Florida Law Review

Volume 20 | Issue 4 Article 6

March 1968

Current Issues in Fiscal Federalism: Federal Grants-in-Aid

Jerome R. Hellerstien

CURRENT ISSUES IN FISCAL FEDERALISM: FEDERAL GRANTS-IN-AID

JEROME R. HELLERSTEIN*

During the past several years, the longstanding concern of students of public finance over the ability of state and local governments to pay for rapidly expanding public services and facilities at rising costs has been focused on the Heller-Pechman plan and other proposals for federal sharing of revenues with the states.[1] Such programs for returning to the states billions of dollars each year out of federal taxes, either with no strings attached or with only broad restrictions on expenditure of the funds by state and local governments, would, if adopted, mark a radical new departure in our fiscal federalism. Heretofore, federal grants-in-aid have been designated to assist specific, identified (albeit in recent years rapidly multiplying) projects such as the interstate highway program, aid to dependent children, slum clearance, school-aid and antipoverty projects, and have been conditioned upon the states' meeting standards set up in the legislation for carrying out the purposes of the grant; and they have frequently required the states to provide matching funds.

The "fiscal mismatch" between the expenditure needs and revenue resources of state and local governments and those of the federal government lies at the root of proposals for massive new federal grants-in-aid, whether in the form of expanded traditional conditional grants, or as block grants.[2] State and local governments throughout the country have been experiencing recurring fiscal crises, as public services have been expanding and expenditures have been burgeoning. Many believe that the states lack adequate or acceptable revenue resources of their own to meet skyrocketing costs. At the same time, however, during peacetime or cold war conditions, federal tax revenues have tended to outstrip the national government's expenditure requirements.[3] True, the Viet Nam conflict, into which $20 to $30 billion is now being poured annually, has eliminated federal surpluses, but peace must one day break out, and the fiscal economists seek to prepare the way now for dealing with the gap between the federal revenue and expenditure pattern while simultaneously enabling state and local governments to meet their mounting expenditure requirements.

This disequilibrium between fiscal needs and resources at the federal and state-local levels results in part from the difference between the federal and state-local tax structures. The federal government places its reliance primarily on individual and corporate income taxes, the revenues from which

---

*B.A. 1927, University of Denver; M.A. 1928, State University of Iowa; LL.B. 1931, Harvard University; Professor of Law, New York University School of Law, 1959 to date.

1. SUBCOMM. ON FISCAL POLICY OF THE JOINT ECONOMIC COMM. OF CONG., 90TH CONG., 1ST SESS., REVENUE SHARING AND ITS ALTERNATIVES: WHAT FUTURE FOR FISCAL FEDERALISM?, (Joint Comm. Print 1967). [hereinafter cited as REVENUE SHARING COMPENDIUM].

2. See Weidenbaum, *Federal Aid to State and Local Governments: The Policy Alternatives*, in REVENUE SHARING COMPENDIUM, *supra* note 1, at 652.

3. *Id.*

rise with economic growth, whereas states and localities rely principally on regressive or proportional taxes—property, sales, and use taxes—revenue from which grows less rapidly, or at least no faster, than our economy.[4]

At the same time, expenditure needs of state and local governments tend to outpace the growth of the economy, whereas federal expenditure needs—always excluding wars—have not been accelerating in proportion to the growth of the economy.[5] Thus, in recent years state and local spending has been rising eight to nine per cent a year faster than our GNP,[6] while federal expenditures between 1955 and 1965 remained at about the same percentage of the GNP.[7] During the decade 1955 to 1965, state and local governmental expenditures rose by 125 per cent, nearly twice the federal increase of sixty-five per cent (excluding war and defense costs). The consequence is that while federal spending lagged behind the seventy per cent growth in GNP during the decade, state and local expenditures grew eighty per cent faster than the GNP.[8] As Professor Kenneth Galbraith has suggested, "prosperity gives the Federal Government the revenues and the state and local governments the problems."[9] Or as Dr. L. L. Ecker-Racz has put it, "national progress bestows both bounties and burdens: the bounties tend to be national, the burdens State and local."[10]

The Heller-Pechman plan, which has been at the center of the recent discussions of federal aid to the states,[11] was presented publicly in 1964 at a time when we were faced with a "fiscal drag," that is, "a budgetary situation in which at full employment levels of income, Federal tax receipts are expanding more rapidly than Federal expenditures."[12] There were perhaps $5 to $7 billion a year of excess federal collections that, if granted to state and local governments, would have eased their financial plight and enabled them to meet expanding demands for public services and facilities.

There are several possible alternative uses of such surpluses, should they recur, as fiscal economists widely believe they will when the Viet Nam conflict ends. They could be used to reduce taxes or to cut the federal debt. Such measures, though widely supported, are rejected by many economists

---

4. *Id.* at 653.

5. *See* ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS [hereinafter cited as ACIR], FEDERAL-STATE COORDINATION OF PERSONAL INCOME TAXES 42 (1965).

6. *See* Weidenbaum, *supra* note 2, at 653.

7. *Id.*

8. *See* W. HELLER, NEW DIMENSIONS OF POLITICAL ECONOMY 128 (1966).

9. *Quoted by* W. HELLER, *id.* at 118.

10. *Quoted by* W. HELLER, *id.*

11. *See* W. HELLER, *supra* note 8, at 118; Pechman, *Financing State and Local Governments*, in REVENUE SHARING COMPENDIUM, *supra* note 1, at 763. Dr. Selma Mushkin has categorized Dr. Heller's work, NEW DIMENSIONS OF POLITICAL ECONOMY as "the bible of tax sharing." Mushkin, *A Revenue Share for the Cities?*, in REVENUE SHARING COMPENDIUM, *supra* note 1, at 991.

12. *See* Break, *Unconditional Grants-in-Aid*, in REVENUE SHARING COMPENDIUM, *supra* note 1, at 816, 845. *See* Dr. Heller's comment on the "fiscal drag," *supra* note 8, at 64. For a different view as to the likelihood of a fiscal drag in the United States see Harriss, *Federal Revenue Sharing with the States*, in REVENUE SHARING COMPENDIUM, *supra* note 1, at 796, 812 *et seq.*

because of their tendency to result in deflation, cutbacks in employment, reduction in general economic activity, and over-all curtailment of economic growth.[13] Distribution of federal surpluses to the state and local governments would thus not only assist these governments in meeting pressing needs, but would also result in expenditures that would flow into the economic stream and strengthen and expand the economy.

THE MOUNTING COSTS OF STATE AND LOCAL SERVICES

During the decade 1955 to 1965, state and local general expenditures increased from $33.7 billion to $74.5 billion.[14] True, part of the rising state and local costs were met by federal grants-in-aid, but in 1965 the state and local governments provided over 85 per cent of the funds required from their own resources.[15]

To a considerable extent the sharp rise in the costs of providing state and local governmental services involves merely the need to run faster to stay at the same place, due to rapidly increasing costs of goods and services and growth in population. Such additional costs accounted for about two-thirds of the rise in costs over the decade; new services or improved quality of old services accounted for only about $14.6 billion out of $40.8 billion of the added costs.[16]

Education is by far the largest factor in state and local governmental expenditures. In 1965, 38.3 per cent of the outlay of these governments went for schooling, including higher education. Highways, by contrast, accounted for 16.4 per cent. Education costs of state and local governments between 1953 and 1965 rose from $9.4 billion to $28.6 billion, while highway expenditures increased from $5 billion to $12.2 billion.[17] All evidence points to persistently rising costs in the years ahead — the unrest of teachers, policemen and firemen, welfare workers, and other state and local governmental employees over the country indicates that salaries of civil servants will continue to rise sharply.[18] The pressures on state and local governments in the years ahead will continue to rise unabated and, indeed, probably at an accelerated

---

13. Brazer, *Our Hard Pressed State and Local Governments*, in REVENUE SHARING COMPENDIUM, *supra* note 1, at 860; Break, *supra* note 12, at 845-47; Pechman, *supra* note 11, at 767-68; Schaller, *Federal Grant-in-Aid: A Review*, 1965 NAT'L TAX ASS'N PROCEEDINGS 96.

14. BUREAU OF CENSUS, DEP'T OF COMMERCE, GOVERNMENTAL FINANCES IN 1964-1965, at 18, table 3 [hereinafter cited as 1964-1965 GOVERNMENTAL FINANCES]; BUREAU OF CENSUS, DEP'T OF COMMERCE, SUMMARY OF GOVERNMENTAL FINANCES IN 1955, at 24, table 6 [hereinafter cited as 1955 SUMMARY OF GOVERNMENTAL FINANCES].

15. 1964-1965 GOVERNMENTAL FINANCES, *supra* note 14.

16. *See* COMM. FOR ECONOMIC DEVELOPMENT, A FISCAL PROGRAM FOR A BALANCED FEDERALISM 19 (1967).

17. 6 CENSUS OF GOVERNMENTS, HISTORICAL STATISTICS ON GOVERNMENT FINANCES AND EMPLOYMENT, table IV-12 (1962); 1964-1965 GOVERNMENTAL FINANCES, *supra* note 14.

18. Illustrative of the trend is the negotiation of a new agreement between the City of New York and the United Federation of Teachers in September 1967, which is estimated to increase costs during the next two years by about $125 million. *See* N.Y. Times, Sept. 12, 1967, §1, at 46, col. 1.

rate. Consider as examples the pressure for improving and expanding plant and equipment, the need to provide colleges, universities and technical institutes to meet society's insatiable demand for trained people, the recent recognition of the dangers to health and living hazards from air and water pollution, the inadequate water supply and sewage disposal, the rising standards and costs of welfare and medical services, the renewed pressures (punctuated in part by the Negro riots that swept the country in 1967) for large-scale slum clearance, housing and urban renewal programs, the demands for leisuretime facilities, and the new cultural explosion with its call for public funds for music, theater, and other activities.

The Rise of State and Local Revenues

The responsiveness of state and local revenues to increasing expenditure pressures has been a source of considerable surprise to many observers. In the past decade state and local tax collections have more than doubled. Thus, in 1955, state and local governments collected $23.5 billion in taxes;[19] ten years later this figure had risen to $51.2 billion.[20] The property tax alone rose by nearly $12 billion during the decade and accounted in 1965 for 44 per cent of state and local tax total revenues.[21] Indeed, the property tax, whose "demise . . . has long been predicted," produced more revenues in 1965 than any tax levied in this country other than the federal income tax.[22] The sales and use tax and related gross-receipts taxes[23] have continued to grow rapidly. In 1965, they brought state and local treasuries $17.1 billion, as compared with $7.6 billion a decade earlier.[24] Sales and use taxes, presently in force in forty-two states and numerous local governments, comprise about one-third of all state and local taxes.[25]

The other "growth" taxes have been the personal and corporate income taxes. Thirty-three states now have general, broadly-based personal income taxes, and thirty-eight states impose corporate taxes that use income as one of the measures.[26] On the other hand, seventeen states have no personal income tax. Given the low rates of tax (the individual top rates seldom exceed 10 per cent and the corporate rates typically do not exceed 5 per cent) the revenues produced by income taxes are not of the magnitude of property and sales taxes.[27] In 1965, state individual income and corporate income taxes

19. 1955 SUMMARY OF GOVERNMENTAL FINANCES, *supra* note 14, at 20, table 1.

20. 1964-1965 GOVERNMENTAL FINANCES, *supra* note 14, at 18 table 3.

21. *See* 1955 SUMMARY OF GOVERNMENTAL FINANCES; 1964-1965 GOVERNMENTAL FINANCES. Property tax collections rose from $10.7 billion to $22.6 billion in the ten-year span.

22. *See* COMM. FOR ECONOMIC DEVELOPMENT, A FISCAL PROGRAM FOR A BALANCED FEDERALISM 18 (1967).

23. The general sales and use tax, as distinguished from specific levies on motor fuels, alcohol, and other "luxury" or "evil" goods made its appearance in the 1930's.

24. *See* 1955 SUMMARY OF GOVERNMENTAL FINANCES; 1964-1965 GOVERNMENTAL FINANCES.

25. COMM. FOR ECONOMIC DEVELOPMENT, *supra* note 22, at 21.

26. *Id.;See* BUREAU OF CENSUS, DEP'T OF COMMERCE, STATE TAX COLLECTIONS IN 1966, at 7, 12.

27. Twenty-four states tax personal incomes at rates that amount to less than 2% of

produced $6 billion, roughly trebling the $2 billion figure for 1955.[28] Unlike the federal government, which obtains about two-thirds of its revenues from taxes on personal and business incomes, the state and local tax system relies much more heavily on regressive levies such as sales and use taxes and property taxes.[29]

One study has concluded that if our economy should continue at its recent rate of growth, the yields of the existing state and local tax structure would increase in proportion to the rise in gross national product and, on this basis, assuming a 4 per cent annual growth rate of GNP, state and local tax revenues would climb by about 50 per cent by 1975 to $75 billion.[30] Nevertheless, it is widely believed that this magnitude of revenues will fall far short of the anticipated expenditure-needs of state and local governments in the years ahead.

FEDERAL GRANTS-IN-AID

Federal grants-in-aid to state and local governments are an old story in American public finance, but they have taken on new dimensions in recent years.[31] At the beginning of the 1930's federal grants amounted to only about $200 million a year and accounted for about 3 per cent of state and local general revenues.[32] Depression programs and social security legislation raised them above the $1 billion level. While there was a decline before and during World War II, federal grants-in-aid have since been growing at an accelerated pace. During each of the decades 1946-1956 and 1956-1966, federal aid doubled. In the eight-year span, 1960 to 1968 (according to the budget for fiscal 1968), these grants rose from $7 billion to an estimated $17.4 billion.[33]

---

federal adjusted gross income and only 9 have such rates in excess of 2%, with Del., Ore., and Wis. at the top rate of 3%. *See* W. HELLER, *supra* note 8, at 158, *citing* Shannon, *Recent Developments on the State Personal Income Tax Front*, ACIR, *supra* note 5. Generally speaking, "adjusted gross income" means gross income after deducting business expenses, but before personal exemptions and the standard deduction or itemized personal-type deductions such as charitable contributions, real estate and other deductible taxes, and interest on mortgages. INT. REV. CODE OF 1954, §62.

28. 1955 SUMMARY OF GOVERNMENTAL FINANCES, *supra* note 14, at 21, table 2; 1964-1965 GOVERNMENTAL FINANCES, *supra* note 14, at 18, table 3.

29. See Council of Economic Advisers, *Federal State and Local Fiscal Relations*, in REVENUE SHARING COMPENDIUM, *supra* note 1, at 688-89; ACIR, FEDERAL-STATE COORDINATION OF PERSONAL INCOME TAXES, ch. 2 (1965). Dr. W. Irwin Gillespie has made an interesting study, *Effect of Public Expenditures on the Distribution of Income*, which concludes that when expenditure benefits are taken into account the net pattern favors low income groups, in ESSAYS IN FISCAL FEDERALISM 122 (R. Musgrave ed. 1965).

30. *See* COMM. FOR ECONOMIC DEVELOPMENT, *supra* note 16, at 14.

31. The history of federal grants-in-aid is detailed in Elazar, *Federal-State Collaboration in the Nineteenth Century*, 79 POL. SCI. Q. 248 (1964); Elazar, *The Shaping of Intergovernmental Relations in the Twentieth Century*, 359 ANNALS 10 (1965).

32. J. MAXWELL, FINANCING STATE AND LOCAL GOVERNMENTS, ch. III (1965); Schaller, *Federal Grants-in-Aid: A Review*, 1965 NAT'L TAX ASS'N PROCEEDINGS 96.

33. BUREAU OF CENSUS, DEP'T OF COMMERCE, HISTORICAL STATISTICS ON GOVERNMENTAL FINANCES AND EMPLOYMENT 48 (1962); Budget of the United States Government for the Fiscal Year Ending June 30, 1968, at 43, table 3.

As President Lyndon B. Johnson has recently suggested, federal aid may soar to $60 billion in the next 5 years.[34]

Public assistance and welfare, highways, and education are the largest areas of grants-in-aid. Ten years ago federal grants for education accounted for only 5 per cent of the total aid provided.[35] With increasing recognition of the fact that federal funds must be provided for primary, secondary, and university education if we are to meet the New Industrial State's need for trained people and the demands of a greater and greater segment of the population for a fuller life,[36] education grants-in-aid now account for nearly one-quarter of the $17.4 billion coming from the federal treasury.[37] Ten years ago there were no federal antipoverty programs; in the 1968 budget $1.4 billion are provided for economic opportunity programs.[38]

Federal aid covers a great variety of activities of state and local governments. As of April 1964, there were 116 distinct major aid programs, and Congress had enacted 239 separate authorizations to fund them.[39] The 89th Congress alone adopted 21 new health programs, 17 new education programs, 15 new economic development programs, 12 new programs for the cities, and 4 new manpower programs.[40] By January 1966, the number of major programs had risen to 162 and specific fund authorizations to 399. They covered, in addition to the major areas already noted, a wide range of activities such as urban renewal, airport construction, low-rent public housing, sewage disposal, vaccination programs, clinics for agricultural markets, vocational rehabilitation, medical care to the aged, remedial programs for juvenile delinquency, venereal disease control, mental retardation, and air pollution.[41]

"While Congress has introduced new programs, it has clung consistently to the principal of making only conditional grants, i.e. grants made only to specified state and local services."[42] In enacting the Morrill Act of 1862, the college land grant act, which is usually regarded as the first federal grant-in-aid program, Congress required the recipient state to maintain a college with

---

34. See U.S. Bureau of the Budget, *Federal Aid to State and Local Governments*, in REVENUE SHARING COMPENDIUM, *supra* note 1, at 156, 163-70. Address by the President, Governors' Conference, N.Y. Times, Mar. 19, 1967, §A, at 1, col. 4.

35. *See Hearings on the Budget for 1968 Before the House Comm. on Appropriations*, 90th Cong., 1st Sess. at 92 (1967).

36. *See* J. GALBRAITH, THE NEW INDUSTRIAL STATE ch. 33, at 370 *et seq.* (1967).

37. *Hearings on the Budget for 1968, supra* note 35.

38. *Id.*

39. *See* COMM. FOR ECONOMIC DEVELOPMENT, *supra* note 16, at 41; I. LABOVITZ, NUMBER OF AUTHORIZATIONS FOR FEDERAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS UNDER LAWS IN FORCE AT SELECTED DATES DURING 1964-1966 (1966). For severe criticism of the rapid growth of conditional grants in aid and the extension of federal power into traditional and local functions, see Freeman, *Federal Grants and the Decline of the Federal System*, 1965 NAT'L TAX ASS'N PROCEEDINGS 134. Professor Freeman asserts: "It has now become too plain to require much proof or to be subject to argument that the basic purpose of functional grants-in-aid is the transfer of central over domestic public services from state and local governments to federal authorities." *Id.* at 143.

40. *See* COMM. FOR ECONOMIC DEVELOPMENT, *supra* note 16, at 41.

41. *See* COMM. FOR ECONOMIC DEVELOPMENT, *supra* note 16, at 26, table 6.

42. Schaller, *supra* note 32, at 99.

a curriculum emphasizing "such branches of learning as related to agriculture and the mechanic arts"; the funds had to be invested in specified types of securities, and annual reports were required. As the grant program matured, more sophisticated conditions were attached, such as requirements for maintaining adequate accounting and control of funds,[43] an aspect of grants-in-aid that has attracted a good deal of public attention in connection with current criticism of the operation of some recent antipoverty programs.[44] Machinery was developed to administer the federal conditions, and as a result state administrative practices have been improved.[45] The Social Security Act "initiated a far-reaching precedent in inter-governmental personnel matters through specifying standards that would bind State and local governments to merit precepts if they desired to receive federal funds for welfare purposes"; this legislation had an impact on the development of state civil service systems.[46] The Federal Highway Act of 1956 requires states to comply with federal standards for materials employed, methods of construction, and other specifications in building highways[47] in order to obtain federal funds for ninety per cent of the costs of interstate highways. More recently, the grant-in-aid program has been a focal point of the Negro civil rights revolution, with the federal government imposing conditions in grants for housing, education, employment, and urban renewal designed to alleviate or avoid segregation and discrimination.

Many federal grants have required recipients to raise matching funds[48] in order to stimulate state and local governments to set up or help finance desirable programs; and it is generally recognized that the stimulating effect of federal grants has been a powerful tool in getting state and local governments to provide needed public services. Thus, in 1962, state and local governments provided an estimated $3 billion to match $7 billion in federal

---

43. *See* REPORT OF COMM'N ON INTERGOVERNMENTAL RELATIONS, H.R. DOC. No. 198, 84th Cong., 1st Sess. at 119-20 (1955). *See* D. LOCKARD, THE POLITICS OF STATE AND LOCAL GOVERNMENT 48 (1966) for a reference to the role of Secretary of the Interior, Harold Ickes, in tightening up state and local accounting practices in the administration of grants-in-aid.

44. The Head Start Program, which was launched in 1965 to aid children of deprived homes, has been involved in acrimonious controversies growing out of requirements established by the Office of Economic Opportunity. Senator James O. Eastland of Mississippi, who has opposed the Child Development Group of Mississippi, a Head Start project in his state, recently asserted "it has been discovered that C.D.M.G. has more than a half-million dollars in expenditures that cannot be accounted for." N.Y. Times, Sept. 23, 1967, §1, at 14, col. 4. Some of the supporters of these projects take the position that such accusations, based on the federal accounting requirements, are merely smoke screens for attempts to kill projects its critics disapprove of on the merits. *Id.*

45. *See* REPORT OF COMM'N ON INTERGOVERNMENTAL RELATIONS, *supra* note 43, at 126.

46. Reynolds, *Merit Controls, The Hatch Acts and Personnel Standards in Intergovernmental Relations*, 359 ANNALS 81, 89 (1965).

47. *See*, as illustrative, Ham, *Urban Renewal: A Case Study in Emerging Goals in an Intergovernmental Setting*, 359 ANNALS 45 (1965). For a study of the protections granted to tenants in federally assisted housing programs, *see* Rosen, *Tenants' Rights in Housing*, N.Y.U. Law School, Project on Social Welfare 154 (Supp. No. 1, 1967).

48. ACIR, THE ROLE OF EQUALIZATION IN FEDERAL GRANTS 39 *et seq.* (1964).

grants-in-aid distributed.[49] Indeed, experience discloses that state and local governments, once embarked on a federally subsidized program, frequently pour in funds beyond the federal matching requirements. Prior to 1930, matching was typically on a dollar-for-dollar basis or on a fixed ratio basis under which each state was required to share in the same proportion of program cost.[50] During the depression years, variable matching, which takes into account the differing abilities of the states to support their aided functions, became more common.[51]

"Equalization" has been a center of controversy and shifting policy in determining how federal grants are allocated among the states and individual beneficiaries and in imposing matching requirements.[52] Historically, the programs have been built on the principle that grants should be distributed in accordance with some index of need and not in accordance with the amount of federal tax payments derived from the state. The Advisory Commission on Intergovernmental Relations defines equalization as "a provision in a grant program, either in allocation or matching, or both, which gives some statutory recognition to underlying differences in the States' relative capacities to raise funds from their own resources for financing a joint Federal-State program, in order to achieve more uniform standards throughout the nation."[53]

To accomplish these objectives, a variety of techniques has been developed. Whereas pre-1930 depression programs typically made allotments to the states in accordance with their populations,[54] since then a number of grants have taken into account the relative fiscal capacities of the states. Typically, per capita income is used as the yardstick of fiscal capacity.[55] Moreover, as has already been observed, matching requirements vary, and this in turn has an equalization effect. Thus, states with low per capita incomes are required by some programs to raise one dollar for each two dollars of federal funds they receive, whereas wealthier states must provide two dollars from their own resources for every one dollar of federal funds.[56] As of 1963, however, only

49. Becker, *Urban Developments and Federal Grants*, 1965 NAT'L TAX ASS'N PROCEEDINGS 112, 127.

50. Schaller, *supra* note 32, at 102.

51. Special Analysis "J," *Budget of the United States*, in REVENUE SHARING COMPENDIUM, *supra* note 1, at 156, 160. There are, however, many programs that require no state or local matching of funds. *See* Schaller, *supra* note 32.

52. ACIR, THE ROLE OF EQUALIZATION IN FEDERAL GRANTS 39 *et seq.* (1964).

53. *Id.* at 48.

54. *Id.* at 46. The traditional 50-50 matching provisions have given way in more recent programs to an enlarged federal share. Title I of the Elementary and Secondary Education Act provides unmatched grants to local communities for promoting educational services for culturally disadvantaged children. Under the Economic Opportunity Act of 1964 localities paid only 10% of a community action program for the first 3 years, with no local contribution if the community was too poor to pay. Under the huge interstate highway program, the federal government provides 90% of the funds. Mushkin & Adams, *Emerging Patterns of Federalism*, 19 NAT'L TAX J. 234 (1966). The authors cited have set out a table of the matching provisions of grants for fiscal 1966-1967. *Id.* at 234.

55. *Id.* at 48-49; *see* J. MAXWELL, FINANCING STATE AND LOCAL GOVERNMENT 57 *et seq.* (1965).

56. *See* ACIR, *supra* note 52, at 48. Professor Schaller does not regard the unequal matching provisions as properly within the compass of the concept of equalization. He

about one-third of the grant programs contained these equalization devices, and in 1962 the amount distributed to state and local governments by such methods accounted for less than twenty per cent of federal grant funds.[57]

BLOCK GRANTS

The Heller-Pechman plan for block grants, launched in the highest federal governmental circles in 1964,[58] is not designed as a substitute but as a supplement to existing conditional grants-in-aid, although some groups disturbed by the expansion of federal control over state and local functions have seized on the block-aid notion as a way of cutting back on conditional aid grants.[59]

---

argues that "equalization should refer to the recognition of the variations in fiscal capacity in providing for the appropriate service levels." *See* Schaller, *supra* note 32, at 102. The ACIR and Professor Maxwell, however, use the term to cover matching as well as allocation of funds. J. MAXWELL, *supra* note 55.

57. *See* ACIR *supra* note 52, at 57-58; J. MAXWELL, *supra* note 55, at 52 *et seq.* Some grants are not subject to any type of formulary allocation. Thus, public assistance has been granted on an open-end basis with the amount determined by state and local expenditures for the aided programs, except for the statutory maximum limitations on the average payments per recipient, which the federal government will share.

There has been a good deal of controversy as to the extent to which the equalization features of grants-in-aid serve to redistribute income from the richer states to the poorer states. *See* J. MAXWELL, *supra* note 55; TAX FOUNDATION, ALLOCATING THE FEDERAL TAX BURDEN BY STATE (1964); Gillespie, *Effects of Public Expenditures on Distribution of Income,* in ESSAYS IN FISCAL FEDERALISM 122 (R. Musgrave ed. 1965). The ACIR, however, emphasizes the fact that redistribution of "income among the states is not among the objectives of the equalization provisions in existing federal grant-in-aid programs. To the extent that redistribution occurs it comes only as a by-product." ACIR, *supra* note 52, at 50. Instead, the commission holds that the prime objective of "equalization is to achieve a reasonable minimum of program service throughout the nation." *Id.* at 69.

58. The plan was first broached publicly in 1964 by Dr. Walter Heller, when he was President of the Council of Economic Advisers. See Heilbroner, *The Share-the-Tax Revenue Plan,* N.Y. Times, Dec. 27, 1964, §6 (Magazine), at 8. President Lyndon B. Johnson expressed interest in the Heller plan and, as a result, a study of the plan was undertaken by the Brookings Institution. Dr. Harvey E. Brazer reports:

"It is no secret that a Presidential task force headed by Joseph Pechman of the Brookings Institution reported favorably on an undisclosed version of the Heller plan last year and that its report has not been released to the public. Obviously the plan was not viewed favorably by key Presidential advisers. One can only speculate on the essence of their objections.

"Perhaps it was because of reluctance, on the part of Washington bureaucrats, to see Federal funds distributed to the States whose spending they [the bureaucrats] would not supervise. Perhaps it was because influential Washingtonians outside of the Government object to their loss of influence vis-à-vis their counterparts in the State capitals. Some may be reluctant to make more Federal funds available at this time to State officials and legislative bodies whose behavior on civil rights issues has been objectionable.

"Others are concerned about the possibility that the larger cities would be shortchanged by the States. Whatever the facts of the matter may be, it seems clear that the Heller plan has yet to be examined on its intrinsic merits." Brazer, *supra* note 13.

59. Senator Goldwater supported block grants during the 1964 presidential election as a substitute for existing grants-in-aid. "The only technical mechanism for heading off the growth of a politically irresponsible grant-in-aid system seems to the writer to be the block grant." Benson, *Trends in Intergovernmental Relations,* 359 ANNALS 1, 8 (1965). *See*

Dr. Heller, however, like many of his supporters, takes the position that "[C]onditional grants for special functions play an indispensable role in our Federalism," although he urges that we ought to cut down on the "myriad categories" of programs and use broader classifications "that will give the states and localities more freedom of choice, more scope for expressing their varying needs and preferences, within the framework of national purpose."[60] But because even the rapid expansion of conditional grants-in-aid now in progress will not enable the states to make ends meet[61] and because "conditional grants are not well-suited to serve the intangible objectives of greater self-reliance and over-all vitality in state and local government," Dr. Heller has proposed his "revenue sharing" plan as a major new method "of channeling Federal revenues to states and localities which will reinforce their independence while enlarging their capacity to serve their citizens."[62]

The essence of the plan lies in annual federal distribution to the states of a specified percentage — perhaps one to two per cent — of the aggregate net taxable income reported in federal income tax returns for the year, without any strings attached, or at least with very broad discretion as to state use of the funds. This would mean, using 1966 figures, that a two per cent distribution rate would have yielded $5.6 billion for the states,[63] or ten per cent of total federal personal income tax collections of about $56 billion for the year. Distribution of the funds on the basis of population would have an interstate equalization effect, in transferring some funds from high income states to low income states, for funds would thus move from states with high federal income tax liabilities to those with low federal income tax liabilities.[64] Moreover, Dr. Heller is prepared to modify the straight per capita distribution to take into account the needs of poorer states, as do many conditional grant-in-aid programs.

Dr. Heller and some of his followers, while emphasizing the importance of wide latitude to states in their use of federal shares revenues, are prepared to yield somewhat on the no-strings-attached principle by broadly restricting use of the funds to education, health, welfare, and community development

---

excerpts from speeches by Republican Congressman Melvin R. Laird of Wisconsin in the House of Representatives, Feb. 15, March 13, April 10, 1967, in REVENUE SHARING COMPENDIUM, *supra* note 1, at 890 *et seq.*

60. *See* W. HELLER, *supra* note 8, at 142.

61. It is estimated that by 1970 there will be a gap of $10-15 billion a year between state and local revenues and their expenditure requirements. Dr. Heller cites studies made by Pechman, *supra* note 11, and Netzer, *State-Local Finance in the Next Decade,* in REVENUE SHARING COMPENDIUM, *supra* note 1, at 1332 *et seq.* He is skeptical of the recent study by Dr. Selma J. Mushkin and Dr. Gabrielle C. Lupo, concluding that anticipated increases in state and local revenues will enable these governments to meet their expenditure needs. See Mushkin & Lupo, *Project 70: Projecting the State-Local Sector,* Geo. Wash. U. State-Local Finances Project (1966), in REVENUE SHARING COMPENDIUM, *supra* note 1, at 1367 *et seq.*

62. W. HELLER, *supra* note 8, at 143. This statement is quoted by Dr. Heller from Presidential Economic Issues Statement No. 6, *Strengthening State and Local Government* (White House Press Release, Oct. 28, 1964).

63. W. HELLER, *supra* note 8, at 145-47.

64. *Id.* at 146-47.

programs (explicitly excluding, however, expenditures for highways, which are already covered by a special trust fund). Some fear that the states, having additional federal funds to be used at their own discretion, will simply cut their own taxes. It is suggested that under the plan, federal distributions to states that reduce their own fiscal efforts could be diminished in order to prevent this practice.

It is also argued that the block-grant plan is needed to siphon off to the states funds that might otherwise reduce the federal income tax, and decrease federal expenditures. Through such grants, we would further "economic democracy" in the form of a more progressive tax system. As Dr. Heller argues:[65]

> Who is prepared to say that slowing down the reduction of the progressive and relatively equitable Federal income tax in order to relieve pressure on regressive, inequitable and inefficient property and consumer taxes is a bad trade?

Per capita sharing under the block-grant plan, it is argued, would have a significant interstate equalization impact. If two percent of the federal individual income tax base were distributed on a straight population basis, the states would receive 30 dollars per capita, using 1967 figures. Yet, these funds would be drawn 42 dollars per capita from the ten richest states and only about 18 dollars per capita from the ten poorest states. Moreover, by adjusting the distribution to take state incomes into account, the equalization effect could be increased. If as little as 15 per cent of the federal funds were set aside for distribution to the poorest states, these states would receive perhaps 2.5 times the amount they would get under a straight per capita distribution.[66]

This plan, with its virtue of simplicity, its political attractiveness, its promise of a large and automatically growing source of revenue to the states, coupled with equalization and tax progressivity features rests essentially on its faith in the fiscal independence of state and local government. It recognizes that in order to restore the vitality of these governments, we must cut back on the increasing tendency to centralize functions and controls in the federal government and shift responsibility and discretion for the design and execution of public service functions back to state and local government. The proponents of block grants-in-aid see this as the key to their prescription for a healthy fiscal federalism.

Reactions to the Block Grants-in-Aid Proposals

The block-grant proposals, as might be expected, have evoked divided reactions among fiscal economists,[67] but they have also produced strange bedfel-

65. *Id.* at 152.

66. *Id.* at 154-55.

67. Block grants have won the support of a considerable number, but by no means all, of the leading fiscal economists. *See* the papers collected in Revenue Sharing Compendium, note 1 *supra*. *See also* the views expressed in the papers on federal grants-in-aid, 1965 Nat'l Tax Ass'n Proceedings 96-161.

lows among business associations, politicians, and labor union leaders. Although the recent interest in the plan was sparked in high level Democratic administration circles, Senator Barry Goldwater embraced block-grants in the 1964 election campaign,[68] and Republican Congressmen have taken the lead in seeking their enactment by Congress.[69] Such widely-separated poles of

---

During the past 25 years a number of distinguished governmental commissions have made extensive studies of intergovernmental fiscal aids, and all either affirmatively disapproved or were unwilling to support more or less unconditional federal grants-in-aid to states and local governments. SPECIAL COMM. ON INTERGOVERNMENTAL FISCAL RELATIONS, FEDERAL STATE AND LOCAL GOV'T FISCAL RELATIONS S. DOC. No. 69, 78th Cong., 1st Sess. (1943); COMM'N ON ORGANIZATION OF THE EXECUTIVE BRANCH, FEDERAL-STATE RELATIONS S. Doc. No. 81, 81st Cong., 1st Sess. (1949); REPORT OF COMM'N ON INTERGOVERNMENTAL RELATIONS H. Doc. No. 198, 84th Cong., 1st Sess. (1955); and since its establishment by Congress in 1959, the various reports of the Advisory Comm'n on Intergovernmental Relations; *see* especially ACIR, THE ROLE OF EQUALIZATION IN FEDERAL GRANTS (1964). Thus, the Kestnbaum Commission, in submitting its report to President Eisenhower in 1955, which disapproved a "comprehensive subsidy program" as an alternative to conditional grants-in-aid, said: "It would doubtless relieve the States of pressing financial obligations, but it would also relieve them of fiscal autonomy. The Commission believes that, whenever possible, decisions to spend and decisions to tax should be made at the same governmental level, thus encouraging financial responsibility." COMM'N ON INTERGOVERNMENTAL RELATIONS, REPORT TO THE PRESIDENT FOR TRANSMITTAL TO CONGRESS 115 (1955).

The prestigious Committee for Economic Development, in a recent evaluation and report on federal, state, and local fiscal problems, rejected the block-grant approach. *See* COMM. FOR ECONOMIC DEVELOPMENT *supra* note 16, at 44 *et seq.*

68. *See* authorities cited note 59 *supra.*

69. The Republican Governors' Ass'n and the Ripon Society, a group of liberal Republicans from universities, business, and the professions have endorsed the Heller-Pechman plan in principle (without working out a detailed plan). REVENUE SHARING COMPENDIUM, *supra* note 1, at 962 *et seq.* In 1965, the Republican Coordinating Committee submitted a proposal for sharing federal personal and corporate income taxes with the states, beginning at 2% of the federal revenues in 1967 and running to 10% in 1975; this was estimated to produce $11.5 billion by 1975. Under this plan, one-half the revenues would be distributed to the states by reference to the states from which they were collected and the other half in a manner designed to produce some measure of fiscal equalization. Task Force of the Republican Nat'l Comm., *Financing the Future Federalism: The Case for Revenue Sharing,* in REVENUE SHARING COMPENDIUM *supra* note 1, at 791 *et seq.*

Senator Javits of New York has proposed a bill cosponsored by Senators Hartke, Scott, and Mundt, S. 2619, 89th Cong., 1st Sess. (1965), which would distribute 1% of aggregate federal taxable income to the states; 80% would be allocated on the basis of population with an adjusting factor for the states' tax effort, and the remaining 20% to the 13 states with the lowest per capita income, on the basis of population. *See* Javits, *Revenue Sharing,* in REVENUE SHARING COMPENDIUM, *supra* note 1, at 914 *et seq.*

On the Democratic side, in 1966, Representative Henry S. Reuss of Wisconsin introduced a bill that would involve a "marriage" of the block grants, without strings, and a plan to induce the states to modernize their governments. H.R. 1166, 90th Cong., 1st Sess. (1967). *See* Reuss, *Revenue Sharing as a Means of Encouraging State and Local Government Reform* in REVENUE SHARING COMPENDIUM, *supra* note 1, at 977 *et seq.*

The various pending measures are summarized in McBreen, *Federal Tax Sharing: Historical Development and Arguments For and Against Recent Proposals,* in REVENUE SHARING COMPENDIUM, *supra* note 1, at 715-16. In all, at least 57 members of Congress, nearly four-fifths being Republicans, sponsored or cosponsored 51 so-called tax sharing bills, *id.* at 722. In the first few weeks of the 90th Congress, such measures were proposed by 85 Congressmen, mostly Republicans. See Reuss, *supra* at 986.

political orientation as the National Association of Manufacturers, the Committee for Economic Development, and the AFL-CIO oppose the plan, although for sharply different reasons. As one writer has put it:[70]

> The NAM believes that the pleasure of spending money should be tied to the pain of raising it . . . and that in any case priority should go to cutting taxes and restraining public spending. The AFL-CIO feels that it wields more power in Washington than in some of the state capitols and that it can advance its goals better by a centralization of program decisions.

Some reject the whole notion of a program of substantial additional federal grants to states, feeling that such grants depend on budgetary surpluses that have been consumed by the escalation of the Viet Nam conflict. So long as the conflict continues at anything like its current pace, there is little hope of achieving even a balanced budget. The budget closed in 1966 at a deficit of $2.3 billion, in 1967 at a deficit of $9.7 billion, and 1968, as of this writing, is expected to produce a deficit of about $29 billion unless Congress shores up the budget by heeding President Johnson's plea for an individual and corporate tax surcharge or unless the President is forced to reduce spending by congressional pressure or action.[71] In view of the fact that in the last thirty years budgetary surpluses have been exceptional, these critics see little warrant for grounding a tax sharing plan on an expectation of continuing federal surpluses. Moreover, they argue that the state and local fiscal outlook is more optimistic than the picture usually drawn, and that state and local governments have considerably greater unused fiscal resources available to meet their own needs than is commonly believed.[72] There is also a body of opinion that opposes block grants on the grounds that any surpluses that may develop should be used to reduce the federal debt or to cut federal taxes.

But the major opposition comes from those who accept the widely held view that federal aid must be broadened if we are to meet pressing state and local needs, regardless of whether there is a federal budgetary surplus. The central issue on which these groups part company with the proponents of the Heller-Pechman and other plans for block aid is at the very essence of the proposals: should we continue the expansion of conditional grants, with strings and standards fixed by the federal government, or should we use the no-strings, or virtually no-strings, aid principle?[73]

70. Freeman, *Federal Grants and the Decline of the Federal System,* 1965 NAT'L TAX ASS'N PROCEEDINGS 134, 139.

71. *See* President's Budget Message, Jan. 14, 1967; *Hearings on the Budget for 1968 Before the House Comm. on Appropriations,* 90th Cong., 1st Sess. (1967) and for the most recent estimate, see N.Y. Times, Oct. 7, 1967, §A, at 1, col. 6.

72. *See* Lutz, *States and Surpluses,* Wall St. J., Dec. 28, 1964, at 6, col. 4; Tax Foundation, *Fiscal Outlook for State and Local Government to 1975, partially reprinted in* REVENUE SHARING COMPENDIUM, *supra* note 1, at 1277; Tax Council, *Needed: A Long Range Approach to Federal Tax Policy,* in REVENUE SHARING COMPENDIUM, *supra* note 1, at 1211 *et seq.* For analyses of the resources and prospects of state and local governments, see the studies by Netzer and by Mushkin & Lupo, *supra* note 61.

73. It is widely recognized that there is plenty of room for improvement in the design

An Evaluation of Block Grants

The focus of attention on broad principles of federalism, on theoretical conceptions of intergovernmental relations such as federal centralization versus "grassroots" government, on the need to revitalize state and local governments by strengthening their independence and self-reliance — approaches that have had strong appeal to many fiscal economists who support block aid — has, in my view, diverted our thinking from the real issue: how can we most effectively deal with our pressing problems of poverty, education, discrimination in employment, air pollution, interstate highways, and the rest? I suggest instead that the *character of the problems and the nature of the emerging solutions* ought to determine the respective roles of federal, state and local governments, and dictate whether conditional or block grants are best adapted to the kinds of remedies to be employed for the substantive problems.

The Jurisdictional Capacity of State and Local Governments To Deal with the Problems Without Federal Participation

State and local governments, because of their limited territorial jurisdiction are, I believe, inherently incapable of dealing effectively with many of our most troublesome problems, even if there should be block grants of large amounts of federal money.

Air pollution, water resources, sewage and garbage disposal, transportation, and conservation and development of natural resources for the recreation and enrichment of the nation do not recognize state boundaries.[74] Only

---

and administration of many of the conditional grant-in-aid programs. We ought to consolidate many of the myriad individual grants in which administration is scattered through dozens of agencies; we need greater uniformity in matching and equalization requirements. Such measures have long been advocated by the supporters of conditional grants. Thus, in 1949 the first Hoover Commission recommended that federal grants-in-aid be systemized by establishing grants based on broad categories such as highways, education, public assistance, and public health as contrasted with the existing fragmentation. FEDERAL-STATE RELATIONS, 36 S. Doc. No. 81, 81st Cong, 1st Sess. (1949). As recently as April 1967, the Advisory Comm'n on Intergovernmental Relations recommended that the President be authorized to initiate consolidation plans for grant-in-aid programs in order to cut down the proliferation and administrative complexity of the programs. The Commission declared: "The Commission's recommendation was in response to the major problems of coordination, comprehension, and manageability created by the rapid multiplication of federal aid programs now totaling more than 400 separate authorizations. According to one count, Federal grant programs are administered by 21 Federal departments and agencies . . . and involve all 50 states, and a sizeable proportion of the 92,000 units of local government. This proliferation of grant programs has tended to confuse objectives, recipients, and administrators." REVENUE SHARING COMPENDIUM, *supra* note 1, at 219.

74. The policies of one community may have considerable impact on other areas. If one locality fails to control air or water pollution, its neighbors suffer. This principle was illustrated recently when Nassau County, which borders New York City, demanded that New York City control its mosquitoes. The public works commissioner of Nassau County charged that swarms of mosquitoes from the city had been invading Nassau territory: "Mosquitoes have no respect for boundary lines or home rule," he complained. FRIEDEN,

by regional or national approaches can we begin to develop workable solutions to such problems.[75] The great network of highways rapidly being built by state and local governments as part of the interstate highway system is nearly a $50 billion program, ninety per cent of which is financed by federal funds. It could not have been constructed without federal direction, design, and imposition of federal standards and supervision.[76]

Likewise, if we are to alleviate unemployment and encourage economic growth where the nation needs it most, no state alone has the jurisdictional powers to execute workable policies. Thus, since World War II the federal government has not only taken steps to direct defense and aerospace contracts to surplus labor areas, but it has also taken into account unemployment and manpower retraining programs in making grants-in-aid. Geographical economic needs are being considered in what amounts to "community planning that would produce diversification of industrial development."[77] Thus, the Appalachian Regional Development Act of 1965 provided $1.1 billion in

---

for HOUSE COMM. ON GOVERNMENT OPERATIONS, 89th Cong., 2d Sess., METROPOLITAN AMERICA: CHALLENGE TO FEDERALISM 6 (Comm. Print 1966).

75. The problems faced by a good part of the State of Vermont are illustrative. Vermont, with a large part of the state covered by virgin forests and farms, is increasingly being populated by inhabitants of the metropolitan areas of New York, New Jersey, Massachusetts, and northeastern New York. The city dwellers are buying up farms and building country homes on uncultivated land. But these houses cannot provide the tax base needed by many Vermont towns to provide schooling, welfare, medical, and other services for their year-round inhabitants. Many hard-pressed communities are eager to attract industry to provide the tax base they need. It may be very much in the interest of the northeastern area to keep Vermont green, but if so, someone other than Vermonters must pay for the retention of the precious verdant rolling farm and timber lands. Only through a national or regional program can Vermont be kept green for the northeastern city dwellers and at the same time do justice to the local year-round residents.

76. The interstate highway program has been a "success" story. In 1955, the Kestnbaum Commission made its recommendations for an accelerated highway improvement program; at that time annual federal aid authorization to highways stood at $875 million. Within a year, Congress had authorized the construction of 41,000 miles of highway at an estimated cost of $46.8 billion. G. BREAK, FUNCTIONAL GRANTS-IN-AID, INTERGOVERNMENTAL FISCAL RELATIONS IN THE UNITED STATES ch. III (1967). By fiscal 1963, the interstate highway program absorbed $3 billion of federal funds; it was the largest single grant program for that year. Wornsop, *Federal-State Revenue Sharing*, in REVENUE SHARING COMPENDIUM, *supra* note 1, at 866, 874. The budgetary estimate for fiscal 1967 for highways is $4.1 billion, virtually the same amount as for public assistance, each accounting for about 25% of total estimated federal grants-in-aid. *See Hearings on the Budget for 1968, supra* note 71, at 92, chart 16. One may fairly be disconcerted at the national value-scale these comparative grant-in-aid allotments suggest—meeting our public assistance needs appears to be more important to us than building our great network of highways; and for 1968 federal aid to education will receive only 60% of the funds we expect to spend on interstate highways. *Id.*

77. Mushkin & Adams, *Emerging Patterns of Federalism*, 19 NAT'L TAX J. 231 (1966). In adopting these programs: "Congress explicitly recognized the interdependence of the national economy and the economic vitality of local and regional sectors. It sought to establish a flexible framework within which national, state, and local planning efforts could meet the varied problems of economic development; expand the opportunities for employment; provide the basic community facilities necessary for the growth of industrial, commercial, recreational, and cultural activities; and achieve lasting economic improvement for the States, and the nation." *Id.*

aid for depressed counties in twelve states, *inter alia* for highways, demonstration health facilities, land improvement and erosion control, timber development, and vocational education.[78] Likewise, the Public Works and Economic Development Act of 1965 calls for multistate planning and regional development. Such regional developments are feasible only under supervision of a government that has both a responsibility for and the jurisdictional powers to deal with the needs of the entire region.

The Inherent Incapacity of Metropolitan Areas To Deal with Major Problems Under the Existing Political Structure

The emergence of metropolitan America as one of the most significant developments of our times, with the "great cities" giving way to "metropolitan areas as the centers of American life,"[79] exacerbates the weakness of state and local governments in dealing with major problems. The great majority of people and economic activities in this country are concentrated in some 200 metropolitan areas, and "virtually all future growth is expected to take place within these areas."[80] It is likewise in the metropolitan areas that the greatest neglect of our most critical problems exists — inadequate schools, slum housing, unemployment, welfare needs, juvenile delinquency, traffic congestion, air and water pollution, sewage problems, and inadequate recreational facilities. In a message to Congress in 1965 President Johnson declared:[81]

> Our new city dwellers will need homes and schools and public services. By 1975, we will need over 2 million new homes a year. We will need schools for 10 million additional children, welfare and health facilities for 5 million more people over the age of 60, transportation facilities for the daily movement of 200 million people, and more than 80 million automobiles.

This blight of the central city is coupled with immigration and outmigration of both people and capital in the growing metropolitan areas that cripples both the central city and the state, where the suburban segments of the metropolitan area cover more than one state.[82] While large numbers of affluent white collar workers, professionals, and business executives are fleeing the central city to the suburbs, there have been vast migrations of southern Negroes, Puerto Ricans, and inhabitants of Appalachia and other blighted areas to the great cities. Capital, whether in the form of factories, service or research centers, or office buildings is increasingly avoiding the central cities and is instead expanding in the suburbs, and with these developments go new shopping centers and private housing expansion.[83]

78. Nathan, *The Policy Setting: Analysis of Major Post-Vietnam Federal Aid Policy Alternatives*, in REVENUE SHARING COMPENDIUM, *supra* note 1, at 660, 683.

79. *See* FRIEDEN, *supra* note 74, at 1.

80. *Id.* at 2.

81. *Id.*

82. Becker, *Urban Development and Federal Grants*, 1965 NAT'L TAX ASS'N PROCEEDINGS 112, 117.

83. *See* FRIEDEN, *supra* note 74, at 3.

The interests, needs, attitudes, concerns, prejudices, and political affiliations of the inhabitants of the central cities — "the gathering places of families with low incomes and of non-whites"[84] — are frequently in collision with the outlooks, interests, prejudices, and political allegiances of the white, native born, affluent, more highly educated inhabitants of the suburban regions. These conflicts have seriously hampered the central cities in seeking to solve their problems. Thus, we have recently witnessed bitter struggles between commuters and the central city over how much of the tax burden of the central city the former should bear. Witness the recent attempt of Mayor Lindsay to obtain enabling power from Albany to impose a New York City income tax that would cover within-city earnings of commuters on the same basis as all the earnings of residents are taxed. A coalition of suburban legislators, allied with conservative rural interests, forced the city to tax commuters at lower rates than residents.[85] This controversy raised the host of troublesome issues that plague all metropolitan areas in levying taxes — among them the pros and cons of double taxation of the commuter, who must support also his suburb's school, police, welfare and other services, and the elusive problems of "spill-over" of benefits and costs between the central city and its in-state and out-of-state bedrooms.[86]

While these struggles concerning apportionment of the financial burden of the central city are going on in the major urban areas, there is intense competition between the central cities and the suburbs for attracting industry, central offices of large corporations, shopping centers, and other installations. This competition has resulted in a race among the various segments of the metropolitan area in their offerings of tax incentives, tax reductions, partial exemptions, and industrial parks built with tax exempt bonds issued to finance low cost loans, all of which tend to weaken and sap the strength of the badly needed urban tax resources.[87] It has been observed that "the competition for industrial firms is so intense between municipalities that they tend to

84. *See* Becker, *supra* note 82, at 119.

85. *See* New York City Personal Income Tax, N.Y. General City Law, art. 2-D; New York City Earnings Tax on Non-Residents, *id.* art. 2-E.

86. There has been a good deal of study on the controversial issues of "spillovers." There are not only spillover benefits, such as the benefit to the commuter of city roads and mass transit facilities, but there are also cost spillovers between communities. For example, if a superhighway is built leading to a city, this may cause traffic problems within the city; untreated sewage dumped by Community *A* into a river may cause problems to downstream Community *B*. However, the spillover problems have more sweeping geographic impact. Welfare costs may go up in Chicago because of the low level of education in the South provided for Negro children, who have now migrated to Chicago. A heavy hospital burden may be imposed on New York City because of inadequate health services furnished in Puerto Rico. *See* G. BREAK *supra* note 76. Mushkin & Adams, *supra* note 77, at 245; Schaller, *supra* note 32, at 104 *et seq.*

87. In November 1967, the State of Mississippi sold $130 million of bonds to finance "the shipyard of the future." The state will build and lease the shipyards to Litton Industries, Inc., for forty years. These issues of industrial aid bonds by the states may reach $1 billion for 1967. There has been a good deal of criticism in Congress and the financial community at the growth of such issues on the ground that "they pose a threat to the tax-exempt status of all local government bonds." *See* N.Y. Times, Nov. 12, 1967, §3, at 1, col. 8; Wall St. J., Nov. 15, 1967, at 15, col. 2.

provide abundant industrial services below cost and require little, if any, compensation from industry for social costs."[88]

These are among the developments that point to the conclusion that individual city and state governments are inherently incapable of solving the major problems of metropolitan areas without intervention of a larger political force that has concern and responsibility for the whole metropolitan region. Moreover, the political infrastructure for good government is simply not there. There exists no body of citizens, no legislature, no mayor or Governor whose tie is to metropolitan area.[89] There is no such political animal as a citizen of a metropolitan area, but only a corporate executive or a Wall Street lawyer or a stenographer in an advertising agency whose local political interests and responsibilities lie not in New York City but in the Scarsdales and Great Necks and Englewoods in which they live. There is no governmental vehicle — no city hall, no state house, no elections — for responsible citizenry to bring pressure on metropolitan government to deal with its problems.

This is a fatal deficiency in the governing capacity of metropolitan governments. While we may ultimately find it necessary to establish more full-blown metropolitan area governments crossing existing city and state lines than now prevail, until that day arrives we must recognize that our state and local governments are incapable of coming to grips with the crisis of metropolitan America without federal intervention.[90] It is, moreover, because of these factors that the federal government has in recent years increasingly made conditional grants directly to cities, particularly in housing, community development, education, and antipoverty programs.[91]

---

88. *See* COMM. FOR ECONOMIC DEVELOPMENT, *supra* note 16, at 44; Becker, *supra* note 82, at 121. *See also* authorities cited note 86 *supra*.

89. *See* Becker, *supra* note 82, at 119 *et seq.*; Hart, *The Dawn of a Community Defining Federalism*, 359 ANNALS 147, 153 (1965). See, however, the conclusions of some students of this area that "the great city does sustain vigorous political leadership" and that the mayor is "necessarily a metropolitan citizen." *Id.*

90. As "local governments acting independently have become increasingly unable to meet the needs either of their own citizens or of the broader metropolitan populations," a whole series of measures have been taken in various parts of the country to reorganize metropolitan government. *See* FRIEDEN, *supra* note 74, ch. V. A movement has developed to consolidate adjoining governmental areas; this has gone on especially in the case of school districts and water districts; as a result of this process, governmental units in the United States declined from 180,000 in 1942 to some 90,000 in 1962. J. MAXWELL, FINANCING STATE AND LOCAL GOVERNMENT 69 (1965). "One of the most promising developments of the strengthening of county government to deal with urban problems has taken place in Dade County, Florida, which has become a kind of federation of local governments in a metropolitan area." *See* FRIEDEN, *supra* note 74, at 91-92. Metropolitan districts such as the Port of New York Authority, the Massachusetts Bay Transit Authority, and the Metropolitan Water District of Southern California illustrate another type of interstate or regional metropolitan governmental innovation. Voluntary metropolitan councils have likewise been employed to seek cooperative solutions of various problems. *Id. See also* Mushkin & Adams, *supra* note 77.

91. *See* J. MAXWELL, *supra* note 90, at 54 *et seq.*; Becker, *supra* note 82, at 127 *et seq.* On Jan. 26, 1966, President Johnson sent a special message to Congress on "Improving the Nation's Cities," recommending a $2.3 billion six-year demonstration program. In November

The Importance of Federally Imposed Minimum Standards in Utilization of Grants-in-Aid

We are not without experience in weighing the risks of lodging in the states, as the block-aid proponents suggest, no strings attached (or virtually so) largesse, to be distributed as those governments may determine. We have had programs that have granted funds for a congressionally dictated purpose, but with little or no restriction as to the implementation of the programs beyond the broad area of use. Thus, the federal government provides grants-in-aid to the states for welfare assistance to dependent children. A recent study discloses that the actual assistance passed on by the states to the beneficiaries varies from nine dollars a month per child in Mississippi to forty-nine dollars in New York. Likewise, old age assistance in Mississippi, again under federal grants-in-aid, is at the rate of thirty-five dollars per month, whereas Minnesota grants 109 dollars a month.[92] Yet, the federal government provided larger grants per capita to Mississippi than to New York or Minnesota,[93] but it failed to impose minimum standards of welfare aid to the beneficiaries of the program. As Leon Keyserling, former member of the President's Council of Economic Advisers, has said:[94]

> The pauperizing and degrading — and not only because of inadequate funds — by many states and localities of those who are dependent on welfare systems not subject to Federal standards, has become a national disgrace.

Congress could have exacted as a condition of the grant a requirement that the assistance to the beneficiaries must meet national minimum standards. Under a block-grant program, however, Mississippi could receive federal aid and still dole out its nine dollars per child and thirty-five dollars per aged person.

In the context of block grants versus conditional grants in other areas, one writer has reported:[95]

1966, Congress in response enacted a model cities program calling for the expenditure of $400 million per year. *See* Nathan, *supra* note 78, at 681-82. For a study of the model cities programs see Simos, *The Old Age and Senility of the City*, 50 MARQUETTE L. REV. 415 (1967).

92. G. BREAK, *supra* note 76 (1967). There is now an effort being made in Congress, led by Senator Russell Long of Louisiana, to incorporate into the federal legislation repressive welfare requirements in force in some states. Aid to a dependent child would be forbidden if the child's mother did not accept a full-time job, when so directed by the local welfare department. *See* N.Y. Times, Sept. 24, 1967, §E, at 13, col. 5. This is proposed in the light of a recently reported case in which a Savannah, Georgia, welfare officer ruled that a mother of seven children was not entitled to welfare because she earned $24 working a 48-hour week. *Id.*

93. *See* J. MAXWELL, *supra* note 90, at 57 *et seq.*

94. Keyserling, *Sharing Revenue with the States*, 156 NEW REPUBLIC, March 25, 1967, at 14.

95. Heilbroner, *The Share-the-Tax-Revenue-Plan*, N.Y. Times, Dec. 27, 1964, §6 (Magazine), at 9.

> Liberals and labor representatives alike are aghast at the thought of handing over Federal revenues for the support of Mississippi's school or law enforcement system.

These are indications of what might happen with unrestricted block grants. The essential point is that under conditional grants, if minimum standards are set, the national government will inevitably fix standards that will bring the poorest or the most backward states closer to a level acceptable to the national conscience; this will still permit the richer or more forward looking states to maintain higher levels of assistance. This, I suggest, is a powerful argument for conditional grants.

There is another danger in making block grants to states, instead of specific grants to fund a designated program. Many of our most explosive problems are concentrated in large urban centers in relatively rich states. These states, because of their own financial resources as compared with poorer states, would doubtless lose block-aid funds that would have gone to their cities under enlarged specific grants for antipoverty and similar programs. The Committee for Economic Development, in opposing the shift to block grants, has pointed out that this "effect raises a serious question whether the problems of poverty are best attacked by helping poor persons or poor states . . . . We believe that the responsibility to bring adequate public services to poor persons, whether in relatively poor states or not, can be most effectively met through categorical grant-in-aid programs designed specifically to deal with these problems."[96]

The Role of the Federal Government Under an Expanded Conditional Grant Program in Providing the Requisite Force and Initiative To Deal with the Needs

There is a related reason for supporting an augmented conditional grants-in-aid program, instead of block grants. If we are to rouse the nation to take the giant steps required to deal with the awesome state and local problems facing us, and if they are to be carried out under standards appropriate to an era that is living through a civil rights revolution and a social revolution, which demand that our vast resources be utilized to furnish a decent life to all our underprivileged citizens, only a national force and initiative can do the job. The initiative and drive for the major significant reform programs in recent years—urban renewal, low-cost housing, aid to education, antipoverty programs — have come from the President and from Congress. The national government is the only power in the country that has the potential to provide the leadership and the dynamic power to harness the nation, to arouse popular support for the vast and radical new programs needed to furnish all our citizens the essential ingredients of a decent life, and to rescue our cities and towns and our countryside from the blight that has overtaken much of the land, and threatens more.[97]

---

96. COMM. FOR ECONOMIC DEVELOPMENT, *supra* note 16, at 46-47.

97. Hart, *The Dawn of a Community Defining Federalism*, 359 ANNALS 147, 152 (1965).

> The national political community is not only well equipped, it is resilient, and it is therefore not surprising that initiative to grapple with community-menacing problems should be coming as often as it has from the President and the Washington departments.

This is not to say that the President *will* provide the requisite leadership or that Congress *will* respond by approving the essential programs and appropriating the needed funds.[98] But if we are to take measures adequate to the dimensions of our domestic crises, the inspiration and dynamism must come from the national government.

Impact on the Vitality of State and Local Governments

What is to be said of the fear that weighs so heavily in the thinking of many of the proponents of block aid, that a shift to block grants is imperative if we are to revitalize state governments; that elimination of virtually all federal control over the design and administration of the projects into which federal aid funds go is essential to reinforce the independence of the states? If, instead, Congress should expand conditional grants, are we not likely to experience a further concentration in the federal government of power over key state and local functions that will further weaken the states and undermine their role in our federal system?

Consideration of our experience to date suggests, perhaps surprisingly, that state and local governments have not been weakened by the controls or supervision exercised by the federal government over grants-in-aid. Initially, it must be remembered that the programs are collaborative projects; they require federal and state or local partnership.[99] While the federal govern-

At a conference of urban specialists, educators, and sociologists held in Washington on November 18, 1967, David K. Cohen of the Joint Center for Urban Affairs of Harvard University and Massachusetts Institute of Technology estimated the 10-year cost of an adequate "compensatory program" in urban schools—programs needed to upgrade Negro and other ghetto schools — would probably require between $100-$160 billion over the next ten years, this suggests, he said: "an order of magnitude which would require major reallocation of national social budgetary priorities and therefore political priorities as well." N.Y. Times, Nov. 19, 1965, §1, at 29, col. 3.

98. At this writing, the prospects are very discouraging, even for existing programs, which are being sharply cut back by Congress in the struggle over President Johnson's request for a 10% income tax surcharge and the congressional demand for a $5 billion domestic spending cut. While the final outcome of the debate is uncertain, Congress is clearly in a mood to cut and not to expand domestic spending. A House committee reduced the $2.25 billion antipoverty appropriation bill, passed by the Senate, to $1.2 billion. N.Y. Times, Nov. 6, 1967, §1, at 46, col. 1. The appropriation for the model cities bill has been severely cut by the House; rent subsidies proposed by the administration were also drastically reduced. As the New York Times put the matter, the program for cities is "gutted," aid for the poor is "shredded," and open housing is "dead." N.Y. Times, Nov. 5, 1967, §4, at 1, col. 5. "Mr. Johnson will argue . . . that not the war but the lack of will is to blame. But they are beginning to wonder at the White House whether Congress isn't representative after all, whether war and strife and affluence haven't sapped the will of the country as well as the Congress to deal with its worst problems." *Id. See also Editorial, No Margarine Either*, 157 NEW REPUBLIC, Nov. 25, 1967, at 5.

99. Elazar, *The Shaping of Intergovernmental Relations in the Twentieth Century*, 359

ment has been the stimulator and a financial supporter of the activities, state or local governments are the managers and administrators of public welfare, educational, highway building, and other activities being carried out. As a result, most policymaking has been a joint federal-state process.[100] States and their local subdivisions have in fact exercised considerably more control than is often supposed; indeed, federal administrators have, at least in some programs, preferred to have decisions made at local levels.[101]

There is another factor in the real world of carrying out programs at state and local governmental levels that has frequently dissipated any friction over federal versus state-local control. The professionals who carry out the projects, some working out of federal offices and others out of state or local offices, tend to be motivated by a "common set of goals for society." "Policies are seen as the product of shared decision making among the several layers of government."[102] In addition, the very existence of new programs, their development and their operation have tended to strengthen and give a new prestige to local governments. In recent years, the active conduct through local communities and their governments of Mobilization for Youth, Head Start, Neighborhood Law Offices, educational enrichment and recreational programs, manpower retraining, and dozens of other projects has served as a real shot in the arm to many local governments. Rather than weakening or undermining state and local governments, these federal conditional grant activities have reinvigorated them through imaginative, creative projects that have relevance to state and local problems in the 1960's.

All this has occurred because "the American commitment to non-centralization has forced federal authorities to seek ways to develop nationwide programs with minimum national requirements within the framework of the co-operative system and has enabled the states to secure federal assistance without fearing any real loss in their integrity."[103] Consequently, there has emerged a new and strengthened cooperative federalism.[104]

Therefore, it appears that the concern of those who foresee the undermining of state and local governments by a creeping concentration of control in the national government absent an initiation of block aid with virtually no strings attached, may be unwarranted by our experience to date. Yet, that experience may not be a fair test of what might happen under a vastly expanded federal conditional aid program, under which it seems likely that the "national government will be the dominant partner."[105] It will not only be the major money giver and possess greater technical skill, through its

---

ANNALS 10, 12 (1965). The state and local governments have always had the prerogative of refusing to accept aid proffered under unacceptable conditions. Despite "the prevalent idea that no State can resist Federal subsidies, few, if any States have ever taken advantage of every grant offered them." *Id.*

100. *Id.; see* Adrian, *State and Local Government Participation in the Design and Administration of Intergovernmental Programs*, 359 ANNALS 35, 35-36.

101. *See* Adrian, *supra* note 100.

102. *Id.*

103. Elazar, *supra* note 99, at 12.

104. *See* Hart, *supra* note 89, at 147-56.

105. *See* Adrian, *supra* note 100, at 43.

staffs, than the state or local governments, but it must also play a decisive role in prescribing and making effective in operation minimum nationwide standards of public assistance, nondiscrimination in employment and educational opportunities, and other restrictions.

This may alter the interrelations of the federal government and the state and local governments in our cooperative federalism. And perhaps it may weaken state and local governments, even though our federal grant experience up to now tends to belie that result. Conceivably, however, an expanded conditional grant program may merely bring sharply to light what many believe are inherent weaknesses in a political structure that is no longer viable in modern urbanized America.[106] Perhaps we must move toward development of metropolitan area sovereignties, an increase in the number and powers of regional governmental authorities, and a revamping of the role of county and state governments. But whatever the long-term impact on state and local governments, we ought to reject the block-grants schemes because they simply cannot do the job that needs to be done.

---

106. *See* S. Greer, The Emerging City: Myth and Reality 194, 206-07 (1962).