay. If developed, it will have very high production costs. An extra dollar of shipping cost per barrel of oil can knell financial death for such a field.

This is perhaps the worst effect of the Jones Act--that down the years, the act will continue to sour the development of Alaska.

Strong lobbies back the Jones Act. We fear that total repeal of the act is unlikely to occur in the near term, though the entire nation would benefit from repeal. More domestic cargoes would move by water than now do (Tussing, p. 40). The federal government would reap $135 to $378 million more each year in revenue from Alaska oil, since it gets about 60 cents of each dollar increase in wellhead value.[14]

The state's long range goal must be to get the act repealed. One amendment to the Jones Act holds immediate promise. It would allow into the Jones Act trade *foreign-built ships* that meet American safety standards. It would keep in force the requirements of U.S. manning, U.S. registry, and U.S. ownership. The requirement of U.S. construction--by far the most expensive feature of the Jones Act--would be dropped. This would ease the burden on Hawaii, Alaska and other noncontiguous parts of the U.S. and would help expand the size of the U.S. merchant fleet.

[11]See the Alaska Statehood Commission publication, *The Jones Act and its Impact on the State of Alaska*, by Simat, Helliesen and Eichner, Inc., 1982.

[12]See the Alaska Statehood Commission publication, *Alaska's Economy and the Merchant Marine Act of 1920*, by Arlon R. Tussing and Associates, Inc., 1982.

[13]Wellhead price equals the price a refinery pays for a barrel of oil *minus* the cost of moving that oil from well to refinery. The price the refinery pays is roughly the "world price" for that grade of oil as determined by world market conditions and actions of the Organization of Petroleum Exporting Countries.

[14]Based on an annual increase in wellhead price of $225 to $630 million (Tussing, 1982, p. 2).

Our research shows that this change would bring a net increase in U.S. shipping jobs. New jobs in the resurrected contiguous-states coastwise trade would more than offset the jobs lost in U.S. shipyards now building merchant vessels.

We would hear the objection that some U.S. shipbuilding capacity would not be available should another protracted, non-nuclear conflict like World Wars I or II occur. Congress should weigh the alleged national defense benefits against the present-day costs of the act. The Jones Act breeds high prices and inefficiency. It is slowly destroying our U.S. merchant marine. The act must be amended; it ought to be repealed.

3 Alaska and our congressional delegation should vigorously oppose extension of that portion of the Export Administration Act of 1979 which effectively bans the export of Alaska North Slope oil.

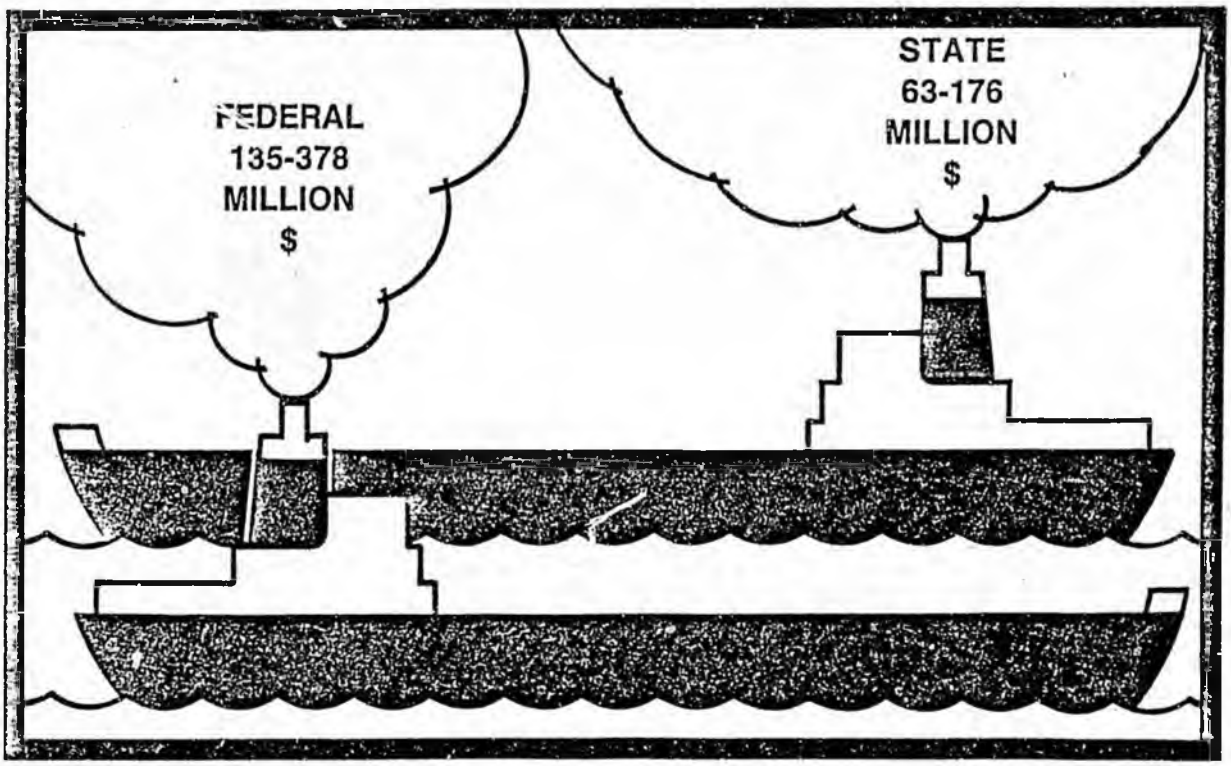
Federal law prevents the export of Alaska North Slope oil and keeps it from a natural market: Japan and the Orient. It forces this oil into expensive American tankers and depresses the price of Alaska oil in other ways as well. Lifting the export ban might ultimately increase Alaska's oil revenue by $500 to $800 million annually.[15]

Two federal laws encumber the export of North Slope oil. One is the Trans-Alaska Pipeline Authorization Act of 1973. It places difficult, but not insurmountable, obstacles to the export of any oil which has flowed down a pipeline sitting on leased federal land. (This law covers the Alaska pipeline and some pipelines in other states as well.)

The second law is a section of the Export Administration Act of 1979. It aims only at Alaska North Slope oil. It sets conditions so numerous and so harsh that, in effect, it lays a total ban on the export of this oil.

The Export Administration Act of 1979 expires on Sept. 30, 1983. State officials and the Alaska congressional delegation should devote themselves to blocking extension of that part of the act relating to North Slope oil. If Congress renews it, a national opportunity to export our oil will not come again for years. North Slope production may be declining by then.

The export prohibition, by default, requires



The effect of the Jones Act on wellhead price depresses federal and state oil revenues, in the dollar ranges shown.

OIL REVENUES LOST FROM JONES ACT RESTRICTIONS

[15] See pp. 25-28 of the Alaska Statehood Commission publication *Alaska's Economy and the Merchant Marine Act of 1920*, by Arlon R. Tussing and Associates, Inc., 1982.

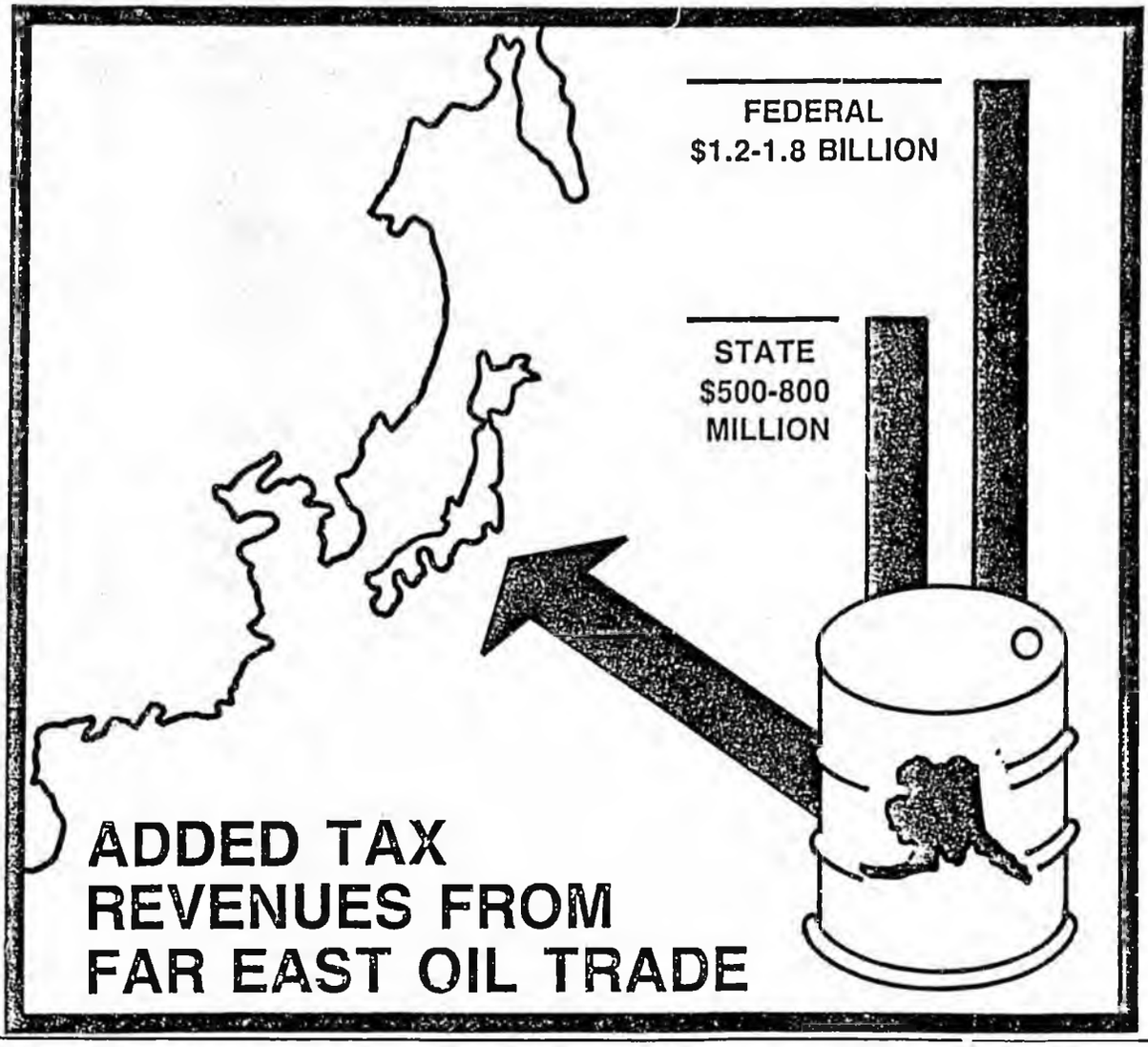
transport on high-priced Jones Act vessels, since we can't move our oil to other states by land. This is one factor depressing the wellhead price. The export ban also depresses wellhead prices by forcing Alaska oil into the wrong markets: the West Coast, which is flooded with Alaska and California crude; and the Gulf and East Coasts, which dictate a long and expensive round trip by U.S. flag vessels of 13,000 nautical miles via the Panama Canal, or 30,000 miles via Cape Horn. The round trip between Valdez and Yokohama, Japan, is about 7,000 miles.

Removing the export ban could ultimately raise wellhead prices by $2-3 billion per year, and state revenues by $500-800 million per year. It could raise federal revenues by $1.2 to $1.8 billion per year.[16] *Exporting Alaska's oil would help balance our nation's $16 billion trade deficit with Japan.*

If Congress were to lift the ban, probably all the Alaska oil now going to the Gulf and East Coasts, and the Alaska oil now surplus to the West Coast, would go to the Far East.[17] The shortfall resulting on the Gulf and East Coasts would be filled with Mexican and Mideast oil now going to Japan.

This "triangle trade" would have advantages to all concerned. Transportation costs would drop, Mexico would earn more per barrel for its oil, and U.S. Windfall Profits Tax receipts would climb. Japan and the U.S. would even their trade imbalance. The change would ease the West Coast oil glut.

Lifting the export ban would bring reason to the economics of Alaska oil.



Because of lower transportation costs to overseas customers, allowing the export of Alaska oil would increase the nation's and Alaska's tax revenues.

[16]These dollar savings would not show up immediately, however, as oil companies would want to pay off some of their capital costs: tankers in use and their commitments to a new Panama pipeline.

[17]We have considered the objection that foreign tankers would pose a hazard to Alaska waters. We feel that the hazard is not necessarily any greater than that by U.S. flag tankers. Foreign tankers can be required to meet U.S. safety standards. And foreign vessels now dock at Valdez, loading oil for the Amerada Hess refinery on St. Croix in the Virgin Islands. (The Virgin Islands, though an American possession, is exempt from the Jones Act, and foreign tankers take oil there.)

4

Alaska must act immediately to create in Washington, D.C., a research and advocacy institute and ask other resource states to join in supporting it. The institute would combat efforts in Congress to limit or tax state resource revenues.

Efforts to strip Alaska and other resource states of revenues from oil and other energy sources center around the Northeast-Midwest Congressional Coalition and its research arm, the Northeast-Midwest Institute.

The Institute has become the dominant source of detailed information about resource extraction and taxing available in Washington to the national press, members of Congress and other federal officials.

The Coalition and the 18 states it represents seek to have resource incomes of individual states pooled by federal law and redistributed to all states. Such federal action would be a major blow to one of the last pillars of state sovereignty: the power to raise and allocate revenues. The Coalition even wants the federal government to prescribe how individual states may spend resource revenues.

The Northeast-Midwest Institute is only too happy to provide facts, figures and research documents to bolster efforts in Congress to nationalize the incomes of what the Coalition has tagged the "United American Emirates," the oil-producing states.

A major political battle looms. It will be fought largely in the newspapers and on radio and television for the hearts and minds of the general public.

The need for a counterbalancing institute of resource states seems obvious and may be critical. Such an organization would perform and publish scholarly research on matters of special interest to the resource states. The institute must be located in Washington, D.C., for maximum accessibility, effect and credibility. It is very important for reporters, the administration, members of Congress and their staff to have personal access to the institute's researchers as well as to its publications.

Alaska must lead in starting such a research and advocacy institute and keeping it funded. The Legislature should provide the governor with money enough to fund the institute's first years and convince other states to join the effort. To do nothing or to delay too long in face of an obvious threat to Alaska's financial well-being will only turn the threat into an impoverishing reality.

5

The state Board of Education and Alaska school districts should require the teaching of Alaska history, citizenship and culture.

The Statehood Commission worries that in our oil-propelled rush into the mainstream of the nation's economy, we may be cutting our ties with what is special about Alaska. Further, by failing to attend to our history we risk repeating mistakes made during Alaska's early days of copper, gold and fishing booms and busts.

We have a system of public and private education second to none, and yet we do not require education about our state's history.

Alaska's long isolation from the other states has ended. Arctic villages once accustomed to occasional newspapers by barge and dogsled now receive their baseball games televised live via satellite. One out of three Alaskans has lived in the state less than five years.

It is not easy to preserve our heritage with such turnover and in the face of a mass culture tuned to a common denominator, but we must try. We have a system of public and private education second to none, and yet we do not require education about our state's history. We do not require instruction on our rich and varied regional and statewide cultures.

We should also teach every student--from elementary through post-secondary schooling--the reciprocal duties between citizen and state, and between citizen and national government. A citizenship program should teach respect for the dignity of every individual; the observance of rules written for the common good; respect for private and public property; strong ethical values; development of a social conscience; and democratic ideals.[18] If Alaska needs a model it need look only as far as the education required of aliens requesting U.S. citizenship. It is paradoxical that naturalized citizens often have a better knowledge about America than those born here.

The Legislature should speed development of the classroom material required, and make the materials available to all public and private school systems.

Education is Alaska's opportunity to invest in the next generation of voters and leaders. It is our preventive medicine against the repetition of past mistakes. It can be our way of preserving and

[18] In 1980 the Anchorage School Board approved a similar list of goals for a citizenship education program.

promoting our heritage as Alaskans, and our way of helping youth understand they have dual citizenship, to the state and to the nation.

6 The Alaska State Legislature should pass a resolution which would apply to Congress under Article V of the U.S. Constitution for the calling of a national constitutional convention. The convention's sole duty would be to define the procedures governing all future constitutional conventions called by the states.

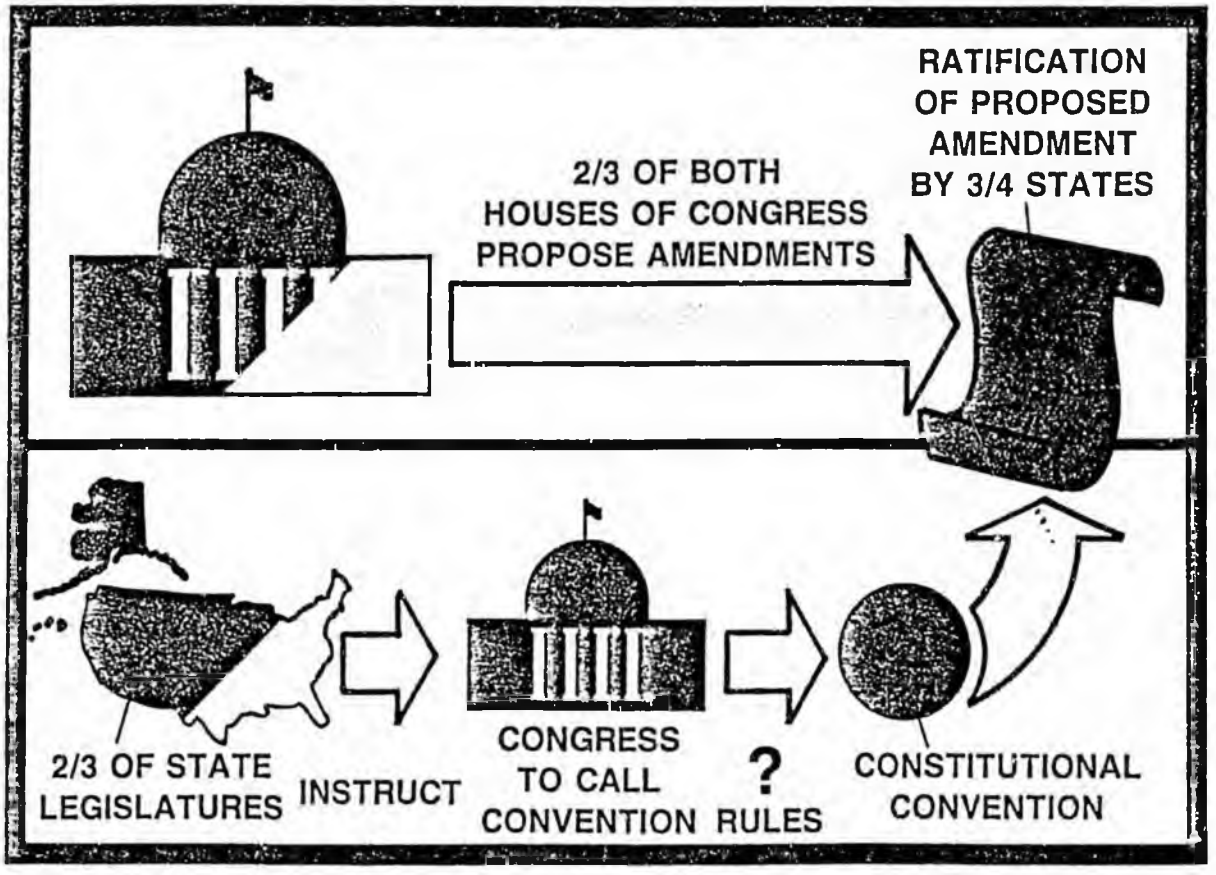
The national interest demands that these rules be written. Until they are, the states will continue to be shut out from proposing amendments in convention. The Founding Fathers thought this amending power fundamental to keeping the state-federal balance.

Alaska has much to gain by taking an early lead in causing discussion on the rules. High-population states may seek rules which would apportion votes to disfavor low-population states.

Under our Constitution an amendment must pass two hurdles: it must be proposed and it must be ratified. A proposal can come by way of Congress or by way of a national constitutional convention. Congress must call such a convention if two-thirds (now 34) of the states request it. After an amendment is formally proposed, three-quarters of the states (now 38) must ratify it through their legislatures or with in-state conventions called for that purpose. Ratification is difficult. Only 16 amendments have been ratified since the adoption of the Bill of Rights nearly 200 years ago.

The first and last constitutional convention was held in the summer of 1787.

Despite the success of the last convention, some fear that another convention would run wild, sack the Bill of Rights and demolish 200 years of constitutional carpentry. This fear has been nurtured by the lack of clear rules governing



Flow chart illustrates steps required for amending the U.S. Constitution.

METHODS OF CONSTITUTIONAL AMENDMENT

a state-called convention to propose amendments.

The rules are long overdue, but we doubt that Congress will write them.[19] It prefers to hold up the specter of a runaway convention to discourage the states ever asking for one. In this way Congress keeps complete control over which amendments are submitted for ratification.

The states must force the issue under Article V by calling for a convention to amend Article V. Rules must set out how convention votes would be apportioned and should define the scope of a convention's proposing powers. We believe a convention should be limited to the consideration of subjects named in the state resolutions asking for a convention. It should not have blanket authority to propose other amendments.

For Alaska, a federal convention has both danger and opportunity. Much depends on how votes are apportioned at the convention. We recommend the Alaska Legislature, in its resolution, call for equal votes by state. Under this plan, if there were 500 votes to go around, Alaska would have 10 votes, or 2 percent.

Were apportionment to follow a congressional model (votes according to the size of a state's congressional delegation), Alaska would have only 3 out of 500, or 0.6 percent of the votes. If votes are apportioned strictly by population, Alaska would have still fewer: 1 out of 500, or 0.17 percent of the votes.

Equal votes among the states would be true to the plan of the Constitutional Convention of 1787. That convention was "first and foremost a gathering of states" (Rossiter, p. 68). We suggest emulating the U.S. Senate: two delegates per state in a constitutional convention, for a total of 100 votes.

7 Alaska should take the initiative to establish a legal action fund for the states. This fund would oppose illegal and coercive federal restrictions, regulations burdensome to state and local government, and excessive use by Congress of its commerce powers to override state and local laws.

At present no one adequately represents state and local views when federalism questions come up in court--questions such as, "What does the Constitution say about this conflict between state and federal government?"

The federal government has the Office of the Solicitor General. Special-interest groups--often at odds with state and local governments--have their legal defense funds.

In short, state and local governments must start working together to oppose creeping federal intrusions.

But lawyers for state and local governments find themselves outgunned in the higher courts on complex federalism questions. They speak only for their employer, but the court decisions handed down will infuse the internal workings of all state and local governments, rewriting charters and constitutions and increasing liability to civil lawsuits.

In short, state and local governments must start working together to oppose creeping federal intrusions.

They triumphed on one of the few occasions they did work together--in the mid 1970s, challenging federal power to impose minimum wage and overtime laws on state and local governments. The National League of Cities, the National Governors' Conference, 19 states, and three municipal governments joined in a lawsuit to defend their authority to set wages and hours. The outcome was a landmark victory for state and local powers: the Supreme Court decision in *National League of Cities v. Usery*, 426 U.S. 833 (1976). It was one of few times in which the Court has held that the 10th Amendment (reserving powers to the states) is a limit on federal action.

Alaska should take the lead to get a legal action fund for state and local governments underway. It should put up money to operate the fund for one year. Lawyers for this fund would file lawsuits and intervene in others as advocates for all state and local governments, at all levels of court.[20]

A century ago the fundamental questions of union and disunion, of federal and state powers, were debated on the floors of Congress and bloodied the fields of Shiloh and Antietam. Today the arena is not Congress, not the battlefield, not even the halls of bureaucracy. The deepest inquiries of our union now pivot on what judges say. States have ignored this fact too long. They should pool their energies and channel them accordingly.

[19]The weight of academic opinion is that Congress does have the power to pass laws defining convention procedures.

[20]A pilot project underway is a move in the right direction. A private foundation and seven nationwide state and local government organizations have brought to being the State and Local Legal Center. Two attorneys will monitor the Supreme Court and will research and help prepare arguments for these governments. However, current plans aim only at the Supreme Court and providing assistance there. We believe active intervention at all levels is needed.

8 Alaska should provide seed money to the National Governors' Association or like organization to sponsor a national convocation on federalism in the United States.

Not since 1787 have the leaders of the nation met to talk over the health of the relationship between the central government and the states.

In that time the federal government has grown in power far beyond that envisioned by the nation's founders, for reasons good and bad. In the past year, we have discovered no evidence to make us retreat from our statement in our preliminary report that:

> "By anyone's standards, the system of government in the United States has become greatly centralized, highly bureaucratized, frighteningly intergovernmentalized and often so complicated that it seems to be paralyzed..."
> *(More Perfect Union, p. 26)*

We think other Americans feel it is time to take a good look at what their governments have become....

On the national level, recent discussions about federalism have failed to center on a fundamental restructuring of the relations between Washington, D.C., and the 50 states. Instead they have dealt with the more superficial matter of swapping responsibilities for who pays for certain health and welfare programs.

There is no doubt that since the founding, and especially in the two decades just past, federal powers have waxed, while the powers of the states have waned. The question is whether this process should continue without examination by the president, the governors, and other chief appointed and elected officials of the nation and the states.

We think not. We think other Americans feel it is time to take a good look at what their governments have become, to determine what is the proper role of the central government and the sovereign states in our federal system.

There has long been talk about having a national meeting to raise national consciousness about the respective roles of the central government and of the states. But no one has taken the first step to make such a convocation happen.

Alaskans, if they are serious about staking out federal powers, can take that first step by putting down the seed money to have the nation's governors organize the convocation. Alaska can even offer to host the convocation in Alaska, in 1984 during the 25th anniversary celebration of Alaska's accession to statehood.

But whatever the place, Alaska should do what it can to stir the nation and get this convocation underway.

9 Alaska and other states should consider amending the U.S. Constitution to strengthen the role of the states.

Since the ratification of the 17th Amendment,[21] which took the duty of electing U.S. senators from the legislatures and replaced it with direct election by the people, the states have lacked a collective voice in setting national policy. The states should contemplate proposing substantive amendments to the Constitution which would strengthen state roles, protect proper state powers, and counter federal growth.

The topic of possible amendments is perfectly suited to the agenda of a national convocation on federalism (Recommendation 8).

Over the years a variety of amendments have been proposed to alter the relationship between federal and state governments. Among them:

- a "state veto" of federal legislation (except for federal laws dealing with defense, foreign affairs or civil rights) by a vote of two-thirds of the state legislatures;
- a measure prohibiting the federal government from imposing any condition upon the states by grant requirements that it could not impose constitutionally by statute or regulation; and
- a "court of the union" composed of the chief justices of every state's supreme court. Assembled at the request of five states, this court would have the power to overrule any U.S. Supreme Court decision.

We are not prepared to endorse any of these proposals. We offer them for scrutiny as ways in which states might assert more control over national decision-making.

Critics have pointed to the states' poor record in championing civil rights during the 1950s and 1960s. They argue that any amendment strengthening state powers will reverse the progress of the last 30 years.

State officials reply that states have come a

[21] Under the original Constitution state legislatures named senators for each state. Alexander Hamilton said this power was an "absolute safeguard" to the states, and one which could not be dropped without "an entire dereliction of the federal principle" (*The Federalist Papers*, No. 59). Towards the end of the 19th Century, though, this duty was causing many deadlocks and much hard feelings in the legislatures. By 1912 two-thirds of the states called for a national convention to propose an amendment providing for direct election of U.S. senators. Congress forestalled this convention by proposing a similar amendment. The states ratified the amendment in 1913.

long way since then; legislatures are now apportioned by population and four-fifths of the states have modernized their constitutions since 1950. The U.S. Advisory Commission on Intergovernmental Relations ran a diagnostic check on state governments recently and found a system vastly improved from 20 years ago. "The transformation of the states, occurring in a relatively short period of time, has no parallel in American history," said the group in 1981 (*State and Local Roles in the Federal System, In Brief*, p. 3). ACIR has been studying federalism since 1959.

What amendments are needed and what states would do with them are questions for the nation. We do feel that in a contest the rights of individuals must take precedence over both state *and* federal powers.

We are confident that one or more constitutional amendments, carefully drafted, could rebalance our union without endangering civil rights.

10 The governor of Alaska should prepare political impact statements on proposed major federal actions. Eventually, the National Governors' Association should prepare them on the behalf of all states.

We agree with the finding of the Advisory Commission on Intergovernmental Relations that federal influence "has become more pervasive, more intrusive, more unmanageable, more ineffective, more costly, and, above all, more unaccountable."[22] Especially in the last 20 years, the federal government has grown a new limb for every problem brought to its attention until it has more legs than a centipede: it has grant programs aimed at urban unrest, railroad crossings, firefighting, the design of dam spillways, and thousands more. We have had rule by reaction.

The states are partly responsible. They have abdicated their role in formulating national policy. They have failed to react in a timely fashion to proposed extensions of federal power which shift the constitutional balance.

We recommend that the governor of Alaska selectively issue political impact statements on the likely effects--on all states--of proposed new federal policies. Later, Alaska should encourage the National Governors' Association to take over this duty for all states.

A political impact statement need not be as long as the average environmental impact statement[23] to be effective. Those charged with writing the political impact statements would monitor proposed federal mandates, statutes, executive orders and new Supreme Court decisions. The writers would select perhaps a dozen impending federal actions per year for 10-page impact statements. The impact statements would describe the likely effects on state governmental organization, on present state programs, on innovation, on traditions, and on state citizenship.

Well-researched and objective political impact statements, if prepared enough in advance, will command attention from the nation's decision-makers and the press. The statements will speak about the health of our union.

11 Alaska's governor should invite the leaders of other northwestern states and the western Canadian provinces and territories to join Alaska in establishing a conference modelled after the New England Governors and Eastern Canadian Premiers Conference. The governor can prepare for such a conference by establishing in the executive branch an interagency task force on foreign relations.

One of the ways a state can match powers with the federal government is by building coalitions. Coalitions have two virtues. Political strength is greater in sum than in parts, and coalitions can settle cross-border problems without intervention from Washington.

Since 1973 six New England governors have been meeting with the premiers of five eastern Canadian provinces. This organization is called the New England Governors and Eastern Canadian Premiers Conference. It is a model of state-provincial cooperation.

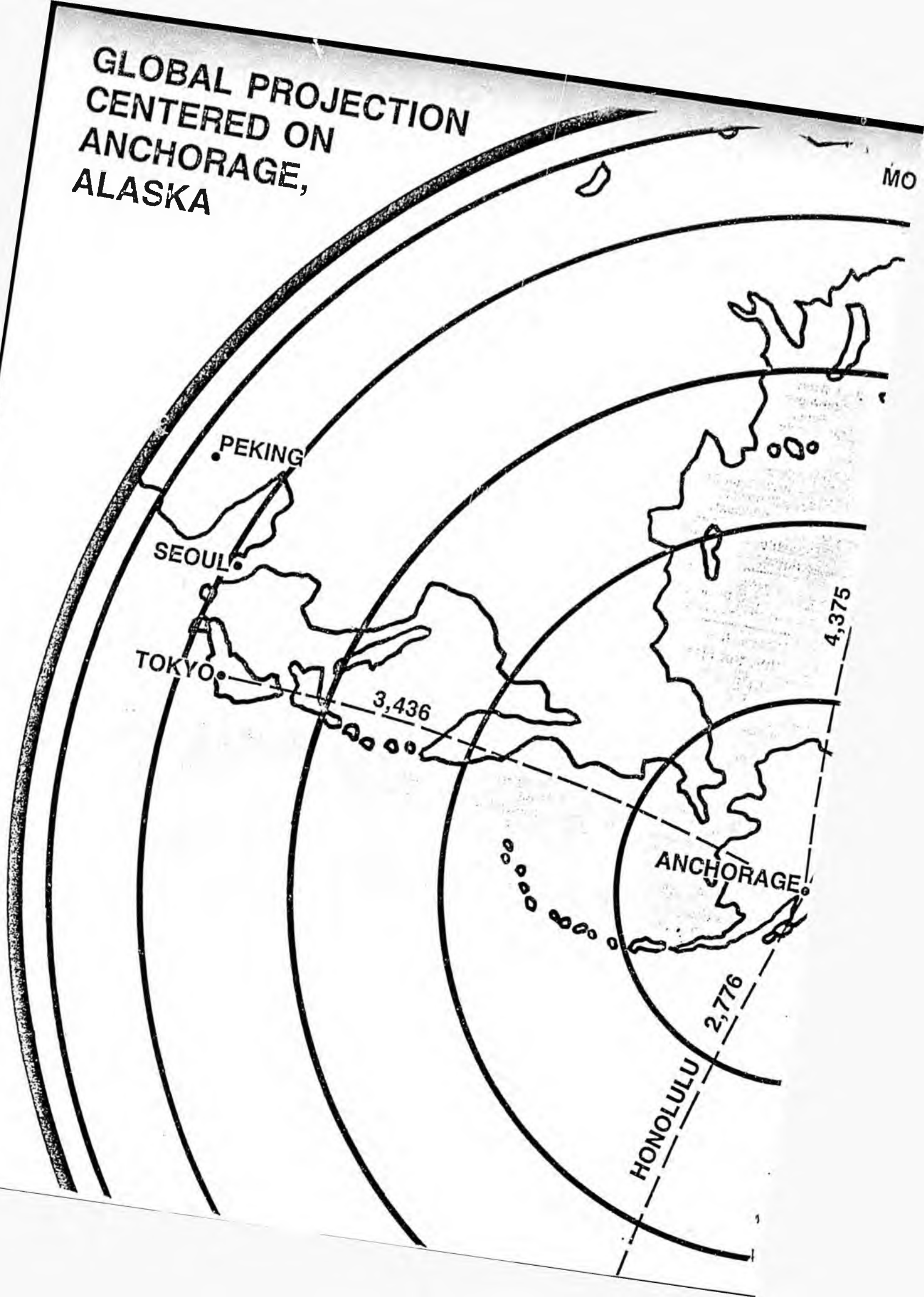
After 10 years, participants report themselves pleased with the progress made in smoothing potential conflicts, cooperating in projects, and exchanging information. "The search for answers need not stop at the boundary," says former Maine governor Kenneth M. Curtis (Schechter and Elazar, p. 64).

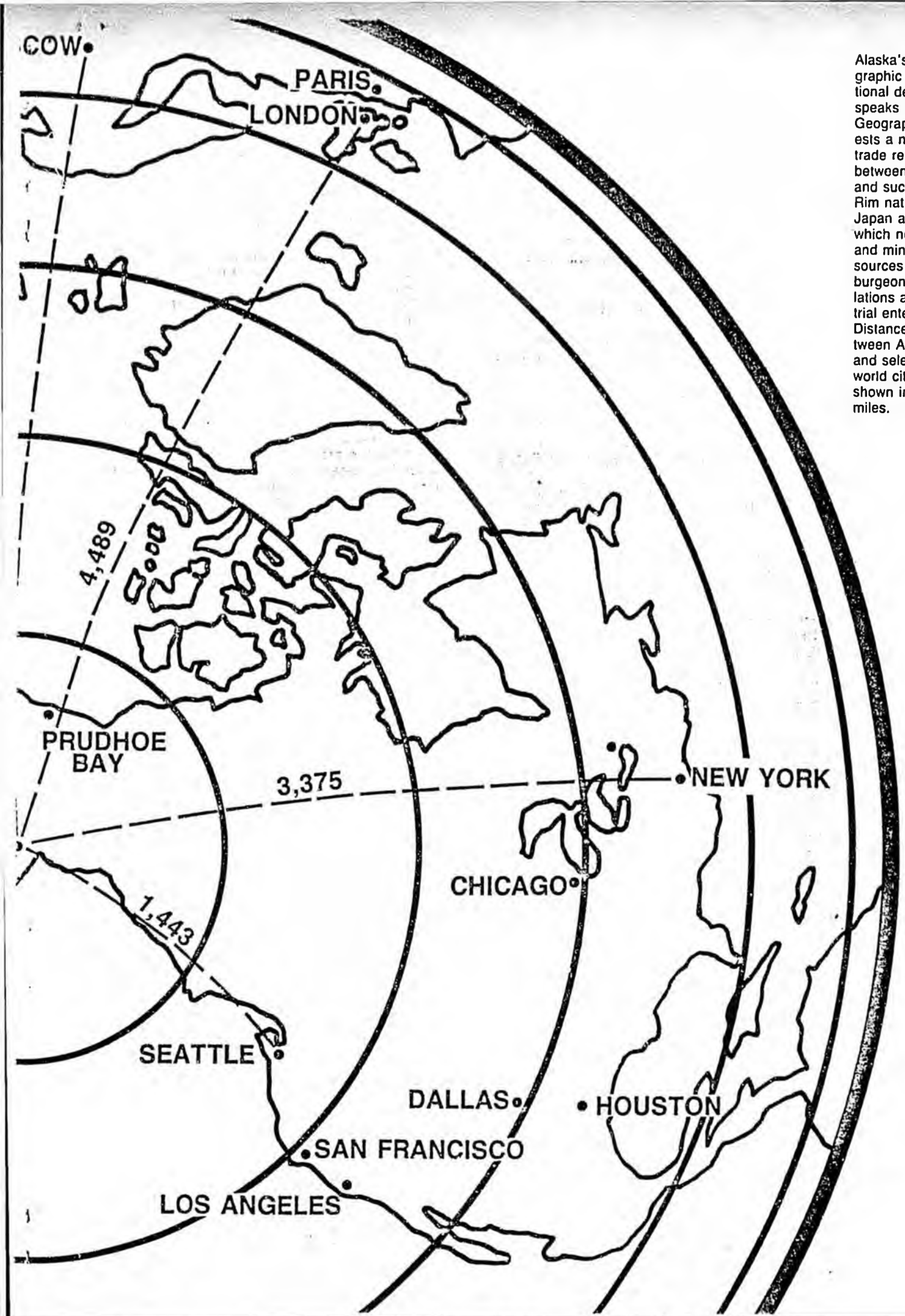
In 1983 the governor of Alaska should prompt a meeting with the leaders of the northwestern states, Alberta, British Columbia, and the Canadian territories. These leaders, joining in a Western States and Provinces Conference, would have much to discuss: minerals and port development, hydroelectric and other energy projects, a railroad to the Arctic, fisheries, tourism, cold-

[22] ACIR, *The Federal Role in the Federal System: The Dynamics of Growth, In Brief*, 1980.

[23] Required by federal law since 1969, these statements are written to describe the probable environmental effects of a new federal action. They list the effects of alternative actions as well. A typical EIS can run to hundreds or even thousands of pages.

GLOBAL PROJECTION CENTERED ON ANCHORAGE, ALASKA





Alaska's geographic role in national defense speaks for itself. Geography suggests a natural trade relationship between Alaska and such Pacific Rim nations as Japan and Korea, which need food and mineral resources for their burgeoning populations and industrial enterprises. Distances between Anchorage and selected world cities is shown in statute miles.

climate research, and migratory wildlife management.

To facilitate this conference and to expand Alaska's relations with the international community at large, we recommend that the governor create an interagency task force on foreign affairs.

With such action states can take charge of the regional interests they claim Washington is neglecting.

This task force would join a foreign-relations specialist[24] on the governor's staff with representatives of the Council on Science and Technology, and the Departments of Fish and Game, Commerce and Economic Development, Natural Resources, Transportation and Public Facilities, and Law.

With such action states can take charge of the regional interests they claim Washington is neglecting.

12 The Alaska Legislature and governor should immediately invite representatives of Hawaii and the noncontiguous possessions to meet with them to explore setting up a permanent coalition to deal with common interests and problems, such as the effects of discriminatory transportation laws.

Not being geographically connected to the first 48 states has threaded the histories of Alaska, Hawaii, Puerto Rico, the Virgin Islands, American Samoa, Guam and now the Northern Marianas with a common experience--that of suffering second-class political citizenship.

Alaska and Hawaii overcame this burden in 1959 by achieving statehood, but even now, remnants of territorial status remain for them in the form of discriminatory laws. The Jones Act is the best example.

The nonstate possessions remain politically impotent. None have a voting delegate to Congress. None vote in elections for president.[25]

Helping any possession to achieve greater self-government through democratic means can only benefit Alaska. If statehood occurs, the new senators and the new congressmen will understand the problems of noncontiguity and can be supposed to join Alaska's delegation in overcoming them.

For the present, the noncontiguous states and possessions share concerns about oil exploration on the Outer Continental Shelf, about fishing, about treaty making, about delayed economic development, and about transportation systems or their lack.

Alaska, for example, must out of principle oppose any efforts to make the Jones Act apply to the Virgin Islands, the one island territory excepted from the act. The Virgin Islands has built an oil-refining industry around that exception, which lets foreign tankers carry American oil to Virgin Islands docks. Some of that oil is from Alaska.

One item for discussion by the noncontiguous parts of the United States could be the establishment of a federal Region 11 just to coordinate federal programs applying to them. Under the existing federal structure of 10 administrative districts, the needs of the noncontiguous areas sometimes get treated as the needs of barely remembered stepchildren.

The western noncontiguous states and territories should also have a distinct federal appellate circuit, the 11th Circuit Court of Appeals.

Alaska in any case has the need to develop new coalitions of friends, and it should reach out to Hawaii and the noncontiguous possessions to ask them to talk over the opportunities for mutual advantage.

13 Alaska must vigorously police federal implementation of the Alaska Statehood Act. We should insist that the remaining land transfers be completed at the rate agreed upon in 1981 (13 million acres transferred to the state per year) and we must guard against congressional attempts to unilaterally change the Statehood Act and the Constitution of the State of Alaska. The Legislature should authorize and direct the lieutenant governor to place all such attempted changes in the Statehood Act and the state's constitution before the voters in a ballot proposition.

In our preliminary report we documented the failure of the federal government to carry out the contract it made in the Alaska Statehood Act of

[24]See Recommendation No. 17. We envision this task force as separate from but working with an office of external relations.

[25]For a complete description of the political status of America's possessions, see the Alaska Statehood Commission publication, *Hawaii and the U.S. Territories*, by Howard Bray and Doris Deakin, 1981.

1958.[26] Land conveyances are years behind schedule. The land freeze of 1966, followed by federal land withdrawals of the Alaska Native Claims Settlement Act (ANCSA) and the Alaska National Interest Lands Conservation Act (ANILCA, commonly known as the D-2 Act), prevented the state from choosing which lands it wanted for the remainder of its entitlement. The state is facing many difficulties gaining access to lands it holds within blocks of land withdrawn under ANCSA and ANILCA.

In an outrageous move to pre-empt all state opposition, Section 10 of ANCSA put a unique one-year statute of limitations on lawsuits by the state. It penalized legal action with a "blackmail clause"[27] promising to stop all state land transfers for the duration of any suit against ANCSA, however valid.

The federal government may renege again on its land conveyance obligations if Alaska fails to muster its full legal, economic, and political powers to compel the federal government to live up to its solemn promises.

We have been monitoring the fulfillment of an out-of-court settlement between Alaska and the federal government on the rate of land conveyances. In this settlement, *Alaska v. Reagan* (1981), the Interior Department promised to convey 13 million acres per year to the state.

The department has so far kept its promise. It conveyed 13,310,856 acres to Alaska in fiscal year 1981. At the agreed pace of 13 million acres per year, Alaska should have all its Statehood Act lands by the end of 1985.

By Oct. 1, 1982, the federal government had transferred 65,644,104 acres to the state, including about 62 percent of the state's general grant of 102,550,000 acres. Native corporations held 23,202,420 acres towards their entitlement of 40 million acres. Private holdings, not including Native lands, are approximately 2 million acres, or less than 1 percent of Alaska's land.

The federal budget will get tighter, however, and with four more years of conveyances to go, the pace of transfers could slow. State officials and Alaska's congressional delegation should make clear that federal funds for carrying out the Statehood pact are not "optional," to be cut back like a federal grant for library improvements or rat control.

It is time to wind up implementation of the Statehood Act. The federal government is already behind schedule, and in 1980 had to extend the compliance deadline to 1994, 10 years beyond the original 25-year deadline of 1984.

Alaskans should stand against any unilateral attempts by Congress to change any provision of the Alaska Statehood Act, for the act is a compact between the United States and the people of Alaska. Similarly, Alaskans should not permit Congress to rewrite the Alaska Constitution.

It is time to wind up implementation of the Statehood Act.

Congress may attempt to change the formulas contained in the Statehood Act for revenue sharing from mineral revenues from onshore federal lands: 90 percent to the state and 10 percent to the federal government. The Interior Department attempted a unilateral change recently. In 1975 and until corrected by the U.S. Supreme Court, Interior altered the sharing formula for oil revenues from the Kenai National Moose Range to give 75 percent to the federal government, 25 percent to the Kenai Peninsula Borough, and nothing to the state. The Supreme Court set the Interior Department straight on this matter, but we are concerned with the Court's language suggesting that these percentages can be changed in the future, at Congress's discretion.

The Legislature in an omnibus bill should authorize and direct the lieutenant governor to place any proposed change to the Statehood Act or Alaska Constitution before Alaska's voters in a ballot proposition, asking them to say yes or no to the change.

The Alaska Statehood Act required the consent of Alaskan voters to become effective.[28] Similarly, Alaskan voters should have the opportunity to pass upon suggested changes to the Statehood Act. If the voters disapprove the change the state will have a mandate to oppose the attempted change in court.

In our two years of study we have devoted more time to monitoring implementation of the Alaska Statehood Act than to any other issue. Other agencies will continue the scrutiny as the commission expires, for Alaska has not yet achieved full statehood.

14

Alaskans should consider two amendments to the state constitution which will clarify the philosophy and the powers of our state government in the federal union.

We suggest few additions to the Alaska Constitution. Ratified in 1956, it is recognized nationwide as a model charter, for its brevity, clarity, and innovations. Federal powers have done a lot

[26] For a detailed discussion of the Alaska Statehood Act, see the Statehood Commission publication, *The Concept of Statehood Within the American Federal System*, 1981, pp. 89-120.

[27] Section 10 of ANCSA, 43 U.S.C. Sec. 1609

[28] Sec. 8(b), Public Law 85-508, July 7, 1958

of growing since then, however, and we offer two possible amendments to help define Alaska's role.

The first addition is modelled after Article I, Section 1 of the Texas Constitution. That section of the Texas Constitution reads:

> "Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States."

A similar amendment to the Alaska Constitution can serve to link the ideas of citizenship, statehood, and local self-government.[29]

The state should not hesitate to lay claim to all the authority given states by the history and practice of the U.S. Constitution.

A second amendment would clarify the state's power to cooperate with foreign nations.

Article XII, Section 2 of the Alaska Constitution now reads:

> "The State and its political subdivisions may cooperate with the United States and its territories, and with other states and their political subdivisions on matters of common interest. The respective legislative bodies may make appropriations for this purpose."

We suggest adding a phrase after the words "on matters of common interest":

> "...and to the extent consistent with the Constitution of the United States, with foreign nations."

An early draft of this section of the Alaska Constitution contained a very similar phrase,[30] but the framers deleted it for fear that Congress would not approve a state constitution referring to foreign cooperation.

Research for the Statehood Commission (Schechter and Elazar, pp. 57-68) shows that American courts allow states much leeway to engage in friendly relations with Canada and other nations. A 1978 study located 766 agreements and understandings between American states and Canadian provinces (Swanson, pp. 221-265).

The state should not hesitate to lay claim to all the authority given states by the history and practice of the U.S. Constitution. Our research shows that states *are* sovereign entities, and they *do* have some powers to engage in friendly foreign relations. The above two amendments to the Alaska Constitution would elaborate those powers.

15 State officials should refuse federal grants carrying burdensome requirements.

The federal government exercises control over more subject areas by grant requirements than by direct orders to state and local governments. It is through grant conditions, for example, that the federal government enforces a national 55 mph speed limit upon the states.

The U.S. Supreme Court allows the federal government to impose controls on the states by conditional funding that would be otherwise unconstitutional if imposed by federal statute or regulation. The Court places few limits to what a federal grant can demand, reasoning that a state can always turn the money down.

In reality, most state and local governments cannot afford to turn down federal money even if they wish. In many cities, grants once seen as "extra" now keep the buses running and the lights on in City Hall. This poor state of affairs grows in part from the federal government's hogging of the tax base.

Alaska is prosperous enough--for the time being--to turn down some federal grants when the conditions or the paperwork required are not worth the dollars. State officials should inventory grant programs, comparing the drawbacks and benefits of each, and be prepared to turn down offers of federal money.[31] The state should reject grants demanding reorganization of state government.

[29]A detailed discussion of these and other amendments to the Alaska Constitution may be found in the Alaska Statehood Commission publication, *The Role of the States as Polities in the American Federal System*, by Stephen Schechter and Daniel Elazar, 1982.

[30]See committee proposal No. 12, introduced in the Alaska Constitutional Convention Dec. 16, 1955. That phrase read, "...and to the extent consistent with the laws of the United States, with foreign nations."

[31]This inventory is a good idea anyway, as the federal money available for grants is dropping sharply. The state should know in advance which grants are worth fighting for and which are not.

Our research* indicates that a state can, by rejecting a grant it accepted in prior years, embarrass the federal bureaucracy into reforming the grant and pruning the tendrils of conditions which have sprouted from it.

16 The Legislature should fund the Department of Revenue or other appropriate agency to make an annual study of and report on the flow of federal spending and revenues in Alaska.

Basic data about the federal government's economic relationship with Alaska has been difficult to obtain in coherent form from either federal or state agencies, though this information is critical for defending against congressional efforts to confiscate or limit state oil and other resource revenues.

The information is also critical for showing our fellow Americans through the national media that Alaska contributes more to the national treasury than it withdraws.

Because of the lack of available data, the Statehood Commission commissioned two studies on federal revenue and spending in Alaska from the University of Alaska's Institute of Social and Economic Research (ISER, 1981, 1982).

The first study, covering federal fiscal year 1980, showed that the federal government was earning $2 from general economic activity in Alaska for every $1 that it spent here. The second study, for fiscal year 1981, showed that by then the federal government was earning $3 in Alaska for every $1 that it spent.

The latter study showed that economic activity in Alaska accounted for one-sixth of all of the federal government's Windfall Profits Tax revenues in 1981 and one-twentieth of all of its revenues from corporate income taxes.

The studies also showed that the federal income tax lands unfairly on Alaskans, hurting families and businesses and distorting investment decisions in this state.

Put in the larger context of economic data about Alaska's high cost of living, its lack of transportation and of energy systems and its lack of adequate housing, the information from these economic studies can show the fair minded that Alaska not only is paying its way in the family of states but has urgent needs at home for its income from temporary oil supplies. Poor until recently, Alaska needs to catch up in supplying to its citizens the basic services that other states offer and most Americans take for granted.

A general theme in this final report from the Statehood Commission is that Alaska must collect more precise, reliable information about itself and disperse it widely across the nation and the state.

Keeping up with how much the federal government earns from Alaska and how much it spends here is a key part of that effort.

17 The governor should establish an office of external relations on his staff, to be headed by a special assistant to coordinate Alaska's expanded relations with other states and with foreign nations

Much of this report argues the necessity for Alaska to reach out to other states and its neighbors in Canada to establish new coalitions, working groups and conferences to deal with mutual needs.

This work is so important that the Statehood Commission feels that one high-ranking official reporting directly to the governor should have the responsibility of coordinating and directing these efforts with all parts of state government.

It is just as important, however, that this office also concern itself with Alaska's efforts to strengthen its relationships with many foreign nations, especially those with which it trades and those with which it hopes to increase trade.

It is not generally known that in 1981 "*Alaska rated number one in the nation for exports as percentage of total shipments from the state. Furthermore, export-related employment in Alaska was 34.7 percent of jobs in Alaska's manufacturing sector, which includes seafood processing*" (Hemphill, p. 2).

Alaska's exports to foreign markets in 1981 equalled $1.2 billion; its imports from foreign countries totaled $229 million, according to Hemphill. Alaska thus was one of the few U.S. states in 1981 with a positive trade balance and so made a significant contribution to the country's trade situation.

Japan bought most of Alaska's exports--$935 million worth. Japan also was the largest exporter to Alaska--$59 million in goods.

Four classes of goods made up the bulk of Alaska's 1981 exports: seafood products, at $427 million; liquefied natural gas, at $310 million; forest products, at $278 million and fertilizers, at $133 million. These figures do not include goods shipped from Alaska to other U.S. states for reprocessing and export.

The nation and Alaska need to expand markets for these products and to find markets for such other Alaska products as coal, other minerals and grains. Developing these markets demands con-

* See the Alaska Statehood Commission publication, *Shifting Power from the Federal Government to the State of Alaska*, by Harold Hovey, 1982.

centrated, coordinated and sensitive effort from the state's administration.

An office of external affairs also can respond sensitively to events at home and abroad that will have major effects on Alaska's well-being. An example is the extensive ban and then recall of Alaska canned salmon last year after a Belgian died from botulism from a defective can. The ban by the United Kingdom and other members of the European Economic Community came as a surprise to which the state was slow to react because Alaska had no one representing its interests in Brussels, headquarters and economic intelligence center for the European Community.

The need to maintain and search out such overseas representation in Japan, Korea and other Pacific Rim nations speaks plainly from Alaska's export figures and from Alaska's geographical position.

Reaching out overseas and to our Canadian neighbors and to other U.S. states will be, we think, a most important task for Alaska and the nation's future. The direction and coordination must come from the governor through a permanent office.

18 The state of Alaska should explore with the federal government and Native organizations the establishment of a permanent joint fact-finding and advisory body to air and help reconcile problems that arise over land, resources and other interests.

The relationship between Alaska Natives and the state of Alaska is rich and complex. It affects and in turn is affected by the Natives' relationship to the federal government. This complexity alone guarantees many possible points of friction, some of which have been, are still or soon may be in the courts.

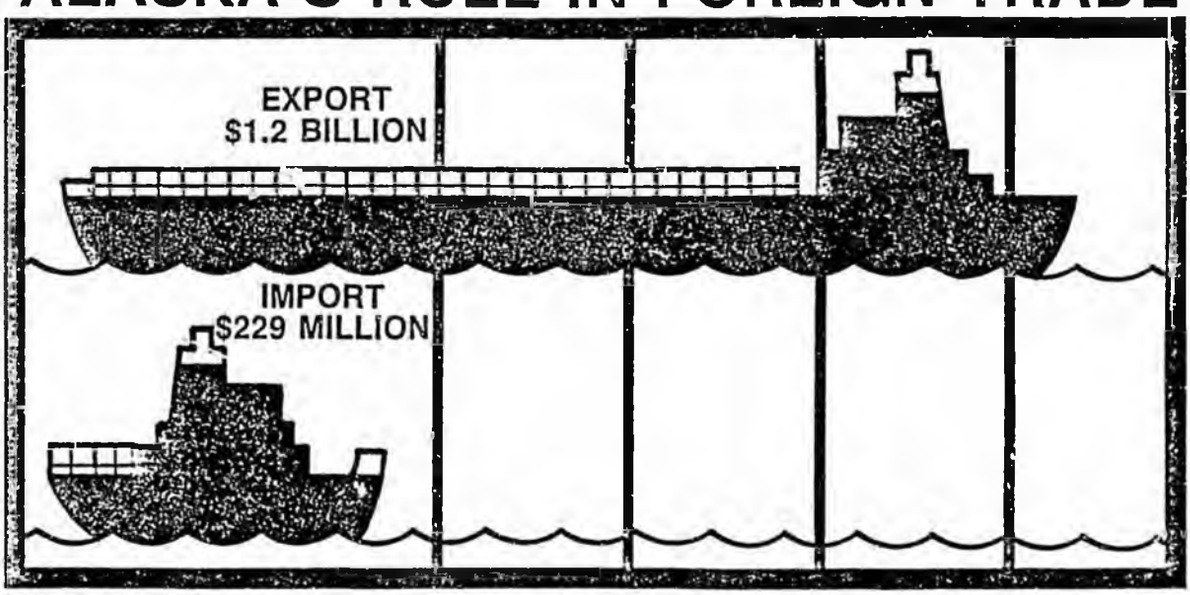
The state's 64,103 Native citizens comprise 16 percent of the state's 401,000 population (1980 Census). This density is twice that of any other state with large Native populations. Natives have a special trust relationship with the federal government which endows them individually and corporately with a web of rights additional to those enjoyed by the non-Native population.[33]

Overall, 80,287 Natives in and without the state are certified under the Alaska Natives Claims Settlement Act. Of the 64,000 living in the state, about 50,000 reside in villages, of which 212 are recognized by the Settlement Act. Beyond the villages, the act incorporates Natives into 13 regional corporations, 12 for Natives within the state and one for those without.

Native institutions own, will own or have in trust 11 percent of Alaska's land. The state owns or will own 29 percent. Private owners other than Native organizations have about 1 percent. The federal government will own the rest.

The complicated patterns of land ownerships and the speed with which some lands are being transferred from the federal government to other

ALASKA'S ROLE IN FOREIGN TRADE



Graph illustrates Alaska's positive contribution to the nation's trade balance.

[33]See the Alaska Statehood Commission publication, *Native Rights*, by the Alaska Department of Law, 1982.

owners inevitably give rise to problems of arranging for or planning for rights of way and of preserving traditional means of access.

Central to land and other disputes which have or which will arise is the federal role. "The basic fact which must be considered by the state of Alaska in its dealings with the Alaska Natives is the overriding federal interest in this matter. All of the institutions of federal Indian law...have the effect of ensuring federal supremacy here" (Alaska Department of Law, p. 18).

The Statehood Commission thinks it would be wise to have in place a fact-finding and advisory body that through its presence and proceedings might allow disputes to reach amicable settlement without recourse to long and expensive lawsuits or emotionally rendering political action. The lessons learned through such a body might, in time, suggest pieces of intergovernmental legislation to formalize use of those pathways that lead away from disputes and toward mutual understanding and agreement.

19 The Legislature, in order to give all Alaskans the greatest measure of home rule, should divide Alaska's single unorganized borough into regional unorganized boroughs in accordance with the intent of the state constitution.

In our preliminary report, we urged the Legislature to take special notice of the desires within Alaska for greater regional self-government, noting that:

> "...just as we ask the United States to listen to us, we must listen when we hear the requests from within Alaska for greater self-control of lives, land, waters, fish, game, trade or commerce."

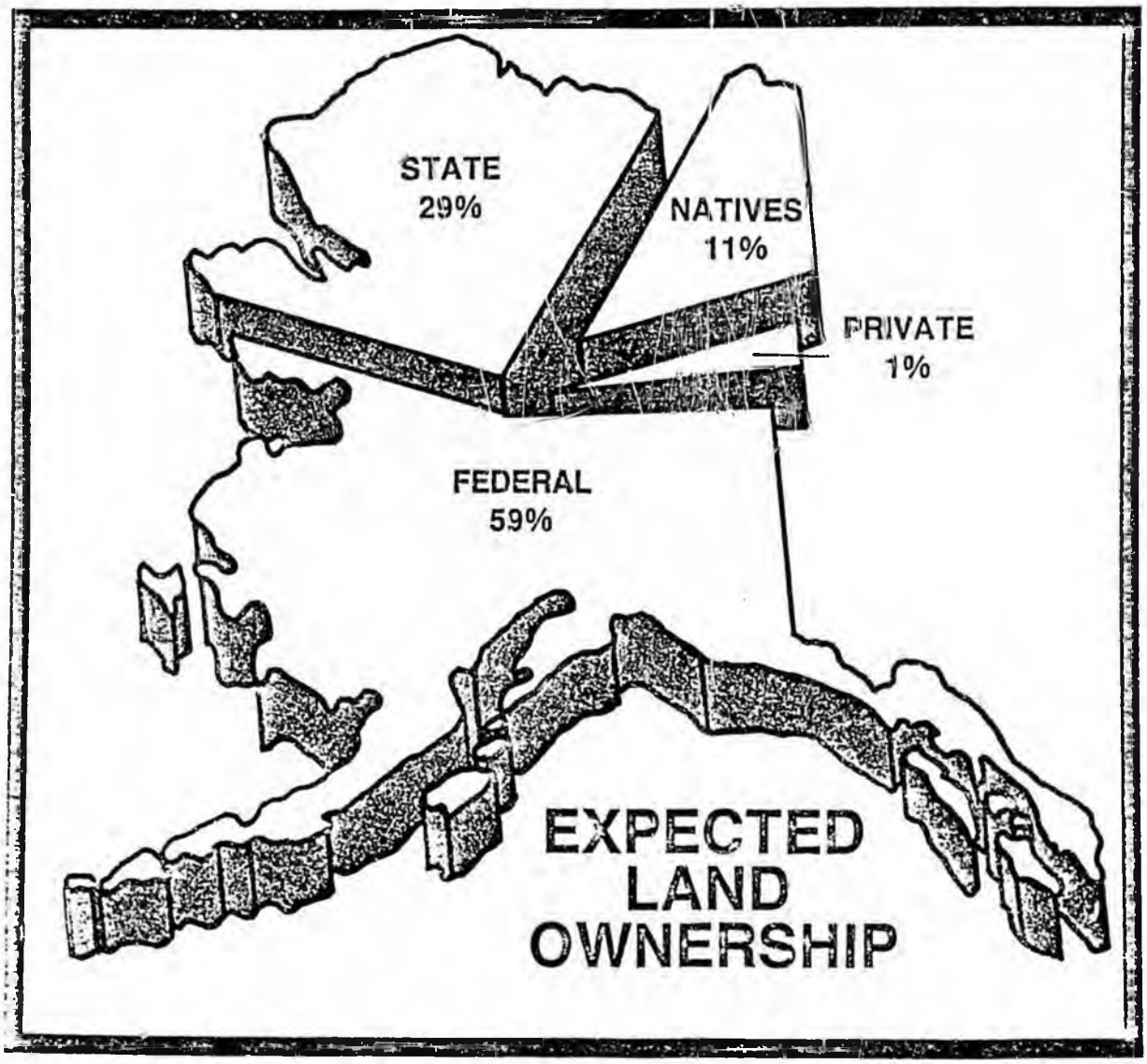


Figure shows only the percentage of ownership, not geographic distribution.

These requests are not new. The Legislature's Joint Committee on Local Government heard and studied them thoroughly in 1979. In its final report, "Local Government Study--1979," the committee proposed that the single unorganized borough be divided into regional unorganized boroughs "in accordance with the intent of the state constitution."

But legislative proposals stemming from that study have not progressed into law. The organized boroughs cover some but not all main population centers. The single unorganized borough covers the rest of the state--*nearly 75 percent of Alaska's land area*--as a kind of catch-all limbo.

There is no doubt that the writers of the state constitution intended for the whole state to be divided into both organized and unorganized boroughs, according to state Sen. Victor Fischer, a member of the Constitutional Convention's Committee on Local Government and author of an authoritative history of the convention. The working papers of the convention evidence the accuracy of his conclusion.

...just as we ask the United States to listen to us, we must listen when we hear the requests from within Alaska for greater self-control of lives, land, waters, fish, game, trade or commerce.

So we note the irony that Alaska, with its desire to keep power from centralizing further in Washington, D.C., is nevertheless the only state of size to govern many citizens in remote areas directly from the state capitol. There is no evidence that remote rule from Juneau is any better or wiser than remote rule from the Potomac.

The Legislature can remedy the situation by exercising its constitutional power to act as the assembly for the unorganized borough. It can divide the single, huge unorganized borough into smaller unorganized boroughs or service districts with regional headquarters. That will afford local people the chance to start evolving their own forms of home rule tailored to their varying local circumstances.

The sooner this division is accomplished, the nearer the state will be to the American ideal--and the Alaskan ideal--of letting local people manage their local affairs.

20 The state should establish an Alaska information office under the governor's direction to produce clear, objective, precise information about Alaska for nationwide distribution and to arrange for visits to Alaska by members of the national press corps, members of government and other opinion-makers.

Alaskans complain that they are misunderstood by people in other states. The complaint surfaces when major Alaskan issues--federal land withdrawals, wolf control, $1,000 payments to residents from the state's Permanent Fund earnings--stimulate coverage and opinions in the national media. Often the misunderstanding has major effects, especially when the issue pits Alaska against other interests seeking to determine the outcome of such major federal legislation as the Alaska National Interest Lands Conservation Act, which carved an area the size of California out of Alaska for federal preservation.

One poll (Dittman, 1981) indeed shows that while most Americans have romantic and fond feelings about Alaska, their actual knowledge about Alaska's conditions is poor, leading some (33 percent) to the opinion that Alaska should share any budget surpluses with other states. That opinion might be ignored were it not that pending in Congress are bills that would require Alaska to share its oil revenues with other states.

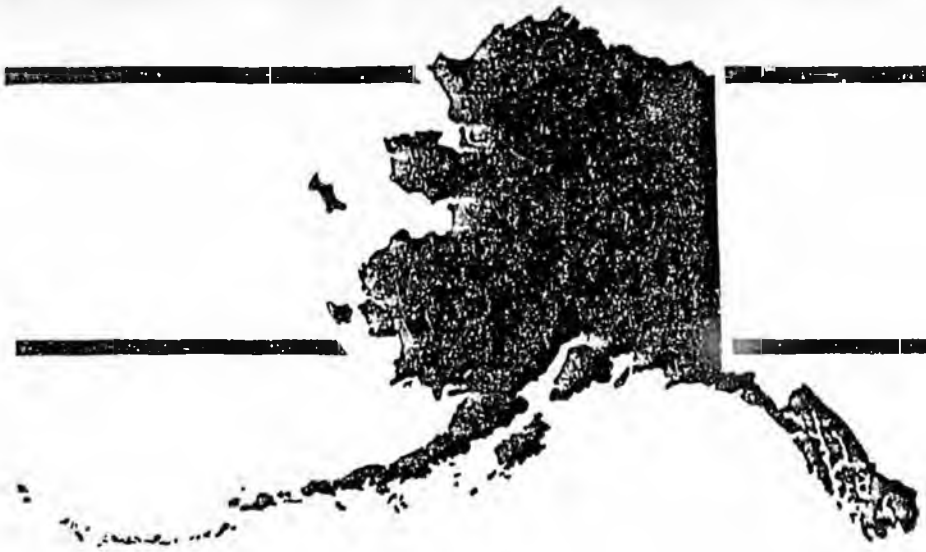
A follow-up poll by Boston University, the Office of the Governor reports, shows that a concerted nationwide informational campaign can change opinions about Alaska for the better--shows that facts induce most people to conform their opinions to reality.

Since Alaska's pending major battles must be fought in the national arena, it follows that an ongoing informational effort is necessary. Such an effort would alert the national press to credible information about Alaska. It would also take the form of offering press members and other opinion-makers tours of Alaska to witness the situation and the issues here for themselves.

A key part of the effort of a state information office would be to *anticipate* issues and reactions to them and prepare material accordingly.

Such an office cannot merely be part of a governor's regular press effort. Such an office must stay divorced from the daily fires of politics, so that it can work on the long-range information problems and look ahead to see what fact booklets, what films, what tapes, what tours and other efforts must be prepared. While its director must answer to the governor, its staff should have civil-service protection in order to carry out long-range work, maintain continuity and serve the Alaskan public at large.

In short, such an office must be part of the regular structure of government, regularly budgeted, and directed to overcome a major problem of this state's relations with the rest of the nation: ignorance.



Conclusion

In a letter to New York City newspapers which was the first of 85 essays later known as the Federalist Papers, Alexander Hamilton raised the question of "whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force."

Alaskans, with a vote setting up the Statehood Commission, asked whether we can *restore* a good government by the exercise of reflection and choice. A republic needs constant attention. Many forces work to skew and bend the structure of government. These forces, operating completely outside constitutions and charters, often spring from impulses of the moment.

More government is not necessarily a bad thing, but over the last century its growth--at all levels--has flowed down the channels of quick reaction and not those of conscious choice. The simple and clear words of our Constitution are so crusted with 200 years of courtroom interpretation that we govern ourselves today with a shadowy charter clear only to some federal judges and a small group of lawyers.

We have directed our attention to what the state can do. Alaska can be a leader, seizing opportunities for action to defend its interests, and reaching out to the nation with a message of what Alaska can offer. The last decade and its controversy over land withdrawals teach that we can find refuge in isolatio[illegible] longer.

Alaska can build its strength from within by granting the regional self-government promised in the Alaska Constitution. Alaska can protect its revenue powers from raids by coalitions of resource-poor states by joining with other resource states for research, persuasion, and pragmatic politics. It can block federal intrusions by turning down grants and leading a call by the states for a convention to set the rules for future conventions to amend the U.S. Constitution. It can work with other nations.

In short, the powers of a state are defined not so much by words on paper but by its willingness and its ability to forge destiny by action and example.

Alaska can be a leader, seizing opportunities for action to defend its interests, and reaching out to the nation with a message of what Alaska can offer.

Alaska is able. We are strong in revenues and resources. We have the resilience and the self-reliance of those who live in a land of climatic extremes that tolerates little weakness.

Are we Alaskans willing to undertake this work of years? We believe we are, for Alaskans--with a history of territorial paternalism followed by statehood--know that citizens receive precisely the quality of government that they demand.

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Appendices

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Sworn to duty Oct. 22, 1980*

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Sworn to duty Oct. 22, 1980

John B (Jack) Coghill, Chairman
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Sworn to duty Sept. 13, 1982

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EDUCATION

WHO IS AUDIENCE

DEMOCRATIC PARTY

WE TOLD PEOPLE WHAT NEEDED

Item 5

SHIFTING POWER FROM THE FEDERAL GOVERNMENT TO THE STATE OF ALASKA

Final Report

Harold A. Hov[illegible]
Economic and Management Consulting
September, 1982

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EXECUTIVE SUMMARY

The Alaska Statehood Commission concluded in its preliminary report tnat many of the concerns that Alaskans have with their relationship with the federal government are concerns shared by citizens of other states. The commission sponsored this study to examine alternatives for the transfer of power (devolution) from the federal government to the states in general and Alaska in particular.

The United States was formed by the thirteen colonies as a result of problems each had in operating in a loose confederation. While the states ceded some major powers in regulating commerce and foreign relations to the new federal government, they retained substantial powers including a basic power to legislate on any subject not covered by the Bill of Rights or expressly given to the new federal government under the Constitution. Over nearly two centuries, however, the powers of the federal government have been increased at the expense of the states, to the point where there are almost no legal limits on what the federal government can do in areas previously controlled by the states.

With no legal bounds to federal power, the question becomes whether there are general principles for division of responsibility between the federal government and the states. As a practical matter, federal action is triggered on the basis of a majority of the Congress believing that such action is a good idea, regardless of impact on the general roles of state and federal governments. Other tests for when states should be free to act, such as whether one state's action could adversely affect citizens of another state, are not often applied in practice. As a result, federal regulations and/or grant programs cover such obviously local matters as cock fighting, libraries, and rat control. This federal role has developed even though there are no compelling arguments that federal action is necessary or that the federal government is any more competent than state and local governments to handle the problems involved. The situation does not, however, admit to simple solutions as many of the subjects addressed by federal action have some elements that are so local as to make total federal control absurd combined with some elements so national as to make no federal action unthinkable. The possibility of change is suggested by experiences in Australia, West Germany, and Canada where the division of state and federal responsibility is much more clearcut than in the United States.

The federal government affects Alaska citizens in three primary ways: (1) as a lawmaker and regulator, (2) as a source of funds and regulations through federal grants to state and local government, and (3) as an employer and large landowner. Federal laws and regulations are very pervasive, affecting state and local policies in civil rights, criminal law, and management of schools, hospitals, mental health and

correctional institutions. The federal government also plays a major role in regulating such private sector activities as transportation, manufacturing, and banking -- at times preempting state regulation of the same subjects. The scope of federal regulation of private activity does not reflect any consistent philosphy or principles regarding appropriate roles for the federal government and state and local government.

Much of the federal control over state and local government is extended through grant programs, which finance nearly a quarter of state and local government spending. Grant requirements dictate how federal funds and state and local matching funds are used and are the basis for federal requirements such as the 55 mile an hour speed limit, payment of "prevailing" wages on state and local construction projects, preservation of historic structures, and other federal mandates. The administration of federal grants has long been a subject of complaint by state and local officials who object to red tape and paperwork and the mandated use of federal funds in projects which they consider to be of low priority. Regulations in grant programs often force program administration to cost more than it should and are sometimes inconsistent from agency to agency.

Alaska citizens and government officials share with citizens of other states problems with federal regulations and grant conditions and are especially affected by the federal government's role as an employer and major landowner in Alaska. While the federal government does not pay state and local taxes, it makes a variety of payments to Alaskan governments in the form of shared revenues and impact aid for education that are particularly important in Alaska and are threatened by potential federal budget cutbacks. It is particularly important to Alaska that these federal payments, that substitute for the payment of state and local taxes, be treated separately from grants, particularly during the present period of reductions in grant funding. The federal government's control of large quantities of land can cause conflicts with state policies relating to economic development and management of fish and wildlife. The prospects that the federal government will cede lands, beyond the cessions required by the Statehood Act, to the state are very limited. There is, however, a significant probability that the federal government would relinquish to Alaska responsibility for the Alaska Railroad and the development and management of hydroelectric projects.

Certain federal policies, such as the requirement for shipping on U.S. vessels and the prohibition of export of Alaskan oil, clearly have strong negative impacts on Alaska. However, the subjects of these policies are appropriately a federal responsibility, so that

improvements in policies involve changes in federal policy rather than a shifting of control from the federal government to the states. Alaska, somewhat more than other states, also experiences the problem that federal laws and regulations are often insensitive to unique circumstances in Alaska.

Reducing the role and costs of the federal government is an objective widely supported by American citizens and political leaders. However, translating this general feeling into specific actions to shift power to the states is extremely difficult. Often business interests support larger, rather than smaller, federal roles and, at times, are joined by state and local government leaders in supporting more federal power. Many of the most vocal complainers about federal power are concerned with single issues such as abortion, school prayer, and busing and are not likely allies in a general strategy of shifting power from Washington to the states. Individual federal programs are defended by strong combinations of interest groups and federal bureaucrats. However, elected officials at the national, state, and local levels are showing increasing interest in shifting power away from the federal government. Current and likely future federal budget problems will limit growth of federal power through grant programs and is causing retrenchment in existing programs.

Concern over excessive federal intervention in state-local affairs and the lives of American citizens has triggered a wide variety of proposals to restrain federal power. Some have proposed that the Constitution be amended either to create specific constraints on federal action or to establish processes, such as veto of federal actions by state legislatures, that would operate to block federal intrusions into state and local affairs. However, the use of the constitutional convention to alter the federal Constitution has been avoided throughout our history by absence of agreement on the rules for such a convention, suggesting the need for action to establish such rules.

There is widespread support, from the president and many state and local leaders, for a "sorting out" of our federal system. Such a sorting out would reduce ambiguities in state federal relations by giving some of the activities that are now funded and controlled by a combination of state and federal governments unambiguously to the states and some to the federal government. The president's "New Federalism" proposal is an attempt to implement this sorting out concept, but faces a number of practical problems, including making the proposal equitable for every state. Some sorting out is occurring simply by federal budget reductions, including the reduction or elimination of federal programs in areas such as law enforcement, economic development, and libraries. There has also been discussion of turning back some federal program

responsibilities to the states along with some current federal revenue sources, although specific proposals have yet to emerge.

The proposals for sorting out offer major advantages in terms of increased accountability and program effectiveness, not to mention reduced federal intervention. However, there are some pitfalls for Alaska, which receives more federal grants per capita than any other state. Some of the pitfalls can be avoided if payments related to federal land leasing and impact aid for schools are kept outside the group of programs that might be returned to the states.

There are also proposals for less sweeping changes in federal and state roles than envisioned in the sorting out proposals. These include block grants, regulatory reform, and a variety of measures to reduce the red tape and administrative costs associated with federal grants. One possibility is to give state officials limited authority to transfer funds from one federal grant program to another. In areas where the federal government is likely to retain responsibility, such as leasing of public lands and the Outer Continental Shelf for resource development, there are also possibilities for enhanced procedures for consulting with state and local officials. However, the effectiveness of consultative procedures fundamentally depends upon the willingness of federal officials to consult, rather than formal requirements which can be satisfied by merely "going through the motions." Congress in general, and the Alaska delegation in particular, can have considerable impact in urging federal officials to consult with state officials before taking action.

With major sorting out proposals under serious consideration, proposals for reforms of existing grant programs are not receiving high priority as many people view the problem as requiring wholesale reduction of the federal role, rather than trying to make that role slightly more palatable.

There are many actions that the government and people of Alaska might take to encourage a reduction of federal intrusion into their lives. It does not appear likely, however, that Alaska will receive special treatment by being able to assume powers from the federal government that are not offered to other states. Thus, improvements in the Alaska situation will generally involve improvements in the situation in all states. The report suggests sixteen different proposals that might be endorsed by the Statehood Commission for enhancement of the role of the states relative to the federal government. These include:

- Coalitions with other states built around such concerns as federal land management,
- A legal defense fund to fight in the courts against infringements on state roles,
- A convocation on federalism,
- Formal establishment of procedures by which state legislatures can call a constitutional convention,
- A requirement that the federal government reimburse state and local governments for costs forced on them by federal law and regulation,
- A veto power over federal legislation in the hands of state legislatures,
- The president's regulatory reform efforts,
- Proposed regulatory reform legislation,
- Opposition to new intrusions by the federal government,
- Reduction on the requirements Alaska must meet to take over responsibilities from the federal government,
- Possible Alaska withdrawal from some grant programs
- New Federalism policies that turn back some federal responsbilities to the states,
- Block grants to replace narrow categorical ones, and
- Other grant management reforms.

Support of New Federalism proposals for a sorting out of state and federal assumptions could be particularly significant in promoting devolution of federal powers, assuming that the proposals would replace lost grants with savings resulting from federal assumption of certain income security (welfare and Medicaid) programs now partly paid for by the state and by allocations from a new federal trust fund. This could result in the turnover of more than 100 separate federal activities to the state. If sorting out measures fail, there are still ways to improve the administration of grant programs, including block grants and other reforms.

However, the status quo is defended both by powerful interests and inertia, which means that change will not come without substantial and persistent effort.

INTRODUCTION

The Alaska Statehood Commission was established by a vote of the people of the State of Alaska in August of 1980. The mission of the commission is "to study the status of the people of Alaska within the United States and to consider and recommend appropriate changes in the relationship of Alaska and the United States."

The commission presented its preliminary report in January of 1982. The report, consistent with the commission's charter, considered such questions as possible independence of Alaska from the United States and dropping status as a state to become some sort of territory. The commission concluded that these alternatives were unwise and is not considering them further.

The commission's very existence grew out of frustrations of Alaska's citizens in dealing with the federal government. One thing the commission found was that these frustrations were not unique to Alaska. As the commission put it in its preliminary report:

> Alaska's short history as a state also happens to coincide with a 20-year national diminution of the power of all the states through actions of the federal government. Some Alaskans, aware of the heavy federal hand in Alaskan affairs, perhaps thought that the interference was unique to this state, a holdover from the paternalistic days of territorial status. Our studies on the status of Alaska within the United States have shown us, however, that the penetration of the federal government into the farthest corners of American life is the rule, not the exception. We share the burden with others.

The commission's report places heavy emphasis on problems that Alaska shares with other states. The transmittal letter notes that the commission expects "tc reach conclusions on ways to improve our federal system for we do feel that the federal-state balance is seriously askew." The Executive Summary of the report describes the current relationship between the states and the federal government as having grown into a "wild garden" and suggests that "The entire system begs for conscientious tending and vigorous pruning." The report concurs with other observers in noting that "now is the critical time to attempt redistribution of powers from the federal to the state level."

Having discovered the commonality of Alaska's problems with those of other states, the commission understandably became interested in the many proposals that have been made to reform our federal system. To provide background for their consideration of alternatives, the commission decided to contract for a report dealing with those alternatives.

The commission's interests coincide with my own. In serving as the top budget official in Ohio and Illinois in the early 1970's, I concluded that many of the problems of state and local government were being caused by the federal government. Experience as a consultant to state and local governments and various federal agencies since that time has reinforced this view. However, recognition of a problem does not lead inevitably to its solution. Our federal system has evolved as it has for reasons that must be understood if proposed solutions are to be feasible politically.

Alaska's need for information on ways to improve the federal system meshed with my own desire to stand back from the day-to-day skirmishes that characterize federal-state relations and to examine potential solutions in a somewhat broader context.

This report owes a great deal to the decades of work on the federal system by the Advisory Commission on Intergovernmental Relations (ACIR). ACIR has been an excellent source of information on everything from financial flows and grant reform to philosophy and constitutional law. Particular thanks is owed to Dave Walker of the commission's staff. John de Yonge and Jim Chiles of the Statehood Commission staff were particularly helpful in assisting me in understanding the specific concerns of Alaska's citizens, as were state staff members and the staff of the Alaska congressional delegation. However, all sins of omission and commission are my own. The commission will be using this report as one of many sources of information for recommendations that it will be presenting in its final report. Perhaps some of the conclusions and recommendations of this report will find their way into the commission's final conclusions and recommendations, but readers should not assume this.

This report is divided into three major parts. Part One provides background for the material that follows. It covers the historical and legal evolution of the present federal system, federal-state relations in other nations, and an examination of fundamental principles for evaluating the relationship between a national government and state governments. Part Two provides a discussion of the current state of state-federal relations. Part Three provides a comprehensive inventory of proposals for changing state-federal relations and an assessment of those proposals against various criteria including workability and

political feasibility. It also provides my recommendations for positions that could be adopted by the commission.

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Arlington, Virginia

PART ONE: BACKGROUND

CHAPTER ONE: HISTORICAL AND LEGAL DEVELOPMENT OF FEDERAL-STATE RELATIONS

INTRODUCTION

This report is about American federalism -- the relationships between national and state governments. The topic is not a new one, concerns over the relationship mark the major points in our national history. The Articles of Confederation, the Revolutionary War, the framing of the Constitution, and the Civil War were all situations in which the stakes were the relation of a national government to American states. More recently, federalism was at issue in the policies of the New Deal and is currently at issue because of President Reagan's "new federalism" proposals.

In the case of federal issues today the past is more than prologue. For some, federal issues should be decided pragmatically, based solely on what appears likely to work at the time. However, many participants in federal issues view the legal framework of the Constitution, the legal interpretations of the Supreme Court, and the history of the United States as appropriate sources of guidance for current issues. Whether one argues for the devolution of federal power to the states on historical or legal grounds or not, an understanding of the historical and legal background is necessary to understanding why things are as they are today. It is also necessary for understanding why some people feel as they do about the issues involved.

This chapter is intended as a summary. Persons seeking more detailed treatment of the subject should consult such documents as the ACIR report, THE FEDERAL ROLE IN THE FEDERAL SYSTEM: DYNAMICS OF GROWTH, The Condition of Contemporary Federalism: Conflicting Theories and Collapsing Constraints (ACIR, 1981) and a report prepared for the Statehood Commission by Birch, Horton, Bittner and Monroe, THE CONCEPT OF STATEHOOD WITHIN THE AMERICAN FEDERAL SYSTEM (1981).

THE EARLY YEARS

When our founding fathers declared independence from Great Britain, they did so as leaders of individual states, not as a nation. The Declaration of Independence refers to united colonies, not to united states. The Declaration says that the colonies are free and independent states, not united states or a state, and that these states (plural) have the power to levy war, contract alliances, etc.

From the signing of the Declaration until the adoption of the Articles of Confederation in 1781, the states operated as sovereign entities. They adopted constitutions, raised armies, and regulated the conduct of their citizens. The Treaty of Peace with Great Britain

recognized the former colonies as "free sovereign and independent states."

The Articles established a national government with powers that were quite limited, so limited that individual states were negotiating with each other on such subjects as regulation of trade. The national government did not even have the power to tax, having to rely instead on state appropriations. Dissatisfaction with this situation led to the Constitutional Convention and the lengthy debate over whether to ratify the new instrument, out of which tracts such as THE FEDERALIST PAPERS developed.

Opposition to the new Constitution was based upon fears of a strong national government. One compromise was agreement to adopt ten amendments, generally known as the Bill of Rights. The Tenth Amendment states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

THE CONSTITUTION

The Constitution represented an attempt to create a framework in which a national government would have enough powers to function while leaving state governments control of those matters that could be handled without a national government's involvement. This objective was handled by providing specific, enumerated, powers for the national government in Article I, Section 8. These powers included powers associated with defense, the power to raise taxes and coin money, the power to make treaties, the power to make bankruptcy laws, the power to establish patents and copyrights, and the power to tax. Congress was also given power to regulate commerce with foreign nations and among the several states. The Article's prefatory language indicates that Congress shall have the power to tax to provide for the "general welfare" of the United States. The concluding phrase in the Article indicates power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers..."

EARLY TESTS OF FEDERAL POWERS

The power of the new federal government proved equal to the variety of tests it faced, ranging from the Whiskey Rebellion, which challenged the power to tax, to various cases which established the supremacy of federal treaties over state law. The Judiciary Act of 1789 assured the supremacy of federal courts in interpretation of the Constitution by creating federal jurisdiction over cases decided on constitutional

grounds in state courts. The Supreme Court supported various exercises of federal power, such as the establishment of a national bank.

An 1824 Supreme Court case (GIBBONS v. OGDEN, 9 Wheaton 1) dealt with the meaning of the Commerce Clause. The Court upheld the power of Congress to regulate steamship transport and, if necessary, to override state legislation in the process.

However, the issues of the day showed how much emphasis those involved placed on limiting the scope and power of the national government. Despite obvious problems being caused by state currency issuance, whether to have a national bank was hotly disputed in Congress. Legislation to create a permanent improvements (public works) fund was vetoed by President Madison on the grounds that such activity exceeded the appropriate scope of national government action. In 1854, President Pierce vetoed a bill to provide federal assistance to the indigent insane noting prophetically:

> (If) Congress is to make provision for (paupers) the fountains of charity will be dried up at home, and the several states, instead of bestowing their own means on the social wants of their own people may themselves, through the strong temptations, which appeals to states as individuals, become humble supplicants for the bounty of the federal government, reversing their true relation to this Union.*

THE COMMERCE CLAUSE AND STATE POLICE POWERS

The Supreme Court accepted a number of cases in the pre-Civil War period that raised the question of overlapping state and federal powers in dealing with commerce. The holdings in these cases indicated that while there were some actions that states could not take (e.g., taxing arriving passengers), states were free to regulate commerce in the absence of conflicting federal regulation. These cases are the legal basis for the many overlapping state and federal rules which characterize much economic activity today.

THE CIVIL WAR AND ITS LEGAL AFTERMATH

The Civil War established the power, and presumably the right, of the United States to prevent secession of states from the Union. It also produced the Reconstruction period during which the Fourteenth

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*ACIR, CONDITION OF FEDERALISM, p. 47.

Amendment was passed. That amendment states, in relevant part, "No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." In the Slaughter-House Cases in 1873, the Supreme Court was asked to decide whether this amendment went beyond the protection of civil liberties of individual citizens by also covering economic rights. In a divided vote, the Court refused to apply the amendment to alleged economic discrimination through a government created monopoly. In 1877 the Court refused to overturn an Illinois law regulating grain elevators, despite claims that the regulation deprived operators of Fourteenth Amendment rights.

FEDERAL JUDICIAL PROTECTION OF BUSINESS

Gradually, the federal courts moved to reverse the doctrines in the Slaughter-House and grain elevator cases in order to overturn various forms of state regulation. The landmark case (CHICAGO, MILWAUKEE, AND ST. PAUL RAILWAY COMPANY v. MINNESOTA, 134 U.S. 418, 1890), invalidated railroad regulation by Minnesota. The case was followed by a variety of others striking down state regulation of such subjects as the hours of work of bakers.

Although these cases, which carried controversial economic doctrines into constitutional law, were eventually to be rejected by later decisions, they represent a major intrusion of the federal government into matters that had, for nearly 100 years, been considered appropriate subjects for action by the states.

In addition to these Fourteenth Amendment cases, the Supreme Court invoked the Commerce Clause to invalidate state regulation of railroad long haul and short haul rates. Congress acted to fill this regulatory void with the Interstate Commerce Act of 1887 which established the Interstate Commerce Commission. This was quickly followed by the Sherman Antitrust Act of 1890. In these pieces of economic regulation, the federal government was clearly dealing with multi-state companies in situations where it would be difficult for state action to accomplish the regulatory results intended.

THE PROGRESSIVE ERA

Teddy Roosevelt assumed the Presidency in what was termed "the progressive era." Politics at the time was oriented to a "can do" philosophy of government and the common view was that government regulation could cure a number of perceived abuses in American society. What were perceived as regulatory voids would be filled. In a 1910

speech, Roosevelt outlined some of the principles of the New Nationalism:

> The state must be made efficient for the work which concerns only the people of the state; and the nation for which concerns all the people. There must remain no neutral ground to serve as a refuge for lawbreakers, and especially for lawbreakers of great wealth, who can hire the vulpine legal cunning which will teach them how to avoid both jurisdictions...The New Nationalism puts the national need before sectional or personal advantage. It is impatient of the utter confusion that results from local legislatures attempting to treat national issues as local issues.*

The Supreme Court began consistently to uphold federal statutes which arguably entered areas reserved to the states. The Commerce Clause was used to uphold a statute that prevented the interstate shipment of lottery tickets despite a contention that the power to regulate commerce did not include the power to prohibit it. The taxing power was used to sustain legislation that for decades protected the butter industry from competition from artificially colored margarine. Congress entered the fields of food and drug inspection and meat inspection under the Commerce Clause. The Commerce Clause was also used to sustain the Mann Act which made it a federal offense to ship women across state lines for immoral purposes. The common link in these cases is that Congress was acting to restrain the physical movement of something across state lines.

However, the connection with physical movement was replaced with the concept of a "stream of commerce". This doctrine was used to apply antitrust laws to sales of cattle within a single state on the grounds that the sales were part of a continuing stream of activity that was part of interstate commerce.

THE BEGINNINGS OF THE GRANTS ECONOMY

Although the federal government had provided "grants" in earlier periods, through such actions as grants of public land to promote construction of railroads, the grant system as we know it today began with the passage of the Weeks Act of 1911. That legislation, which covered protecting forested watersheds, was soon followed by the Smith-Lever Act establishing the Agricultural Extension Service. By 1925 federal grants totaled about $93 million, covering these functions

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*ACIR, CONDITION OF FEDERALISM, p. 64.

plus public health, highways, vocational education, and maternity care. The grants economy was beginning.

A challenge by the State of Massachusetts to one of the programs indicated that the Supreme Court would not likely accept challenges to grants on both procedural grounds and on the basis that the state's participation in grant programs and adherence to grant conditions was voluntary.

CONSTITUTIONAL AMENDMENTS AFFECTING FEDERAL-STATE RELATIONS

A series of constitutional amendments in the early 1900's had significant implications for evolving relationships between the states and the federal government. The Sixteenth Amendment provided the federal government with access to the income tax, now the most significant single source of federal revenue. The Seventeenth Amendment ended the practice of selection of senators by state government, replacing it with the popular election method. No longer would senators be emissaries from state government; they became political figures with direct ties to the electorate. The Eighteenth Amendment (Prohibition) reflected use of police power at the national level in an area previously under the control of states, which was why a constitutional amendment was considered necessary to permit federal action.

THE TWENTIES

A group of civil rights cases in the period from 1919 through 1927 brought protection of the federal Bill of Rights to citizens dealing with state action through the concept that the Fourteenth Amendment made these protections applicable to the states. While this enlargement of federal control was taking place in civil rights, the Supreme Court began to void federal action dealing with economic regulation. Most notable, in light of previous cases on lottery tickets and meat packing, was a decision invalidating congressional action to regulate child labor. In response, Congress passed new child labor legislation based upon the taxing power. The Supreme Court rejected this legislation also on the theory that an invasion of state powers was involved. However, the Court rejected an Arizona labor relations statute on the grounds that it involved unequal protection of the laws and rejected a Kansas arbitration statute as contravening the due process requirements of the Fourteenth Amendment.

DEPRESSION AND RECOVERY

The Depression had a massive impact on the history of federalism. As the Advisory Commission on Intergovernmental Relations put it:

> By the end of the Depression, the American governmental system was transfigured. Whether or not conscious of its plunge into modernity, the nation had modified its view of economy, realigned itself politically, and amended its attitudes on poverty and unemployment. Yet...the Constitution stood practically if not formally transformed. When the clouds of depression lifted, the remaining constitutional constraints to the growth of the central government had been eroded. The character of American federalism was thenceforth forever changed.*

The Depression saw the enactment of the first federal welfare program, which used the mechanism of funneling funds through state governments. Public works projects were also funded for economic relief but, unlike more recent versions of such programs, the funds were spent directly by the federal government rather than by state and local governments. An entirely new type of federal institution, the Tennessee Valley Authority, was established with a charter to provide power and economic development to a designated geographic area. The president also entered economic regulation in great detail, resulting in a running battle between the administration and Supreme Court. The president's agricultural program was scrapped on the grounds that it invaded the power of the states. Other key parts of the New Deal were held invalid. However, by 1937 the Court had backed down from these decisions and began to uphold federal economic regulation on a broad front. In the cases that resulted, the Court generally upheld the concept that the federal government was empowered to tax and spend generally in the pursuit of the general welfare. Prior decisions prohibiting federal child labor laws were overruled. By the end of World War II, the previous constitutional bounds on federal action potentially infringing on the powers of states had been almost totally rejected both in the courts and by the nation's political leadership.

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* ACIR, CONDITION OF FEDERALISM, p. 76

MORE RECENT DEVELOPMENTS

Over the past 20 years, little attention has been paid to the moribund historical relationship of the state and national governments. Instead, decision-makers, including many state officials, fell into a pattern of decision making which assumed fundamental national responsibility for essentially all domestic functions. That responsibility might be shared with state and local governments. The primary cost responsibility might be carried by state and local governments. But the legitimacy of a federal role was rarely challenged.

Federal grant programs were provided in such areas as fire protection, coastal zone management, rat control, domestic water supplies, sewage treatment plant construction, repair of rural bridges, bilingual education, libraries, arts and culture, police protection, and just about every governmental activity known. Federal legislation protected the rights of the physically handicapped, the aged, drug abusers, and others, and sought to improve the status of minorities.

The extension of federal power and roles suffered only one legal setback. In 1976 in NATIONAL LEAGUE OF CITIES v. USERY (426 U.S. 833), the Court, in a 5-4 decision, held that the federal government could not apply its wage and hour regulations to state and local government employees. The majority opinion noted that "states as states stand on quite different footing than an individual or corporation when challenging the exercise of Congress's power to regulate commerce...Congress may not exercise that power so as to force directly upon the states its choices as to how essential decisions regarding the conduct of intergovernmental functions are to be made." The minority opinion called the decision a judicial redistribution of power and argued that "the extent of federal intervention into the states' affairs in the exercise of delegated powers shall be determined by the states' exercise of political power through their representatives in Congress.."

The Usery decision deals only with one instance of regulating state and local governments directly by legislation, as distinct from federal regulation of private conduct that state or local governments may also seek to regulate. In addition, the holding stands side-by-side with other holdings making the same legislation applicable to certain state and local functions considered to be of a proprietary (businesslike) nature and decisions applying age and sex discrimination statutes to state and local employment policy. More important, it is generally agreed that the policy that Congress cannot apply as a regulation under the Usery decision could be applied through the spending power by conditioning federal grants on compliance with the policy.

THE RELEVANCE OF HISTORY AND CONSTITUTIONAL LAW

In the day-to-day decisions that determine the relationship of Alaska and the federal government, most of the legal and constitutional materials discussed in this chapter do not make much difference. As a practical matter, neither history nor current interpretations of the Constitution prevents the federal government from entering areas that traditionally were handled by state and local governments.

The American history of federalism certainly provides the basis for claims that the founding fathers did not contemplate the degree of federal involvement in regulation and grant programs that has developed since World War II. However, the counterclaim is that the founders did contemplate the Constitution as a living document and that increased federal roles reflect real changes such as easier transportation, greater mobility of people and goods, and the development of a truly national economy that cannot be effectively regulated by a single state.

As politically salient arguments, "states rights" and appeals to the principles of the founding fathers have simply lost whatever effectiveness they may have had in an earlier day. One indication of this is that state officials themselves rarely make historical or legal arguments against federal action, and often support federal actions that would be inconsistent with such sweeping arguments. Another indication is the way in which the Reagan administration has handled the effort to reduce the scope of the federal government and put more power into the hands of state and local officials. This argument is normally put pragmatically, not legally or historically. federal action is criticized as being too costly, too remote from the problem, having too many unintended consequences, destroying individual initiatives, and being overly intrusive into the lives of citizens. While the rhetoric includes occasional mention of historical background or the principles of the founding fathers, the key arguments for state and local power are basically pragmatic.

Chapter 2 thus turns attention to the pragmatic question of the circumstances under which national action may be more appropriate than state and local action and when national action should be avoided.

CHAPTER TWO: GUIDING PRINCIPLES OF FEDERAL-STATE RELATIONS

INTRODUCTION

The preceding chapter suggested that historical and legal approaches to federal-state relations are likely to have little current political saliency. Americans have either forgotten their history or choose to reject historical precedents and the courts no longer stand as major guardians of federalism. If history and law are not to guide policy, then other guides must be found. This chapter is the quest for those guides.

In broad terms, the issue is at what level of government should there be lodged responsibilities for social welfare, economic regulation, provision of services, and financing all of these. This is by no means a new issue. Plato's REPUBLIC and Aristotle's POLITICS both address the appropriate size and scope of governmental units.

In its study of this subject, THE FEDERAL ROLE IN THE FEDERAL SYSTEM: THE DYNAMICS OF GROWTH: AN AGENDA FOR AMERICAN FEDERALISM: RESTORING CONFIDENCE AND COMPETENCE (1981), the Advisory Commission on Intergovernmental Relations suggested that a test of national purpose be applied to determine wnen the federal government could legitimately act. The concept of national purpose is, in substance, a replacement for the former legal tests of appropriate spheres of federal action. It can be seen as one of two possible approaches to issues raising questions of state-federal relations.

One approach is to bring to the table no theory at all about appropriate spheres of responsibility, letting each case be decided on its own merits. ACIR calls this approach the "timely contribution" test. That is, if federal action can make a timely contribution to a worthwhile objective, then the action should be taken.

The national purpose test applies the added concept that the federal government should consider overall division of labor among governments and the effect of any proposed specific action on that general division of labor in deciding when federal action is appropriate

Despite its concern that a national purpose test be applied, ACIR concedes that in practice, one is not:

> According to the national purpose criteria, grants-in-aid should be employed to advance major national objectives in the principal fields of federal concern, with other functional fields being left to state and local

> governments alone. In practice, however, most commentators believe that the federal grant system has never -- at any stage of its development -- embodied a clear conception of national purpose or priorities. The specific activities selected for assistance seem to have reflected short-term political judgments, rather than careful assessment of basic needs.

ACIR does not do a convincing job of articulating a national purpose test. The most specific test that it offers is one of "irreconcilable conflict" which would require actual head-on conflict between state action and a nationally articulated goal before federal action was taken. This approach is hard to apply as it is difficult to know a "head-on conflict" when one sees one. Whether or not the federal government should regulate the hunting season on federal lands and whether or not there should be federal legislation on drunk driving are important issues, but notions of national purpose seem to add little insight to the analysis of these issues.

As a practical matter, anyone advocating federal action can couch the advocacy in terms of national purpose. Federal action is needed because there is a problem that needs to be solved which is not being adequately solved by state and local action. This is the premise on which practically all federal domestic legislation is based. The national purpose test does not dispose of the issue but simply changes the vocabulary by which it is addressed. Thus, more specific prescriptions of when federal action might be appropriate must be considered. These include concepts based upon fiscal equalization, externalities and spillovers, economies of scale, service and tax competition, and political accountability. These concepts are discussed in the sections that follow.

FISCAL EQUALIZATION

Different governmental units differ in their fiscal capacity as measured by such indicators as property value per pupil in public schools or per capita income. Different governmental units also differ in the needs for public spending as measured by such indicators as percentage of persons in poverty, percentage of persons in public schools, etc. The cost of providing services also differs from government to government due to differing prevailing wages and prices.

The concept of fiscal equalization is that an appropriate role for higher levels of government is to equalize, in whole or part, fiscal disparities among lower levels of government. The concept is illustrated by the financing of elementary and secondary education in most states.

There is general agreement in society that there should be a system of free public schools and that the actual provision of the service should be at the local level.

Organizing educational responsibility into local school districts and, in some states, with general purpose local governments which rely heavily on property taxes creates considerable disparities in financial capacity among the districts. It is not unusual for some districts to have high concentrations of industrial and commercial property and very few pupils. Other communities are essentially bedroom communities, with large numbers of pupils to educate and little or no industrial and commercial property to tax. As a result, a property tax of 1% of value may suffice to provide public education in one community while a 4% tax might be required in another to provide the same teacher salaries and pupil-teacher ratio.

Most states deal with this problem through equalization programs of school assistance. These equalization programs generally seek to supply state aid so that the same level of local tax effort will produce the same minimum expenditure level in each district.

Equalization can be considered through both how the federal government raises money and how it spends money, recognizing that there is not general agreement on the appropriate measures of equalization for either.

The federal tax system is inherently equalizing with respect to income. That is, citizens in a state with high per capita income will pay a greater proportion of their income in federal income taxes than will persons in a lower income state.

Federal expenditure programs may or may not be equalizing depending on the characteristics of each program. Aid to schools based upon the number of disadvantage pupils would generally be considered as equalizing. Programs, such as revenue sharing, which consider per capita income as an allocation factor, would also be considered as equalizing. However, programs which provide a federal match for state and local spending, such as welfare (AFDC) and Medicaid, may not be equalizing as states with high fiscal capacity will tend to spend more and draw larger amounts of federal money than poorer states.

Equalization is logically a more relevant criterion for aid to local governments than for aid to state governments, as fiscal disparities among local governments are much greater than fiscal disparities among states.

Furthermore, fiscal disparities among states have been decreasing throughout the 20th Century, at least when measured by the traditional test of per capita personal income. The American economy permits free movement of workers, goods, and employers. Persons in low income areas tend to migrate to higher income areas, increasing per capita income where they left and decreasing it where they go. This can be seen in the major migrations from the rural South to the Midwest in the 1940's and 1950's and in current migration to Western states, including Alaska. At the same time, centers of employment can migrate to where low income (and low wage) workers are to be found. The wholesale shift of the garment industry from the New York area to the South and of furniture manufacturing from North to South are examples. This movement decreases income in the states giving up the firms and increases income in the new locations.

Although there are occasional gyrations in the secular trend, the convergence of personal incomes is continuing. In 1967 regional per capita income in the Southeast was 79% of the national average, the lowest of any region. By 1977, however, it had increased to 86% of the national average. The two highest regions in 1967, with 113% of the national average, were the Far West and the Middle Atlantic. By 1977 the Middle Atlantic had dropped to 106% of the average, while the Far West maintained its position. In terms of individual states, Mississippi was the lowest state in 1967 at 62% of the national average, but moved to 70% in 1977. Connecticut, which led in 1967 with 129% dropped in ten years to 114%.*

Fiscal capacity can also be measured through a representative tax system which seeks to reflect the comparative yield of a national average of state tax rates for each of the states. This measure will indicate more capacity than the personal income measure for states with major natural resources (e.g., Alaska and Oklahoma), a strong tourist industry (e.g., Nevada), or a major corporate tax base (e.g., Delaware) and generally lower capacity for states lacking these assets. This measure also shows convergence over time for all regions and most states. The most notable exceptions are low population high resource states, such as Wyoming and Alaska, which improved their fiscal capacity, by this measure, from 1967 to 1979.

Thus fiscal equalization considerations are a diminishing factor in the design and evaluation of federal financial roles.

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*ACIR, TAX CAPACITY OF THE FIFTY STATES: METHODOLOGY AND ESTIMATES (1982), pp. 20-21.

Fiscal equalization is only a theoretical purpose of federal grants. In actual practice, the current system of federal grants is not particularly equalizing. While states such as California, Rhode Island, and New York get a smaller percentage of costs in large programs such as Medicaid and AFDC (welfare) paid by the federal government, their benefit levels are sufficiently higher so that per capita federal assistance in these states is higher than in the states with lower fiscal capacity.

Thus, if fiscal equalization were the only criterion for measuring the federal role, there would be little if any such role. Fiscal capacity disparities among states are relatively small and generally diminishing and there is clear proof that federal aid, in total, is not equalizing.

EXTERNALITIES AND SPILLOVERS

The theory of externalities and spillovers is easily understood. Individual firms provide "private" goods, such as automobiles and magazines where the enjoyment (benefit) is confined to the person making the purchase and where that person bears the total cost of the purchase. Governments provide public goods which inherently can be enjoyed, without specific charge, by many persons. Economically optimal decisions about what public goods and services to provide at what cost are most likely to occur when the voters of the decision-making unit receive all of the benefits and pay all of the costs. In this sense, the national defense function is appropriately at the federal level because all U.S. citizens receive the benefits and all of them pay the costs. Provision of defense services by a state would involve externalities as the citizens of that state would be providing defense capabilities benefiting citizens of surrounding states.

A major example of externalities is pollution control. If all the costs and benefits of pollution control were confined to a single state, then the citizens of that state would presumably, through their elected representatives, reach a decision on the optimal level of pollution control spending. However, if many of the costs of pollution fall into a downstream or downwind state, the citizens could be expected to "underspend" on pollution control as they would not bear the full costs of pollution created in their state.

The theory of externalities sounds attractive when applied to grant programs. For example, suppose that 40% of the benefits of a particular state program accrued to persons out-of-state, but that all the costs were borne in-state. The voters of the state could be expected to "underspend" on this program. The optimal policy would be for the

national government to share the costs of the program, specifically to pay 40% of the costs. Given this incentive, the state decision-makers would presumably act optimally. Thus, the notion of externalities fits well with the actual structure of many federal grant programs which do involve federal percentage matching.

However, the theory becomes tenuous when applied to practical situations. Theoretically, the citizen of Alaska has some interest in education provided to citizens of Mississippi. The Mississippi student may, for example, migrate to Alaska or be part of the pool of persons from which armed forces are drawn. However, who is to say that national taxes, justified on this basis, should be used to pay 1%, 5%, or 30% of Mississippi's educational costs?

The externalities argument is quite strong for certain federal financing, such as financing of an Interstate Highway System and a national system of airports. The argument is ridiculously weak when applied to such activities as local fire and police protection, rat control, solid waste disposal, urban gardening, home insulation, and pothole repair. As economist Lester Thurow puts it, the concept of externalities:

> ... is simply not a convincing explanation of the provision of most domestic public goods. Once a society gets beyond basic public health measures and communicable diseases, medical care does not generate externalities. Death is the most private of all activities, and an individual's health has no nonmarket economic effects on the general population. Neighborhood externalities certainly exist in housing, but internalizing these externalities does not lead to the types of housing programs that have been legislated. The externalities have nothing to do with minimum housing standards for each family. Similarly, I find the arguments that education generates exernalities unconvincing once one gets beyond elementary education (literacy, etc.). Fire protection is like medical care. Some limited amount of fire protection and code enforcement is necessary to prevent conflagrations, but beyond this a donor has no more interest in his neighbor's fire protection than in his neighbor's fire insurance.*

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*ACIR, RESTORING CONFIDENCE, pp. 53-54

Although the economic criteria of equalization and externalities give some indication of appropriate national roles, particularly in regulation, they do not match well with the existing federal grant system. As ACIR concludes:

> Existing grant-in-aid programs have not been a very effective instrument in achieving national equity goals. In general, the grant-in-aid system is not strongly targeted to the least advantaged states or localities, has not substantially altered the distribution of income or economic opportunity, and has not been consistent with theoretical prescriptions based upon externalities criteria.*

ECONOMIES OF SCALE

Governmental activities vary in the extent to which they require large service areas to be performed most effectively. Where an activity is less expensively or more effectively carried out on a national scale, there is a strong argument that the federal government should be performing the function. Conducting a space program and providing for the national defense are examples of such functions. The only government that can provide national copyright and patent protection is clearly a national government.

While notions of economy of scale provide some clear examples of functions that should be performed at the national level, they provide little guide to what functions should be performed at the local level. If there are diseconomies of scale in performance of a particular function, one option is decentralizing the function to state and/or local governments. Another option, however, is decentralizing the function to federal field offices or private providers operating on contract at the appropriate scale.

There is very little hard evidence to show that there are significant diseconomies of scale in government functions. While some major federal functions, such as welfare, social services, and education, are carried out through state and local governments, the federal government itself conducts such programs as the maintenance of

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*ACIR, RESTORING CONFIDENCE, p. 60

decentralized park system (National Parks), the management of a hospital program (Veterans Administration), the making of loans (Farm Credit System), and the patrol of waterways (Coast Guard). As state and local service delivery systems go, some of these are generally considered to be relatively efficient.

An example of a situation in which local control is cherished in the United States is local law enforcement. However, we have no real evidence that there are diseconomies of scale in this function. Some functions are clearly better performed on a large scale than a small one. Examples are the maintenance of records on vehicle registrations, specialized training, fingerprint records, and files on persons wanted by the law. We have no real proof that small city police departments are more effective (however measured) than those of large cities, nor that persons in rural areas who get local police protection from state police forces, as is the case in some states, are less well protected than those served by county agencies. Some European police forces, generally conceded to be effective in comparison to ours, are national forces.

There are reasons, discussed below, why the notion of local police forces is widely accepted, but diseconomies of scale do not account for this view.

SERVICE, POLICY, AND TAX COMPETITION

Individual governments can adopt quite different patterns of regulatory policy, provision of service, total governmental cost, and the division of financial responsibility in the tax structure. This leads to the possibility of competition, which can be viewed both as good and bad.

The concept of competition is recognized at the local government level in both the public finance literature and in the popular mind. In many American metropolitan areas, one can find a number of suburban communities with quite different characteristics. Some are well known for the quality of their public schools and often have high property tax rates. Others, often called working class communities, maintain relatively low (inexpensive) levels of public service and have lower tax rates. People can, by decisions on where to reside, pick and choose among jurisdictions. In this sense, having decision-making at the local level maximizes individual choice of Americans.

This concept can also be applied at the state level. President Reagan used this concept when answering questions about potential uneven distribution of gains and losses under his new federalism proposal, noting that people could always vote with their feet if they did not

like the results in their own state.

While the notion of governments competing to draw residents has some appeal, it also has limitations. For many persons, moving even within a metropolitan area is not an option -- they may not live in a metropolitan area at all or may be locked into current residential choices by high interest rates associated with new mortgages, by friendship with neighbors, proximity to work, or a desire to avoid switching schools of their children. Of course, for competition to have effects it is not necessary that all the customers need to be free to switch suppliers, just enough of them to influence the behavior of the suppliers.

As a practical matter, however, the bulk of the competition among local and state governments is likely to occur over ensuring the location of firms considered to provide attractive employment opportunities. This competition now has practically all states and major cities offering industrial development revenue bonds; many states and cities providing tax abatements and/or loan funds; local government cooperation in providing site improvements for new firms, etc. This competition can tend to reduce the taxation of persons and firms considered mobile (primarily firms and high income taxpayers) relative to all other taxpayers. Whether this result is considered desirable or not depends upon one's tax policy views.

If one accepts the idea of competition among jurisdictions as an appropriate mechanism for popular control of sub-national governments, then the competition criterion would suggest making sure that key governmental functions are both performed and financed by the smallest governmental units possible.

However, this conclusion definitely has its critics. Their fear is that competition will produce socially undesirable results. If, for example, unemployment compensation and workers' compensation are controlled by the states, it can be argued that benefits are held to low levels so that states can maintain a competitive business climate. If states are left on their own to set welfare benefits, it is argued that the more generous states will be hurt by less generous ones, either by the migration of persons to the more generous state or by the migration of firms to the less generous states with lower taxes.

POLITICAL ACCOUNTABILITY

In deciding what levels of government should perform what functions, ACIR suggests a criterion of political accountability. The concept is that functions should be assigned to jurisdictions that are "controllable by, accessible to, and accountable to their residents

(ACCESS AND CONTROL) and that maximize the conditions and opportunities for active and productive citizen participation (CITIZEN PARTICIPATION)."

ACCESS AND CONTROL: Notions of voter access and control of public officials and of accountability are difficult to translate into quantifiable terms. As a legal matter, all citizens of local, state, and national government in the United States have the trappings of access, control, and accountability. Governments are controlled by officials who are elected by any adult who wants to vote. Elected representatives at all levels are accessible to just about any constituent. Decisions are normally arrived at in open forums. Procedures are available for petitioning bodies of elected officials, and public hearings are common at all levels of government.

It is difficult to say how one would judge comparative access and control between state and federal governments or between local governments and the states. In a mathematical sense, the individual citizen has more power to influence decisions when smaller numbers of citizens are involved in making those decisions. Thus, a voter who is one of a hundred residents of a town would be expected to have more influence in town affairs than he or she would in a state of two million people or a nation of 220 million. Furthermore, the individual enjoys a greater likelihood of knowing the elected officials and the appointed personnel of the government. Other things being equal, the criteria of access and control would thus seem to favor conducting governmental functions at the lowest possible governmental level.

CITIZEN PARTICIPATION: So long as there are not systematic differences in barriers to citizen participation, the discussion above would seem to apply to citizen participation, suggesting that more meaningful participation is likely to take place at lower levels of government. This is certainly mathematically the case. If a decision is made by federal legislation, some 535 elected representatives will be involved. If the same decision is made at the state level roughly 10,000 decision makers will be involved. If made at the local level, literally hundreds of thousands will make the decision.

The assumption that citizen participation opportunities are inversely a function of the number of citizens covered by a government is clearly invalid if lower levels of government systematically deny certain categories of citizens access to their political processes. At times when state legislatures were unrepresentative of state populations because of failure to reapportion on a timely basis, this could easily be the case. It can also be the case if certain groups, such as blacks in the South or Native Americans, are systematically denied access at

the state or local level.

However, times have definitely changed in the representation of minorities. State legislatures have much smaller districts than those of U.S. representatives or senators. As a result, any ethnic group that is concentrated in a particular area will have state legislative representation before it will have representation in the U.S. Congress. For example, the percentage of black members of Congress is well below the percentage of black state legislators.

At the local level, the impact is even more pronounced. For example, blacks now control county and city government in many areas in the South and city governments in many Northern cities.

At any point in time, groups will probably tend to prefer that power be concentrated at the level of government at which they feel they are most effective in getting their policies implemented. This would suggest a pragmatic approach to federalism in which groups that have a lower proportion of members in some areas (e.g., blacks in Alaska) would tend to prefer policies of a government covering more persons with their background (e.g., the national government). Groups with a higher proportion of membership in an area (e.g., Alaskans who fish or hunt) would, on the same logic, prefer that decisions of interest to them be made on a state rather than a national basis.

While this analysis of political self-interest seems reasonable enough and has some basis in observed political conduct, the situation is distorted somewhat in consideration of devolving power from the federal government to the states. Practically every significant group in America is represented in the nation's capital, usually with headquarters there. The persons in leadership positions in these groups have a vested interest in decisions being made in Washington, D.C. rather than in state capitals. To the extent that government power is devolved, power will devolve in private groups as well, as organizations will be more dependent on their state leadership and less dependent on their national leadership. For this reason alone, the organized leadership of political interest groups are likely to represent one of the groups of opponents to devolving federal power.

INFORMATION AND COMPLIANCE COSTS

INFORMATION COSTS: Decentralization of authority for decision-making puts more people into the act of making decisions. This was discussed above as a valuable result in connection with citizen participation. However, significant costs are imposed in the process. Some of these costs are simply overheads. It clearly costs more to have a Congress, legislatures in 50 states, and numerous county commissions and city councils than it would simply to have a Congress and some sort of local government body in each community.

However, these information costs multiply through the administrative machinery of state and local government. State legislatures must be informed on such matters as possible locations for highways and means of financing them. However, state transportation agencies then make specific decisions on such matters as specifications for construction materials, selection of contractors, and the like. Having to make policy decisions on these matters in 50 states is clearly more expensive than making the decisions once for the nation would be. The costs of this decentralized activity are clearly substantial.

COMPLIANCE COSTS: Once decisions have been made on a decentralized basis, then individuals and firms must find out what those decisions have been and find ways to comply with them. As any driver in the Lower 48 states during the 1970's knows, even such things as deciding when one can turn right on red become confusing in the absence of national standards. The situation can be equally difficult for a trucker seeking to move semi-hazardous cargo across the United States by truck.

In some cases, the differences in regulations that develop on a state-by-state basis are difficult to defend. One example is trucking with vehicles that have two trailers attached to one tractor (double-bottoms) and weight limits for trucks. The construction of roads, most of which are federally-aided roads built to uniform national standards, and weather conditions among the states would suggest that there is no significant physical difference in road conditions and maintenance criteria among the states. Yet, weight and length restrictions differ considerably. As a result, truckers are driven into patterns of travel that are clearly non-optimal in an economic sense. It may be that the most restrictive states have taken the correct view, and that other states are incurring excessive maintenance costs by permitting heavy trucking. It may be that the gains from more efficient transportation outweigh the safety and maintenance implications of heavy trucking. What cannot be the case is that both groups of states could be

correct at the same time. The resulting inconsistencies cause significant compliance costs.

Significant information and compliance costs are the other side of the argument that concentrating power at state and local levels lets policy be tailored to the particular needs and policy preferences of the local population.

RELATIVE COMPETENCE OF LEVELS OF GOVERNMENT

Many discussions of state and federal roles have concentrated attention in alleged systematic failings of one level of government or the other. Much of the court intervention in state and local policy has been based upon apparent systematic discrimination by many states, particularly Southern ones, against black citizens. Many of the national grant programs are premised on notions that state and local governments provide inadequate attention to the needs of the poor. Many of the administrative restrictions in grant program presume the necessity to guide state and local government in such matters as avoiding conflicts of interest, procurement procedures, personnel practices, etc.

The criticisms of federal involvement in domestic programs also deal with competence questions. The federal government is viewed as being bureaucratic, overly involved in paperwork, incapable of understanding local situations, etc. This section examines the question of whether state and local government are inherently more or less competent than the federal government.

Because there is disagreement about appropriate policies in such areas as transportation, land use, social services, and recreation, one cannot judge the competence of governments by the policies they adopt, at least in many important instances. Thus, the question of relative competence is discussed in terms of what those discussing it consider proxies for competence, such as the number of staff members available to a legislative body. These are inherently poor measures, but are the only ones available.

REPRESENTATIVENESS: There can be no question that state governments, before the decision of the Supreme Court in the reapportionment cases, were unrepresentative of the citizens in each state, simply because voters had unequal voting power. In some areas, usually rural ones, a much smaller number of voters had a single representative in the legislature than in rapidly growing urban and suburban areas. However, the holding in BAKER v. CARR that such systems were unconstitutional has meant that state legislatures are reapportioned at least every ten years and that both houses of the

legislature are reapportioned in proportion to population.

Interestingly enough, this leaves the federal government with a system that is less representative of population than state governments. As each state gets two senators, persons in smaller states have more representation than persons in larger states. Thus, a believer in "one person -- one vote" would be more comfortable with the representativeness of state legislatures and local governing bodies than with the national legislative machinery.

CORRUPTION: Because one suspects that only a small percentage of corruption at any level of government is uncovered and prosecuted, it is not possible to make quantitative comparisons of corruption at various levels of government. Thus, one is left with impressions which may not reflect reality, but which are themselves a reality because they affect the political environment in which federalism issues are considered.

During the expansion of the federal role in domestic policy ranging from the 1930s to early in the 1970s there was a widespread impression that the federal government was much less corrupt than state and local governments. Machine politics were seen as dominating the politics of many cities, and state legislators were seen as being in the pockets of various special interest groups. Petty corruption in such matters as local purchasing and inspection functions was believed to be widespread. Meanwhile, the federal government was viewed as offering a superior civil service system and a general history of avoidance of corruption.

These views have been shaken considerably by recent events. The Watergate scandal shook public confidence in the integrity of officials at the very top of the Executive Branch. A crusading press, rightly or wrongly, has not treated the federal Executive Branch image kindly. In 1982 alone, a Secretary of Labor was under investigation for alleged ties to racketeering, an Attorney General was under fire for allegedly taking tax breaks that he did not deserve, and the White House was criticized for policies on the acceptance of gifts.

The situation is not much better in Congress. Recent years have seen the forced resignation of a Senator and indictment of several House members in the Abscam investigations. Memories are fresh of the resignation of the Chairman of the House Ways and Means Committee in a scandal involving alcohol and sexual escapades. Campaign contribution information shows massive contributions to key members, even when they do not face serious election fights. After setting stricter standards, Congress recently relaxed its standards on receiving outside income for lecturing to outside groups, typically groups with a strong interest in legislation being considered by the person being paid.

However, the state and local government picture does not provide major contrasts. Federal indictments are being made in the area of highway contracting in many states and there is considerable reason to believe that similar situations may exist in other states. Corruption is often a major issue in gubernatorial contests at the state level. While the federal government can be criticized for policies regarding acceptance of outside income by members of the legislative body, many states have much lower standards. In fact, with legislative service being part-time, many legislators have business dealings (e.g., legal services) with persons and firms that have a direct interest in influencing their conduct as legislators.

At the level of the individual government worker, there periodically appear exposures of conduct problems. At all levels of government, many of these concentrate in the procurement function, with the federal GSA and its state and local counterparts being the object of suspicion. Persons who can benefit or harm individual firms substantially through the use of discretion -- tax auditors, tax assessors, building inspectors, safety inspectors, etc. -- are always subject to temptation. While few public complaints appear about federal officials' corrupt conduct in fields such as mine inspection and occupational health and safety, considerable suspicion is directed to building and other compliance inspectors at the local level.

In summary, we have no way to measure corruption at the various levels of government. We do know, from the tip of the iceberg that reaches the stage of publicity, that the problems seem to exist at all levels of government. This is not surprising, as officials often start their careers at the local government level and work their way through state government to federal service. Certainly, there is no basis for asserting that the federal government is consistently or inherently less subject to corruption problems than state or local government.

STAFFING: Another argument which was often used in the years of expanding grant programs to justify growing federal involvement in decisions previously made by state and local governments was that the federal government was better staffed than state and local governments.

As applied to the legislative body, the argument consisted of contrasting state legislatures with Congress. State legislators were much more likely than members of Congress to have additional occupations, as most state legislative service was, and is, not considered full time. State legislators often did not even have offices assigned to them and legislative staff was quite limited, particularly when contrasted with the staff support available to members of Congress.

This situation has changed considerably. Legislators are still not, in most states, full time bodies. However, legislative pay and expenses have been increased and more time is spent on legislative business as sessions have become more frequent and longer, and intra-session special committees and commissions more common. Legislative staffing has increased in practically every state by substantial margins, as have the legislative counterparts of the Congressional Research Service.

Perhaps as important as legislatures moving to meet an implicit staffing standard, is the increasing questioning of the standard itself. The bureaucracy supporting Congress now costs over a billion dollars a year, but it is not clear that this level of staffing has improved legislative decision-making.

Within the Executive Branch, state governments have sharply increased the top level staff of the governors. Typically, in 1982, governors are supported by a budget staff, some sort of planning staff, and enough personal staff members to handle functions such as press, legislation, etc. and usually additional staff specialized in such areas as health, transportation, and education.

At the level of the government worker, state and local workers in a "spoils" system were often contrasted with federal workers in a "merit" system. A typical stereotype of a state or local worker was as a "hack" whose career was launched through political connections. This stereotype never was totally accurate, as some of the strongest civil service systems in the country were in state government.

However, by 1982, the contrasts between federal and state and local governments were reduced. Merit-type systems cover hiring and promotion in major government services such as teaching and police and fire protection. Practically all states have also gone to non-patronage systems for all functions, even including traditionally patronage positions such as those involving highway maintenance and support services in state institutions.

Perhaps more important is that the rigid civil service standard itself is less respected than it once was. Some critics point out that such a system makes it more difficult to provide opportunities to minorities. For higher level positions, the criticism is that the system prevents political leaders from making the bureaucracy responsive. This criticism has been strong enough to cause the federal government to move away from a strict system for higher level employees. Thus, it is not clear what the current standard should be for comparing the personnel systems of state and federal governments, but the federal system no longer is regarded as clearly exemplary.

RED TAPE AND PAPERWORK: Rightly or wrongly, the federal government has acquired the reputation of having become highly bureaucratized, with all the symptoms that implies -- excessive preoccupation with paperwork, slow procedures, complicated forms, etc. There is substantial evidence for this view. For any given action that is comparable between federal and state government (e.g., building a road, providing a grant to local government), the paperwork associated with federal action is normally substantially greater than that associated with state action.

One of the main reasons for this is that the federal government systematically covers more cross-cutting issues in much of what it does. Thus, a federal policy designed to deal with highways will also cover such subjects as affirmative action, highway beautification, protection of the environment, payment of prevailing wages, avoiding barriers to the handicapped, historical preservation, promotion of small business, etc. State and local programs, other than those where terms are dictated by the federal government, have these complex cross-cutting features much less often than federal ones.

PUBLIC OPINION ABOUT COMPARATIVE COMPETENCE: Current public opinion does not accord much credit to the federal government's competence compared to that of state governments. A Gallup poll taken in September 1981 asked a representative sample of Americans the question: "Which do you think is more likely to administer social programs efficiently -- the federal government in Washington or the government of this state?" Seventy-two percent of the respondents indicated that the state government would do better; only 19% indicated the federal government, with 9% suggesting their performance would be about the same. In response to the question "Which do you think is more understanding of the real needs of the people of this community -- the federal government in Washington or the government of this state?", 74% picked state government. Another question asked was "Which theory of government do you favor -- concentration of power in the federal government or concentration of power in the state government?" When this question was asked in 1936, 56% preferred the federal government, but in 1981 only 36% preferred the federal government, while 64% preferred concentration of power in state government.

SUMMARY: COMPETENCE: Because there are no accepted tests of what constitutes good public policy, and no reliable comparative measures of how well policy is carried out, the question of the relative competence of state and federal government will not ever be settled. However, such evidence as we have leads to the conclusion that there is no clear competence advantage for either level of government. Put another way, the centralization of power in Washington will not necessarily improve administration, but the devolution of power to the states won't necessarily do so either. This suggests that criteria of relative

competence are not relevant to key decisions about federalism in the modern context.

TOWARD A THEORY OF FEDERALISM

INTRODUCTION: As a nation, we now have enough experience with the "timely contribution" theory of federal action to know that we are dissatisfied with the results. Decisions that federal action would make timely contributions to such subjects as local law enforcement, rat control, library finance, and other subjects have now been rejected by budget decisions in the administration and Congress. Other "timely contributions" such as the small area economic development programs are also being dropped rapidly.

More important, the pattern of ad hoc federal decisions on individual domestic grant and regulatory programs has obscured the relative responsibilities of state and federal governments, has caused the creation of new local government bodies such as planning commissions, manpower consortia, and professional standard review boards that have littered the administrative landscape with little apparent gain to the effectiveness of our governmental system and substantial loss in political accountability. Also, federal intervention has substantially affected the way in which states deal with their local governments and the functions performed by various local governments. Finally, the policies have been expensive -- perhaps too expensive to sustain along with such federal responsibilities as income security, Social Security, defense, and an irreducible minimum of clearly national functions, such as care of veterans, national parks, and the airways system.

The public vote in Alaska to examine the statehood relationship through the Statehood Commission is but one manifestation of strong and widespread feelings that something major is wrong with the current system. The fact that the President can propose sweeping changes in the federal system and receive criticism primarily on the grounds that the proposals were designed to divert attention from the country's economic system, rather than that the proposals were wrong, suggests widespread desire for change. The fact that the nation's governors and legislators have endorsed in principle a sorting out of federal and state and local functions also suggests that the times may be ripe for change.

For the collection of ad hoc policies that currently characterize state-federal relations to be replaced by a system that makes some degree of overall sense requires some agreement on the basic concepts that will determine what revisions are to take place. Thus, there is a need for a theory of federalism that can command widespread acceptance

and guide major policy decisions.

NATIONAL FUNCTIONS: The Constitution provides a reasonable starting point for the elaboration of national functions. The list of functions in Article 1, Section 8 includes:

(1) regulating commerce with foreign nations,
(2) establishing naturalization rules,
(3) providing uniform bankruptcy laws,
(4) fixing standards for weights and measures,
(5) providing the money supply and prohibiting counterfeiting,
(6) establishing post offices,
(7) maintaining a patent and copyright system,
(8) maintaining jurisdiction over offenses committed on the high seas, and
(9) providing for armed forces.

In addition to this incomplete list of functions, the federal government clearly needs powers and functions that are necessary to exercise the powers listed above. These include the power to tax, the power to establish a court system and law enforcement personnel to enforce federal laws, the power to own property and regulate its use, the power to pay personnel including retirees and veterans, etc.

To this list of widely accepted constitutional functions must be added the protection of the civil rights of Americans. There is considerable controversy over the definition of these rights, for example, whether enforcement of them requires bussing and whether they extend to a right to have an abortion. However, the concept that these questions should be addressed at the federal level in the context of a nationally uniform concept of citizen rights is widely accepted. Also widely accepted is the concept that as a nation we do not favor entrusting enforcement of these rights to individual states and cities.

Other functions also seem to be lodged in the federal government by general consensus. One of these is the general research and information collection function. The benefits from space research, health research, economic data collection, etc. are national in scope and the costs are appropriately financed on a national basis.

There are also certain "systems" which are designed to serve all citizens and are appropriately financed nationally, although there may be state or local roles in the implementation of some nationally defined systems. Whether some or all of the services in such systems are provided privately or publicly, the decision making on the systems can

be national in scope, if there is to be government decision making at all. Examples of such systems, besides the postal system, include the air transportation system, multi-state systems of water supply and navigation, a system of roads connecting population centers, a system of parks of national value and interest, a weather prediction system, a mapping system, a system of insurance for financial institutions, a system of check clearance and credit regulation, and a nationally uniform pension system (Social Security and Medicare).

REGULATION OF COMMERCE: The commercial motivations of the founding fathers were substantial. Having a strong national government was seen as protecting commerce by making uniform national rules on the avoidance of contract by bankruptcy, preventing internal tariffs and other limits on trade, providing a national standard of value for currency and goods (weights and measures), and providing a postal and post road system.

Many of these motivations would seem relevant, and consistent with the intent of the Framers, today. They would seem most relevant to the notion of inter-state movement of goods and services where national action may be the only way to protect citizens of one state from individuals or firms resident in another state. Federal regulation that can easily be justified on this basis includes regulation of inter-state land sales, regulation of drugs and cosmetics, regulation of food (e g., meat inspection standards), and regulation of transportation of products in support of state laws prohibiting use or sale or restricting use (e.g., narcotics, alcohol, gambling devices, prostitutes). This regulatory approach can also easily be seen as covering securities regulation and the currency power as extending to the creation of currency through bank loans and other financial transactions.

The scope of federal activity affecting commerce is, of course, much more substantial than that described above. Some examples are federal regulation of wages, hours, and working conditions and federal regulation of collective bargaining. The federal government seeks to prevent anti-trust violations and enforce trade practices. It also regulates particular industries, such as mining and railroads, and influences business conduct heavily through the tax laws. The question is how much of this type of federal activity is appropriate and how much should be left for state and local government. Here, and elsewhere in the report, whether the activity should be regulated is not being considered. Instead, we are assuming that regulation of the current type will continue to be provided and asking the appropriate level of government to provide it.

The strongest argument for regulation by the federal government in such areas as labor relations, occupational health and safety, unemployment compensation, compensation for industrial injuries, mine safety, pollution control, and product safety is that, without federal regulation, competition among the states would undermine regulatory effectiveness. States wishing to attract industry and/or states whose politics were dominated by persons favoring industry positions, or totally opposed to regulation of these subject matters, would presumably maintain quite low (inexpensive) standards. This would encourage some movement of firms from high cost to low cost states, provide an advantage for firms in the low cost states, and put considerable pressure on the states with higher standards to drop them.

At the same time, many of the activities that could be reached by federal standards are de minimus in the impact of standards on persons living in other states. For example, the impacts of a 2,000 employee plant producing brakes are much different from those of the corner ice cream store. Using the test of externalities discussed above, the costs and benefits of the ice cream store regulation all fall on the citizens of the state with the store.

This combination of circumstances would seem to indicate concurrent state and federal jurisdiction. Federal law would provide minimum standards for firms or plants with significant impacts on interstate commerce. Federal power could be delegated to states that met federal minimum standards. States would be free to set their own standards for smaller firms where there would be no externalities (e.g., wages and hours of local business) and would have to meet federal standards where there were externalities (e.g., most air pollution). State regulation could be accepted as taking the place of federal regulation when minimum federal requirements were met. In such a case, there would be a federal payment to the regulating state that would be roughly equal to what the federal cost would be if the federal government administered the regulations being taken by the states.

This regulatory model is quite close to current policy in many areas. In unemployment compensation, the federal government establishes the basic principles of the program and collects a payroll tax that is returned to the states for the administrative costs of the program and the state employment security offices. The states have considerable flexibility in setting benefit levels and tax rates. Comparable arrangements exist for pollution control, workers' compensation, and a variety of other economic regulatory programs.

INCOME SECURITY: Currently, the most controversial portion of the federalism debate concerns state and federal roles in income security programs. However, there is some consensus on these programs. It is generally agreed that the federal government should continue to maintain a nationally uniform retirement system (Social Security) and an accompanying medical program (Medicare) as well as to assume its responsibilities for former employees (Veterans and civil service annuitants). The federal government also provides a minimum income for the aged, blind, and disabled under the Supplemental Security Income program, although this payment is still supplemented by some states.

Beyond this point consensus disappears. State governors and legislators have long argued that the federal government should have primary responsibility for programs of substantial money or goods transfer to poor persons. The Reagan administration's New Federalism proposal would shift the basic welfare (AFDC) program to the states in return for federal assumption of all or part of the income-tested medical program (Medicaid).

The issue of which level of government should handle income security can be viewed on both a static and a dynamic basis. On a static basis, viewing the subject at single points in time, there are significant disparities among states in potential needs for income security programs. Table 1 shows comparative poverty rates in 1975, the last year for which state-by-state data are available. The data are based upon a nationally uniform definition of poverty. If they were adjusted for the higher cost of living in some states, such states, including Alaska, would show higher percentages of persons in proverty.

TABLE 1: COMPARISONS OF POVERTY RATES
Percent in Poverty, 1975

	Persons	Children (5-17)
Alaska	6.7%	6.4%
UNITED STATES	11.4	14.5
Connecticut	6.7	8.4
West Virginia	15.1	18.9
Mississippi	26.1	32.6

The sharp disparities in poverty population shown in Table 1 are not totally reflected in participation in social welfare programs. States, such as Mississippi and West Virginia, with high poverty populations also have low fiscal capacity and tend to have low welfare payment levels and stricter eligibility standards than more affluent states. Thus, the national average for public aid recipients (AFDC and

SSI) as a percentage of population was 6.5% in 1980. In Alaska, the percentage was 4.6%; in Mississippi, the highest state, 11.4%; and in Nevada, only 2.3%. On a national average basis, the percentage of persons receiving food stamp assistance in 1980 was 9.7% while it was 8% in Alaska and 20.6% in Mississippi.

Currently, the amount of income security assistance a United States citizen receives is highly variable with the state of residence. All citizens are eligible for Food Stamps on a nationally equal basis. The availability of housing assistance varies with the willingness of local housing authorities to participate in federal programs. The coverage of free medical care under the Medicaid program varies, both in terms of services that can be provided and eligibility for the program, from state to state, with the more affluent states tending to provide loser eligibility criteria and more services. Welfare eligibility also varies with some states permitting assistance to "intact families" (two parents in the home) and some not. Payment levels vary considerably as well, with 1980 average monthly payments of $280 nationally, $359 in Alaska (which has a substantially higher cost of living than the national average), $399 in California, and $88 in Mississippi.*

On a dynamic basis, there are significant changes over time in income security needs in various parts of the United States. This is most obvious in the case of unemployment. Employment and unemployment tend to gyrate substantially in the industrial Midwest. Employment in other areas, such as the rural South, experienced decline for many years. New technology and tastes are likely to shift the burdens of unemployment from state to state in ways that cannot now be predicted.

State leaders believe that the disparities among states in poverty and welfare dependency rates, the potential future variability of those rates, accompanying disparities in state fiscal capacity, and the fact that unemployment and dependency relation to national economic trends over which they do not control all suggest that responsibility for "safety net" programs should be federal. This would suggest full federal financial responsibility for Social Security (now federal), Medicare (now federal), Food Stamps (now federal with state sharing of administrative costs), subsidized housing (now federal), Supplemental Security Income (federal with state supplements), AFDC (shared state and federal), and Medicaid (shared state and federal).

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*All data in the paragraph above are from STATISTICAL ABSTRACT OF THE UNITED STATES, 1981, various tables.

The Reagan administration is clearly interested in returning responsibility for relief and related income-tested programs to the states. Actual proposals have fallen short of this target mainly because the costs of full state assumption would be extremely high and politically unacceptable. A discussion of the proposal now under consideration will be found in a later chapter of this report.

One principle is that the government that is responsible for causing poverty is responsible for any safety net programs to deal with it. This suggests federal responsibility for poverty and unemployment associated with federal actions, such as tariff reduction, and an uncertainty about responsibility when poverty and unemployment are associated with national economic fluctuations. The states clearly do not control these fluctuations, but the national government's control is, at best, incomplete. As a practical matter, much of the poverty in the United States is not caused by short-term economic fluctuations but by longer term economic changes and various demographic circumstances that have persisted for generations. In the case of some native populations, life-styles centuries old are now defined as poverty through contrast with modern life-styles elsewhere in the United States. In other cases, as in Appalachia, large populations were drawn to areas by economic opportunities which were later sharply reduced by changes in technology and tastes for goods and services. Unless one takes a very activist view of the role of governments, this poverty is not necessarily caused by any level of government.

Another approach to the subject is to consider responsibility for poverty in terms of which government has the tools to deal with poverty. This criterion produces highly ambiguous results. State and local governments control education, one clear route out of a life of poverty. However, the federal government is the primary source of funds for manpower training programs, a presumed route out of poverty for adults. State and local governments control preventive health programs, but with substantial federal financial participation. State governments control employment services, but under a federal program with federal standards, and would be the logical administering agencies for any working requirements (workfare) associated with income transfer programs.

Another approach to the subject is to consider the best level of government to administer the income-tested programs. State and local governments now administer the AFDC program, the costs of which are shared with the federal government. The federal government could administer this program just as it now administers Social Security and the income tax. Alternatively, the federal government could pay for the program and have state and local governments handle the administration, which is now what happens with Food Stamps. However, the result of such an arrangement is constant disputes between the federal government and

state and local governments. The federal position is that state and local governments do not have adequate interest in tight administration of the program because they do not bear any of the program costs associated with loose enforcement of eligibility criteria.

If the American public approached this subject anew, it might be that they would have hit upon an arrangement in which the federal government made payments to the states for dealing with low income persons. These payments would be based upon a measure of need (e.g., number of persons in poverty) so that the national government would provide more assistance to those states where the income security needs were greatest. However, the program might also incorporate some measure of fiscal capacity, reflecting a concept of shared state and federal responsibility. The federal government would meet only the needs that could not be met with reasonable effort on the part of the states. The selection of programs for assisting the poor would, in this scheme, be left with the states. Although some of the arrangements currently under discussion might lead in this direction, all levels of government have become so locked into existing programs that this is not now a politically realistic alternative.

CATEGORICAL ASSISTANCE PROGRAMS: The current network of federal domestic assistance programs grew in an environment where concerns about the overall relationships of national and state and local governments were basically ignored. In an environment in which such concerns were paramount, it is unlikely that the present large numbers of categorical grants would have developed.

ADMINISTRATIVE FEATURES OF THE RELATIONSHIP: If one were designing a federal system from scratch, it is likely that the current loss of political accountability would be avoided. For reasons discussed in detail in later chapters, the categorical grant system tends to place power in the hands of non-elected lower level state and federal officials. To avoid this situation, one would need much clearer definitions of national and state and local roles. In some of the regulatory areas discussed above, this would probably consist of some national minimum standard with states exercising options beyond the minimum and having considerable flexibility in administrative arrangements. In some areas, this would mean simply having no federal involvement at all. In still others, it might mean categorical grant programs administered on a formula basis with state participation contingent on statutorily defined performance minimums.

SUMMARY

This chapter has reviewed various methods by which one might find some guiding principles for dealing with the relationship of the national government to the states. This quest can be viewed as mostly a failure. Constitutional and historical approaches lead to results that are not controlling precedents today and are inconsistent with the issue-by-issue positions of many state and local officials, not to mention Members of Congress. Criteria, such as those suggested by ACIR, are not easily applied to real world situations, and most suggest lines of argument rather than presenting definitive prescriptions for action. Considering alternative theories, as is done in the latter part of the chapter, also produces ambiguous results when applied to such fields as pollution control and regulation of the workplace. The fundamental problem is that some subjects of governmental action include elements that are so local as to make total federal control absurd and elements so national as to make no federal action unthinkable.

Thus, the federal system is likely to continue to be characterized by ambiguities in the divison of responsibility among governments. It is not practical to eliminate these ambiguities. It may be practical to limit them and to adopt policies which diminish their negative effects.

FEDERALISM IN OTHER NATIONS*

CONDUCTING INTERGOVERNMENTAL RELATIONS: In the United States, there are essentially no organized mechanisms for state-federal consultation, although considerable consultation takes place on an ad hoc basis. In other federal systems some of the consultative mechanisms are more formal. For example, in Australia there is an annual Premiers' Conference which brings leaders of the national government together with the state leaders. This is simpler in Australia than the United States because Australia's parliamentary system means that executive and legislative leadership are the same, so that each state can be represented with a single voice. The Conference does not have any legal authority but has become an institutionalized forum in which national leaders present their proposed programs affecting states. There is also a Loan Council in which the six states each have a vote and the national government has two votes and the capability to break ties. The Council

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*The subjects covered in this section are covered in more detail in ACIR reports on federal systems in West Germany, Australia, and Canada, and a summary report, STUDIES IN COMPARATIVE FEDERALISM: AUSTRALIA, CANADA, THE UNITED STATES AND WEST GERMANY (1981), dealing with comparisons of the United States and those three countries.

has jurisdiction over non-defense long term borrowing of all the governments involved, thereby permitting coordination of this aspect of government impact on credit markets. Australia also has a grants commission, with three part-time lay members, that has no formal powers but is highly effective in influencing legislative actions on grants. Canada, like the United States, lacks formal consultative mechanisms such as the Australian Premiers' Conference. However, Canadian intergovernmental relations is characterized by large numbers of conferences, 782 of them in a recent year, involving primarily career officials of national and provincial governments.

The West German Constitution, basically that dictated to the Germans by the occupying powers at the end of World War II, was designed to reduce the power of the central government and place considerable power in the states. One of the ways by which this is done is through a bicameral legislature with one house representing the states. Representatives in this house can be recalled by the states that send them. The concurrence of this house is needed on many important national matters handled by legislation.

In the late 1960's, Germany began a state-federal fiscal planning process designed to permit state and federal officials to coordinate their budgeting processes. This has resulted in the creation of two state-federal planning bodies, but these bodies do not have substantial power.

RESPONSIBILITIES FOR TAXATION: The responsibilities for taxation in Australia are similar to those in the United States, with the federal and state governments having power to tax the same sources. However, in practice the governments use separate tax sources. The payroll tax is levied at a nationally uniform rate but all proceeds go to state governments. The national government relies on sales taxation and customs. State governments administer sin taxes (e.g., liquor, gambling) and, by tradition, local governments use the property tax.

Canadian federal and provincial governments have overlapping taxing authority. Income taxes, which account for 38% of governmental revenues, are generally collected by the national government for both levels of government, but the provinces set the rate for that portion of the tax that is turned over to them. In Canada the provinces own the natural resources, so that revenues from resources are a significant item for some of the provinces.

Most German government revenue is obtained from shared taxes. The shared taxes are the personal and corporate income tax, the value added tax, and the business tax. Thus, the financial position of the state

governments is secured in large part through shared taxes rather than grants from the federal government.

INTERGOVERNMENTAL TRANSFERS: Australia provides equalization grants to its financially weaker states, and only to them. The distribution is based upon the concept that those states should receive enough federal assistance so that they can provide the same services as "standard states" where most of the population resides with the same level of taxes as those states. Australia also has specific purpose (categorical) grants but has been reducing reliance on these since 1977.

The Canadian national government makes equalization payments to many, but not all, of the provinces using the equalization logic described above for Australia. The federal government also provided 50-50 cost sharing of provincial programs for hospital insurance, medicare, and higher education for many years. In 1977 Canada changed this system from open-ended matching of provincial costs to a program that is independent of provincial costs, but does require provinces to meet nationally defined minimum standards for these programs. The total grant amount is defined as a base year amount plus an escalator related to economic growth. Part of the grant is cash and part is raised by the provinces which were yielded the right to take a portion of the income tax. This shift to unconditional grants with minimum standards reduced the detailed federal day-to-day involvement in these programs.

As noted above, a large portion of German revenues are shared among the various levels of government. In addition, Germany provides equalization payments from the federal government. There is also a unique system which results in shifts of resources from the richer states to the poorer ones. Germany also maintains some relatively small programs of categorical grants, but the level of federal dictation of state and local conduct under these grants is not nearly as high as in the United States.

CONCLUSIONS FROM THE COMPARISONS: ACIR reached three basic conclusions from its study of federalism in the three countries discussed above:

(1) Fiscal federalism as organized in the United States is less formally structured, more fragmented, and consequently less neat and orderly than in any of the other three countries.

(2) The United States grant system is more complicated and extensive than is the case abroad.
(3) The United States pays less attention to the goal of fiscal equalization than do Australia, Canada and West Germany.*

Intergovernmental relations in the United States is clearly "messier" than in the three countries studied. Part of this results from the fact that at each level of government in the U.S., three branches of government are involved. In the three countries, with parliamentary systems, the executive and legislative leadership are the same and the courts play a lesser role in federalism issues than in the United States. There are also many more actors in the United States because the United States has more states and local government is a more significant factor here than in the three countries.

However, the constitutional apportionment of responsibilities in Germany, the various consultative bodies in Australia and, to a lesser degree, the conferences in Canada all tend to give intergovernmental relations in the three countries more structure than in the United States.

The American grant system is considerably more complicated than those in the three countries. More grants are involved, more money per capita is involved in categorical grants, and the administrative mechanisms are more cumbersome.

While the American general revenue sharing program is oriented toward fiscal equalization and some grant programs take fiscal capacity into account, ACIR concludes that "The United States ... pursues equalization to a lesser extent and measures fiscal capacity in a less rigorous manner than do the federal systems of Australia, Canada, and West Germany." As ACIR sums it up:

> Fiscal equalization, however, is the exception rather than the rule in the United States. Even in equalizing programs, measures of fiscal ability are combined with factors designed to represent program need so that no program in this country distributes aid with the exclusive purpose of lessening fiscal disparities. It thus follows that, unlike the other countries studied, the U.S. has no targeted program of equalization aid under which the richer states do not receive any financial assistance.

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*COMPARATIVE FEDERALISM, p. 93.

PART TWO: CURRENT STATE-FEDERAL RELATIONS

CHAPTER THREE: FEDERAL LAW AND REGULATION

INTRODUCTION

The federal government interacts with state and local government in three basic ways. First, the federal government operates as national lawmaker. It affects state and local government through interpretations of the Constitution by the Supreme Court and by the passage of laws affecting them by Congress. Second, the federal government is grantmaker, affecting state and local government actions by providing money and guidelines on how to use it, and sometimes cross-cutting requirements forcing these governments to do or refrain from doing something in order to continue to be eligible for grants. Finally, the federal government as an entity has important impacts. It is a large employer, particularly in Alaska, a large land owner, particularly in Alaska, maintains many facilities, and may impact significantly on state and local government through its relationships with Native Americans and foreign governments.

An understanding of how the federal government now operates in these three modes is essential to consideration of potential changes. Thus, this part of the report describes and analyzes current federal operations, providing a chapter on each of the aspects of federal operation discussed above.

Historically, federal-state activities have been basically cooperative. That is, when the federal government desired to induce certain conduct by state and local officials it would typically offer them a gran. in return for that conduct. Federal restrictions were closely tied to the grant. What the private sector knows as regulation, instructions from the federal government with no accompanying federal grant, was largely confined to the private sector.

However, federal regulation is an extremely important aspect of state-federal relations. In some cases, the federal government regulates the private sector, but in ways that preempt or interfere with state regulation. In other cases the federal government regulates state and local government directly and outside of the context of any grant program. Finally, the regulation is handled by many different actors including the courts and federal regulatory agencies.

PROTECTING THE RIGHTS OF CITIZENS

There has been a long history of federal preemption of the decisions of state and local government in civil rights. The areas in which the most regulatory activity has taken place have been in protecting the rights of the criminal defendant and minorities. While

there are still substantial controversies in both fields, there now seems to be widespread acceptance of federal involvement in them.

The acceptability of this form of intervention probably relates to a number of historical factors. The first of these was that a civil war was fought specifically over the question of whether the federal government could intervene to protect civil rights, specifically by ending slavery. This question having been decided, the Fourteenth Amendment was passed which specifically applied civil rights tests -- such as not abridging the privileges and immunity of citizens, depriving a person of life, liberty, or property with due process or denying equal protection of the laws -- to state governments. By interpretations through the years, that amendment is seen as giving protection from state action for all the rights of U.S. citizens stated in the Bill of Rights.

The federal courts have shown little hesitancy in accepting jurisdiction of civil rights cases even when what they were doing was requiring actions by state and local officials. Federal court decisions in the name of civil rights mandate spending for improving prison conditions, patient-staff ratios in mental health institutions, and various other expenditures in each.

The most widely known situations where judicial activism in civil rights makes major changes in the conduct of state and local functions is the implementation of school desegregation. Judicial decisions have required not only busing within the same school district, but have overridden the geographic scope of school districts for the purpose of finding pupils outside of a district to promote racial balance within it.

Federal constitutional law has also had major impacts on the pattern of law enforcement. Federal rules, derived by the courts from interpretation of constitutional requirements cover investigatory procedures, arrest procedures, questioning and incarceration, procedures at trial, and sentencing.

Constitutional interpretations by the Supreme Court have also created some of the most emotional issues in American politics. Two current examples are abortion and school prayer.

The protection of constitutional rights has been extended by statute through a variety of enactments. For example, age discrimination was prohibited by the Age Discrimination Act of 1975. Anti-discrimination requirements are applied directly to state and local governments through federal law and are also applied through the provisions of specific grant programs. For example, general revenue

sharing -- which goes to all general purpose local governments -- has an anti-discrimination requirement and the block grants authorized by the Omnibus Budget and Reconciliation Act of 1981 contain a prohibition against discrimination on the basis of race, color, national origin, sex, age, and physical handicap.

The continuing evolution of judicial protections of civil rights is moving fast enough so that it is possible that regulatory impacts on state and local government will increase even at a time when discrimination is becoming less and less of a problem. A good example of this is the litigation that has developed out of Section 1983, an 1875 amendment to the Civil Rights Act of 1871. The section provides that a person who "under color of" state law causes the deprivation of civil rights shall have personal liability to that person for damages.

Both the protection of state governments from suit provided by the 11th Amendment to the Constitution and defenses available through acting in good faith meant that the section was not a significant source of litigation affecting state and local government until 1961. In that year, the Supreme Court allowed the application of the statute to individual Chicago police officers involved in an illegal search. In a 1978 case, the Supreme Court decided that the governments involved in such actions, as well as the individual persons, were subject to suit, with some restrictions. The key restrictions were lifted two years later when the Court eliminated good faith as a defense. This created a substantial liability potential for municipalities. For example, one leading case involved a Chief of Police who was dismissed without a formal written reason or hearing. Such a dismissal was found to create a civil rights violation by a Supreme Court case decided AFTER the officer was fired. In a subsequent opinion, the Court extended the capability to sue municipalities to violations of federal laws, not just the Constitution. Litigation of this type permits recovery of attorney's fees in certain circumstances. The combination of these factors has resulted in litigation with over $4 billion at issue.*

The potential impact of continued judicial activism in the civil rights area on state and local government is indeed substantial. Civil rights issues have reached the Supreme Court in the context of decisions such as controlling the location of adult movie theatres, rezoning for low and moderate income housing, and whether zoning can prevent occupancy of housing units by non-related persons or extended family members such as grandparents. Civil rights decisions also, of course,

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*Cynthia Colella, "The Mandate, the Mayor, and the Menace of Liability" in INTERGOVERNMENTAL PERSPECTIVE, Fall 1981.

affect state and local governments in dealing with their employees, with decisions involving such questions as whether cities can require a larger pension contribution from women than men on the grounds that women live longer.

REGULATION RELATING TO NATIONAL DEFENSE

Another area of federal regulation is that related to the national defense, about which there is also little argument. Clearly, if the nation's defense will depend in part upon the National Guard, state guardsmen will have to train in ways set by the federal government and be subject to federal regulation. Clearly, the federal government will need authority to conscript persons, take property, etc. in time of military emergency.

The consensus on clearly military regulation does not necessarily extend to other regulation done in the name of national security. Responses to various energy crises have included federal rules governing allocation of supply, changes in speed limits on state and local roads, changes in local traffic regulations (e.g., right turn on red), and mandates from the federal government to state utility commissions. These economic regulations are probably best understood as coming from factors other than national defense.

COMMERCIAL REGULATION

INTERSTATE TRANSPORTATION: The federal government has long regulated companies engaged in the inter-state transportation of goods and persons. Over a century ago, the courts established that strictly intra-state transportation could be regulated incident to this power. For example federal regulations can prohibit unreasonable railroad charges for short hauls, where there are no competing carriers, to cross-subsidize longer hauls.

The federal government maintains exclusive jurisdiction over the airways system and regulates the aspects of state and local airports that are related to flight safety. Federal laws preempt state laws on such matters as the alcoholic beverage regulations applied to planes in flight.

The federal government has the power to regulate water-borne inland navigation. The Corps of Engineers does this for commerce that could affect the navigability of the waterways. Rates for waterborne commerce are not regulated by the federal government or the states. Ports and terminals for inland water-borne commerce are normally provided by the private sector and state and local port authorities, which are not regulated by the federal government. The regulation of ocean shipping

safety and rates is federal.

The federal government is the primary instrument for the regulation of railroad rates and terms of service through the Interstate Commerce Commission. The federal government has also undertaken some responsibilities in the area of railroad safety, duplicating regulations in some states without preempting them. There are some overlapping state and federal responsibilities in such matters as the management of grade crossings.

The federal government has also been active in the regulation of interstate trucking, including moving companies and bus companies. However, states maintain jurisdiction over the licensing of the vehicles, which can include safety requirements that overlap the federal requirements. States can make their own regulations on what kinds of vehicles can use the highways, and do set separate standards on such subjects as permissible truck weight and hazardous cargos. There is also some state regulation of intra-state trucking and bus operations.

States set licensing requirements for motor vehicles and can set standards affecting car design, as California has done in the case of emission standards. However, the federal government can also set vehicle design standards and has done so both as part of pollution control and energy conservation efforts, and has also set standards relating to such factors as bumper strength under the Motor Vehicle Information and Cost Savings Act. The states have authority to set speed limits, determine whether or not to have inspection programs, etc., but much of this authority has effectively been shifted to the federal level because of provisions which the states must accept in order to continue to receive federal highway funds.

COMMUNICATIONS: The federal government has totally preempted the field of broadcasting by television and radio using the airways. The broadcast spectrum is allocated by the Federal Communications Commission which regulates everything from ham operators to major TV stations.

Cable TV, which does not use the airways, is subject to licensing and regulation by state and local government although legislation is pending in Congress to limit state and local roles in regulating cable operations.

The federal government also regulates telephone communications that are interstate, while local phone service is regulated by the states.

PUBLIC UTILITIES: Regulation of gas and electric utilities, like telephone service, is split between the states and the federal government. In terms of rates, the federal government regulates

interstate rates, while states regulate rates for gas and electricity (and water, which is not regulated by the federal government) sold within a state. As a practical matter, the federal control extends to wholesale contracts provided to municipalities and cooperatives that resell power.

Federal control over the navigable waterways gives the federal government authority to veto proposed powerplants using impoundments (hydro) or significant withdrawals of cooling water (which all do). Federal control over atomic energy gives the federal government the power to license nuclear plants. Conventionally powered plants do not require licensing, but federal pollution control requirements must be met.

Under the Natural Gas Pipeline Act of 1968, the federal government is also involved in the regulation of pipeline safety.

Periodically, proposals are made at the federal level to preempt a variety of state and local laws relevant to public utilities. Power plant siting proposals involve a national finding that a particular site should be set aside in the national interest and would preempt state police powers relative to site development. The proposed coal slurry pipeline legislation would override state law regarding the taking of private property and other local zoning and land use restrictions.

PRODUCT SAFETY AND LIABILITY: The Consumer Product Safety Commission is empowered to enforce safety standards for products such as lawnmowers, bicycles, and power saws. This legislation does not preempt stricter state standards, although as a practical matter states do not normally regulate product safety. Under the Flammable Fabrics Act the federal government regulates the flammability of fabrics such as children's sleepware. Federal law also regulates the contents and labeling of bedding materials.

The liability of manufacturers to users for product defects is covered by state law. However, there has been serious consideration of federal laws to set uniform product liability laws.

The Food and Drug Administration regulates food additives, cosmetic ingredients, medical appliances, and drugs. The agency also regulates radiological products. States can legislate in these areas, but generally do not do so. Federal regulations also cover the production and distribution of meat and poultry. These laws and regulations do not preempt state and local regulation, but as a practical matter have generally discouraged state regulatory programs.

LABOR RELATIONS: The federal government regulates labor relations in all firms of significant size and there are periodic attempts to apply the national labor relations law to the relations between state and local governments and their employees. Federal regulations set a minimum wage for firms affecting interstate commerce and have provisions relating to maximum hours, migratory labor, child labor, when overtime must be paid, etc. The federal government also regulates private employer pension plans.

The Workers' Compensation system provides compensation for injuries in the workplace. It overrides state tort laws whch previously set the liability of employees injured on the job. Special laws are applicable to longshoremen and coal mine workers. The Occupational Safety and Health program regulates working conditions to ensure safety of workers.

FINANCIAL INSTITUTIONS: The prime federal influence on the banking system and related financial institutions is not, strictly speaking, the exercise of regulation through the passage of federal laws requiring specific conduct. The Federal Reserve Board handles clearing transactions and the flow of credit on a short term basis in the banking system. Pursuant to this function, the Board regulates banks that are a member of the system. The Federal Deposit Insurance Corporation and Federal Savings and Loan Insurance System provide insurance for depositors. Membership in these systems, which is not required by federal law, brings certain regulatory consequences. Other credit mechanisms exist for consumer cooperatives and credit unions.

The federal government also preempts state legislation dealing with money and credit. The most recent example is legislation dealing with state usury laws, which effectively repealed such laws unless reinstated by actions of the state legislatures subsequent to the passage of the federal legislation. There has been preemption by court decision of state laws relative to the assumption of home mortgages. The securities exchanges and sales of financial instruments are regulated by the Securities and Exchange Commission. Some states have "little SECs" that pursue comparable regulation for securities not sold across state lines. While states charter corporations and set rules for their functioning, considerable recent litigation has developed challenging state laws designed to prevent unfriendly corporate takeovers.

ENVIRONMENTAL PROTECTION: Acting under their police power, state governments and local governments given the power to do so by the states, can adopt widespread rules governing the use of land and water, air, and noise pollution. The federal government has entered this field with various cooperative state-federal programs relating to air pollution, solid waste disposal, noise pollution, water pollution and safe drinking water. As a legal matter, federal regulations do not

preempt state ones, but as a practical matter the state control of pollution is generally handled through the cooperative state-federal program in which the federal government exercises considerable control through the grant mechanism. The laws in the pollution field generally require state plans that meet certain federal minimum standards. The consequences of having an unacceptable state plan include the possibility of the federal government doing its own enforcement and the loss of federal environmental protection funds to state goverment.

State law generally governs the use of land for solid waste disposal and states can license operators of landfills. However, federal preemption of some of this authority has been discussed, and regulations enforced through grant programs influence how this authority is used at the state level. Much the same situation exists in the handling of hazardous waste.

The federal government regulates water supply through the ure Drinking Water Act.

Federal legislation preempts state legislation respecting endangered species. Federal legislation also involves the Corps of Engineers in water diversions affecting navigable waterways, including the diversion of water from nearby wetlands and construction such as docks.

ANTITRUST AND TRADE PRACTICES: Federal law governs the anti-trust field and certain aspects of unfair trade practice law. State regulations are permissible in this field, but antitrust law can be applied to state actions, as it has been in professional licensing situations which discourage professional advertising.

LANDLORD-TENANT LAW: The federal government does not currently directly regulate the relationship of landlords and tenants except in federally assisted housing. However, proposals are under serious consideration in Congress that would use the grant mechanism to preclude local rent control laws.

SAFETY IN THE WORKPLACE: The Occupational Safety and Health Act is one of many areas where federal legislation is designed to permit state participation in the regulatory function while not precluding the effect of state laws regulating the same subject matter.

MINING: The federal government has long had mine safety requirements for deep mining, and more recently has regulated surface mining. These regulations do not preclude state regulations on the same subject.

AGRICULTURE: Most of the federal regulation of agriculture takes place through grant agreements with state and local governments and agreements between farmers and the federal government on acreage restrictions in relation to ability to use various farm subsidy arrangements. Federal regulation of the function also occurs through the foreign policy and trade powers. The Department of Agriculture is responsible for preventing the entry of diseased plants and animals into the country, has certain powers relative to the movement of farm goods in interstate commerce, enforces laws relative to humane slaughter and the research use of animals, and even is responsible for the prevention of cock fights. Meat and poultry inspection laws are enforced through cooperative state and federal programs in states that have chosen to participate, and are federal administrative responsibilities in the other states. The Department also enforces the U.S. Warehouse Act designed to protect farmers against warehousemen and maintains inspections of products containing eggs. Federal seed inspectors inspect seeds sold in interstate commerce. Also commission brokers and others handling perishable farm products are subject to a federal licensing procedure. The federal government also regulates the wholesale price of milk.

FISH AND WILDLIFE: The federal government regulates migratory bird taking and the Marine Mammal Protection Act as well as the Endangered Species Act, all of which preempt state legislation dealing with the same subject matter. Fishing in territorial waters of the United States is controlled through treaty agreements negotiated by the federal government and federal rules for fishing outside the three mile limit.

CRIMINAL LAW: Some federal regulation simply takes the form of declaring various activities to be criminal. For example, it is a federal offense to rob a bank, to transport women across state lines for immoral purposes, to smuggle cigarettes, to transport narcotics, etc. In general, the federal criminal offenses are consistent with state law in the sense that crimes under federal law are also crimes under state law. In general, duplication in this area is more of a problem for the criminals than for law enforcement officials, as the commission of many crimes makes one liable for state and federal prosecution and subjects one to the attention of law enforcement personnel from both levels of government.

FEDERAL REGULATION OF STATE AND LOCAL ACTIVITY

The bulk of federal regulation, as described above, is concerned with the regulation of conduct of individuals and firms, not governments. It is well established that when state and local governments undertake enterprises usually undertaken by firms (e.g., electric and gas utilities, Virginia's railroad, North Dakota's cement

plant, South Dakota's bank) these governments are subject to the same federal regulation applicable to private firms.

The extent to which the federal government can regulate governmental functions is more controversial, as is the exact definition of governmental functions. In NATIONAL LEAGUE OF CITIES v. USERY (426 U.S. 833 (1976)) the Supreme Court ruled in a divided vote that the federal government could not apply the national wage and hour legislation to state and local governments. This decision and the principle above regarding businesslike functions have caused controversy between Department of Labor and state and local officials over the subjects excluded from the protection afforded by the Usery case. The Department contends that such functions as the maintenance of state stores for the sale of alcoholic beverages, off-track betting, local mass transit, electric power generation and distribution, and certain other functions are "non-traditional" and are not government functions protected under the Usery decision.

These definitional conflicts arise in other areas as well. For example, New York State runs the Long Island Railroad. A conflict of laws exists between New York's Taylor Act which forbids public employees from striking and the Federal Railway Labor Act which guarantees to railroad employees the right to strike.

Another regulatory conflict arises out of the federal regulation of the structure of private pension plans. This federal regulation is carried out through the tax code which defines employer contributions to pension plans as non-taxable to the employee and deductible to the employer when various conditions are met, such as not discriminating against lower paid workers. The Internal Revenue Service has contended that these provisions are applicable to state and local pension plans. Many state and local officials have argued that they are not and have refused to qualify their plans through IRS, which has taken no major enforcement action to date.

The magnitude of direct federal regulation of state and local government is quite small in comparison with the regulation implemented through grant programs discussed in the next chapter.

SUMMARY: FEDERAL LAW AND REGULATION

The primary mechanism by which the federal government regulates state and local government is through grant programs. The limited attempts at direct federal regulation are of doubtful constitutionality under the Usery decision, so disputes over federal regulation of state and local government will probably continue to center on regulation through grants. The exception is federal civil rights enforcement where

broadened definitions of what rights are protected have triggered federal court involvement in state and local law enforcement, corrections, mental health, education, personnel administration, and other areas.

The current level of federal regulatory activity relative to the private sector is substantial by any standard. In some cases, the federal regulation touches subject matters not regulated at the state level. In other cases, no grant programs are involved nor is there formal coordination, but state and federal programs operate side-by-side as is the case in public utility and wage and hours regulation. In many cases, attempts have been made to develop cooperative regulatory programs through the grant mechanism. Pollution control, occupational health and safety, and meat and poultry inspection are examples. In still other cases, federal regulation is designed to preempt state and local regulation.

While some of the regulation described in this chapter fits with the general principles, such as externalities and economies of scale, outlined in Chapter 2, much does not. Current controversy over a proposed Federal Trade Commission order dealing with the conduct of funeral directors provides an example of a situation in which state governments already regulate the industry, as do proposed standards for used car sales. Certainly, federal regulation of cock fighting does not represent a situation dealing with externalities or in which a uniform national policy is essential.

Federal regulation of the private sector comes about because a group of people get concerned about a situation and muster enough power to get a law passed. The test of whether such laws can be passed is whether a majority can be obtained for passage. Throughout much of our history, neither members of Congress nor state and local officials were much concerned about the abstraction of the federal system as they faced specific issues such as aversion to cock fighting. The predictable result, as shown in this chapter, is that the scope of federal regulation of private activity does not reflect any consistent philosophy or principles on appropriate roles for the federal government and state and local governments.

CHAPTER FOUR: FEDERAL GRANT PROGRAMS

INTRODUCTION

Grants represent the cornerstone of the current system (or non-system) of federal-state relations. It is through grants that the federal government controls state-local administration of programs such as Food Stamps, Aid to Families with Dependent Children, Medicaid, Urban Mass Transit, Highways, and many others. It is through conditions attached to grants that the federal government can set the speed limit on every local road in the United States.

Procedures associated with grants have been, for most state officials, the single most important source of concern about federal policy affecting states. For example, in 1976 the National Governors' Association issued a publication FEDERAL ROADBLOCKS TO EFFICIENT STATE GOVERNMENT, which is an inventory of federal policies which hampered the effectiveness of state administration. The publication contains 44 pages of examples, almost all of which are from grant administration, rather than regulation.

Alaska's situation, however, does not mirror those of other states. Alaska is one of the states where federal land ownership is a massive factor in the state's development. Federal policies in dealing with Native Americans affect Alaska in major ways, as well. As a non-contiguous state, Alaska is much more affected by the Jones Act (requiring shipping among states to be in U.S. bottoms) than most other states. High reliance on oil revenues makes the state sensitive to energy policy and taxation. High reliance on fishing makes international treaties more important in Alaska than other states. Thus, federal grant problems may not dominate consideration of state-federal relations for Alaska as they do for many other states.

However, an understanding of grant program problems and potential solutions is critical to the work of the Statehood Commission for two reasons. The first is that while grant problems may be comparatively less significant in Alaska, they are still significant, as Alaskans suffer the same problems as people in other states, and have non-grant problems on top of them. Second, to be feasible politically, action to reform the federal system will have to build on a broad base of support throughout the United States. For Alaska's concerns to be acted upon in the context of a major revision of the federal system, that revision will have to include enough grant reform to satisfy those for whom grant reform is the primary motivation for considering changes in the state-federal relationship.

Grant spending by the federal government in the fiscal year ending in September of 1982 will be about $91.2 billion, down somewhat from $94.8 billion the previous year. Grant spending will account for about 13% of total federal spending in the current year and for a little less than a fourth of state and local spending. There are literally hundreds of federal government grant programs for state and local government.

THE LEGAL STANDING OF FEDERAL GRANT REQUIREMENTS

In 1923, the Supreme Court decided a landmark case that still controls the law of federal grants (MASSACHUSETTS v. MELLON, 262 U.S. 447, 1923). The Court viewed a potential grant as an offer of assistance by the federal government that could be accepted or rejected through voluntary decisions of individual states. It followed that the grants did not require the states to do anything or yield anything. The state could defeat any alleged ulterior purpose by "the simple expedient of not yielding", not accepting the grant and the conditions that went with it.

From this logic it followed that when a state entered into an agreement with the federal government to accept a grant it was validly bound by whatever conditions were attached to the grant. This condition could be one that the federal government could not impose directly through regulation. For example, it is widely conceded that if the Court follows past precedents, the federal regulation of state and local working hours rejected in the Usery case as regulation could be imposed as a grant condition.

In a companion case to the Mellon decision, the Court held that an individual did not have standing to challenge the use of general tax funds for a particular grant. Subsequent cases have held grant conditions valid that would require a state to amend its constitution to accept the grant, to shift public health responsibilities from county elected officials to a planning board, and to undo a part of a major reorganization of state government. Thus, there is little legal limitation on what grant conditions may include.*

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*For more detailed discussions of this topic, see David B. Walker, "Federal Judges and Federal Grants: A Dimension of Today's Dysfunctional Federalism (processed, 1979) and Thomas J. Madden, "The Law of Federal Grants" (processed, 1979).

DISSATISFACTION WITH GRANT ADMINISTRATION

State officials, and their local counterparts, have experienced numerous frustrations in trying to serve citizens effectively throughd grant programs. Some of the major problems today were identified by the governors in 1976 in their report on federal "roadblocks" to efficient state government. The six major problems identified in that publication were:

(1) Lack of coordination among federal departments or agencies limits the effectiveness of programs in solving problems and increases the administrative burden on the states;

(2) The federal executive branch exceeds its proper authority in some areas, encroaching on matters which are within the proper jurisdiction of the states;

(3) Federal regulations are prescriptive in methodology rather than oriented toward results;

(4) Excessive reporting and paperwork requirements must be met by states participating in federal programs;

(5) Funding and program implementation are delayed by lengthy approval procedures, absence of program guidelines, and other administrative practices which cause serious dislocation and inequities at the state level; and

(6) Lack of federal coordination and consistency in implementing indirect cost determination procedures creates continuing administrative confusion for states.

Comments such as these continue to be made by officials of both state and local government.*

These problems are also cited in reports from a variety of federal agencies that have examined the grants system. For example, Congressional Budget Office has considered federal mandates in FEDERAL

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*See, for example, "Federal Grants Management Reform," Hearings before the Subcommittee on Intergovernmental Relations of the Committee on Governmental Affairs, U.S. Senate (1979) and Office of Management and Budget, MANAGING FEDERAL ASSISTANCE IN THE 1980'S: PUBLIC COMMENTS ON THE DRAFT WORKING PAPERS ISSUED AUGUST, 1979 (OMB, 1980).

CONSTRAINTS ON STATE AND LOCAL ACTIONS (1979); the Commission on Federal Paperwork provided IMPACT OF FEDERAL PAPERWORK ON STATE AND LOCAL GOVERNMENTS: AN ASSESSMENT BY THE ACADEMY FOR CONTEMPORARY PROBLEMS; and the General Accounting Office has produced a number of reports on the grants system including FUNDAMENTAL CHANGES ARE NEEDED IN FEDERAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS (1975). ACIR has published extensively on reforming the grants system including a comprehensive report, IMPROVING FEDERAL GRANTS MANAGEMENT (1977).

The concerns of state officials have been reflected in the attitudes of Presidents Carter and Reagan. Both of these former governors have concurred in the need for grant reform. In 1977, President Carter wrote to the heads of federal departments and agencies: "Both my own experience in State and local government and the advice and comments I have received from State and local officials over the past seven months have convinced me of the need to simplify and streamline the administration of the Federal aid system."*

PROBLEMS WITH REGULATION IN GRANT PROGRAMS

QUALITY STANDARDS AND GOLDPLATING: State and local officials feel that federal regulations often force them to conduct activities in a more expensive fashion than they would conduct those same activities if using their own funds. In a derogatory sense, this is often called "goldplating." State and local officials know that it is generally more expensive to do something within a federal program than to do the same thing with state or local funding. This knowledge is based upon the experience of those officials in doing the same things (e.g., building airports and highways, providing social services) with federal funds in some cases and without in others.**

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*This memorandum and other documents dealing with Carter administration activities in this field will be found in FEDERAL AID SIMPLIFICATION: WHITE HOUSE STATUS REPORT (1978).) President Reagan has made sweeping proposals for changes in federal grant programs, which are discussed in Chapter 8 of this report.

**A good example is the direct comparison of comparable road projects, some with federal assistance and some without. See Los Angeles County Road Department, RED TAPE (1973) and RED TAPE II (1973) for graphic examples.)

Besides the cross-cutting requirements discussed below, there are some systematic reasons for higher cost in federal programs including:

(1) Federal programs add another level of reporting, as a federal agency will insist on reports of how its funds are being used;

(2) Federal programs involve delays, during which costs mount as people are underutilized;

(3) Federal programs require the establishment of new public consultation devices (e.g., mandatory advisory committees, special publication of notices and public hearings) which are overlayed on existing state and local consultative devices;

(4) Federal programs have very extensive appeal procedures;

(5) Federal programs have special administrative requirements governing purchasing, personnel, accounting, etc.;

(6) Federal programs generally involve extra paperwork for elaborate plans, quarterly reports, exception reports, etc.;

(7) Federal programs have audit requirements that overlay existing state and local auditing procedures, and, most important,

(8) Besides the procedural standards listed above, federal programs generally have higher "quality standards" than state and local governments have when using their own funds.

"Quality standards" are not simple issues because both sides of controversies about them are correct. At the federal level, line agency officials want to make sure that state and local officials do things right -- meeting the highest standards for everything from road construction to health services. Congress, by delegation to these line agency personnel, lets them insist on the standards in federal programs. However, Congress does limit the funding, which is why quality standards can safely be delegated from a congressional pespective. As a result, federal programs generally have a "do it right or not at all" characteristic.

A classic example is the Section 8 housing program, where new Section 8 construction, like new public housing construction before it, costs more than comparable housing provided in the private market because of quality standards (and paperwork). This reduces the number of persons assisted with any given federal appropriation, but does mean that those assisted get high quality buildings.

While federal officials can mandate a good job in dealing with part of the problem and ignore the rest, state and local officials generally do not have the luxury of dealing with problems this way. ALL roads must be maintained and all significant population concentrations must have roads, but limited resources mean that roads will not be perfectly built or maintained. ALL persons requiring institutional mental health care will get some kind of service, but limited resources mean that not all will receive care equal to that in private psychiatric hospitals. ALL school age children who want to attend public schools will be provided education. Thus, in most of their activities, state officials do not have the option of meeting the best (and most costly) standards for some part of the population and leaving the rest totally unserved. Federal officials do have this option in many programs.

The conflict between a federal approach of "do it right or not at all" and a state and local approach of "do the best you can with the resources you have available" emerges in a variety of programs.

A typical situation involves the staffing of day care centers, which has been an issue for many years. Obviously, other things being equal, the lower the ratio of children to staff the better the care. At least that is the conventional wisdom in this field. The federal government supports day care through Title XX (social service) and WIN (employment for welfare recipients) programs. Final new day care regulations released in early 1980 reduced the allowable child-to-staff ratio from six to five in facilities that serve infants as well as other children.*

Clearly, the regulations were designed to increase the quality of care by increasing the cost of care. In the absence of funding increases, which did not occur, the effect is also to reduce the number

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*The specific examples used in the remainder of this chapter are from a survey of states made by the National Governors' Association. Results are summarized in ELIMINATING ROADBLOCKS TO EFFICIENT STATE GOVERNMENT: THE GOVERNORS' GREEN BOOK (1981).

of persons who can be provided any care at all. Furthermore, because many day care facilities combine children funded with federal money with children whose parents pay, some of the higher costs will fall on the parents.

Another example of the quality standard situation is associated with federal support of highway rehabilitation. State highways generally are in bad condition. Much maintenance has been deferred and a considerable number of older roads do not meet current standards on permissible sharpness of curves and width of bridges. State highway officials have "logics" by which they determine which problems to solve first on what roads based upon such factors as accident records, the severity of the problem, the amount of traffic, etc. Federal officials are insisting that when federal funds are used for maintenance (e.g., resurfacing) that other work be undertaken so that the whole road meets quality standards. This requires state officials to deviate from their priority lists to "do it right or not at all".

CROSS-CUTTING REQUIREMENTS: Federal assistance is greatly complicated for federal administrators and grantees because the federal assistance programs have been chosen as the vehicle for implementing a wide variety of federal concerns unrelated to the purpose of the grant. These requirements apply both to the uses of the federal funds involved and to any state matching funds. They all increase cost, increase paperwork, and cause delays.

The Office of Management and Budget has recently identified some nearly 60 separate requirements of this type. They include:

- Nine different anti-discrimination requirements covering race, sex, age, architectural barriers to the handicapped, creed, national origin, alcoholism, and drug abuse,
- 15 different environmental protection provisions covering clean air, clean water, drinking water, endangered species, floodplains, wetlands, fish and wildlife, historic preservation, coastal zones, etc.,
- Three different provisions regarding "protection and advancement of the economy", such as the Cargo Preference Act,
- Three different health and safety provisions, including the Animal Welfare Act and protection of human research subjects,
- Two minority participation provisions, one for women and one for Indians,
- Three different labor standards provisions including the Davis-Bacon Act, an anti-kickback provision, and the Contract Work Hours and Safety Act,

- Two standards regarding public employee personnel policy,
- 10 standards on general administrative and procedural requirements,
- Nine "recipient-related administrative and fiscal requirements", and
- Two freedom of information requirements.*

Even assuming that these requirements were administered consistently by a single agency for each, which is not currently the case, these requirements involve adding costs to federal programs that would not develop in the case of state or local spending for the same purpose. Administrative costs are involved in certifications, studies of impact, etc. Real costs are imposed by requiring contractors to pay more for labor than they otherwise would (Davis-Bacon) and modifying plans based upon requirements.

PAPERWORK: In a report to the Commission on Federal Paperwork, the Academy for Contemporary Problems concluded from its examination of federal aid paperwork:

> If, as we suspect, the costs of this kind of paperwork are closer to five percent of total program costs, the annual cost is a little over $5 billion. Further, these estimates represent the minimum cost of Federal paperwork in federally-assisted programs operated by State and local governments. They include only the costs to the primary governments and do not include costs that can be passed on to other governments, to private businesses, or to citizens. The General Services Administration has estimated that such administrative costs may accumulate to as much as 35 percent of program costs. If the costs absorbed by individuals are included, the Federal paperwork burden may approach 50 percent of some program budgets.**

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*Office of Management and Budget, MANAGING FEDERAL ASSISTANCE IN THE 1980'S (1980), pp. 20-26.
**THE IMPACT OF FEDERAL PAPERWORK, p. 7.

Much of the paperwork in federal grant programs is driven by the nature of narrow categorical grants. For example, rather than providing assistance for health and mental health, the federal government separates these programs. Rather than providing a program for health, the federal government further divides these programs into individual health problems, etc. Recent moves to block grants have improved this situation somewhat but by no means solved the problems of large numbers of smaller categorical grant programs.

The narrow categorical programs inherently generate considerable paperwork just to make sure that funding affects the category defined in the program. This involves intricate tracking well beyond the federal funding itself. First, the uses of the federal funds must be monitored and checked. Second, the uses of the state matching funds must be monitored and checked. Third, state funds not involved with the program must be monitored to avoid "supplantation" (substitution of federal dollars for what the state would do in any case), and to ensure "maintenance of effort" (avoiding reduction of state contributions in the same field).

Leaving aside the special problems of categorical programs, the federal agencies routinely require of state and local agencies detailed paperwork far in excess of the paperwork which the White House, Office of Management and Budget, and Congress require of the federal agencies themselves in federally administered domestic programs. Examples are:

ELABORATE PLANS AND APPLICATIONS: Applications for federal programs routinely run to hundreds of pages. New applications are required each year even though much information does not change. State agencies are required to describe their environment, provide maps, show population by sub-areas, etc., evaluate program inter-relationships, provide information on plans for designated subgroups, show evidence of considering alternative strategies, response to federal initiatives, etc.

CERTIFICATIONS: State and local governments are not permitted to certify their procurement systems, accounting, auditing, personnel systems, etc. on a one time basis or for many different programs at once. They must do it at least annually for each of the federal programs involved.

In addition, they must certify to all kinds of things they are not doing, such as not violating the nearly 60 cross cutting requirements.

DENIAL REPORTS: In many programs, states must report on what they do not do as well as what they do. Thus, they provide reports on persons they do serve and on persons to whom they deny service.

FISCAL INFORMATION: State and local governments are routinely required to provide fiscal information in federal formats, which often do not match state and local accounting systems, and for time periods which are incompatible with those used in their own systems.

PROGRAM REPORTS: These are the most understandable reports, although required in more detail than is used. These deal with what was accomplished with the federal money.

STEP-BY-STEP APPROVAL PAPERWORK: Some of the federal programs, particularly in construction programs for waste water tratment and highways, are based upon a presumption that state and local officials are incompetent, trying to rip off the federal government, or both. Thus, these progams involve detailed review of plans and drawings, contractor selection, specifications, progress payments, contract modifications, etc. by federal officials.

State and local officials generally find this quantity of paperwork onerous, particularly when they compare it to the paperwork the federal agencies do themselves or to the paperwork required of them in state-administered progams.

LOW PRIORITY PROGRAMS AND REGULATION: State and local officials often complain that they are driven to low priority use of funds by narrow federal categorical grants.

Sometimes this is a result of creating categorical grants within a narrow categorical grant program. For example, in a survey of regulations in grant programs by the National Governors' Association,* one state reported that it could not use funds for feeding programs for the elderly for transportation to where the food was offered. The result, in areas not served by mass transit, was to redefine recipients as those who needed the feeding and who also owned cars, which one suspects is the least needy portion of the potential client population.

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*ELIMINATING ROADBLOCKS IN EFFICIENT STATE GOVERNMENT: THE GOVERNORS' GREEN BOOK, 1981

Often low priority uses of funds is a problem with a program, not within it. Narrow categorical programs deal with a need defined nationally that may not exist to the same degree in every state. Usually the problems of mismatch are not obvious and are hard to prove, as was the case in Southern states where officials found federal resources more than adequate for drug abuse but less than adequate for alcohol abuse. Sometimes, however, the mismatches are obvious as in the case of grade crossing protection funds allocated to Hawaii which lacks grade crossings and "weatherization" funds for that same state. Those funds were available to install insulation, caulking, etc. in a state where these are not pressing needs.

COST-INCREASING REGULATIONS: In the case of most federal programs, regulations that increase costs reduce the quantity of service that can be produced with any given quantity of federal dollars and state or local matching funds. However, in the open-ended programs of Medicaid and AFDC, such regulations increased total costs and thus the costs that had to be paid by state governments.

In 1980 some of the Medicaid regulation in effect required a state, to have any program at all, to adopt a complete schedule of basic services. If the state opted for additional services, it had to provide them to everyone, not just persons with the greatest need for them. States could not penalize Medicaid abusers by taking benefits away from them, could not steer patients away from high cost providers, and had to follow federal reimbursement standards even if they could make arrangements to buy the services for less. The Reagan administration has eliminated a number of these requirements, but a subsequent administration could reimpose them.

INCONSISTENT REGULATIONS: The premise of federal regulation involves substituting federal decisions for state and local ones. This presumes that federal officials know the right answer, that the right answer is the same for each state, and that state officials will not discover the right answers without federal guidelines. Considerable doubt arises about these premises when federal agencies issue inconsistent guidelines.

The most serious cases of inconsistent federal regulations occur in the federal cross-cutting requirements where a grant program in one field (e.g., transportation) is used to achieve other objectives such as historical preservation or equal employment opportunty. Problems arise through both legislation and regulation because the substantive and procedural requirements in one program's statute or regulations will differ from and/or partially duplicate those in the general statute dealing with the cross-cutting requirement. This problem frequently

arises in affirmative action requirements, where reporting problems and conflicting guidance have become a particular problem for universities. Another example is historical preservation values affected by highway programs, which are covered by two separate statutes. Examples of inconsistency appear in the paragraphs below.

How to handle purchases which involve the contractor's purchase of a commodity to perform work (e.g., asphalt for a highway contractor) is always a dilemna for private and public purchasing officials. If one does not permit the contractor to pass along a price escalation, some believe that contractors increase their bids by more than the amount of the likely escalation because of risk and uncertainty. Those officials prefer to absorb the price increase. Others believe that contractors may underestimate cost increases in their bid and do not permit escalation once the contract is signed. Current standard contract forms for the Department of Transportation reflect an attitude that federal officials have more insight on this issue than do state officials. Thus, both the Federal Aviation Administration and the Federal Highway Administration provide guidance on this subject. One prohibits escalation and the other requires it.

Dam safety requirements administered by the Corps of Engineers require that the safety of a dam be evaluated in terms of the risk involved in the event of failure, with the ability of an emergency spillway to pass a certain size storm for a given level of risk as the criterion. The problem is that federal agencies have inconsistent standards for the risk evaluation of dams, including having no agreement on the size of storms that should be used in such evaluations.

Different federal agencies have different standards for allowable costs, making it impossible to have a single automated accounting system that meets federal standards and state needs. For example, in highway projects the Federal Emergency Management Agency does not permit reimbursement of undistributed direct costs and workers' compensation. On the other hand, the Federal Highway Administration does.

Universities, particularly those using certain hazardous chemicals in research and practicing radiology in university hospitals, find dealing legally with pregnant women in "at risk" jobs impossible. Policies of the Nuclear Regulatory Commission and National Institutes of Health seek to exclude pregnant women from such jobs. On the other hand, civil rights requirements prevent discrimination based on pregnancy. States cannot achieve one objective without violating the other.

Federal agencies are also inconsistent on costs in the same project. For example, "weatherization" projects are often handled by workers paid through a Department of Labor program while materials are

purchased through a Department of Energy program. If a project is done by error (e.g., a project where the recipient's income was insufficiently low), Labor holds the sponsor liable, but Energy does not unless the error rate is above 3%.

CONTROL OF PROCESS, NOT RESULT: In general, state and local officials feel that federal agencies should be concerned with the results of programs -- persons provided assistance, jobs obtained, highways built, etc. -- in relation to funds spent. State and local officials resent excess federal dictation of processess that are used to achieve the results, particularly when the effect is to overlay a federal requirement on a state system that can and does achieve the same result. Examples are mandated forms of organizations such as advisory committees and boards, dedicated data processing, procurement rules, and personnel allocations.

SUMMARY: FEDERAL-STATE REGULATIONS IN GRANT PROGRAMS

There is general agreement by state and local officials and outside observers, such as the Advisory Commission on Intergovernmental Relations, that the federal system is badly congested and in considerable need of reform. This widely held view has given rise to reform efforts of various types that are described in Part Three of this report. The 1980's may be a time in which the political environment is right for a substantial reform of the way in which the federal government relates to state and local government, with grant reform being one cornerstone of the new relationship.

CHAPTER FIVE: OTHER FEDERAL IMPACTS ON ALASKA

INTRODUCTION

This chapter concludes the overview of current state-federal relations. Chapter 3 discussed federal law and regulation generally; Chapter 4 considered federal grant programs; and this chapter covers federal lands, federal employees and some issues, such as control of fish and game, that are of particular interest to Alaskans.

The purpose of this chapter is limited relative to the overall charter of the Statehood Commission. The commission is working separately on subjects, such as the implementation of the Statehood Act and the Native Claims Settlement Act of 1971, which are outside of the scope of this report.

FEDERAL EMPLOYEES AND INSTALLATIONS

There are a number of ways to consider the presence and impact of the federal government. One way is to consider the regulatory presence, the impact of federal laws, as was done in Chapter 4. Another approach is to consider federal money, taxes and spending. Still another approach is to consider federal personnel.

Interestingly enough, while the federal government has increased its financial and regulatory roles in the past several decades, there has been very little expansion of federal employment. Total federal civilian employment, including the Post Office, in 1981 was 2.9 million persons, about the same as in 1970. In the federal budget presented in early 1982, the president reported a reduction in employment from FY 1981 to FY 1982 and recommended further reductions of federal civilian personnel in FY 1983 and FY 1984. As a result of static federal employment and national population growth, federal employment as a share of population has been dropping.

While direct federal operations are a relatively insignificant economic factor in most states, they are economically very significant in Alaska. Estimated federal spending in Alaska on federal operations in FY 1981 was $1.9 billion, much more than the $495 million estimated to have been spent on grants. There were 41,200 federal civilian employees in Alaska in 1979, 22% of the Alaska non-agricultural work force. The

federal government in FY 1980 spent an estimated $765 million in wages and salaries, a significant contribution to total Alaska personal income of about $5 billion.*

To a significant degree, attention has been focused upon federal employment as a measure of the federal presence. Both Presidents Carter and Reagan have attempted to avoid increases in federal civilian employment as a matter of policy and, as indicated by the statistics above, have been successful in this policy. In the current political climate, it is reasonable to anticipate a continued attempt to reduce or at least not to increase federal non-military employment. As most of the federal employment in Alaska is military, this policy would not necessarily have an adverse impact on Alaska.

However, ceilings on federal employment have not proved to be effective ceilings on the federal impact on state and local government or citizens. For the administration of many domestic programs, the delivery system for federal programs is state and local government. The many state and local employees who are paid with federal funds are not included in reported totals of federal employment. In other cases, particularly in defense programs, the federal government has a choice between performing certain functions itself and contracting with firms to provide engineering, computer facility management and the like. It has been estimated that there are something like five million persons in the non-federal economy who are paid with federal funds.

Along with federal employees are federal installations, ranging from post offices and office buildings to military bases. One principle of federalism that has remained intact from the initial days of the United States is that state governments and their instrumentalities, specifically local governments, cannot tax federal property or operations and the counterpart doctrine that the federal government does not tax the states. The fact that federal property is exempt from taxation does, however, create a potential problem for state and local governments. These governments provide services to the installations (e.g., police and fire protection for a federal office building) without receiving the property tax revenues and various other revenues associated with comparable activity in the private sector. State and local governments also provide services to federal workers and their families without being able to tax the workplace of federal employees.

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*Information on federal spending in Alaska is from Institute of Social and Economic Research, University of Alaska, FEDERAL REVENUES AND SPENDING IN ALASKA (1981 with a 1982 update).

This situation has created pressures to develop some method by which the federal government can pay some of the costs imposed on state and local governments by its employees and installations, without subjecting federal property to taxes. Excluding public lands, the result has been an ad hoc collection of payment devices including some payments in lieu of taxes and, most important, the impact aid program for schools. In certain cases, federal assistance has also been proposed for private economic activity encouraged by the federal government. The Coastal Energy Impact Assistance program is an example.

These programs have long been the subject of political controversy. Proponents contend that they are necessary to offset the costs which federal activities impose on state and local govenment. Opponents contend that, in many cases, the economic benefits and even favorable impacts on government revenues of federal installations are greater than the costs of additional public services, so that there is no burden to be offset. Numerous studies, particularly of the impact aid program, tend to show that circumstances vary from one federal activity to another, making it difficult to tailor a nationally uniform program. In a budget sense, these programs are treated as federal grants, not as part of the federal costs of doing business. They are included within national totals of federal grants to state and local governments and have suffered with other grants the- impacts of federal funding reductions for grants.

Controversy over the extent of the federal obligation to reimburse state and local governments for lost property taxes and/or services provided to federal installations and employees has led to inconsistencies in federal policy from agency to agency and program to program. As ACIR puts it:

> The one generalization that can best be made regarding the array of federally owned property is that there is no guiding principle regarding the extent to which the federal government as a property owner should contribute to the financial support of state and local governments....
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> In short, the federal payment and tax system is a patchwork of uncoordinated programs. The federal establishment could use similar amounts of real property in each of ten different localities and, depending on a host of different institutional factors, pay different amounts of tax revenues or in lieu payments -- or no payment -- to each of the ten jurisdictions.*

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*ACIR, PAYMENTS IN LIEU OF TAXES ON FEDERAL REAL PROPERTY (1981), p. 3.

From the perspective of the state of Alaska, it is particularly important that the federal government's obligations as a holder of property and employer of persons be separated from federal grant policies and programs. Many of the proposals, for example, for the reform of the federal system involve sharp cutbacks in the federal role in elementary and secondary education. If impact aid is viewed as one of many grants by which the federal government enters the educational field, it is subject to elimination as part of a sweeping "sorting out" of federal and state and local functions. To the extent that impact aid and in lieu payments are part of the costs of doing business, as indicated by such shifts as putting the costs in the budgets of the agencies whose property gives rise to the payments, funding for these programs will not be affected by reforms aimed at the regulatory and grant-making role of the federal government.

PUBLIC LANDS

BACKGROUND: The public lands of the federal government represent another special case of federal-state relations that is of particular importance to the citizens of Alaska. Under the Statehood Act, Alaska is scheduled to receive about 103 million acres of federal land, 29% of the total acreage in the state. Before the bulk of these transfers, the federal government owned, in 1979, 89.5% of Alaska land, including over 52 million acres administered by the National Park Service. This land ownership is a key aspect of the relationship between the federal government and a number of Western states.

The original thirteen states existed before the federal government and there was no such thing as federal land until the federal government was created. When it was created, the states of Virginia and Maryland agreed to give the federal government a 10 mile square area which has become the District of Columbia. The other federal land in these states is land purchased by the federal government for office buildings, military installations, and national parks.

The westward expansion of the United States occurred through purchases of territory from other governments. The federal government established rules for the governance and settlement of these areas in legislation such as the Northwest Ordinance. In the Midwest, certain sections were set aside for public use by what were to become state and local governments and the remainder was deeded to the persons who settled it. Because settlement patterns were relatively dense and all the land was considered to be of value, practically all land went into private ownership and there were no significant residual interests in land retained by the federal government.

In the West, the pattern was different. Land grants were made to settlers and some large land grants were made to railroads. However, large portions of the lands in the West and Alaska were simply not useful for the settlement patterns of division of land to individual farm families that would own and manage farms on the land. As a result, much of the land remained in federal hands. Starting with the admission of Ohio in 1802, the federal government has required states, as a condition of admission to the Union, to accept a "clause irrevocable" by which the state renounces any claim of title to federal lands within the state.

The application of this policy to the central portion of the United States made very little difference, leaving the federal government with title to lands that have been used for such purposes as national forests and parks. These landholdings are generally not the subject of significant controversy. The same cannot be said for the Far West, Alaska, or Hawaii. In these states, federal landholdings constitute large portions of the land area. Changes in technology, mineral exploration, and expanding population have increased the value of federal holdings and made land use controversial in the extreme.

CEDING FEDERAL LANDS TO STATE GOVERNMENTS: The tensions between Westerners and the federal government over land policy have a long history.* The issues have included grazing rights, water rights, timber cutting policy, mineral exploration restrictions, and various environmental controls. One obvious way for dealing with these problems is to remove the federal government from its major role as landowner, one theme of the "Sagebrush Rebellion."

The Rebellion can be viewed as a political movement with its core concern over federal land management. Its rhetoric is a collection of complaints over that management. Because the "rebels" have no single organization through which to decide policies, it does not have a definition of proposed remedies. However, it is clear that many concerned with this issue view ceding federal lands to the states as the appropriate solution. This view has been given some support by President Reagan who, in Anchorage in 1979, called the federal government, "land greedy, holding on to land that it was never intended to hold on to." In subsequent speeches, he indicated that he was one "who cheers and

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*For a good summary from a historical perspective, see Richard D. Lamm and Michael McCarthy, THE ANGRY WEST: A VULNERABLE LAND AND ITS FUTURE-1982 (Richard Lamm is Governor of Colorado).

supports the Sagebrush Rebellion" and during the campaign pledged that "My administration will work to insure that the states have an equitable share of public lands."*

The Statehood Commission's preliminary report reviews the prospects for forcing the federal government to relinquish federal lands by court action and concludes that such prospects are dim indeed. The report also considers the prospect of obtaining the same result by legislation, and concludes: "The western and Alaska public lands, as Alaskans know only too well, are looked upon by populations in other parts of the country as common goods owned by and to be used by all U.S. citizens."** The report reviews the mathematics of congressional representation, which makes it obvious that major land conveyance to the Western states and Alaska will not take place without a plan that is acceptable to a substantial number of persons East of the Mississippi River.

The problem, of course, is that the energy-poor East sees public land transfers as potentially shifting nationally owned energy-rich properties to states and individuals already becoming rich from control of energy resources.*** In addition, there are substantial and vocal groups throughout the nation that wish to maintain large areas in their pristine state and that concentrate on federally owned land for this purpose.

Furthermore, the objective of turnover of federal lands to the states is not accepted by all Western leaders. Governor Lamm, for example, argues:

> Whoever the rebels are, whatever it is they want, their strategy is bankrupt. To the people of the West, the idea of land cession as leverage to extort improved federal public-lands management is risky enough. But the idea of land cession as an end in itself -- which is how most Sagebrush reactionaries see it -- is dangerous beyond imagination. The cession of the public domain to the western states would destroy the land and the states with it.****

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*Lamm, as cited above, pp. 317-318

**MORE PERFECT UNION, p. 22)

***See, for example, Northeast-Midwest Research Institute, THE UNITED AMERICAN EMIRATES: STATE REVENUES FROM NON-RENEWABLE ENERGY RESOURCES (1981).

****Lamm, as cited above, p .307.

Lamm argues that the states would not retain lands transferred to them. Instead, they would sell them and they would be resold to major corporate interests. He quotes former Idaho governor and Interior Secretary Cecil Andrus as indicating that cession would place the West in the hands of "the Exxons, the Mobils, and the Gulfs."

MANAGEMENT OF THE PUBLIC LANDS: If the states, by reason of Eastern opposition to cession or lack of Western interest in cession, do not acquire the public lands, the problem of perceived excessive federal power must be handled in the context of land management. There are really two basic issues in land management, substance and process.

In procedural terms, many of the complaints regarding land management relate simply to how the federal government makes decisions, rather than the substance of those decisions. As Governor Lamm states the complaint:

> The point is that, good laws or bad, the West has been voiceless in making them. That some have been good does not alter the hard fact that the West has become legally emasculated, that it is treated with arrogance and indifference, and that it still is living with the old, archaic federal-eastern assumption that the federal government is better equipped to rule the West than the West is to rule itself.*

The process by which public land decisions are made in Congress is inherently open, in the sense of being based upon open hearings and recorded votes. Decisions in Congress may be faulted in substantive result, and Westerners may resent not having a majority, but it is hard to fault the process. This is not necessarily true, however, in the administrative processes related to public lands. There questions of attitude, as expressed in concepts like Interior's current approach to being a "good neighbor," can affect substance as well as process. In addition, consultative mechanisms can be developed to reduce the friction between state and federal decision-makers. However, as noted in the chapter which follows, it is difficult for Alaskans, or anyone else, to guarantee meaningful federal consultation regardless of what the formal rules for consultation might be.

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*Lamm, as cited above, p. 241

One consultative device for use of public lands that appears to have satisfied some state concerns is the Department of the Interior's Coal Policy Team concept. These teams are used to deal with decisions relative to leasing federal lands for coal exploration and mining in each of the regions (basically coal basin areas) where leasing is significant. Each team has a representative of the governor of each affected state and a Bureau of Land Management (BLM) representative from the same states. The team is chaired by a BLM employee from outside the region. All of these members vote. Thus, in a basin encompassing parts of two states, there would be five voting members, three federal and two state.

The teams structure the technical work (e.g., environmental impact assessment) of their own agencies and other federal, state, and local agencies. Their open meetings often involve participation by local officials and officials of the many federal agencies besides BLM with an interest in leasing activity on federal land.

The coal team approach was adopted administratively by the Department of the Interior. The approach was not mandated by statute or federal executive order. This means that any subsequent Interior Secretary would be free to drop or modify the concept.

In terms of the substance of land management, Alaskans seem to have their greatest complaint over the general category of restrictions on land use. The complaints vary from restrictions on hunting, overcommitment of land to wilderness status, restrictions on mineral development, etc. As discussed in the final chapter of this report, some of these concerns can, without cession, be dealt with in the context of devolution of federal power while others cannot easily be handled in this context.

The themes of this report on the devolution of federal power obviously have some applications to public lands. The ownership of vast quantities of land does contribute to the pervasiveness of federal influence, makes it more difficult for citizens of the states to manage their own affairs, and does contribute to the costs and size of the federal government. Those concerned over a return to the principles of the founding fathers can also recognize that none of the founders expected the federal government to exercise massive powers as a landlord. The provisions of the Constitution relative to federal property were clearly designed to deal with such subjects as the ownership of forts and arsenals.

Attempting to suggest possible lines of approach to the lands question that could be merged with other approaches to federalism involves speculation, as no attempt was made in the preparation of this

report to interview political leaders on their views of the relationship between lands questions and questions of the federal role in grants and regulation. While it is speculation, it may be useful for the Statehood Commission to consider possible connections.

At the outset it should be noted that there is a general national consensus on valid reasons for the federal government to own and control the uses of land. The federal government needs land for military installations and for a national park system, the keystone of which is ownership of places of unique natural beauty that could reasonably be expected to draw visitors from throughout the United States. However, persons from east of the Mississippi have become interested in recent years in making sure that the benefits of the national park system are not confined to the West and have encouraged national park development in such places as Tocks Island (New Jersey) and the Cuyahoga Valley (Ohio) so that more national park spending would occur closer to population centers. The National Park Service budget has been sufficiently tight in recent years that the current administration has called a moratorium on park acquisition in order to concentrate resources on parklands already owned by the federal government.

Obviously, having land already in federal ownership makes it considerably easier to put such land into the status of parks. Even easier is to put additional land into the status of wilderness, as citizens of Alaska should know better than anyone. It would seem highly unlikely that any lands that are currently a part of the National Park System would be given to individual states except as a part of land swaps. Wilderness areas might be another question, but would probably never be ceded without substantial land use restrictions and not until enough time has passed to provide reliable information on the extent to which such areas are used (or not used as the case may be).

For the remainder of land, there can be several approaches to the transfer issue, including approaching the issues through both economic and political aspects.

In terms of the economics of the situation, it would appear unlikely that the federal government would transfer valuable mineral rights to the Western states. If the concerns over public lands relate more to control questions and less to a desire to gain from mineral exploitation, exclusion of mineral rights is not necessarily a problem for those seeking to shift control of land out of federal hands.

If mineral rights are out of the picture, it becomes reasonable to look at the current costs and benefits of the federal government holding large quantities of land in the West. Holding this land to current standards of operation is not costless. The Department of Agriculture

and Bureau of Land Management spend considerable sums for public land management. Some of these costs (the federal budget is not designed to show how much) are costs associated with earning income such as management of the national forests, administration of systems for permits of various kinds, and surveys. Other costs are essentially deadweight costs, affecting the interests of the states in taking over these lands, but also potentially affecting the willingness of the federal government to give them up. Some sort of study of the costs and benefits of the federal government continuing to hold land would seem appropriate, with land differentiated by type and current use. The Reagan administration has indicated a commitment to analyze federal property on just this basis, although emphasis is on smaller landholdings.

There is one other possibility for dealing with the public lands issue in the context of a general sorting out of state and local and federal roles and financing. The proposals for a grand "sorting out" of functions among various levels of government that are most appealing to state officials involve a combination of termination of federal assistance to, and involvement in, functions such as local education and local transportation and federal assumption of all costs of one or more income tested programs such as Medicaid or AFDC. These proposals are presented and discussed by federal and state officials on the theory that steps will be taken to avoid such a swap having implications for individual states that are substantially different than for states as a group. In other words, the desire is to avoid windfall gains and major losses in any state.

Avoiding such gains and losses is difficult even in the context of an overall agreed swap. Giving income tested programs to the federal government tends to favor most (e.g., more per capita relief) those states which have traditionally had high payment levels in AFDC and high benefits in Medicaid and whose low income persons represent a relatively high proportion of total population. These states are generally those located in the industrial Northeast.

On the other hand, Western states tend to receive larger than average per capita amounts in programs of federal assistance that would be terminated in proposed sorting out arrangements, particularly in highway funding and elementary and secondary education. To make the Western states fare as well as Eastern ones, proposals for sorting out need some sort of extra payments for the Western states. In the administration proposal, for example, a trust fund would be established that would make payments to the states that lost the most from the swap of federal and state/local functions. However, to achieve the objectives of reducing the federal grant budget and eventually getting the federal government out of these programs, the trust fund must eventually

disappear, as the administration proposes. The eventual drying up of the trust fund reduces the attractiveness of the proposals to those states that lose by the swap.

One way to reduce the federal budget cost of swap proposals and at the same time to provide an asset (which current federal leadership may wish to sell in any case) of lasting value would be to provide some public land transfers as part of a New Federalism package for those states that have substantial public lands and would otherwise lose in the swap proposals.

For example, one proposed swap of functions would have the federal government assume full costs of income security functions, including Medicaid, welfare (AFDC), and food stamps. The federal government would stop funding elementary and secondary education, vocational and higher education, highways, transit, and certain other grant programs. A calculation of the financial effects of a proposal comparable to this shows that nationwide the program would be a "wash." That is, states in the aggregate would save exactly enough from the federal takeover of programs to fund the programs that the federal government would stop funding.*

However, some individual states would lose substantially by such a swap. Alaska would have the largest loss of any state, over $260 per capita. Other states with large losses ($50 to $100 per capita) would be:

Arizona	North Dakota	New Mexico
Michigan	California	South Dakota
Montana	Mississippi	Wyoming

Most of these states are Western and all contain substantial public land holdings. To make the New Federalism proposals feasible, a way must be found to provide some offset for these states. In the administration's proposal, a new trust fund is the mechanism chosen, but a combination of a trust fund and public land cession is a potential alternative to just a trust fund.

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*The particular calculation used as an example is from ACIR, CHANGING THE FEDERAL AID SYSTEM: AN ANALYSIS OF ALTERNATIVE RESOURCE/RESPONSIBILITY TURNBACKS AND PROGRAM TRADE-OFFS (1982), p. 59. The numbers should be considered illustrative of this family of proposals. Exact numbers will vary with the year used for analysis, the exact programs to be turned back, and any supplements considered. However, all proposals in the family described above will tend to produce major losses in the states listed in the text.

FISH AND WILDLIFE

The management of fish and wildlife is of particular importance to Alaskans because of the much greater economic importance of fishing and hunting to Alaskans compared to citizens of most other states. Interaction with the federal government on fish and wildlife issues has not been a totally satisfactory experience for Alaskans as indicated by comments made at the convention of the International Association of Fish and Wildlife Agencies in 1979 by Alaska Fish and Game Commissioner Ronald O. Skoog. :

> Historically, each state has had the primary responsibility for managing the fish and wildlife resources within its borders, and I think has done the job well. There is no need to change this role! Yet the trend of increasing involvement and interference by the federal government in state management programs is disruptive, not cost effective, and not in the best interest of the public nor the resources. Frankly, it is also quite unnecessary. I believe the state is in the best position for managing fish and resident wildlife most effectively...
>
> People tend to resent regulations and they particularly resent them when they are developed or promulgated at a distance, such as in Washington, D.C., by people not knowledgeable about the state or its problems and in many cases not particularly sympathetic toward that state....This resentment is particularly true in Alaska...

TREATIES REGARDING FISH AND WILDLIFE: Part of the source of federal power regarding fish and wildlife grows out of the power of the national government to handle relations with foreign governments. In the early 1900's, the taking of migratory waterfowl was occurring so rapidly that it appeared likely that stocks would be depleted. Under the constitutional doctrines of the time (see Chapter 1), the control of shooting of ducks was clearly a state matter and federal legislation regulating the subject would have been unconstitutional. However, the subject was dealt with by a treaty which was implemented in the United States by an act of Congress. The Supreme Court upheld the constitutionality of the statute on the grounds that the foreign policy power, to be effective, had to include the power to implement what was agreed to in a treaty.

Since that time, the question has not been whether the federal government could regulate fish and wildlife management by treaty but

under what circumstances this would be done. Treaties of interest to Alaskans include those relating to migratory birds, endangered species, polar bears, and North Pacific fisheries. State officials have had major inputs into decisions about some of these, but not others.*

Discussion of a possible caribou treaty with Canada gives some indication of the issues that can be involved. The Tanana Chiefs Conference and others seek a treaty covering habitat management and taking. The state of Alaska has taken a position that the treaty would not be beneficial citing, among other things, that "The treaty ... would result in federal pre-emption of yet another traditional prerogative of the state -- management of its own game resources."**

MARINE MAMMALS: The Marine Mammal Protection Act of 1972 in essence federalized the management of marine mammals including polar bears, sea lions, walruses, and several species of seals. The legislation contained provisions permitting the federal government to return this power to states but only with certain restrictions. One barrier is that the federal legislation, before recent amendment, only authorized taking by Alaska natives. Such a provision under state management was viewed as running afoul of the equal protection provisions of the Alaska Constitution. Other barriers may appear in the interpretation of the recent amendment and committee report language. The Alaska Department of Fish and Game makes a strong case that the federal pre-emption eliminated a successful state program and replaced it with non-management by the federal government.

OFFSHORE FISHERIES: There is now dual control of offshore fisheries between the federal government and the state of Alaska, with Alaska having responsibility to the three-mile limit and federal regulation controlling outside the three-mile limit. Under the Fisheries Conservation and Management Act, the federal government is supposed to

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*The treaties and the state role in them are detailed in a letter from Commissioner Skoog to the Executive Director of the Statehood Commission dated December 9, 1981.

**"State Announces Stand on Caribou Treaty," Department of Fish and Game press release, November 3, 1980.

manage in cooperation with the state, but a number of difficulties have developed in implementation. One of the many coordination problems concerns timing in such matters as catch limitations and opening and closing seasons. The state manages on a short turn-around basis, but the federal government has trouble doing this because of its procedural requirements (e.g., Federal Register publication of proposed regulations) and thus encounters difficulty in following state mangagement policies even when trying to do so.

REFUGE POLICY: There is also conflict in the management policies applicable to national wildlife refuges. The basic conflict is that states tend to see the federal government as responsible for the refuge, but not the wildlife, per se. Some federal policymakers see their management responsibilities as extending to the wildlife while on federal land, and in more extreme cases to the wildlife even when not on federal land.

HUNTING ON FEDERAL LANDS: The Department of Interior generally follows a policy of discouraging non-subsistence hunting and fishing in national parks, and regulates these activities in natural preserves. The Department of Fish and Game and many Alaskans see the combination of these regulations and designation of massive land areas as parks and wilderness areas as reducing available hunting opportunities and increasing the difficulties of game management with no particular public benefit.

THE OPPOSING VIEW: Much of the federal intervention in wildlife management issues in Alaska can be understood as an Eastern public using the federal government as a way to enforce their views of appropriate wildlife management on Alaska and other states. An example of this point of view is a comment made by John W. Grandy, Executive Vice President of Defenders of Wildlife:

> Defenders does not oppose cooperative, productive relationships between state and federal Governments. We do oppose politically motivated destructive, single-purpose "management" schemes, such as aerial wolf killing. And if saving wolves threatens traditional relationships, so be it. Traditional federal-state cooperative agreements are useful only if they serve the expanding public interest in perpetuating viable, natural wildlife communities on public land. In short, if we can't get states to uphold

> responsibility on public land and do it right, we'll have to demand that the federal government uphold its ultimate responsibility.*

THE OVERALL LEGAL ENVIRONMENT:** It is well settled under the property clause of the Constitution that the federal government may exercise over its lands both the normal power of a landowner and such sovereign powers as declaring certain activities to be unlawful and enforcing such laws. However, the federal government has not normally sought to apply separate fish and game laws to its lands. For example, the Taylor Grazing Act of 1934 contained an express indication that it was not designed to interfere with state hunting and fishing laws. Similar law applies to activities at federal water projects and military installations. The governing law for management of national forests states: "Nothing herein shall be construed as affecting the jurisdiction or responsibilities of the several states with respect to wildlife and fish on the national forests."

The "Sikes Act" of 1974 affirmatively directs the Secretaries of Interior and Agriculture to develop plans with the states on wildlife conservation and development on federal lands. Further, the legislation stated that nothing implied by the term "conservation and rehabilitation programs" should "be construed as diminishing the authority or jurisdiction of the states with respect to the management of resident species of fish, wildlife, or game, except as otherwise provided by law." The Federal Land Policy and Management Act of 1976 also has a provision indicating that nothing in the Act shall be construed as changing the authority of the states for fish and wildlife management.

Thus, the various federal interventions in fish and wildlife policy are associated with special situations -- treaties, native claims settlements, endangered species, and marine mammals, but do not represent a general attempt to control fish and wildlife. The Department of the Interior and the state of Alaska have recently reaffirmed the state role by formal agreement***. This agreement presumes that the state and federal governments maintain complementary policies on subsistence hunting.

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*In PROCEEDINGS OF THE SIXTY-NINTH CONVENTION -- INTERNATIONAL ASSOCIATION OF FISH AND GAME AGENCIES (1979).

**Materials provided by Paul A Lenzini of Chapman, Duff and Paul (which is counsel to the International Association of Fish and Wildlife agencies) provided considerable information useful in the preparation of this section.

***"State, Interior agree on wildlife management." ANCHORAGE TIMES, March 19, 1982.

FEDERAL ENTERPRISES: WATER, POWER, AND THE RAILROAD

One example of a potential devolution of federal power to the state of Alaska would be for the federal government to sell the properties associated with the Alaska Railroad or the Alaska Power Authority, or both, or to drop consideration of new federal river basin developments in favor of state responsibility for the same activity. All three of these issues are somewhat unique to Alaska, although there are some parallel situations in other parts of the United States.

THE ALASKA RAILROAD: Unlike many European nations, the United States government is not the fundamental provider of railroad services in this country. Federal land grants were used to stimulate railroad expansion in the West, but direct federal ownership was never involved. Currently, the federal government is in the rail business in three major activities: the Alaska Railroad, Conrail, and Amtrak. Conrail was the federal response to Penn Central's bankruptcy, where federal action was considered necessary to prevent the economic disruption of the Northeast. The clear intent of the legislation, the current position of the administration, and the position of Conrail's management is that Conrail should operate without federal subsidy and, as soon as possible, should not be owned by the federal government. Amtrak provides the nation's longer haul passenger service and is heavily subsidized. Again, the authorizing legislation, policies of the administration and of Amtrak's leadership all point toward movement away from subsidies and independent operation.

Finally there is the Alaska Railroad which was built by the federal government when Alaska was a territory. Legislation, which has the support of the administration, is now pending in Congress to give or sell the Alaska Railroad to the state of Alaska. There appears to be no significant argument over transferring the railroad to Alaska. While there is no argument over principle, there is an argument over price which could postpone the transfer.

ELECTRIC POWER: The federal government entered the business of generating electric power as a side effect of decisions to build large multi-purpose dams and reservoirs throughout the West. The trade-offs

inherent in operating such dams have made it impractical to turn them over to the private sector.* To market power from these federal projects, the federal government maintains power marketing agencies such as the Alaska Power Administration and the Bonneville Power Administration. In addition, the Tennessee Valley Authority provides generation in the Tennessee Valley, covering parts of Tennessee, Alabama, Kentucky, and Mississippi. However, TVA power operations are not now subsidized by the federal government.

These power marketing activities have been the subject of considerable controversy in the Lower 48 states. These controversies have often taken the form of public versus private power disputes based upon philosophical differences regarding the role of the private sector and government in the production of electric power. Generally, power produced from federal hydroelectric projects is cheaper than power produced in conventional steam plants. Certain users, particularly municipally owned electric systems and rural electric cooperatives, receive preference in the distribution of the limited supplies of federal power. When power supplies are not equal to demand, difficult choices have to be made, such as whether to integrate hydro with privately owned steam plants. In the Lower 48, proposals for the elimination of the power marketing administrations would encounter a general lack of state interest and probable opposition from the federal government's "preference" customers. States generally do not have power generating capabilities. The major exception, New York, created one such facility primarily to deal with the financial crisis of the public utility serving New York City.

The Alaska Power Administration administers two projects in Alaska -- Eklutna serving part of Anchorage's needs, and the Snettisham project serving Juneau. The state's Alaska Power Authority is involved in five power projects, a transmission line connecting Anchorage and Fairbanks, and has other projects under design including the Susitna hydro project. Officials of the Authority have indicated that some savings could be expected if the Power Administration and Power Authority activities were combined.

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*Optimal use of a dam for recreation requires that the pond level be kept constant to avoid unsightly mudflats and various ecological disturbance. Optimal use of a dam for power is for peaking purposes which involve maximum flow for only a few hours a day and fluctuating pond levels. Optimal use for power involves using all water to generate power; optimal use for flood control may dictate sharp lowering of pond level to accommodate expected high volume flows. Private sector operators would not be expected to make these trade-offs in the public interest.

If the economical provision of power were the sole issue, there would seem to be every reason for such a combination. As the state of Alaska, rather than the federal government, is likely to be most heavily involved in new hydro projects, the Power Authority would seem to be the most logical surviving entity, removing the federal government from the power business in Alaska. From the federal perspective, such a federal withdrawal has the advantages of reducing federal employment and responsibility. From the standpoint of those who have long advocated an even greater role for the federal government in power transmission and generation, however, such a move might appear undesirable. The extent of local support would presumably depend upon such matters as what price, if any, the federal government would expect and the price impacts of the proposal on particular groups of customers.

A closely related question is the future federal role in water projects in Alaska. On a national scale, the Corps of Engineers and Bureau of Reclamation continue to plan and construct multi-purpose dams and reservoirs which are normally eagerly sought by states in order to benefit from improved navigation, cheaper power, flood control, and improved recreational opportunities. However, primarily for budget reasons, the Carter and Reagan administrations have sought to slow federal construction activities. Funds for surveys and project design have been cut back, some projects under construction have been slowed, and the federal government is increasingly looking for state and/or local financial contributions in such projects.

The demand by state officials for projects such as dredging, harbor deepening, flood control, and multi-purpose water projects is far in excess of the likely supply of federal funds for such projects. As a result, devolution of this particular federal activity in Alaska should not be difficult if state decisionmakers are willing to forego the federal subsidy inherent in the projects. A state willingness to construct projects and lack of pressure by the state's congressional delegation can virtually guarantee concentration of federal funds elsewhere.

SUMMARY: FEDERAL ENTERPRISES: The federal enterprises covered in this section are quite different from many of the subjects considered elsewhere in this report. In these enterprises, the federal government actually does something -- builds a dam, sells electricity, or runs a railroad -- as distinct from the normal circumstance where, through a law, regulation, or grant condition, the federal government tells somebody else to do something. In these cases, at least in the Lower 48, the federal presence is not often considered obtrusive on state powers;

in fact, states compete for the subsidies associated with using federal tax funds to pay some of the costs involved.

While attempts to reduce the federal role in Alaska in protection of marine mammals or civil rights will run head-on against interest groups that believe that the federal goverment should tell Alaskans what to do, the federal enterprises do not present the same obstacles to devolution. As with the Alaska Railroad, the argument is more likely to be over price than over principle.

EXERCISE OF FEDERAL POWERS FOR NATIONAL DEFENSE AND COMMERCE

In the course of its work, the Statehood Commission has received information on situations in which federal action is discriminatory in its effects on Alaska. Two such situations are the requirement that shipments from U.S. port to U.S. port utilize American ships and the prohibition on export of Alaskan oil. Another example, which may be viewed as positive or negative depending on one's role in the forest product industry, is placing restrictions on log exports.

For the purposes of considering devolution of federal powers -- the subject of this report -- the merits of these policies are not at issue.* The appropriate questions are whether it is appropriate to have the power to make such policies lodged in the federal government rather than state governments.

The rationale for a requirement for shipping in U.S. bottoms stems from the economic reality that U.S. shipping is more expensive than foreign shipping. It is widely believed that U.S. shipping would disappear completely in the absence of subsidies. That outcome is considered undesirable for national defense reasons, as there are many military scenarios in which the United States would want to conscript substantial capabilities in a merchant marine, just as the British did in the Falklands War. Thus, for defense reasons as well as concern for jobs for Americans on vessels and in shipyards, there are subsidies for the merchant marine. Some of these subsidies are direct, paid from funds appropriated to the Maritime Administration. Like many farm subsidies, some maritime subsidies are indirect, such as those paid by Alaska's consumers and producers.

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*The author's conclusion regarding federal roles is not influenced by opinions on the merits of the policies. While I think all three policies are inappropriate, it is for reasons not related to the question of relative state and federal roles.

There are many reasons to argue for a change in the Jones Act policy and its discriminatory impacts on Alaska. However, it would seem hard to argue that the wrong level of government is making decisions about how large a merchant marine to maintain and what financing method to use to maintain it. It was for the purpose of making decisions such as these that the original thirteen states created a national government with the power to regulate commerce and provide for the national defense.

Export prohibitions are a major issue for many parts of the country. Farmers decry political constraints on farm exports that dry up natural markets and cause the U.S. to be considered an unreliable supplier. Computer manufacturers decry limitations on high technology exports. Drug companies object to being prohibited from marketing drugs in a country where they are legal simply because distribution is not approved in the United States. Firms with technology suitable for the Soviet gas pipeline object to sanctions associated with exports from third country subsidiaries to the Soviet Union. For the purposes of this report, however, the question is should the national government or the states have whatever power is to be given to any government to limit exports. The only sensible answer, which is consistent with the decision of the Founding Fathers in 1789, is that only a national government could effectively exercise such powers and carry out the negotiations required with foreign powers.

FAILURE TO RECOGNIZE THE UNIQUENESS OF ALASKA

In the course of this study, a number of staff members from the Alaska congressional delegation were interviewed about situations in which too much power is being exercised in Washington that could be exercised in Alaska. These individuals are in a good position to know things that irritate Alaskans with the federal government. As might be expected, there are some specific Alaskan examples of the types of problems with federal regulation and grants discussed in Chapters 3 and 4 of this report. Examples are:

> QUARANTINE FACILITIES: The United States has strict controls over the importation of plants and animals to protect against new forms of plant and animal disease and new types of insects. Alaska has an interest in agricultural research, particularly in species that thrive in Arctic climates. When personnel in Alaska agricultural research facilities want to import living specimens they must do so through the agricultural quarantine facilities, which happen to be in the Caribbean, a roundabout trip involving a habitat that is not particularly conducive to

Arctic species.

WETLANDS: Responding to the excessive federal regulations for the most minor use of wetlands and conflicting state and federal regulations, the Corps of Engineers has been trying to streamline the approval process by allowing states to take over the program. There are some pre-conditions for state takeover which appear reasonable in the context of the Lower 48 but which can create problems in Alaska, which has vast areas of wetlands. The main problem for Alaska is the condition that the state must identify the wetlands. This work has long been done in most states but remains a major task in Alaska.

CLEAN AIR: There is a problem in the application of certain car design requirements in the context of the very cold starts required in Alaska. Apparently certain requirements that make sense in other contexts cause hard starting in certain Alaskan settings and, more importantly, cause more, rather than less, pollution.

REVENUE SHARING: The revenue sharing program provides assistance directly to essentially every general purpose local government in the United States. Because some Alaska villages are very small, the limited revenue sharing compliance requirements (e.g., reports and audits) can be burdensome, a problem that is not confined to Alaska.

WEATHERIZATION: Alaska has gotten into a dispute with the Department of Energy over uncommitted funds under the weatherization program. The federal side of the argument is that unspent funds indicate a lesser need for funds the following year. The Alaska side is that the Alaska weather patterns make the Alaska spending pattern logical and comparable to other states in real program impact and costs, though not in timing.

FOOD STAMPS: Federal food stamp regulations apparently create problems, and create error rates for which the state can be penalized, when applied to persons who come to Alaska with little money (i.e. backpackers).

MEDICARE: Many Medicare and Medicaid regulations on quality of service are excessively detailed and frequently do not fit well with the small health care facilities found

in rural areas. An example is (or was, if intervention by the Alaska delegation is successful) that the director of nursing in a nursing home has to supervise full time, with no paperwork and no work with patients. For a nursing home with only one nurse, this regulation does not make a lot of sense.

EDUCATION: Federal regulations in elementary and secondary education have been burdensome in Alaska, although block grant legislation and regulatory reform activities by the Reagan administration have cleared away many of the problems, though there is no guarantee that the regulatory burdens won't reappear. At one point the state Department of Education proposed substituting state for federal funds in vocational education, simply to get out from under federal reporting requirements.

SUMMARY

This chapter concludes Part Two of this report with its general survey of federal regulation, federal grant programs, and special problems of Alaskans -- some unique to Alaska and some examples of the problems with federal regulations and grants that both citizens and officials of many states encounter. Part Three, which follows, provides a discussion of the many problems of state-federal relationships discussed in this part.

PART THREE: APPROACHES TO CHANGE

CHAPTER SIX: THE POLITICS OF DEVOLVING FEDERAL POWERS

INTRODUCTION

This part of the report is a discussion of getting something done to change the situations reported in the previous part. From the Alaskan perspective, the kinds of changes that are needed range from constitutional revision, court action, and federal law changes, to interstate cooperation, and the regulations and day-to-day decisions of federal and state administrators.

For the citizens of Alaska, or citizens of any state, to have an impact on the current division of responsibilities between federal and state governments, they need two things: (1) a precise statement of what they want decision-makers to do, and (2) decision-makers who agree with them that changes are needed. They also need to convince decision-makers that the particular changes they seek are the ones designed to eliminate the problems involved.

The relevant decision-makers in our democratic system are people much like those doing the persuading. The current president and his immediate predecessor were both state governors before becoming president. Members of Congress have commonly served in state legislatures and/or as elected officials in local government before being elected to Congress. On the whole, these are not people who are remote from the people they serve. Nor are they people who necessarily favor the concentration of power in Washington as a philosophical matter.

Those people are decision-makers who, like the rest of us, have been subjected to training and history that condition their viewpoints. Unlike the rest of us, they are also subject to pressures from all directions as they make their public policy decisions. To understand how best to bring about a devolution of governmental power from Washington to the states, it is necessary to understand what political and ideological forces put the power in Washington in the first place and what forces tend to keep it there.

THE ROLE OF GOVERNMENT GENERALLY

DUAL THEMES OF LESS GOVERNMENT AND MORE STATE ROLES: Federalism and devolution questions are theoretically independent of what volume of government activity is undertaken. It would be intellectually possible to argue that government should intervene very little in the lives of citizens, and that existing social and economic regulation should be cut back substantially, but that whatever regulation remained should be conducted by the federal government. Conversely, one could argue for

major government roles, including an expansion of social controls of various types, larger income maintenance programs, etc., and at the same time argue that these programs should be decided upon and implemented by state and local governments.

However, as a practical matter throughout our national history those who have argued for an expansion of government's role have typically allied themselves with those that would have the federal government increase its role at the expense of the states. Those rejecting proposed expansions of federal power have often pursued two separate arguments: (1) that the power should not be exercised, and (2) that, if it is to be exercised, decisions about how to exercise it, and perhaps whether to exercise it, should be left to state and/or local governments. Examples of this approach can be seen in the Supreme Court opinions invalidating some of the early New Deal programs and in business rhetoric in dealing with business regulation from the period of the populists in the early 20th Century through environmental protection debates in the 1950s and 1960s.

The only logical link between opposition to government action generally and a preference for the locus of power being in state rather than federal hands is the presumption that state governments would be less likely to act than would the federal government. This presumption tended to operate in fields such as unemployment and worker compensation laws, labor-management relations, and more recently strip mining regulation.

The juxtaposition of views that government generally is too much involved in the life of the citizens and that power should be devolved to state and local government is still an important feature of the American political scene. These dual themes represented a major part of the basis on which President Reagan campaigned for the office that he now holds.

THE ROLE OF BUSINESS LEADERSHIP: However the American people may feel about these issues, those favoring devolution of power to the states have lost a major ally from earlier history. In issues of economic regulation, and by implication in issues of general philosophy, the business community was a major supporter of this perspective. However, the business community no longer plays this role. Business leadership generally has become quite pragmatic about the relationships of state and federal governments.

In 1982, some business leaders can be found who are encouraging shifts of power to state governments from the federal government, but many business leaders are doing the exact opposite. Major producers of energy were behind the proposals for power plant siting legislation,

which would have made it faster and easier to build new power plants by a federal permitting procedure that would override various state zoning, water quality, building permit, and land use controls. In the area of transportation of energy, one business group is pressing legislation for a coal slurry pipeline. The substance of the legislation is to apply federal rather than state rules for the involuntary taking of property for use by a public utility. Many companies are also looking for solutions to the nuclear waste problem that would preempt the exercise of state police powers.

In transportation, trucking companies are seeking national legislation overcoming state regulation of maximum truck weights and length. In banking, various interests went to the Supreme Court arguing for federal preemption of state laws governing the assumability of home mortgages. In product liability, many firms are supporting the concept of uniform national legislation on the subject to preempt various existing state laws. National no-fault auto insurance was a serious proposal for many years, backed, among others, by some large insurance companies. There is significant business support for federal legislation that would eliminate state usury laws, which set limits on permissible interest rates.

Thus, when one shifts from broader philosophical matters to practical decisions that together determine the relative roles of state and federal governments, the business community should not be assumed to be an advocate of stronger state roles.

OTHER SUPPORTERS OF DEVOLUTION: In fact, the intellectual inheritors of the business positions of the 1920s through the 1950s have become a quite different group. These are persons with no economic interest in the outcomes, who are opposed to extensions of federal power to state and local decisons and private conduct through the federal judicial system. The issues include the ability of state and local government to control abortion, the ability of school districts to have prayers as part of school activities, and the ability of school districts to set attendance areas (school busing). Often, however, the persons interested in these subjects are single-issue persons, with little knowledge of or interest in other subjects, such as relative state and federal roles in taxing, spending, and business regulation.

Thus, the potential forces that might form a coalition built around the notion of reducing federal powers would have to involve some "strange bedfellows". It is not at all clear that persons interested in issues such as school prayer would form common cause with the state and

local officials interested in devolution of federal power, nor that the state and local officials would be willing to make the concessions required to form such a coalition.

It is this political reality which tends to govern the politics of potential calls for a new constitutional convention. The problems surrounding calling a convention, and ways to deal with them, are discussed in the preliminary report of the Statehood Commission. The fundamental problem is that there are no rules governing such a convention, so it is unclear whether such a convention could be limited to a single purpose (e.g., federalism) or, once convened, could consider every subject.

RELATIVE COMPETENCIES OF STATE AND FEDERAL GOVERNMENTS

In the evolution of federal power from about 1910 to about 1970, perceptions of the relative competency of state and federal government played a vital role. Those perceptions, in reverse, could play a major role in creating a climate for the devolution of federal power.

The question of relative competence of the two levels of government is discussed at length in Chapter 2, with a conclusion that there is little basis for arguing that the federal government is more competent than state government or the reverse. However, in the context of promoting devolution, public disenchantment with the effectiveness of federal personnel and policies can be a helpful factor. Fortunately for those seeking devolution of federal powers, there is some factual base for this disenchantment.

Federal programs in elementary and secondary education are widely recognized as causes of an explosion in paperwork in education and as the source of a number of rules that make little sense to school officials. Detailed categorical assistance programs for health and social services became sufficiently unpopular so that there was considerable support for replacing them with block grants. Many believe that public housing and urban renewal were totally unsuccessful policies.

In short, it is not difficult to find problems in most programs where the federal government has used grant programs to inject federal policies into matters previously decided by state and local government.

PUBLIC OPINION

The opinion of the public is likely to be a key factor in determining the success of attempts to devolve power from the federal government to state and local governments. Fortunately, ACIR obtains information from a national poll that provides an indication on changes in public sentiment.* These data suggest that public attitudes are changing in directions supportive of devolution of federal power.

One key question has been asked every year since 1972. It is: "From which level of government do you feel you get the most for your money -- federal, state, or local?" In 1972, 39% selected the federal government and 44% selected either state or local governments, with 17% indicating that they did not know. Between 1972 and 1981, the percentage indicating state or local government increased to 58% and those indicating the federal government dropped to 30%. An important change also occurred in perceptions of taxes. In 1972 -- given the choices of federal income tax, state income tax, state sales tax, and local property taxes -- 45% identified the local property tax as least fair. Only 19% listed the federal income tax as least fair. In 1981, however, 36% identified the federal income tax as least fair, well above the 2?% for state income and sales taxes combined.

Somewhat less encouragement for devolution comes from a question asked in May of 1978 and not repeated in subsequent surveys. The question was:

> Which of these statements about the ability of state and local governments to deal with today's problems comes closest to your view?
>
> 1. State and local government is too fragmented and disorganized to be effective.
> 2. State and local government does an adequate job in dealing with today's problems.
> 3. State and local government should be given more authority because it is closest to the people.
> 4. No opinion.

This question is not particularly well-designed because someone could believe both the third statement and either the first or the second. The results indicated that 36% thought the first statement to be true; 22% opted for the second answer; 33% for the third, and the remaining 10% had no opinion.

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*The data in this section are from ACIR, 1981 CHANGING PUBLIC ATTITUDES ON GOVERNMENT AND TAXES, 1981.

In a question asked only in the 1981 poll, respondents were given a list of services and asked: "President Reagan has indicated he would like to turn a number of programs back to the state and local governments and get the federal government completely out of the financing and administration of such programs. Various leaders and organizations have proposed that the following functions be turned back. From which functions would you like to see the federal government withdraw?" Because respondents could give more than one answer, the totals are more than 100%. The totals are:

Mass Transportation	30%
Day Care and Other Social Services	29%
Public Schools (kindergarten-12th gr.)	26%
Public Service Jobs	26%
School Lunch and Other Nutrition	25%
Highways	18%
Welfare (AFDC)	15%
Public Hospitals and Health	15%
Don't Know	13%

UNDERSTANDING HOW FEDERAL INTERVENTION OCCURS

Despite concerns about federal over-intervention in the daily lives of citizens and preemption of state and local responsibilities, federal power has continued to expand. This has developed despite the fact that national elected officials often have had backgrounds of service at the state and local level and many have strong platform commitments to limiting the roles and costs of governments. To understand proposals for breaking this pattern, it is important to know what has been causing the pattern.

Federal programs get started because someone sees a need for them. Generally there is a perceived problem, such as impure drinking water, rats in urban ghettos, loss of historic landmarks to new construction, bridges in need of repair, deaths due to drunk driving, or crowded public prisons. Often there is a constituency that is concerned with this problem and wants to see something done about it. Typically, there will also be journalistic attention paid to the problem, with television documentaries and the like.

A number of persons at the federal level will have an interest in a "program" to deal with the problem. Many members of Congress think they need positive actions which they can show to their constituents and, in Washington, passing a piece of legislation is considered the equivalent of positive action. Members, their staffs, and committee staffs all have an interest in legislative action. Federal agencies, which are often asked for cooperation in drafting and supporting legislation, may have

an interest in expanding their "turf", power, and appropriations. Even if these baser motives are excluded, federal line agency personnel are often dedicated to their missions and look for ways to do more to promote historic preservation, aid in preserving the public health, or whatever their mission might be. National interest groups also have an interest in action at the federal level. First, their members -- often organized around the need for action -- may want action. Second, the function of a national interest group is to deliver national policies, not state and local ones.

Typically, legislation will be introduced for federal action to deal with the problem. This legislation normally has common features such as federal regulation or federal minimum standards for state regulation, research, and perhaps grants to fund state and local activity. Such legislation typically does NOT involve federal assumption of responsibility for the problem as, often, the problems are substantially greater than could be handled with appropriations likely to be available at the federal level.

The interest groups, media, and congressional staff members interested in the legislation then work to bring to the public a perception of the severity of the problem and to Congress a perception of popularity of federal action to deal with the problem. Congressional hearings are held; TV interviews are held; investigative reporters find dramatic examples of the problem, etc.

State and local officials have typically played a significant role in this process. That role has not normally been to oppose grant legislation. The functionally specialized state and local officials assigned to deal with particular problems have typically been supportive of federal grants to deal with them. The resources available are inevitably less than what these officials think they need, so additional money from any source looks good. In addition, they may actually favor federal standards in their area on the grounds that those standards will force state and local officials to provide funding for better quality programs. Thus, organizations of school superintendents, teachers, librarians, police officers, and public health officials, to mention only a few examples, have often been supportive of expanded federal roles in their areas.

State and local elected officials typically do not oppose, and often have supported, additional federal programs on subject matters ranging from animal shelters to zoos. In deciding whether to support a new program for rat control or law enforcement, a state legislator, governor, mayor, or county commissioner does not have to deal with federal resource constraints. Money for the program is seen as being supplemental to funds already being received from the federal level. In

this sense, a new federal program is something for nothing.

In fact, many of the federal programs complained of as reflecting too much federal interference in problems inherently local were passed through the strong efforts of state and local officials. The federal program providing support for costs of improving bridges on local roads is a classic example. Past support of narrow categorical programs such as these has not prevented state and local officials from complaining about excessive federal regulation, but has certainly limited the seriousness with which the complaints are taken.

Likewise, state officials have not always objected to federal preemption of state and local decisions. A classic situation was federal preemption of state usury laws. Usury laws limit the rate of interest that can be charged in private transactions. When the market rate of interest exceeds the rate that can legally be charged in a particular state, no one wants to make loans in that state because they can make more money on loans in another state. In this situation, the usury laws tend to prevent credit financing of auto sales and housing, creating severe dislocations for those involved in those industries.

The solution is, of course, either for the state to repeal the usury law, change the allowable rate of interest, or simply decide that the law is worthwhile despite the negative consequences. Each one of these alternatives creates potential political problems for any state official selecting it. An easier solution for state officials appeared when language preempting these laws appeared, probably at the suggestion of banking officials, in federal legislation. The preemption removed the effect of the laws without making legislators change the interest rates or repeal the laws. A provision indicating that a preempted law could be reinstated by legislation at the state level passed subsequent to the federal law maintained the fiction that states were still controlling the subject matter. This legislation was welcomed, not opposed, by a significant number of state officials.

Thus, members of Congress have been expanding federal powers because of responses to constituency concerns coupled with a lack of substantial opposition to such expansion, particularly when new regulation of business was not at stake. The question is whether devolution of federal power and concern with new federal intrusions has any constituency at all.

SUPPORTERS OF DEVOLUTION

The examples above suggest that state and local officials, members of Congress, and business-oriented interest groups all take quite pragmatic views on individual issues involving creation of additional

federal controls through grant programs and preemption of state and local laws and regulation. This raises the question of where support for devolution of federal power is likely to come from.

One potential source is from national leadership and national political parties. It is possible that the collection of pragmatic decisions on particular issues results in an overall situation of government regulation and/or spending and/or disenchantment with the federal role that makes the situation an attracti issue for a political party and/or political leadership in a party. The situation in the United States has probably reached this point, although it is unclear how long the situation will last.

It will be recalled that President Carter obtained the Democratic Party nomination against a variety of potential opponents who more closely reflected the national Democratic Party's close association with activist federal policies dealing with social welfare and the growth of federal programs in the Kennedy and, particularly, Johnson years. Carter's primary campaign emphasis was strongly anti-Washington with stress on state and local control and a less active federal government in many areas of domestic policy.

Carter's presidential term was a mixed bag in terms of the administration's action on federalism issues. The administration encouraged the expansion of employment and training programs, particularly, and promoted the use of state and local government in counter-cyclical policy through local public works and public service employment programs. At the same time the administration supported a number of proposals to consolidate categorical assistance programs into block grants and implemented some measures to reduce the quantity of regulations and conflicting guidance by federal agencies to state and local government. However, this approach did not carry over into some issues of particular interest to Alaskans, such as public lands issues. Throughout his term, however, Carter used themes of restraining the size of government and increasing the efficiency of the federal government.

The themes of the Reagan campaign for the nomination included considerably more hostility to federal domestic programs generally than characterized the views of his primary opponents and the last Republican administration (Ford's). This rhetoric was also reflected in the campaigns of many persons running for Congress in 1980. The rhetoric began to become reality in 1981, as campaign themes were reflected in appointments to federal positions, administration positions on federal legislation, administration of existing legislation, and new proposals for "sorting out" the federal system that are discussed in detail in the next chapter of this report. In addition, many of the administration's positions on issues such as public land management were considered

favorable by state offficials.

Obviously, a president and a substantial number of members of Congress were taking themes of smaller government and less intervention in state local affairs seriously, believing these positions to combine political appeal with substantive soundness.

State and local officials were also altering their views on federal programs and regulation, although views of individual state and local leaders differed, as they always had. These officials were aware of growing public hostility to spending at all levels of government, as reflected in votes for such expenditure and tax limiting proposals as Proposition 13 in California and Proposition 2-1/2 in Massachusetts. They were also becoming increasingly concerned over federal regulations affecting their day-to-day actions in local government.

This change was reflected in a number of different state and local leadership positions. Among Republican governors, there was no real replacement for Nelson Rockefeller who had been an influential advocate within the party for additional federal programs. Leadership among the Republican governors tended to fall to men like William Milliken (Michigan) and Richard Snelling (Vermont) who stressed themes of efficiency, management, and a reasonably trim public sector. Among Democratic governors, there were fewer governors aggressively seeking additional federal assistance, and more, such as Governors Busbee (Georgia) and Matheson (Utah), also scressing management themes. At the municipal level, mayors such as Carver of Peoria came to play major roles in the National League of Cities. Organizations such as the League of Cities, National Conference of State Legislatures, and National Governors' Association began to stress intergovernmental management more and expanding federal programs less in their relations with the federal government. This change affected the U.S. Conference of Mayors less, but the presence of officials such as Mayor Koch of New York, also tended to moderate the demands for additional federal programs by local officials.

One result was that support for new federal programs and added funding for existing programs was no longer automatically forthcoming from state and local officials. Elected officials and their organizations also took steps to limit the lobbying of appointed officials for programs in their particular areas and began serious consideration of proposals to "sort out" the federal system. Criticisms of federal administration of grant programs multiplied. As is the case with national leadership, however, one cannot predict with certainty how long this environment will last.

THE IMPACT OF THE FEDERAL BUDGETARY SITUATION

The condition of the federal budget has had major impacts on federal-state relations in the post Korean War period, particularly in the area of federal grants to state and local governments. The end of the Eisenhower administration probably marked the end of a period in which there were political constraints of major proportions against expansion of federal aid to state and local governments. From that point on, through administrations of both parties, less was philosophically at stake and much more depended upon specific circumstances surrounding individual federal intervention issues.

One key circumstance was that the federal budget was financed primarily by revenues from a highly progressive federal income tax. As a result, revenues rose much faster than gross national product and the federal role in the economy would automatically grow every year unless tax rates were cut. The worse inflation the nation encountered, the more this effect swelled federal revenues. Planned deficits were also acceptable, particularly when it could be shown that the deficit would disappear in a few years because of the growth of federal tax revenues without any change in rates, as was shown for deficits in the 1960s and 1970s.

So long as no one objected to an increasing federal share of Gross National Product (GNP), growth of federal grants could continue without squeezing other items in the budget. Thus, despite periodic tax cuts, federal outlays grew from 18.5% of GNP in 1960 to over 22% in 1980. Federal grants to state and local government were 15.9% of federal domestic outlays in FY 1960 and in FY 1983 were 17.3%. Thus, GNP grew with real economic growth and inflation, the federal budget grew faster than GNP, and the grant share of the federal budget grew even faster. The result was that total grants jumped from $7 billion in FY 1960 to $91 billion in FY 1980.

However, there was a limit to the tolerance of the public and elected leadership to constantly increasing shares of GNP being funneled into federal coffers. This resulted in commitments from various leaders, such as President Carter, to freeze the percentage of GNP taken by the federal government. Even stronger commitments to reducing the rate of growth in federal domestic spending have been made by the present administration.

If there is an effective political constraint against increasing the percentage of the GNP that is taken by the federal budget, then there are some built-in pressures to reduce grant outlays. This is most easily understood by considering the federal budget as having four components: (1) interest on the debt, (2) Social Security, (3) defense

and related programs, and (4) federal domestic programs other than Social Security. Interest on the debt has been rising faster than GNP as debt increases and lower interest rate debt is replaced with debt on which current higher interest rates must be paid. Social Security outlays are rising faster than GNP and will continue to do so even with modifications to the system that have been discussed in the past several years, but not enacted. National defense is not likely to decline, and it appears that congress will yield in 1982 as it did in 1981, to pressures for increases in defense spending greater than GNP growth.

If the percentage of the GNP taken by the federal budget is to be fixed or decreasing, and if two components (Social Security and interest) are to be growing, and one component (defense) constant or growing, it follows that the remaining component must be shrinking as a percentage of GNP. This is a mathematical fact, true whether liberal Democrats, conservative Republicans, or middle-of-the-road leaders of either party hold the White House or Congress. Not surprisingly, the amounts available for grants are dropping in absolute terms and dropping quite rapidly in relation to GNP. The details are comprehensively reported in other sources.*

The political implications of reductions in real (inflation-adjusted) grant outlays are substantial. First, as grants become less important in overall state-local finance, state and local officials can and will argue logically that the federal government should be having less impact on day-to-day decisions in areas supported by grants. Second, the need to cut grant outlays felt by members of Congress and the administration has led to genuine concerns on how to minimize adverse impacts on state and local finances and on service recipients. This has made them receptive to arguments that decreasing red tape and increasing flexibility will make it possible for state and local officials to get more bang for each grant dollar. Third, because grant dollars create their own constituencies of specialists, federal and state/local employers, contractors, grantees, and service recipients, shrinking grant funds will also shrink the constituencies for narrow categorical grants. Fourth, because certain federal regulations cause state and local costs that the federal government must share (e.g., water pollution control regulations and wastewater treatment grants), declining federal funding may cause reconsideration of various mandates applied to state and local government.

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*For a review of the situatior from a state perspective, see National Conference of State Legislatures and National Governors' Association, THE PROPOSED FY 1983 FEDERAL BUDGET: IMPACT ON THE STATES (1982).

These factors are likely to improve the environment in which further improvements in grant consolidation and management are being considered.

SUMMARY: THE POLITICAL ENVIRONMENT FOR REFORM

The history of increasing federal intrusion into matters previously considered of state or local concern has many causes. Not the least of these has been postures of business and state and local leaders who, on the whole, have not only acquiesced in the trend but have often encouraged specific federal interventions.

While those concerned about federalism and the other issues faced by the Statehood Commission can find potential allies in single issue groups opposed to the power the federal courts are having in particular fields, these groups do not seem likely to view their problem in the context of larger intergovernmental relations views, nor is it clear that elected state and local officials would be willing to align with such groups.

However, there are some politically encouraging factors from the perspective of those interested in devolution of federal power. These include: (1) state and local officials who, on the whole, are less concerned with trying to increase grant programs and more concerned about abuse of federal power through regulatory preemption and grant regulations, (2) increasing public trust of state and local governments and decreasing trust of the federal government, (3) clearly demonstrable federal policy failures in major domestic programs, (4) budget pressures at the federal level which will tend to discourage expansion of federal roles through spending programs, and (5) widespread endorsement of devolution by major political figures including the president of the United States.

Some of these factors may persist for a decade or longer. Some may be quite transitory. For example, political leaders are normally not chosen solely for their views on federalism and intergovernmental relations. Political change based upon factors such as the state of the economy or success or failures in international relations could bring changes in the persons controlling leadership positions in the White House and Congress, which might bring quite different views on federalism issues.

CHAPTER SEVEN: PROPOSALS FOR MAJOR CHANGES IN THE FEDERAL SYSTEM

INTRODUCTION

There have been many proposals for modification of the relationships between the federal government and the states. Some of these are highly detailed, such as the notion that federal agencies should not require state officials to report statistics to them when the statistics are generated by other federal agencies. Some are quite simple, such as the concept that state legislatures should be able to veto congressional enactments. Some changes are basically just changes in attitudes and general approaches; some involve legislation at the national level; some would even require amendment of the Constitution of the United States.

For convenience in exposition, these changes have been divided into groups: (1) "major changes" such as those involving constitutional amendment or major shifts in the division of responsibilities among levels of government, which are covered in this chapter, and (2) "less major changes", which are covered in the next chapter. As a general rule, the major changes offer more substantial devolutions of federal power, but have more difficulties associated with obtaining enactment.

CONSTITUTIONAL CHANGES

The United States Constitution can be amended in two basic ways. Both involve ratification by the legislatures of three fourths of the states. In one case, however, the amendment is submitted to the legislatures by a two-thirds vote of both houses of Congress. This is the method that has been used for all amendments that have been made to date. The second method is a constitutional convention called by Congress after being petitioned by two thirds of the state legislatures. This method has never been used, although the two thirds mark was nearly reached for the 17th Amendment before Congress adopted it, and now has been nearly reached for an amendment requiring a balanced federal budget.

The major problem with the second method is that no one knows exactly what the rules would be. Questions include what the basis for voting in the convention would be (one vote per state, one vote per delegate), whether the subjects considered could be limited to those in the states' call for the convention, how much time is available for the states to issue a call and whether a call can be rescinded once a state acts. Furthermore, there is debate over whether these rules can be set

by an act of Congress or whether setting them itself requires a constitutional amendment.

In its preliminary report, the Statehood Commission concluded that the absence of an authoritative determination of rules retarded use of the second method of amendment to the detriment of the states. The Constitution gave state legislatures a role, along with the national legislature in proposing constitutional change, but this power has been muted by concerns over a "runaway" convention. The commission recommended that Alaska join with other states in having Congress call for a constitutional convention limited expressly to development of procedures for the second form of amendatory procedure. ACIR has recommended that Congress pass legislation setting the rules which has been pending for over a decade.*

Once rules were established, there remains the question of what constitutional amendments would work in restoring balance to the American federal system. One approach, suggested by Governor Babbitt, would follow somewhat the mechanism used in Germany where the states are represented in an upper house of the legislature with veto over legislation passed in the lower house. Babbitt's proposal would allow the legislatures of two-thirds of the states to nullify any act of Congress, except those dealing with defense, foreign affairs, or civil rights.

It is something of an irony of history that the decision for an amendment to have U.S. senators elected by the people, rather than the legislatures, eliminated the concept of the Senate as a body representing states, per se, thereby creating the need, as seen by some people, for a new way to maintain constitutional balance through an amendment allowing state legislatures to veto federal legislation. At the time, state legislative leaders were a major force in causing direct election of senators.

Another potential constitutional amendment would follow procedures now in effect in California and some other states governing the relationship between state and local governments. Cast as a constitutional amendment, it would prevent the U.S. Congress, the federal courts, or both, from imposing cost-increasing requirements on

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*See the discussion in ACIR, RESTORING CONFIDENCE, pp. 152-154.

state (or state and local) governments without appropriating funds to pay the added costs associated with complying with the requirement.*

If applied to the courts, such an amendment would have its primary effect in decisions that increase the costs of providing governmental services in the name of civil rights. Examples are the costs of school busing, educating the children of illegal aliens, and maintaining the standards in mental health and correctional institutions that the courts have said are necessary to comply with the Constitution.

As applied to Congress, such an amendment would have uncertain effects on conditions imposed in grant programs. It would be difficult to design an amendment to prevent such conditions from being imposed, so long as the amounts provided by the grant were sufficient to meet the costs imposed. Outside the grant area, the primary impact would be on attempted congressional regulation, such as the wages and hours controls rejected on other grounds by the Supreme Court and federal regulation of pollution control, which creates substantial state and local costs for wastewater treatment.

Other possibilities for constitutional amendment include:

(1) More clearly defining interstate commerce to limit federal control to goods and services crossing state lines,
(2) Expressly exempting state and local governmental functions from regulation by Congress, and
(3) Limiting the capacity of the federal government to raise revenues for purposes other than national defense, foreign policy, and Social Security.

SORTING OUT THE FEDERAL SYSTEM

Over the past several years, critics of the current federal system have been looking seriously at ways to "sort out" the federal system. Those involved have included the nation's governors and legislators, presidents Reagan and Carter, and members of Congress. The sorting out proposals generally involve only areas where there is actual or potential federal funding, as distinct from regulatory policy. However,

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*The "balanced budget amendment" has a section which states: "The Congress may not require that the States engage in additional activities without compensation equal to the additional costs."

in the many cases where federal regulation follows federal grant dollars, regulatory policies would also be affected by the sorting out proposals.

Sorting out advocates begin from the position that the federal system is now hopelessly muddled. Practically every domestic policy of consequence -- health, welfare, social services, transportation, water supply and wastewater treatment, law enforcement, fire protection, education, natural resources -- has major involvement by the federal government and by state and local governments. This is seen as causing overlapping, duplication, and frustration in administration, creating excessive federal controls and federal spending, reducing accountability of officials at all levels of government, increasing administrative costs, and causing a host of other evils.

The objective of sorting out is to get the federal government out of some of these activities, making them more clearly a state and local responsibility. There are varied approaches to providing resources to state and local government to handle the costs previously borne by the federal government. The proposals also differ in whether or not some additional responsibilities would be shifted to the federal government. The three basic approaches can be characterized as (1) federal withdrawal, (2) federal withdrawal with revenue turnbacks, and (3) swaps of functions.

FEDERAL WITHDRAWAL

The obvious way to take the federal government out of various activities is simply to turn back the clock to restore the situation before the federal government entered those areas. From a federal perspective, this has the advantage of allowing reductions in federal personnel and the federal budget. It has the potential disadvantage of loss of federal control along with termination of funding, but in some areas for some federal decision-makers this is a desirable result, not an undesirable one.

From a state/local perspective, federal withdrawal combines the program implications of ending federal control with the financial implications of loss of grant funding. Those financial implications differ depending upon one's perspective and upon how state and local government budgets adjust to the withdrawal.

In many cases, the state/local response to the withdrawal of funding for a grant program will be to discontinue the activity that was financed by the grant. This has generally been the case, for example, when state and local governments have experienced reductions in programs funded by the Comprehensive Employment and Training Act. In such cases,

the federal withdrawal has little or no financial impact on state and local government as the cuts flow through to the beneficiaries of the program and those who provided services on a contract basis. State and local employees who lose their jobs because federal funds are cut are, of course, affected but not necessarily their government's fiscal situation.

In other cases, however, the state and local governments will find it necessary or desirable to increase local funding to make up for at least a part of the reduction in federal funds. In these cases, the fiscal position of state and local government will be affected.

The amounts involved in federal grants are substantial, accounting for nearly a fourth of state and local spending in 1981. Federal grant outlays for Alaska in FY 1981 were over $1,100 for every person in the state, well above the national average of $412.*

Withdrawals of assistance currently being provided on the grounds of inappropriate federal involvement, as well as on the basis of federal budget savings, were discussed as early as the Kestnbaum Commission under President Eisenhower. The first major withdrawal, from the Law Enforcement Assistance Program, began in the Carter administration. In its first (FY 1982) budget the Reagan administration proposed wholesale withdrawals from some programs, along with consolidation into block grants and/or reduced funding for others. Some programs were eliminated by Congress on the president's recommendation and more were proposed for elimination in the FY 1983 budget. For example, all economic development programs of the Economic Development Administration, the Title V regional commissions, and the Appalachian Regional Commission were targeted for extinction.

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*National Governors' Association, "The Impact of the FY 1983 Federal Budget on the States: State-by-State Analysis" (February, 1982). This publication used the federal Office of Management and Budget definition of grants, which counts as grants certain shared revenues (e.g.,mineral leasing). This factor alone tends to cause assistance to Alaska to be higher than other states. Because of concerns over grant program recipients (e.g., persons on welfare and/or receiving treatment under Medicaid) and the fiscal posture of state and local governments, state and local officials have preferred turnbacks and/or swaps to simple federal withdrawal from programs.

The result was that federal outlays for grants dropped from $94.7 billion in FY 1981 to $91.2 billion in FY 1982. As this was written, Congress had not yet acted on the FY 1983 appropriations, but the budget resolution indicated that Congress was moving in the direction of further reductions, though perhaps not to the $81.4 billion in outlays for FY 1983 proposed by the president. Of course, with inflation affecting the costs of delivering service, actual increases in grants would be required for grants to maintain the purchasing power they had had in the past.

The concept of federal withdrawal as implemented by Congress in 1981 did involve some aspects of reduction in federal controls. Cuts in Medicaid and AFDC programs were accompanied by actions to reduce the many instances in which law, regulation, or both required states to spend more on these programs than state officials would have spent in the absence of federal cost-increasing requirements. The administrative provisions of the block grants were much simpler than the requirements of the narrow categorical programs they replaced.

Long-time observers of state-federal relations found 1981 an unusual year. Very few proposals were made for new grant programs. None were made by the administration although some thought was apparently given to a grant program for correctional institutions when this was proposed by a federal task force. State and local officials did not press for new programs and many acquiesced in the grant cuts being proposed, suggesting that the administration had picked its targets well and/or that many state and local officials concurred in the concept that grant cutting had become necessary.

The magnitude of the 1981 reductions, however, made it clear that another round of reductions was possible, and another, and yet another leading to a course of unplanned federal withdrawal. State and local officials feared this result. Administration officials recognized that as a result, another round of grant cutting might not be so easy to accomplish without a plan for where it would all end that would be acceptable to, or at least bearable by, state and local officials. The result was discussion of turnbacks and swap proposals.

TAX TURNBACKS

One concept for the reform of the federal system is for the federal government to relinquish funding and policy responsibilities to the states and local governments (as in sorting out) and to relinquish some federal revenue sources as well (rather than assuming new federal expenditures as would be the case with sorting out). The concept of revenue turnback has been considered from time to time for decades.

During the Eisenhower administration, considerable attention was given to identifying both expenditures and revenue sources that could be turned back. One of the more serious efforts involved a proposal that responsibility for vocational education and municipal waste treatment be turned back along with some revenues from the telephone excise tax. The proposals ultimately floundered over a problem of distribution among states, a topic that will seen to be relevant to the swap proposals discussed below. The patterns of federal aid distribution and of telephone tax revenues were quite different. Therefore, a turnback of nationally equal revenues and expenditures produced windfalls for some states and cutbacks for others. Because the cuts were unacceptable to officials of the states affected, the program was redesigned to include a grant component. With this redesign, the program had two major disadvantages: (1) the federal cost was substantially higher than continuing the status quo, and (2) the program did not achieve the objective of getting the federal government out of the business of providing grants in these areas.

The tax turnback approach was initially of strong interest to the Reagan administration. In his speech accepting the Republican nomination for president, Mr. Reagan stated: "Everthing that can be run more effectively by state and local governments we shall turn over to the state and local governments -- along with the funding sources to pay for it." In March 1981, the WASHINGTON POST reported that the president told a group of county officials:

> I have a dream of my own. I think block grants are only the intermediate steps. I dream of a day when the federal government can substitute for those, the turning back to local and state governments of the tax sources that we ourselves have preempted here at the federal level, so that you would have the resources.

There are four approaches to revenue turnbacks which involve quite different federal actions and potential state responses. They are:

1. federal withdrawal from certain tax bases,
2. a federal "pick up" tax,
3. return of revenue from a tax, and
4. a grant program from earmarked revenue.

Federal "preemption" of a particular tax, such as the personal income tax, may make it harder for states to tax the same source. In the federal withdrawal form of turnback, the federal government eliminates a tax, thereby making it easier to raise state taxes on the same source. However, federal withdrawal does not mandate state taxation, and federal

and state taxes on the same tax base can coexist indefinitely, as indicated by taxation of gasoline, cigarettes, and personal and corporate income.

The concept of a federal pick up tax is that the federal government levies a tax but allows a 100% credit for state tax payments against the federal tax liability. This induces all states to enact a tax up to the amount of the credit. States take this action because it does not change the liability of their taxpayers and provides the state with revenues it would otherwise not have. These arrangements are currently in effect for estate and unemployment compensation taxes.

While many states return revenues from particular taxes (such as shares of personal income taxes, auto registration fees, and gasoline taxes) to local government, the federal government does not now have such a program that returns tax revenues to the places where they were raised. A federal grant program from earmarked revenue, such as the highway trust fund, differs from returning revenues in that the allocation of expenditures is based upon measures of need for spending rather than on where the revenue was raised.

When the staff of the Reagan administration and ACIR began to look at specific ways to implement this turnback approach they discovered that there are few federal revenue sources that offer the potential for turnback. Individual and corporate income taxes are too important in terms of total federal revenues to be turned back. Social insurance revenues (e.g., Social Security) are already earmarked and airport and airway trust fund and highway trust fund monies are already returned as grants. Eliminating these taxes from the list of federal taxes leaves the sin taxes on alcohol and tobacco, what remains of the estate and gift taxes, the telephone excise, and the windfall profits tax. The windfall profits tax is not a suitable tax for turnback because it is temporary and revenues are concentrated in a few states. Receipts in FY 1980 from these taxes were alcohol, $5.6 billion, tobacco, $2.4 billion, estate and gift $6.4 billion, and telephone, $1.1 billion. The 1981 tax amendments will cause gradual reduction in estate tax revenues. Alcohol and tobacco tax revenues will not grow rapidly and may not grow it all, assuming no change in rates. Thus, these tax sources would not necessarily seem desirable from a state and local perspective as resources to finance growing expenditures in programs turned back by the federal government.

In 1982, Congress passed new tax legislation designed to reduce the deficit by increasing federal taxes. The tax increases included a doubling of federal cigarette taxes and an increase in the telephone excise. This development enhances the revenue raising capacity of these tax sources, but reduces the probability that federal officials will be

willing to abandon them to the states.

The idea of federal withdrawal from one or more of these tax bases was not, per se, particularly attractive to state and local officials because of the lack of growth of the base, the fact that state and local governments can already reach these tax bases, and recognition that the state and local officials would have to legislate state tax increases in order to capture any revenue to compensate for federal cutbacks. Pick up taxes or return of revenue from a tax would avoid legislatures having to adopt "new taxes", as the federal government would still be levying the tax.

The major problem with turning back revenues from a particular tax or group of taxes as compensation for termination of federal funding for a group of grants is that it is hard to match the revenue being turned back with the grants being lost. ACIR showed this problem in unpublished materials developed in 1981 which compared each state to the average of all states in revenues being obtained from turnbacks of various taxes and in expenditures from federal programs.

The contrasts in revenue raising capacity are particularly obvious for the taxes (sin taxes and estate and gift taxes) that looked the most promising for turnback. Utah, with its high proportion of persons who neither smoke nor drink, could raise only 53% of the national average revenue per capita from the sin taxes, by virtue of having less sin to tax. Nevada, which sells lots of alcohol and tobacco to visitors, would raise 2.5 times the national average from these taxes. Alaska would raise about 31% more per capita from the sin taxes. However, Alaska would do much worse with an estate tax turnback as Alaska, according to the ACIR figures, would only raise 36% of the national per capita average. While the Alaska numbers may change from the base year used by ACIR, the high numbers for Nevada and low ones for Utah are likely to be stable over time.

There is basically no relationship between the federal aid per capita in grant programs and the revenue per capita from potential turnbacks. Alaska, according to the ACIR figures, gets 260% more education aid per capita and 364% more transportation aid per capita than the average. Thus if the turnback revenues equaled the lost federal aid on a national basis, Alaska would lose substantially. A state like Connecticut with lower than average federal aid for education and transportation and higher than average yields from sin and estate taxes would be a gainer.

Like the Kestnbaum proposal described above, the turnback approach would produce politically unacceptable disparities among states through a pick up tax or return of revenue from a tax to the state where it was

raised. Thus, it was not an acceptable alternative to the Reagan administration.

The remaining alternative from the list of four turnback approaches presented above was to fund a grant program out of earmarked revenues. This was not attractive to the administration or other participants in turnback discussions. From an administration perspective it retained federal financing, which the administration was trying to reduce, and violated the principle of using trust funds only when true user charges were involved. Financing roads from gasoline taxes met this criterion, but financing education from alcohol taxes did not. From a state/local perspective it did not represent a real sorting out, and there was no guarantee that a switch in the source of financing would reduce the federal mandates associated with the programs involved.

Thus, the turnback proposals died in 1981 much as they had died in the 1950s in the Eisenhower administration. In their place emerged another set of proposals, built around the idea of swaps, as discussed in the next section.

PROPOSALS FOR SWAPPING FUNCTIONS

The concepts of federal withdrawal and turnbacks of functions and revenue sources involve a one way movement of federal activities to the states. However, much of the discussion of reforms in the federal system in the past several years have been concentrated on proposed two way shifts, with the federal government taking more responsibility for some activities and less for others. This approach has generally been more to the liking of state and local officials because the financial consequences are better than no federal assistance with withdrawal or chancy prospects of new revenues under turnback. In sorting out, the federal government could pick up some functions and, in the process, save state and local governments the money they now spend on them. These funds could be used to defray the costs associated with the ending of federal grants in other fields.

In November 1980, shortly after President Reagan was elected, the National Governors' Association and the National Conference of State Legislatures adopted a joint policy statement that called for, among other things, "sorting out roles and responsibilities among the three levels of government to recognize the primary federal policy and financial responsibility for national defense, income security, and a sound economy, and the primacy of state and local governments in such areas as education, law enforcement, and transportation."

After this general adoption of sorting out principles, staff members of various governors and legislators began to study specific sorting out proposals, as did the White House. For the state officials, the question of what functions the federal government might take was easily decided. The governors and legislators have consistently pressed for greater federal cost responsibility for welfare and Medicaid programs. During the Carter administration, this support took the form of support for welfare reform and health financing arrangements that offered considerable fiscal relief to states. The Reagan administration had little interest in these proposals, but was willing to consider proposals that would include relieving the federal government of some costs of major grant programs in return for more federal spending on welfare or Medicaid.

ADVANTAGES OF SORTING OUT: Sorting out offered many advantages from the perspective of those interested in it. First, responsibility for various activities would be clearly established. With such clear designation of responsibility would also come increased political accountability. Each level of government would be forced to deal with the consequences of its own actions, and the constant finger pointing and blame shifting that characterize the current intergovernmental

system would be lessened. This was attractive to state officials who had long felt they had responsibility inconsistent with authority in the state-administered programs of Medicaid and welfare and resented federal control in such fields as education. This was attractive to the Reagan administration because it, as a philosophical and budget matter, wanted to be out of detailed involvement in state and local affairs in as many programs as possible.

Second, many believed that with clear accountability would come increased program effectiveness. Program success or failure would depend on the developers and implementers, not on the complex mecnanisms of intergovernmental relations.

Third, program administration would be more effective and efficient. Unnecessary and duplicative administrative and overhead expenditures could be avoided. At a minimum, federal, state, and local staff now devoted almost entirely to the maintenance of the intergovernmental system could be eliminated or reassigned to more productive activities. State bureaucrats could devote their attention to program management rather than to grantsmanship and lobbying with federal agencies. The fragmentation of planning and data processing systems could be ended.

Fourth, within each level of government there would be opportunities for more flexible program design and operation. It is inherently easier to modify a system where one level of government controls all the parts than when responsibility is more widely dispersed. In the particular case of income security programs, federal assumption of funding and policy responsibilities could reduce some of the extreme disparities which exist in the definitions of eligibility for assistance and the amount of assistance that is provided.

Finally, officials at each level of government saw possibilities for financial gains. States had the potential to unload all or part of the Medicaid program, with its history of escalating costs. By clearly assigning such functions as education out of the federal domain, federal officials saw ways to avoid pressures for increased spending in functionally oriented grant programs.

DETAILED SWAP PROPOSALS: The president released his "New Federalism" proposals in January 1981 indicating that he would like them to go into effect with the beginning of FY 1984, October 1983. The major components of the proposal were a swap of functions and trust fund financing of some state costs for a limited period.

In the swap component the federal government would absorb the entire costs of the Medicaid program, which is now cost shared between

states (and local governments in some states) and the federal government. In return, the states would assume all costs of the federally funded, cost-shared AFDC program and of the Food Stamp program which is now 100% federally funded for benefits and 50% federally funded for administration. This swap was seen as a financial gain for states in terms of the dollars involved, depending upon assumptions made about future cost growth and the starting year used for analysis.

The turnback component would involve ending about 125 federal grant programs in 43 program areas with estimated FY 1984 federal spending of about $30 billion. A federalism trust fund of $28 billion would be established to finance continued state and local spending on the federal program activities that were being eliminated and to equalize gains and losses from the swap on a state-by-state basis. Beginning in FY 1988 the federal taxes used to finance the trust fund would begin to be reduced, so that states would assume full financial responsibility gradually, using state taxes to replace those repealed, increasing other state taxes, or cutting programs, as state officials might decide.

Certain key details were not specified by the administration, including the extent to which the benefit levels of Medicaid would be retained under federal administration and the requirements that might be imposed on the states to maintain benefits in AFDC and Food Stamps. The administration indicated a desire to enter into discussions with state and local officials over these and other features of the plan.

When the governors held their winter meeting in February 1982, the state response to the federalism proposals was a key issue. Administration officials were seeking the support of state and local officials for the New Federalism proposals. It was generally believed that without this support, the many groups interested in continuation of narrow federal categorical programs would easily kill the administration's initiative. The "federalism policy" adopted by the governors at this meeting is quoted in detail below as it is an excellent indicator of how the governors of both parties reacted to the proposal. The legislators did not have a meeting format as convenient as the mid-winter meeting of the governors, but individual legislators expressed comparable sentiments. The statement of the governors included the following:

> The time is at hand for national debate and action on the roles and responsibilities of federal, state and local government. The President, in his State of the Union message, set out a bold and specific proposal to realign the federal system to achieve more effective and accountable government at all levels.

> The Governors have, with an increasing sense of urgency, placed federalism reform at the top of their national agenda. We share the President's strong dedication to the concept of federalism. ..
>
> Our policy statements set forth many federalism principles and guidelines that are compatible with the President's proposals. We are in full accord with the President's proposal for a federal assumption of Medicaid. We also welcome his far reaching suggestion that a range of categorical programs be transferred to state responsibility....
>
> The President's federalism proposals contain some elements that are not consistent with existing policy positions of the National Governors' Association, such as assigning responsibilities for food stamps and AFDC to the states. The Governors also believe that support for state and local governments should not be cut in the 1983 budget to the extent that state governments are weakened and left without the capacity to meet the new service delivery requirements of the president's plan for 1984 and beyond.
>
> The Governors believe that these differences can either be reconciled by negotiation or temporarily set aside as we build a program based on existing areas of mutual agreement. The Governors believe that our areas of agreement with the President's proposal form the basis of a revolutionary restructuring of our federal system. ... The Governors stand ready to enter into immediate discussions with the administration concerning these areas of agreement and the subjects left open in our proposal. Our goal is to keep the federalism issue before the American people and to work with the President and the Congress at every opportunity to restore balance to our system of government.

The governors' statement went on to make a series of specific proposals including the federal takeover of Medicaid and the turnback of grant programs with an accompanying trust fund, but without turnback of AFDC or Food Stamps.

THE STATUS OF THE NEW FEDERALISM PROPOSAL: The New Federalism proposal was immediately characterized by some as an attempt by the president to divert attention from the serious economic problems then facing the country. However, the administration sought consultations

with state and local officials. These discussions were private, although news about them was released from time to time.

One change in the administration's posture related to the sources of financing for the proposed trust fund. The original proposal had contemplated that some of the funding would come from the windfall profits tax. This is a temporary tax designed to capture some of the difference betwen oil prices before decontrol and market prices. It was never seriously considered in the tax turnback proposals discussed above because of its temporary nature and because the benefits would be concentrated in only a few states. State officials did not want to see trust financing tied to a reveue source which, under current law, will soon cease to exist. The administration dropped its position that the trust fund financing had to come from earmarked taxes, such as the windfall profits tax.

State officials also argued that the Food Stamp program should remain a federal responsibility. Administration spokespersons indicated a willingness to consider this possibility. However, eliminating food stamps from the package would substantially reduce the amount of new financial responsibility being accepted by the states. In order to keep the swap relatively equal in financial terms, it became necessary to consider having the federal government take only a part of Medicaid costs. The negotiators discussed a somewhat different proposal for federal takeover of Medicaid, with the federal government taking only the Medicaid costs associated with typical private health insurance plans, including up to 100 days of hospital care. The states would be given considerable flexibility in deciding whether additional medical care would be provided to low income persons, to whom such care would be provided, and what types of care would be covered. The major impact of the proposal would be to leave the states with financial responsibility for "long term care", basically the significant costs incurred in some states of maintaining indigent and near indigent elderly persons in nursing homes.

In their meetings in the summer of 1982, both the governor and state legislators discussed the swap proposals at length. Both groups explored the many difficulties with the proposals, as discussed below. Some of the governors who had been most active in the negotiations indicated a desire to abandon discussions with the administration in favor of drafting a plan that would be presented directly to Congress. Neither the governors or legislators endorsed the plan that was then being supported by the administration.

Thus, as this is written, it is unknown whether or not the administration and large numbers of state and local officials can reach agreement on some sort of a plan. If they fail to do so, New Federalism

proposals have little chance of passage, although comparable results might be reached by different means as discussed below.

DIFFICULTIES IN NEW FEDERALISM PROPOSALS: From the perspective of the Statehood Commission, it is not necessary to examine minutely each variation of sorting out proposals. The details under discussion are likely to change almost weekly and the final plan may well not take shape until after the commission has made its report. However, an understanding of some of the obstacles to agreement between the administration and state and local officials is important. These obstacles are inherent in the basic concepts of sorting out and thus are independent of the individuals who happen at the moment to be in leadership positions in state governments, Congress, or the White House.

The difficulties with sorting out depend, of course, on what programs are involved. Assuming that the federal government acquired either of the major cost-shared income maintenance programs (AFDC or Medicaid), as often advocated by state officials, some difficult choices would have to be made at the federal level. These are essentially the same problems that were faced when the federal government assumed responsibility for the SSI program (Supplemental Security Income -- income maintenance payments for the aged, blind and disabled) in 1974. As is now the case with AFDC and Medicaid, eligibility for the program and payment levels differed sharply from state to state.

Federal takeover of SSI costs was urged as a step to shift financing burdens from fiscally pressed states to what was then perceived as a financially more comfortable federal government. In addition, the takeover, like welfare reform proposals, provided a national floor under eligibility criteria and benefit levels, resulting in more assistance to disabled individuals and the elderly poor in many states. There was no direct state quid pro quo for the takeover.

The federal government's cost to raise everyone's benefits to the level of the highest state was viewed as prohibitive. A benefit level was chosen that raised benefits for inhabitants of many states, but would have lowered them for inhabitants of other states. States were given the option of supplementing the federal payments, and many did so in order to avoid benefit cuts for their residents. However, later federal law "locked in" the states to their supplements which are currently about $2 billion per year.

Current AFDC benefits for a family of three with no other income range from under $100 in Mississippi to nearly $500 a month in Vermont. Adoption of nationally uniform benefits at the Vermont level would increase the federal costs of takeover by billions of dollars over and

above the costs of picking up what states currently spend on the program. The obvious alternative is to set some lower level of payments, thereby cutting benefits for some program participants and reducing the federal budget cost. This problem can be delayed, but not prevented, by phase-in provisions. The likely solution would be the one used for SSI -- a nationally uniform benefit involving major benefit increases for some beneficiaries and reductions for others. If the SSI precedent were followed, states would be allowed to supplement benefits. If states decided to do so, the net improvement in their financial situation from federal takeover of the AFDC program would be reduced because they would be continuing to support AFDC beneficiaries at the same time they would have taken on new financial responsibilities in other federal program areas under sorting out. Thus, federalization of welfare might well involve higher federal costs than the state costs being assumed by the federal government because of need for uniformity in benefits nationwide and the state fiscal relief might be less than envisioned because of supplementation of benefits in some states.

Much the same situation exists in the Medicaid program, where some states have opted to provide the minimum array of services only to persons actually receiving cash assistance. At the opposite extreme are states that provide the full array of benefits to persons who are medically needy, though not on cash assistance, in addition to benefits provided to recipients of cash assistance. The federal government could match existing services only by perpetuating state-by-state differences in a national system. It could protect all current recipients only at considerable cost. It could opt for lesser coverage, but in the process would still incur some added costs and would cause the benefits of some recipients to be reduced. In the case of benefit reductions, the possibility of state supplementation would presumably be left open.

Thus, from a federal perspective, nationalization of either program would likely bring a combination of higher costs to bring low states up to national minimum standards and outcries from those whose state standards had been above the new national minimum.

Federalization of Medicaid or AFDC also carries some problems of administrative control. Currently Food Stamps are administered by the states using 50% federal money for administration and 100% federal money for the stamps. The income tests used for the program are somewhat different than those used for AFDC. AFDC and Medicaid are administered by state and local officials with some federal supervision of administration. AFDC recipients are automatically eligible for Medicaid. If the federal government has Medicaid cost responsibilities, it will thus be subject to the cost responsibilites based upon eligibility determinations in AFDC which are controlled by states. One way around this problem would be to have the states, with their existing

decentralized offices, continue to administer the intake procedures forboth programs, but if this is done the sorting out of state and federal functions is less complete.

Another difficulty with sorting out is that the patterns of state expenditure on functions to be taken over by the federal government vary significantly from state-to-state as do the patterns of federal spending on programs that would be shifted to the states.* States such as New York spend much more per capita on Medicaid than, for example, do the Southern and Western states. However, most Southern and Western states get more per capita education assistance than states in the Northeast. Thus, a swap of Medicaid for education programs that involves equal national totals would not yield equal results state-by-state.

The Reagan administration proposal deals with this situation by the mechanism of a trust fund. The amount that each state would get under the trust fund would be the amount needed to replace the federal programs being lost minus the amount that the state gained from the swap proposal. This means that all states are "held harmless" in the base year for the swap. Difficulties arise, however, in any year after the base year. The first problem is that the trust fund replaces what would have been provided in the base year, not what would have been provided in the current year had the old federal programs continued. In cases of major shifts in population or the welfare of individuals, the trust fund allocation would grandfather old assistance patterns rather than meeting new assistance needs. This is not a major problem in the Reagan proposals, however, as the trust fund is intended only to be temporary.

However, if the trust fund is temporary, the states will, sooner or later, lose funding from it. When that happens the unequal aspects of the swap tend to dominate the equity of the results for individual states as those unequal aspects are no longer compensated for by the trust fund. Furthermore, state officials have to face the question of where to find the money to continue the programs previously financed out of the trust fund.

Another problem with the swap and sorting out proposals is the considerable likelihood that the level of government that is giving up a function will try to maintain some control of how that function is handled by the government that takes it over. For example, there is considerable discussion of minimum federal standards in the event that

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*The details are explored in considerable state-by-state quantitative depth in ACIR's staff working paper CHANGING THE FEDERAL AID SYSTEM: AN ANALYSIS OF ALTERNATIVE RESOURCE/RESPONSIBILITY TURNBACKS AND PROGRAM TRADE-OFFS (January, 1982).

programs such as AFDC or Food Stamps were turned over to the states. In the other direction, officials of states with generous Medicaid programs are desirous of a federal commitment not to reduce benefits in the event of a federal takeover. It is reasonable to anticipate that various groups would want guarantees of how states would spend money out of any new trust fund. Local government officials are, for example, looking for a mandatory "pass through" so that state officials would be required to pass along a specified amount of the state allocation to local governments in the same states. Groups interested in particular functional areas, such as elementary and secondary education, will undoubtedly seek to have strings attached to trust fund allocation to protect overall spending on the function in which they are interested.

These restrictions would, of course, somewhat defeat the philosophical objectives of sorting out -- making one, and only one, level of government responsible and accountable for individual functions rather than spreading accountabilty over several levels of government.

PROSPECTS FOR FUNCTIONAL REALIGNMENT

The proposals for ensuring functional realignment of state and federal governments without a constitutional amendment are all built on a political premise that it should be possible for state, local, and federal leaders to reach and have enacted some sort of agreement among themselves providing for sorting out of functions and financial responsibilities. There is certainly support in the examples of Canada, West Germany, and Australia that such actions can take place.

However, the American political system is much more fragmented than the political systems of those three nations. Those nations have strongly cohesive political parties which can provide one vehicle by which decisions are implemented. Furthermore, in their parliamentary system the head of the government is also head of the majority party in the legislative body. This means that, unless the government falls, the chief executive can normally deliver on commitments that require legislation for implementation. This is clearly not the case in the United States at either the state or federal level. Agreement by state leaders and the president does not necessarily result in state legislators considering themselves a party and certainly would be less than binding on Congress.

Furthermore, the United States has many more actors than the other countries. Not only do we have 50 states, many more than Canada, Australia, and West Germany, but our local governments have close financial and regulatory ties to the federal government to which state governments are not a party. Much of the federal assistance that would be given up in any swap or turnback proposal would be assistance such as

Community Development Block Grants, mass transit assistance, school aid programs, and wastewater treatment grants, that go directly to local governments without even passing through the states. Representatives of these local governments will not necessarily view an even swap at the state level to be even relative to them if they assume that the states will keep many of the benefits of swaps and turnbacks while letting the negative impacts of the cut-off of federal aid fall directly on local government.

Furthermore, the swap and sorting out proposals will substantially reduce the power of many actors in the current intergovernmental system, and cost some of them their jobs. This is most obvious in the case of executive branch officials who earn their living passing out federal dollars and writing regulations for programs that would be ended under the proposals. Also important are the specialized staffs in congressional committees and the interest groups that have built up over exercising some control over the amount and purposes of federal assistance in these programs.

These considerations and the substantive difficulties with the proposals as outlined above suggest that it will be difficult, if not impossible, to reform the federal system through one grand plan such as the president's proposals. However, even if reform cannot be accomplished in one major step such as a constitutional amendment or a major swap, there are many less major steps that can be taken. These are discussed in Chapter 9.

CHAPTER EIGHT: PROPOSALS FOR LESS MAJOR CHANGES IN THE FEDERAL SYSTEM

INTRODUCTION

The topic of shifting functions among governments, as discussed in the preceding section, has occupied considerable attention in 1981 and 1982 because of the major changes being made in federal taxing and spending patterns and an administration with strong views on returning power to state and local governments and the private sector. However, over the past decade, most attention was paid to reform proposals that did not involve shifting functions but rather took the existing funding patterns and functional interests of the federal programs as given. These reform proposals are discussed in this section in terms of four basic concepts affecting federal grant programs: (1) broadening the purposes of grants, (2) transferability, (3) joint funding, (4) consultative procedures, and (5) other reforms. In addition, the relationships of state and federal governments are potentially affected by regulatory reform, which is discussed at the end of the chapter.

BROADENING THE PURPOSE OF GRANTS

Many of the criticisms of the existing federal grant system can be reduced by the combination of a number of categorical programs into one new program encompassing the purposes of the prior programs. Such action provides more state and local flexibility, eliminates or reduces mandates to use particular providers or technologies, makes it possible for the priority setting system to more closely conform to local institutions, and can reduce reporting and administrative costs. Whether these results follow in all cases, of course, depends upon the controls, institutional requirements, etc. of the new program that is created.

The basic concept involved has been given a number of names. These include:

-- Grant Consolidation
-- Block Grants, and
-- Special Revenue Sharing.

In addition, proposals in particular functional area such as the Allied Services Proposal in social services, have elements of grant consolidation.

DEFINING BROAD-BASED GRANTS: There is inherently no single best way to define what is a "block" grant, or a broad-based grant. Some programs traditionally defined as broad-based block grants, such as the Law Enforcement Assistance Program, evolved various categorical aspects such as federal earmarking of funds for particular subfunctions within the

grant (e.g., corrections). Within each grant program, state and local flexibility varies from time to time by virtue of changes in both legislation and regulations.

The classification system that is most widely used is that of the Office of Management and Budget which defines three major categories of grants: (1) General Purpose Grants, (2) Broad-based Grants, and (3) Other Grants. Using these categories, OMB defines general revenue sharing and certain specialized revenue sharing programs, such as sharing of timber revenues with local governments, as general purpose grants. These grants normally have no restrictions on the purposes to which the grant funds may be put. OMB defines broad-based grants to include such programs as Community Development Block Grants, comprehensive health grants, certain titles of the Comprehensive Employment and Training Act (manpower training), the Social Services grants, law enforcement assistance, impact aid, and the local public works program. Under these definitions, the new block grants enacted in 1981 are broad-based grants.

STATUS OF BROAD-BASED GRANTS: In FY 1981, general purpose grants accounted for 7.2% of federal grant outlays and broad-based grants accounted for 10.6%, leaving over 80% of grant outlays in the category of "other". The adoption of some of the administration's FY 1981 block grants increased the broad-based grant percentage to 13.5% in FY 1982 and administration projections indicated that a level of 17.1% would be reached in FY 1983. Meanwhile, general purpose grant outlays would remain under 10% of a declining total grant allocation.*

While the administration has indicated a preference for block grants over narrow categorical programs, in many key areas it would rather take the federal government out of the function with turnbacks or swaps rather than support the function with any kind of grants.

DEVELOPING A BROAD-BASED GRANT: The development of a block grant involves a number of steps as outlined below:

(1) The programs to be consolidated must be defined, normally in terms of some organizing concept such as preventative health or social services;
(2) The basis for allocation must be established, typically on a formula basis;
(3) Transition provisions must be developed to deal with situations in which the new formula causes sharp changes in funding;

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*U.S. BUDGET, SPECIAL ANALYSIS H, p. 21.

(4) Earmarking, requirements for continued support of certain activities, etc. must be specified; and
(5) New administrative provisions, dealing with auditing, reporting, etc., must be specified.

Each of these steps can involve considerable controversy. As the debate over the block grant proposals showed in 1981, it is possible to combine some programs and to label the result as a block grant while retaining many of the features of categorical grants.

Because the categorical programs are themselves established by legislation, the normal mechanism for achieving block grants is through legislation that eliminates the categorical programs and establishes the new block grant. However, a somewhat different procedure is involved in the proposed Federal Assistance Improvement Act (S. 807). Title I of this legislation uses the legislative veto for dealing with grant consolidations, a procedure generally associated with the president's power to reorganize federal agencies subject to legislative veto. The basic mechanism involves a presidential decision to consolidate grants, notification of Congress, and automatic implementation of the decision unless vetoed by Congress. The legislation is designed to make it easier to consolidate grants as congressional inaction works on the side of change not on the side of the status quo and members of Congress may be able to avoid an actual vote on some consolidations.

The approach of allowing the president to consolidate grant programs, subject only to the possibility of legislative veto, has been advocated for some time by state and local elected officials. The logic is that enactment itself would encourage the president to propose consolidations and that groups interested in the survival of particular categorical grants would find it more difficult to engineer a resolution of disapproval in one or both houses of Congress than to block passage of new legislation, which is the ony way currently available to consolidate grants. This same logic, naturally, leads to opposition to the proposal by persons interested in preserving particular categorical grants.

The legislative veto aspect of the legislation also raises policy objections to it. From the perspective of some members of Congress, the legislative veto alters the legislative process by giving the president the power to write legislation and have it adopted by default. From an executive branch perspective, the legislative veto may increase presidential powers in some areas (e.g., reorganization and grant consolidation) but reduce them in other areas such as congressional review of proposed arms sales, administrative regulations, and sales from the national stockpile.

In addition, grant consolidation proposals often present tricky jurisdictional issues within Congress, as is the case when a program under the jurisdiction of one committee is to be consolidated with a program under the jurisdiction of another. The congressional committee system is not well adapted to dealing with such proposals.

Despite the obstacles, block grants are likely to continue to be favored by state and local officials and do offer a way to improve federalism without total federal withdrawal from fields where considerable assistance is now provided by the federal government.

TRANSFERABILITY

The fundamental concept of transferability is that the grant recipient, a state or local government, could transfer funds from one grant program to another. The individual proposals specify what programs can be affected, the maximum amount of possible transfer, which is usually stated as a relatively small percentage (e.g., 10-33 percent) of the program totals, and the administrative procedures for the transfer. The basic concept is to allow state and local officials to reflect unique local priorities and problems that could make the optimal local distribution of uses of federal funds different from the distribution called for by the national legislation establishing each program. Transferability is also reflected in S. 807 in that legislation's Title V which allows recipients to transfer up to 20% of funds from one program to another among programs covered by an integrated plan developed at the state or local level.

Although experiments with transferability have been suggested by a number of state and local officials, the United States has no experience with transferability of grant funding. However, certain implications of the concept are obvious. One of these is that the provision would provide a kind of grant popularity context that would be likely to affect future funding. Consistent transferring of funds out of certain programs would suggest that local decision makers accorded a lower priority to that program than past congressional fund allocations would indicate. To proponents of the activity involved, this would suggest the need to protect the program from transfers out of it. To federal budget-cutters, this would suggest the potential for reductions in the program.

JOINT FUNDING

Frequently, single projects or facilities at the state and local level are supported from more than one federal grant source. This raises the possibility of a different kind of grant consolidation. Instead of consolidating programs at the federal level, the existing programs could

be combined at the level of the regions, states, project or facility being supported by different federal sources. This offers the theoretical possibility of eliminating duplicating reports to various federal agencies and of tedious audits to make sure that each federal agency's funds were used only for exactly what that particular agency can support. The assumption is that monies are saved and more services can be delivered. Further the aggravations of people and problems "falling between" federal programs would be reduced.

The desire to exploit these possibilities received considerable attention in the 1970's. One result was the Joint Funding Simplification Act of 1974 which followed various administrative experiments with "integrated grant administration." The fundamental concept was that one set of reporting and auditing requirements and one application could serve the needs of many federal agencies that all support the same basic activity. Although much ink has been spilled in describing the promise of these actions and in writing regulations, they have had little impact on grant programs.* The fundamental problem has been that the relevant congressional committees and administering federal agencies have been reluctant to drop what they consider to be their minimum legal obligations on the control of spending as established by their authorizing legislation. The Joint Funding Simplification Act has now expired, but joint funding would be included as a title in the Federal Assistance Reform Act discussed earlier.

CHANGES IN FEDERAL CONSULTATIVE PROCEDURES

Over some 20 years, there have been constant attempts to try to improve the consultative arrangement between state and local governments and federal officials. However, it is hard to say that any systematic improvement has occurred. Basically, whether and how consultative arrangements work is still largely a function of the general attitudes of the particular federal officials involved toward consultation and the aggressiveness with which the particular state and local officials wishing to consult on a particular subject pursue their desires.

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*A comprehensive history of the various grant reforms of this type will be found in Chapter 5 of ACIR, IMPROVING FEDERAL GRANTS MANAGEMENT (1977). The General Accounting Office has issued a number of reports on the same subject. These are summarized in PERSPECTIVES ON INTERGOVERNMENTAL POLICY AND FISCAL RELATIONS (1979).

Obviously, from a state perspective, the ideal arrangement would be one that made it impossible for the federal officials to do anything but consult. Having an upper house of state representatives would clearly serve such a function as would a constitutional amendment that would give the legislatures of the states a chance to reject laws passed by Congress. However, these solutions are not likely to be available in the near term.

In consideration of shorter term needs, the issue is normally discussed in terms of consultations with the federal executive branch. Because the federal legislative process is inherently an open one with published bills, open hearings, open debates, etc., state officials and their organizations normally have little difficulty in keeping posted on what is going on and generally do not have difficulty in reaching, as distinct from persuading, their elected officials in Congress. Within the agencies, however, is another matter, particularly in such fields as the drafting of proposed regulations.

With some support from their reading of the Advisory Committee Act, federal officials tend to look upon state and local officials as just another interest group. They see relations with state officials as appropriately conducted in the same fashion as relations with industry groups. State officials receive notification of pending proposals through the Federal Register, just like others, and are consulted with in the same time frames and formats as representatives of particular industries.

State and local officials do not see themselves in the same role as industrial spokespersons protesting economic regulation and resent this federal approach to consultation. Instead, they see themselves, at a minimum, as the subordinate delivery staff in federal programs that are delivered through state and local government and would prefer to be considered as partners with the federal government in the delivery of services. In this capacity, they feel they have roles in the early stages of policy formulation on the grounds that they have unique information and perspectives which can be useful in improving the administration of federal programs. In regulatory programs, such as those involving wetlands, state officials see themselves as having concurrent jurisdiction with the federal government and desire to be consulted in that capacity. In programs, such as fish and wildlife, state officials see themselves as having primary jurisdiction and want the federal government to follow state rules and certainly to consult extensively before any failure to do so.

Over the years, it has been difficult to pin down exactly what changes in law and regulation would be appropriate to ensure the desired degree of consultation. While formal systems can be designed, for

example, to notify states of grant applications and awards, it is difficult to define exactly when in the process of evolving policy federal agencies should consult with state and local officials and equally hard to define just what officials should be consulted.

One organizational change made by the Carter administration was to require that each federal department have someone responsible for intergovernmental relations at the assistant secretary level with an intergovernmental relations staff. Such units are now common, but reviews of their effectiveness are mixed. In some cases, they seem to be an effective part of the agency's decision-making processes, but in other cases they operate more like messengers to and from state and local officials and officials of the agency's line bureaus.

Another, much older, organizational change was the federal regional councils. Federal regional offices were shifted to ensure that at least most agencies had common regional structures. The heads of the field offices in each region were established as a federal regional council with a head in each region appointed by the White House. These officials were to bring a more grass roots orientation to federal policy in each region. Furthermore, they were supposed to be able to handle situations in which the federal agencies might be taking inconsistent positions in dealing with state and local governments.

There has now been enough experience with the councils to suggest that they did not solve the problems they were designed to solve, and probably inherently could not do so. For regional organizations such as the councils to work there had to be enough power delegated to the regions so that staff of federal agencies at the regional level were making meaningful decisions. However, as a practical matter Congress was defining programs and criteria in considerable detail and each agency was adding to the detail, and decreasing local flexibility, with regulations and guidelines of its own. As a result, the councils could do little to adapt any federal programs to the needs of state and local government as seen by those near the scene. It became increasingly obvious that, at least in the U.S. federal government, field and regional offices were not likely to bring decisions closer to the people, as the mere establishment of these offices took no real power away from the Washington headquarters of the agencies.

Thus, one is left with what amounts to ad hoc consultative relationships between state governments and the federal government. The federal government may consult states in a fashion through a grant notification system, may be a "good neighbor" in the management of federal lands, may consult with Alaska fish and game authorities in a proposed treaty on caribou migration, and may establish bodies such as the Interior Department's Regional Coal Policy Team. Yet it is hard to

see structured ways to guarantee these relationships, which are ultimately based on the power of the parties. The president and/or Congress can order consultation, but cannot find a way to order that the consultations be meaningful or that federal officials listen to state and local officials.

How much federal officials listen is probably set by other factors. One of the most important of these is how much state and local officials seem likely to influence the outcome. When that power is perceived as high, because of White House ties or whatever, there is likely to be more consultation.*

OTHER REFORMS

There are a variety of other reform proposals which fall within the general rubric of improving grants administration without affecting the fundamental nature of the categorical programs. These include:

AUDIT REQUIREMENTS: State and local officials have pressed, with some success, for the substitution of state, local, and/or private audits for federal audits and for uniform approaches among federal agencies.

CERTIFICATIONS: Current federal grant programs dictate, sometimes inconsistently from program to program, state and local personnel procedures, data processing use, indirect cost reimbursements, purchasing procedures, etc. The fundamental position of state officials is that one uniform federal minimum standard should be set in general terms and that a single certification of a jurisdiction's procedures should satisfy the requirements of all federal programs. Failing this, state and local officials would at least like federal agencies to have uniform requirements.

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*A good example of this was found in interviews on the extent of federal consultation in treaties affecting fish and game matters. Apparently, a major shift occurred in the level of consultation some years ago after state officials persuaded Congress not to ratify a treaty negotiated by the State Department with little consultation with those officials.

CROSS-CUTTING REQUIREMENTS: There is clearly demonstrable inconsistency in the administration of cross-cutting requirements (e.g., affirmative action and historical preservation) from federal agency to federal agency and considerable state and local concern with the delays and paperwork associated with these requirements. These problems are addressed in the federal assistance reform legislation and are being continuously addressed administratively by OMB and the president's regulatory reform task force.

SIMPLIFIED PLANNING REQUIREMENTS: Typically, federal grant requirements involve comprehensive "plans" and have required detailed application documents that are resented as excess paperwork by state and local officials. Potential partial remedies include allowing the submission of a single plan to accommodate the requirements of several programs, reducing the frequency of plan submissions, and reducing the number of elements required to be included in such plans.

INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS: During the years when federal grant programs expanded substantially in number and funding, state and local officials began to object that the system was becoming uncontrollable. Elected officials, such as city council members, mayors, state legislators, and governors claimed that they could not even find out what federal grants were coming into their areas, much less have their comments considered on proposed grants. These criticisms led to three changes in federal grant procedures. The first was to reduce the degree to which grants were given to non-governmental units, such as community action program agencies. The second was a procedure, established by OMB Circular A-95, that gave state and local governments the opportunity to comment on proposed federal grants affecting them. The third involved attempts to improve federal reporting of grants being made in particular areas. In addition to these federal actions, some states and local governments changed their own rules to strengthen review by elected officials of grant applications. State executive branch review was strengthened by establishing central clearance points for review and approval of grant applications by state agencies. Legislative review was strengthened in many states by requiring that federal funds be appropriated by state legislatures before they could be spent by state agencies.

On July 14, 1982 President Reagan issued an executive order designed to strengthen these procedures while reducing the paperwork that had been associated with Circular A-95, which the administration's press release indicated was costing $50 million a year. The new executive order is to be fully implemented by April 30, 1983. It is, of course, too early to know exactly how it will be implemented, but it does offer considerable promise for improved intergovernmental

relations.

The executive order requires federal agencies to "support state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, state and local elected officials." This section of the order should discourage federal mandates for the creation of bodies outside of normal state and local government administrative structures. A good example of the type of body that would be discouraged are local health planning bodies.

The order also eliminates the A-95 review and comment procedure and allows states to establish their own procedures for receiving notice of proposed federal actions such as grants and property acquisitions or improvements. The flexibility accorded to the states appears to be total, permitting everything from decisions not to review at all to use of very formal mechanisms such as review by a state legislature. Federal agencies are required to notify states of proposed actions and either accept the state comments or explain "in a timely manner" why they are not being accepted and acted upon.

The order also encourages federal officials to allow states to substitute state plans for federally mandated ones "where state planning and budgeting systems are sufficient and where permitted by law." This part of the order will have little immediate effect as much of the specialized state plan submissions are mandated by law.

OTHER INDIVIDUAL REFORMS: The listing above does not cover the many other subjects touched upon by grant reform proposals. Other aspects include federal aid information systems, changes in matching and maintenance of effort requirements, and administrative details such as property accountability. Each of these has various advantages and disadvantages and supporters and detractors.

ACIR RECOMMENDATIONS

The Advisory Commission on Intergovernmental Relations has made a number of different proposals for improvement of the federal system. Many of these have been covered above and in the preceding chapter, but all are collected in this section for an overview.

The capstone to ACIR's multi-year review of the federal role in the federal system was an agenda for American federalism published in mid-1981. This report contained a series of recommendations for "decongesting the federal grant system". ACIR (with a few dissenting

votes) reaffirmed its recommendation that AFDC and Medicaid become clear federal responsibilities and that employment security, housing assistance, and basic nutrition be added to the federal list. At the same time, the commission recommended that "the number of remaining federal assistance programs should be reduced very substantially through termination, phase-out, and consolidation." It provided criteria for selecting programs to be consolidated or terminated.

The commission also recommended a number of procedural steps to avoid unintended impacts of federal actions on state and local governments. One of these was that fiscal notes be prepared on pending legislation that would give members of Congress knowledge of the financial effects on these governments. This is now being implemented in Congress. ACIR's suggestion for regulatory impact analysis is now being implemented administratively and is included in recently passed regulatory reform legislation. ACIR also recommended that OMB be given the authority to temporarily suspend the impact of cross-cutting requirements in specific grant programs, a step that has not yet been taken but is favored by many state and local officials.

The commission also made recommendations for strengthening the political party system which are not discussed here as they are likely to be a bit afield from the Statehood Commission's mandate.

ACIR's recommendations for state action included various state-local matters, state participation with federal officials in determining how best to decongest the federal system, considering prior ty accorded by state and local officials to various federal grant programs, and "establishing jointly on a permanent basis a state-local legal defense organization, with adequate funding, professional staffing, and appropriate assistance from the states' attorneys general, to monitor and institute legal action opposing 'coercive' conditions attached to federal grants and 'intrusive' congressional exercise of the commerce power."* This recommendation has already been endorsed by the Statehood Commission in its preliminary report.

The commission also endorsed the concept of a convocation on federalism to raise public and decision-maker consciousness about federalism issues and action to end uncertainties in how the constitutional amendment process works, as discussed earlier in this report.

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*RESTORING CONFIDENCE, p. 145.

REGULATORY REFORM

One of the elements of the president's economic recovery package was regulatory reform, defined to apply to federal regulation of state and local government as well as federal regulation of private business. The president has issued guidelines to agencies on regulatory reform, strengthened the functions of OMB in this area, and through a task force headed by the vice president has pressed agencies to reduce the amount of their regulations and the burden of those regulations on state and local government and the public.

These efforts and the general environment of trying to make the federal government less oppressive have undoubtedly had some impacts on the extent to which state and local governments are regulated by federal officials. The limited paperwork and regulations associated with the new block grant programs are just one example.

SUMMARY OF LESS MAJOR CHANGES

The many proposals discussed in this chapter reflect an accumulation of over 20 years of experience of state, local, and some federal officials and a number of studies by ACIR and other groups. There is merit in many of the proposals, without doubt. However, all of them are, with the exception of deregulation, designed to make improvements within a system where the impact of improvements that can be made is inherently limited by the characteristics of the system itself.

However, in terms of major improvements to the system of federalism, the problem is not to make a system many find unworkable slightly less unworkable, but to find a system that will avoid the many problems associated with current federal-state relations. Thus, many of the proposals discussed in this chapter are "on the back burner" because of consideration of the New Federalism proposals discussed in Chapter 7. Obviously, if serious consideration is being given to eliminating hundreds of federal programs, it makes little sense to devote much time to questions such as reducing the paperwork associated with auditing and reporting in those programs. Thus, the federal assistance reform legislation is simply not a particularly high priority in the current session of Congress.

Chapter 9 explores whether there are changes, major or minor, in the federal system that might be consistent with the mission of the Statehood Commission, substantively useful in reforming the federal-state relationship, and potentially achievable through legislation and administrative actions.

CHAPTER NINE: CONCLUSIONS AND RECOMMENDATIONS

INTRODUCTION

As noted in the introduction to this report, the commission in its preliminary report concluded that reversion from statehood status was not in the best interests of the citizens of Alaska but that Alaska citizens would do well to make common cause with citizens of other states to promote reforms in the relationship of the federal government and the states. This report has reviewed the historical relationship of the federal and state government, explored some basic principles of federalism and their application in the United States and other countries, examined the current relationship of federal and state governments in the United States, and inventoried and assessed the many proposals for the reform of the American federal system.

The question remaining to be addressed is what significance all of this information has for Alaska. The purpose of this chapter is to relate all of the information in the preceding chapters to the specific question of what the Statehood Commission should recommend to the citizens of Alaska and their leaders on subjects related to the devolution of federal power.

DECONGESTION OF THE FEDERAL SYSTEM

The covering letter of the commission in transmitting its preliminary report noted that "Alaska can do little to make unilateral structural changes in its statehood status; but Alaska can and should make efforts to explore the full power of the states within our Union." The cover letter continues:

> We expect to reach conclusions on ways to improve our federal system for we do feel that the federal-state balance is seriously askew. States are losing their vital place in our system of government.

This report concludes that the belief that states are losing their place in our system of government is widespread and that a substantial number of politically significant actors are intent on doing something about it. However, the loss of state roles has its roots in strong economic and political forces, so the task will not be easy.

Much of what the citizens of Alaska can accomplish will depend upon a national political environment. Specifically, it will depend upon the extent to which Americans recognize the institutional inability of a national government to set and implement policies that deal with the day-to-day functioning of state and local government. Enough evidence is

in to conclude both that a policy of detailed federal intervention into matters formerly of state and local concern has high costs and massive unintended consequences and that the American public and political leadership are increasingly aware of this fact. The question is whether and how this awareness can be converted into specific actions that satisfy the widespread concerns of Alaskans.

In the Lower 48 states, much of the concern over federal-state relations has been focused upon federal grant programs. This emphasis contains hazards and opportunities for Alaska. The opportunity is that Alaska can, with 49 other states, reduce the intrusiveness of the federal government, refocus control of Alaskan activities in Alaska, and rid itself of red tape and administrative controls from Washington.

The hazard is that in the rush to decongest the federal system, leaders of the federal government and other states may overlook the unique situation of Alaska. Alaska receives more per capita in federal grant spending than any other state by a wide margin. There are some logical reasons for this, including the large land area of Alaska, the high proportion of native Americans, and expenditures associated with the large federal presence in Alaska through the military and public lands. It is very much in the interest of Alaska's citizens to make sure that federal "grant" spending associated with the commitments of the Statehood Act (e.g., mineral leasing payments) and with the federal presence in Alaska (e.g, impact aid) become disassociated from traditional federal grants that are under attack in budget battles in Washington and potential candidates for "swaps" of federal and state responsibility. Alaska's leaders will also want to be careful to ensure that any New Federalism proposals they support do not place larger future fiscal burdens on Alaska than on other states.

With these concerns out of the way, there is much to be said from an Alaskan perspective for support of the devolution of federal power as it is exercised through the federal grant system. In this effort, Alaskans will be making common cause with leaders of 50 states. However, it should be recognized that issues which are paramount to leaders of many states, such as shifting income maintenance responsibilties to the federal government, are not necessarily the most compelling concerns in Alaska and that Alaskans will want to use the concerns associated with the federal grant and regulatory presence as a climate in which to seek other improvements in Alaska's status.

PUBLIC LANDS

It is unrealistic to expect that the majority of Americans, indeed the majority of American political leaders, will ever fully understand the problems of states with large federal landholdings. For Americans

east of the Mississippi River the primary public lands problem is to get the federal government to acquire MORE lands to expand national parks and secure open space in those states. Problems of fish and game regulations, commercial access, and other public land issues simply are not key issues to the leaders of these states.

For the changes in public land management sought by Alaskan leaders to get a prominent place on the national agenda will require linking public land problems to problems that are relevant east of the Mississippi. There are basically two ways to accomplish this.

The first is simply regional politics and coalition building. The East has some major problems which are as regional as public lands are in the West. Investments in water supply, infrastructure and certain international trade concerns are examples. Differing regional concerns are not new in the United States. Our very Constitution came out of the "great compromise" among regions. However, compromises cannot result unless there are parties to sit at the table to negotiate them, which suggests the importance of the commission's recommendations regarding cooperation of Western states.

The second approach involves translating concerns over federal intrusion into specifics of interest to Alaskans. Public land issues that can be fit into this framework will be better handled from an Alaskan perspective than when public land issues are seen as arguments over giving away nationally owned resources.

OTHER ISSUES

As discussed in Chapter 6, there is a limited but tenuous relationship between desires to reduce federal control over state and local affairs and desires to reduce federal control over the lives of citizens and the activities of firms. Currently, the Reagan administration's deregulation efforts are treating both together. Two laws that are quite significant to Alaska citizens -- restrictions on Alaskan oil imports and a requirement that shipping within the United States occur on U.S.-owned ships -- can probably be best addressed in the general context of lifting the weight of unnecessary and cost-increasing regulation from the shoulders of U.S. citizens and businesses.

SPECIFIC DEVOLUTION PROPOSALS

In developing its final report, the commission will be considering a variety of specific proposals that it might support. This section provides a sort of "shopping list" of devolution proposals that might be recommended by the commission. The list covers the full range of

REGULATORY REFORM

#8 SUPPORT THE PRESIDENT'S REGULATORY REFORM EFFORTS: This administration has been strongly oriented toward regulatory reform, including reforms in regulation of state and local government as well as regulation of the private sector. In addition to broad support of these efforts, the state of Alaska could take specific actions to promote federal regulatory reform. One approach is to conduct a survey of all state, and possibly some local, agencies to determine those federal regulations that are viewed as most burdensome and least justified. Another approach is to commission a survey of several Alaskan communities on the same subject, but covering regulation of private as well as governmental conduct.

#9 SUPPORT REGULATORY REFORM LEGISLATION: Regulatory reform legislation is currently pending in Congress. Legislation of this type could be supported, particularly provisions that would permit congressional veto of regulations, exempt small business and small governments from certain regulatory burdens, and provide "sunset" (automatic expiration) for regulations.

DEFENSE AGAINST NEW FEDERAL INTRUSIONS

#10 CONTINUE OPPOSITION TO INTRUSIONS MOST ONEROUS TO ALASKA: The potential federal intrusion into state policy with the most economic significance for Alaska is proposed federal limitation on state severance taxes. The federal courts have refused to override states on this subject, so the arena has shifted to Congress. Other issues of interest include Outer Continental Shelf leasing, overrides of state and local securities and financial regulatory laws, override of hazardous waste controls, and power plant siting.

#11 ESTABLISH A DEFENSE FUND TO LOBBY AGAINST FURTHER FEDERAL INTRUSION: Chapter 6 reported on the factors that tend to cause further federal intrusions into state and local affairs and noted that state and local officials have often been advocates of intervention. This means that organizations of state and local officials are not consistent protectors against federal intrusion. Chapter 6 also pointed out that business interests frequently favor extension of federal power at the expense of state and local governments. There is no organization in Washington that consistently opposes extension of federal power into state and local affairs on principle. Alaska could lead in the establishment of such a group, either by trying to interest others or actually appropriating seed money for it. Such a group, working in the legislative process, could complement a legal defense fund (#2) working in the judicial process.

GENERAL ASSAULTS ON FEDERAL CAPACITY

The federalism debate can be viewed as a war between the states and the federal government. If one views the situation this way, one examines the enemy's assets and trys to minimize them. Fundamentally, the federal government has used two major assets to take over many responsibilities formerly exercised by state governments, local governments, or left to the people. These assets are money and reputation.

The lure of federal money accounts for many of the intrusions of the federal government into such areas as law enforcement, fire protection, libraries, and local schools. As discussed in Chapter 6, it is the lack of money which is stimulating much of the federal pullback from these areas. A strategy designed to encourage further federal pullouts (at the possible expense of state and local budgets, of course) would:

(1) Cut federal taxes as much as possible,

(2) Eliminate federal borrowing as a source of funds (e.g., balanced budget amendment) and/or create political pressures to reduce the federal deficit, and

(3) Ensure that available federal funds were used up by federal programs not intruding on state and local government such as national defense, foreign aid, space exploration, and Social Security.

The second federal asset is reputation -- the concept that federal action promises to have positive effects in curing national problems ranging from crime to poverty. One tactic in any battle against federal power is to destroy or minimize this reputation. The public opinion material cited in Chapter 6 suggests that much of this work has been done.

CONTRACTS FOR THE ADMINISTRATION OF FEDERAL PROGRAMS AND REGULATIONS

The preliminary report of the commission indicates some interest in the state making arrangements to administer federal programs on some sort of contract basis.

There are a few situations in which the federal government does contract with state and local government for the administration of a federal function. Examples are contracts with state universities for

research and contracts with state and local hospitals for the care of patients whose care is a federal responsibility (e.g., merchant seamen, military personnel, and certain veterans). The federal government also contracts with state agencies to make disability determinations under the Supplemental Security Income program.

More common than contracts are grant programs in which the federal government provides a grant to state government for the purpose of administering a national program. In some programs, such as Food Stamp administration, the federal government gives state officials essentially no discretion. In other cases, such as pollution control, the federal government sets minimum standards and gives state officials significant (but not enough) discretion in administration. This pattern of state regulation with federal standards and cost sharing is the mechanism used for many of the federal regulatory activities discussed in Chapter 4. Examples are occupational health and safety, water pollution control, and certain agricultural inspection programs.

Some idea of the difficulties for Alaskans in encouraging return of power to the states is indicated by the fact that, when offered power in such arrangements, some states do not accept the offer. For example, the meat and poultry inspection program allows states to administer the program or opt not to do so and have the federal government administer the program. Only 23 states, including Alaska, have chosen to administer both meat and poultry programs.

Thus, the issue is not normally a question of the federal government using a contract mechanism for the administration of federal programs, at least as terminology is used in Washington. Instead, potentials for state administration of federal standards and programs are subsumed under the general topic of grant reform, which is discussed below.

TURNBACK OF FEDERAL RESPONSIBILITIES WITHOUT FEDERAL FUNDING

There are some situations in which Alaskans may want to pursue a turnback of federal responsibilities without federal funding being involved. This is the case for wetlands usage and marine mammals, as discussed in Chapter 5. These are cases in whch no specific federal grant program is directly involved in the activity.

#12 ENCOURAGE FEDERAL AGENCIES AND THE CONGRESS TO MINIMIZE THE CONDITIONS STATES MUST MEET TO TAKE OVER FEDERAL ACTIVITIES: As Alaskans know from the discussion of the subsistence issue on the ballot, the ability of the state to carry out certain actions may be conditioned by compliance with federal requirements. This is a problem, for example, with marine mammals and wetlands management. The commission can

recommend the minimization of these barriers and could take, or encourage others to take, specific action to find and identify these barriers. One approach would be to survey state agencies for programs that they could take over but for barriers, and turn over the resulting list to the congressional delegation.

#13 CONSIDER WITHDRAWAL FROM SOME FEDERAL GRANT PROGRAMS: Because the most onerous of federal regulations are found in grant programs, one way out of the regulations is to get out of the grant programs. This was considered, for example, for vocational education in Alaska.

In the 1960s, many Southern states and school districts declined federal grants because they would not accept the civil rights requirements connected with them. Since then there have been few examples of state rejection of federal grants, excepting programs (e.g., meat and poultry inspection) where the federal government would provide the regulation if the state opted not to provide it. However, state rejection of federal grants in particular programs is always a possibility.

State rejection of federal funds from particular programs would have salutory effects on other states. A federal bureaucrat is particularly embarrassed whose profferred grants are rejected. Rejection would tend to encourage a federal review of the regulations and requirements which caused Alaska to reject a particular grant. Increasingly, federal funds are being concentrated in block grants and larger programs (e.g., Medicaid) that are too expensive to reject. However, there remain some smaller programs where rejecting federal funding is a possibility.

The state could use its budget process to identify programs for state government where federal assistance could be dropped. An individual city government could do the same thing in its budget process. Assuming that the process produced some grants that could be dropped, the state would appropriate funds to cover the loss of federal funds. The state funding would be somewhat less, say 10% to 20% less, than the lost federal funds to reflect economies associated with avoiding paperwork and federal regulations causing inefficient uses of funds.

Refusing federal grants is a difficult step to take because it does involve not taking some federal funds to which the state is entitled. A more attractive approach, from a state perspective, would be federal legislation that permitted transfers of funds among grant programs. With such legislation, Alaska would be free to drop federal funding in some areas without loss of federal funds.

TURNBACK OF FEDERAL RESPONSIBILITIES WITH FEDERAL FUNDS

#14 SUPPORT NEW FEDERALISM POLICIES THAT WOULD TURN BACK RESPONSIBILITIES FOR CURRENT FEDERAL PROGRAMS TO THE STATES: Chapter 7 discusses a variety of New Federalism proposals currently under discussion in the administration and Congress and by state leaders. These proposals have in common:

(1) Withdrawal of the federal government from a number of grant programs and the regulations that accompany them, and
(2) Providing the states with additional financial resources roughly equivalent to the loss of federal aid by:
   (a) A federally funded trust fund
   AND/OR
   (b) Federal assumption of programs currently partly funded by states.

It is not realistic to expect the Statehood Commission to pick and choose among the many alternatives now under consideration. As a practical matter, if New Federalism is to be enacted at all, the state's choice will be whether or not to support some sort of compromise proposal that has not yet been drafted. Thus, all the commission can be expected to do is indicate support of, or opposition to, the family of proposals described above. In the president's initial proposal Alaska would save $32 million from federal assumption of Medicaid, spend an additional $53 million to maintain public assistance benefits with no federal cost sharing, lose $165 million in federal assistance in programs that would be terminated, and get an allocation of $187 million from the proposed trust fund which, ignoring rounding errors, is a net gain/loss of zero.

The programs proposed by the administration for turnback to the states are listed below:

Program	Number of Separate Grants
Rehabilitation Services	5
Vocational and Adult Education	9
Elementary and Secondary Education Block Grant	28
Comprehensive Employment and Training	5
WIN (employment and training)	1

Low Income Energy Assistance Weatherization	1
Emergency Assistance (welfare)	1
Child Nutr. (School Lunch, etc.)	10
Child Welfare	2
Adoption Assistance	1
Foster Care	1
Runaway Youth	1
Child Abuse	1
Social Services Block Grant	3
Legal Services	1
Community Service Block Grant	1
Preventive Health Block Grant	8
Alcohol, Drug Abuse, and Mental Health Block Grant	5
Primary Care (Health) Block Grant	1
Maternal and Child Health Blk. Gr.	7
Primary Care Research	1
Black Lung Clinics	1
Migrant Health Clinics	1
Family Planning	1
Women, Infants, and Children Special Feeding (WIC)	2
Aid for Airports	2
Highway Programs	9
Transit Programs	4
Rural Water and Waste Disposal	1
Water and Sewer Loans	1
Community Facility Loans	1
Community Development Block Grant	2
Urban Development Action Grants	1
Waste Water Treatment Grants	1
Occupational Health and Safety	1
General Revenue Sharing	1

TOTALS	
Programs	45
Grants	122

SUPPORTING GRANT REFORM

#15 ENCOURAGE THE CONSOLIDATION OF NARROW CATEGORICAL GRANTS INTO BROADER BLOCK GRANTS: For the grant programs that are to be continued, the commission could endorse the concept of block grants. Congress enacted some significant block grants in 1981 at the request of the president. The president's current budget recommendations include several additional block grants.

The commission could also encourage passage of the Federal Assistance Reform Act, which contains a provision allowing the president to consolidate grants by executive order, subject to veto by Congress.

#16 ENCOURAGE OTHER GRANT REFORMS: There are a variety of other grant reforms which the commission could endorse. These are discussed in Chapter 8 and, in more detail, in many publications of the Advisory Committee on Intergovernmental Relations. The commission may wish to avoid details and simply endorse grant reforms, which have been proposed by ACIR and others, that would simplify grant administration, reduce paperwork, and increase the flexibility accorded to state and local officials.

In the context of discussions of grant reform, it will continue to be important to Alaska to preserve the important funding from federal programs that are associated with "the cost of doing business." These include shared revenues from mineral leasing, shared timber receipts, impact aid and other programs designed to compensate state and local government for the fact that the federal government does not pay state and local taxes. Besides having a different rationale from regular grant programs, these programs do not have extensive regulation or paperwork requirements.

REGIONAL ORGANIZATIONS

In some cases, it can be argued that the major reason for federal action is that individual states cannot be allowed to control situations which affect several states. In this situation, there is an alternative to federal action, which is action by the affected states acting together through a compact or other agreement.*

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*Persons wishing more detailed information on this subject should consult ACIR, Multistate Regionalism (second printing, 1978).

Interstate compacts have been used in a variety of ways to promote interstate cooperative efforts. Some of the major compacts include the Atlantic States Marine Fisheries Compact, the Great Lakes Basin Compact, several nuclear compacts, the New England Police Compact, the Western Compact for Higher Education, and a variety of mass transit and river basin compacts. The largest interstate compact agency is the New York Port Authority which owns many facilities including the World Trade Center.

The interstate compact would appear to have little appeal for Alaska, as a non-contiguous state. Alaska has a few subject matters of common interest with other states. Specialized higher education (the subject matter of the Western Compact for Higher Education) and fisheries are two examples. However, in other areas such as pollution control, mutual police assistance, river basin planning and the like, Canada, rather than other states, is the logical partner for Alaska and the logical vehicle for agreement is a treaty, which can only be entered into by the federal government, not individual states.

SPECIAL ARRANGEMENTS FOR ALASKA OR NON-CONTIGUOUS STATES

The commission's preliminary report indicated an interest in exploring the prospects of special treatment of non-contiguous states and possible agreements between Alaska and the federal government regarding devolution of powers. Such special treatment appears unlikely to develop.

The notion of "generality" of laws has a significant attraction in our culture. The concept is that laws should not be directed at individual situations, but directed at categories. The prohibition against bills of attainder in the U.S. Constitution is an example of an application of this concept to individuals.

There is no legal reason why Congress could not enact laws applicable only to Alaska, even given the "equal footing doctrine." States, with constitutions comparable to the federal one, often have laws that create classes where only one local government falls in the class. While the notion of passing "general" laws would not seem a bar to special treatment of Alaska, the concept has wide acceptance as a standard of legislative conduct. For example, provisions in grant law designed to limit the entitlements of New York City, New York State, and California are typically phrased generally (e.g., provided that no single recipient shall be awarded more than 10% of the funds appropriated pursuant to this act).

Singling out Alaska or a group of states could be done in this fashion. Another approach with the same result is to pass general

legislation giving states options of doing something under circumstances where Alaska would be the only state likely to exercise the option. An example might be a law giving any state the opportunity to buy all federal electric power facilities within its borders at an appraised fair market value.

Given that distinctions can be made among states, is the fact of non-contiguity a reasonable basis for distinction?

To answer this question on a public policy basis one needs to turn to some principles of federalism such as those described in Chapter 2. Of those, the one most likely to be applicable is the economist's concept of externalities. The concept is that federal action may be required if the benefits of action in one state are felt in another. For example, federal action will likely be appropriate when one state's pollution affects a downwind or downstream state.

Lack of externalities would argue for special provisions for non-contiguous states in some instances. It would argue that Alaska and Hawaii should have a much freer hand in air and water pollution decisions than West Virginia, though not necessarily less than those contiguous states that geographically cannot easily pollute their neighbors (e.g. Delaware and Florida).

However, the externalities argument involves dealing with questions of fact in each case. Highway safety provides an example. So long as Alaskan and Alabaman drivers driving in those states injure only their fellow residents, there is no externalities argument to justify federal highway safety laws. The extent to which federal intervention would be justified through externalities would be based on the factual question of how much each state's drivers exposed non-residents to risk, which depends both on how much they drive in other states and how much drivers of other states drive in their state.

As pointed out in Chapter 2, much federal intervention is based upon a "timely contribution" test. This test merely requires a finding that the federal action will be helpful for some reason. Using this test suggests no distinction for non-contiguous states. Teaching handicapped children, humane treatment of prisoners, avoiding impure meats, avoiding industrial accidents, having pure drinking water, etc. are all presumably good things. If the motivation for federal legislation is to make sure that all Americans have these and other good things, there is no logical basis for depriving certain Americans of these good things merely because they are separated from other Americans by Canada or the Pacific Ocean.

Attempts to secure special treatment for any particular state in federal regulatory programs, including those with a grant component, are thus unlikely to be successful. This conclusion is indicated by the scarcity of special treatments in the current patterns of federal regulation.

CONCLUSION

In its preliminary report, the commission commented: "We feel that now is the critical time to attempt redistribution of powers from the federal to the state level." All of the evidence in this report -- the attitudes of other state leaders, the Reagan administration's approach to federalism, and public opinion -- suggest that this is the case. Such redistribution would by no means solve all of the problems that led to the establishment of the commission by the citizens of Alaska, but could certainly eliminate many of the problems which Alaska citizens and leaders share with citizens of other states. However, the status quo is defended both by powerful interests and inertia, which means that change will not come without effort.

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Item 6

F I R S T E N R O L L E D C O P Y

Constitutional Convention
Committee Proposal/12/Enrolled
January 23, 1956

ALASKA CONSTITUTIONAL CONVENTION

COMMITTEE PROPOSAL NO. 12

Introduced by Committee on Executive Branch

Article Containing General and Miscellaneous Provisions

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution:

GENERAL AND MISCELLANEOUS PROVISIONS

Merit Principle

Section 1. The legislature shall provide for a system under which the employment of persons by the State shall be governed by the merit principle.

Employees Retirement

Section 2. Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired.

Disqualification for Disloyalty

Section 3. No person who advocates, or who aids or belongs to any party, organization or association which advocates the overthrow by force or violence of the government of this State or of the United States shall be qualified to hold any public office of trust or profit under this constitution.

Oath of Office

Section 4. All public officers, before entering upon the duties of their respective offices, shall take

Board shall have power, in accordance with law, to formulate policy, and to appoint the President of the University, who shall be its executive officer.

Rules of Interpretation

Section 7. Titles, subtitles and marginal titles are not to be used for purposes of interpreting this Constitution.

Section 8. In this Constitution the personal pronoun is to be interpreted to include persons of both sexes.

Section 9. The enumeration in this Constitution of specified powers is not to be interpreted as a limitation upon the powers of the state government.

Section 10. The provisions of this Constitution are to be interpreted as self-executing whenever possible.

Office of Profit

Section 11. Service in the armed forces of the United States or of the State is not an office or position of profit as the term is used in this Constitution.

Disclaimer Regarding Native Lands

Section 12. The state of Alaska and its people do agree that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of the Act of Admission of this state, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights) the right or title to which may be held by any Indians,

Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property, belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe and except when held by individual natives in fee without restrictions on alienation; and that no taxes shall be imposed by the State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restriction on alienation.

Consent to Enabling Act

Section 13. All provisions of the Act admitting Alaska to the Union which reserves rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property made to Alaska, are consented to fully by the state of Alaska and its people.

Constitutional Convention
Committee Proposal/12
December 15, 1955

ALASKA CONSTITUTIONAL CONVENTION

Report of the Committee on Executive Branch

Honorable William A. Egan
President, Alaska Constitutional Convention

Dear Mr. President:

The Committee on the Executive Branch presents for consideration and adoption by the Convention the attached article entitled General and Miscellaneous Provisions; although these provisions are of particular interest to this committee, they were not included in the proposed Article on the Executive Branch because they have application also to the other branches of government.

A commentary is also attached which explains the purpose of each section.

Respectfully submitted,

Victor Rivers, Chairman

Frank Barr

John C. Boswell

Thomas C. Harris

Maynard D. Londborg

Katharin Nordale

H. R. VanderLeest

Constitutional Convention
Committee Proposal/12
December 16, 1955

ALASKA CONSTITUTIONAL CONVENTION

COMMITTEE PROPOSAL NO. 12

Introduced by Committee on Executive Branch

Article Containing General and Miscellaneous Provisions

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution:

Merit Principle

Section 1. The legislature shall provide for a system under which the employment of persons by the State shall be governed by the merit principle.

Employees Retirement

Section 2. Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired.

Disqualification for Disloyalty

Section 3. No person who advocates, or who aids or belongs to any party, organization or association which advocates, the overthrow by force or violence of the government of this State or of the United States shall be qualified to hold any public office or employment.

Oath of Office

Section 4. All public officers, before entering upon the duties of their respective offices, shall take and subscribe to the following oath or affirmation

"I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as _____ _____ to the best of my ability". The legislature may prescribe further oaths or affirmations.

Inter-Governmental Relations

Section 5. The State and its political subdivisions may cooperate with the United States and its territories and with other states and their political subdivisions on matters of common interest and, to the extent consistent with the laws of the United States, with foreign nations. The respective legislative bodies may appropriate such sums as may be necessary for this purpose. In all intergovernmental relations involving the state, the Governor shall act as the agent of the state.

Constitutional Convention
Committee Proposal/12
December 16, 1955

CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 12

Commentary on the Article on General and Miscellaneous Provisions

Section 1. Merit Principle: Only employment in certain Federally aided programs of the Territory is now governed by the merit principle. This section would call upon the legislature to establish a system under which employment generally by the state would be governed by the merit principle. A system governed by the merit principle would be one, for example, which comprehended professional, technical, clerical, and administrative positions of the state government. The positions comprehended within the system would be classified according to duties and responsibilities. Salary ranges would be established for the various classes of positions. Appointments would be made according to merit and fitness which would be ascertained, so far as practicable, by competitive examinations.

Section 2. Employee's Retirement. This will assure state and municipal employees who are now tied into various retirement plans that their benefits under these plans will not be diminished or impaired when the Territory becomes a state.

Section 3. Disqualification for Disloyalty. This conforms with the language of the Congressional enabling bills.

Section 4. Oath of Office. The oath is self-explanatory.

Section 5. Intergovernmental Relations. This provision is recommended mainly in order to make it clear that the state can participate in cooperative programs such as the Western Interstate Compact on Higher Education even though such programs may involve the expenditure of public funds outside the state. Some states have had to amend their constitutions in order to participate in such programs.

This provision would also authorize local government units in Alaska to cooperate with Federal agencies on grant-in-aid programs such as housing and airport construction. Local government units could maintain direct relations with Federal agencies, but the Governor would serve as agent for the state in developing the intergovernmental relations of state agencies.

In view of the close relationships which Alaska will have with the neighboring Canadian provinces, explicit authority is granted to the state to cooperate with foreign nations to the extent consistent with the laws of the United States.

Constitutional Convention
Committee Proposals/12/15 & 16
Style and Drafting/Article XII
January 30, 1956

ALASKA CONSTITUTIONAL CONVENTION

REPORT OF THE COMMITTEE ON STYLE AND DRAFTING

Hon. William A. Egan, President
Alaska Constitutional Convention

Dear President Egan:

Your Committee on Style and Drafting herewith presents its redraft of the Article on General and Miscellaneous for consideration by the Convention.

Respectfully submitted,

George Sundborg, Chairman
R. Rolland Armstrong
Edward V. Davis
Victor Fischer
Mildred R. Hermann
James J. Hurley
Maurice T. Johnson
George M. McLaughlin
Katherine D. Nordale

REPORT OF THE COMMITTEE ON STYLE AND DRAFTING

Constitutional Convention
Committee Proposal/12
Style and Drafting/Article XII
January 30, 1956

ALASKA CONSTITUTIONAL CONVENTION

RESOLVED; that the following be agreed upon as part of the Alaska State Constitution:

ARTICLE XII

GENERAL AND MISCELLANEOUS

Civil Service

Section 1. The legislature shall establish a system under which the merit principle will govern the employment of persons by the State.

Retirement Systems

Section 2. Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.

Disqualification for Disloyalty

Section 3. No person who advocates, or who aids or belongs to any party or organization or association which advocates, the overthrow by force or violence of the government of the United States or of the State shall be qualified to hold any public office of trust or profit under this constitution.

Oath of Office

Section 4. All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear, or affirm, that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully dischage my duties as _____ to the best of my ability". The legislature may prescribe further oaths or affirmations.

Inter-governmental Relations

Section 5. The State and its political subdivisions may cooperate with the United States and its territories and with other states and their political subdivisions on matters of common interest. The respective legislative bodies may make appropriations for this purpose. The governor shall act as the agent of the State in all intergovernmental relations involving the State.

Interpretation

Section 6. Titles and subtitles shall not be used in construing this constitution. Personal pronouns used in this constitution shall be construed as including persons of both sexes.

General Power

Section 7. The enumeration of specified powers in this constitution shall not be construed as limiting the powers of the State.

Provisions

Section 8. The provisions of this constitution

Self-executing

shall be construed to be self-executing whenever possible.

Law-Making Powers

Section 9. As used in this constitution, the terms "by law" and "by the legislature", or variations of these terms, are used interchangeably when related to law-making powers. Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI.

Office of Profit

Section 10. Service in the armed forces of the United States or of the State is not an office or position of profit as the term is used in this constitution.

Consent to Enabling Act

Section 11. All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property, are consented to fully by the State and its people.

State University

Section 12. The University of Alaska is hereby established as the state university and constituted a body corporate. It shall have title to all real and personal property now or hereafter set aside for or conveyed to it. Its property shall be

administered and disposed of according to law.

Board of Regents

Section 13. The University of Alaska shall be governed by a board of regents. The regents shall be nominated and appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session. The board shall, in accordance with law, formulate policy and appoint the president of the university. He shall be the executive officer of the board.

b. Example / Checklist Contact Sheet

LEGISLATIVE SPONSOR: House State Affairs

Pub. Hear Work Ses. Inv. Hear

LEGISLATIVE REFERENCE: HJP34/HJP35

SUBJECT: Const Amend: State Sovereignty/ Coop. Foreign Nations

CONTACT: Ann PH: 4931

TC DATE/DAY: Mon. Tues, Mar 29

TIME: 8:30 - 10:00 AM

JUNEAU ROOM: C-102

BRIDGE:

OF PORTS:

DATE TAKEN/BY: 3/24/89 Glenn

****

TELECONFERENCE SITES:

LIO'S	LTC'S	VTS'S
Anchorage – Miles Dale 337-7910	Homer	See List on Reverse Side
Barrow *	Wrangell	
Bethel		
Delta Junction *		
Dillingham *		
Fairbanks		
Glennallen *	ALL LIO'S	
Juneau		
Ketchikan	OTHER SITES WELCOME WITH PRIOR NOTIFICATION	
Kodiak		
Kotzebue		
Mat-Su		
Nome		
Petersburg *		
Sitka – John Dapcevich 747-8383 747-3663		
Soldotna		
Valdez *		

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CHAIRING SITE: Juneau

CHAIRPERSON: Rep. Bunch

[ ] CONFORMS TO LEGISLATIVE COUNCIL POLICY 4/85

SIGNATURE OF SPONSOR/CONTACT PERSON DATE

****

LIO will call the offnet. per Quinn 3/28 9:30 AM

SPECIAL INSTRUCTIONS

* SESSION ONLY

LIO Miles DAVIS - Anchorage
337-7910

OFFICE
— Brian Rodgers (474-7448)
Fairbanks

LIO Sitka
— John Dapcevich 747-8383

Tuesday, March 29th
8:30

HCR 34&35

THE FOLLOWING DOCUMENT HAS NOT BEEN FILMED BUT IS AVAILABLE IN THE ORIGINAL FILE

file w/ my bill on Constitution

Intergovernmental PERSPECTIVE

Summer 1989, Vol. 15, No. 3

Judicial Federalism

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS