June 5, 1981

BLOCK GRANTS AND FEDERALISM: DECENTRALIZING DECISIONS

INTRODUCTION

The Tenth Amendment to the Constitution provides that "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." This is the most important constitutional statement of the uniquely American doctrine of federalism, that is, a division of governmental powers between different levels of government. President Reagan has for years called for a renaissance of federalism, a doctrine much attenuated by events of the Twentieth Century.

Today, the decisive element in governmental federalism seems to be the financial relationship between the different levels of government -- national, state, and local. The national government is now well established as the controlling partner in this relationship. Its means of control is the system of grants and assistance, and their accompanying regulations, directed to individuals, private institutions, state governments, and local governments. The President's first major proposal in this area is his plan to consolidate a handful of categorical grants into block grants.

This paper, the first a series of papers on federalism and block grants, examines some of the constitutional issues surrounding federalism and national financial assistance to the states, presents an outline of the current governmental grant system, and evaluates the efficacy of certain block grants already in existence. Subsequent papers will deal with the President's specific block grant proposals.

A LOOK AT TWENTIETH CENTURY CONSTITUTIONAL FEDERALISM

Marbury v. Madison (1803) and McCulloch v. Maryland (1819) are Chief Justice John Marshall's two fundamental contributions to American government. More than decisions of the Supreme Court, they might better be described as additions, if not amendments, to the Constitution. In Marbury, Marshall invented the doctrine of judicial review. In McCulloch, Marshall established the doctrine of supremacy of federal law and Congress' discretion to pass laws under the "necessary and proper clause."

In McCulloch,[1] the Supreme Court confronted its first major controversy in the areas of federalism and state sovereignty, that is, the constitutional separation of powers between the national and state governments. In 1816, Congress chartered the Second Bank of the United States, which then proceeded to open branches in many states. In 1818, the legislature of Maryland passed an act imposing a tax on all banks not chartered by the state legislature and imposing penalties on the officers of banks not so chartered. The State of Maryland brought suit against the Baltimore branch of the Second Bank of the United States for doing business without authority of the state.

The Supreme Court unanimously ruled against the authority of Maryland to regulate or tax a federally chartered corporation.

The power to establish a national bank or to charter a corporation was clearly not one of "the enumerated powers" of Congress under Article I, Section 8 of the Constitution. Nevertheless, Marshall set out to justify such powers. Maryland contended that, under the Constitution, only the states were truly sovereign and that the powers of the national government were delegated to it by the states. In refutation, Marshall established the sovereignty of the national government by pointing out that the Constitution had been ratified by state conventions of the people, not by the state legislatures. He concluded that, "From these conventions the constitution derives its whole authority....It required not the affirmance, and could not be negated, by the State governments. The constitution, when thus adopted, was of complete obligation, and bound the state sovereignties."[2]

Marshall continued by admitting that the power to establish a corporation was not given to Congress "expressly" by the Constitution. Nevertheless, such an act of Congress can be justified as a means to carry out the enumerated powers. "No sufficient reason is, therefore, perceived, why it may not pass as incidental to those powers which are expressly given, if it be a direct mode of executing them."[3] And, he continued, it was left to Congress

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1 4 Wheat 316.
2 at 403.
3 at 411.

to decide what means are appropriate to carry out its powers, "But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people."[4] The Constitution itself, Marshall contended, gave this power of decision to Congress by way of the "necessary and proper clause." For, "to its (i.e., the Congress') enumeration of powers is added that of making all laws which shall be necessary or proper, for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States, or in any department thereof."[5]

Finally, the states have no power to tax an enterprise established pursuant to congressional statute. "The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared."[6]

In summary, it can be seen that the McCulloch reasoning could be used (and has been used) to justify congressional legislation in almost any area outside of the limited and enumerated powers given to Congress by Article I, Section 8 of the Constitution. Marshall construed the necessary and proper clause, in what was the first important construction of that clause and what has remained the permanent construction of the clause, to be not a power certifying the authority of Congress to pass specific legislation to effect the enumerated powers, but to be a separate, additional, and general power to pass any legislation subject only to the decision of Congress as to what is "necessary." Marshall set forth the structure by which the necessary and proper clause has become a subject of "ends" and not only "means." As such, the necessity and propriety of making laws was severed from the connection with "the foregoing powers."

McCulloch also set down the foundation for numerous subsequent decisions based on the supremacy of the federal to the state governments. Sixteen years earlier, in Marbury v. Madison, Marshall had said, "It is not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned"[7] (emphasis in orginal). In McCulloch, Marshall broadened the statement to say that "the government of the United States, [though] limited in its powers, is supreme; and its laws, when made in pursuance of the constitu-

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4 at 421.
5 at 411-412.
6 at 436.
7 1 Cranch 137, at 179.

tion form the supreme law of the land"[8] (emphasis added). (Both of these statements can be compared to a 1958 ruling of the Supreme Court, Cooper v. Aaron, where the Court said that "the federal judiciary is supreme in the exposition of the law of the Constitution....It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land."[9] Emphasis added.)

It was not until well into the Twentieth Century that the Supreme Court began to hear significant cases regarding the extent of Congress' spending power and the effect of it on the reserved powers of the states. Until the passage of the Sixteenth Amendment (income tax) in 1913, Congress had only a limited capacity to spend because it had only a limited capacity to tax. In 1921, Congress passed the Maternity Act (42 Stat. 224) which provided for appropriations apportioned among the states "for the purpose of cooperating with them to reduce maternal and infant mortality and protect the health of mothers and infants." States could receive monies from the national treasury if they complied with the provisions of the Maternity Act and with the regulations prescribed by the new executive branch bureau created pursuant to the Act.

The constitutionality of the Maternity Act was challenged by the state of Massachusetts on the Tenth Amendment grounds that the Act induced "the states to yield a portion of their sovereign rights," and by an individual taxpayer, one Mrs. Frothingham, on Fifth Amendment grounds, that is, that the Act deprived her of her property, under the guise of taxation, without due process of law. The Supreme Court combined the two cases, Frothingham v. Mellon and Massachusetts v. Mellon,[10] and delivered its opinion in 1923.

The Court disposed of the taxpayer challenge in an abrupt manner -- and thereby disposed of all taxpayers' suits permanently. (With a few exceptions -- Flast v. Cohen (1968) being the most notable.) An individual taxpayer's interest, the Court said, "is comparatively minute and indeterminable; and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating, and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity."[11]

In dismissing the claim of the state of Massachusetts, the Court picked up the theme of McCulloch, that the national government has constitutional powers to bypass the structure of state government and reach individual citizens directly: "Thus inhabi-

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8 at 406.
9 358 U.S. 1, at 18.
10 262 U.S. 447.
11 at 487.

tants...are within the taxing power of Congress as well as that of the States where they reside....It cannot be conceded that a State, as parens patriae, may institute judicial proceedings to protect citizens of the U.S. from the operation of the statutes thereof....It is no part of its (i.e., the state's) duty or power to enforce their rights (i.e., those of an individual citizen) in respect of their relations with the Federal government."[12]

Finally, in one of the most important statements ever uttered by the Supreme Court -- a statement that paved the way for judicial acceptance of the New Deal and a statement that has defined federalism in the Twentieth Century -- the Court refused to agree that the Maternity Act invaded the powers reserved by the Constitution to the states for the simple reason that the states agreed to the invasion:

> Nor does the statute require the states to do or yield anything. If Congress enacted it with the ultimate purpose of tempting them to yield, that purpose might be effectively frustrated by the simple expedient of not yielding.[13]

In fact, the Court refused even to recognize the issue as one permitting a judicial decision -- or to say it in another way -- as one permitting a constitutional decision: "That question is political and not judicial in character," for, with regard to the acceptance of monies from the national Treasury, "nothing is to be done without their consent."[14] This consent of the states merely establishes a system, the Court concluded, by which the national government will "share with the State the field of state powers."[15]

In 1936, the Supreme Court handed down its decision in United v. Butler,[16] an odd decision, full of contradictions and ironies. The case concerned the constitutionality of the Agricultural Adjustment Act of 1933, one of the first of the New Deal measures. The Act provided for an excise tax on the processing of certain food commodities, the revenue from the tax being used to pay farmers who agreed to reduce their production of the same commodities. Butler, a receiver for a bankrupt cotton mill company, refused to pay the tax, contending that the Act was unconstitutional in that it was beyond Congress' power to spend for "the general welfare" (Article I, Section 8), that it invaded the powers of the states, and that the tax was not a bona fide general revenue exaction but, in reality, a means of regulating local agriculture.

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12 at 482, 485, 486.
13 at 482.
14 at 483.
15 at 483.
16 297 U.S. 1.

The Court began by distinguishing the case from Massachusetts v. Mellon by asserting that in the earlier case the question was a simple one of an individual taxpayer's right to prevent government spending, while in Butler the tax was but one "step in an unauthorized plan," and, additionally was "an indispensible part in the plan of regulation."[17]

"The great and controlling question in the case,"[18] the court said, was the extent of Congress' power to spend for "the general welfare." The Court pointed out that even in the Federalist Papers there was a division between Madison and Hamilton on this question. Madison claimed that the granted power "to provide for the general welfare" was not separate and distinct from the enumerated list of powers under which Congress may legislate. In Federalist 41, Madison asked, "For what purpose could the enumeration of particular powers be inserted, if these and others were meant to be included in the preceding general power?" The general welfare clause, Madison maintained, is "explained and qualified" by the enumeration of particulars.

In Federalist 34, Hamilton argued for a "general" power of taxation so that Congress could provide for the equally general "pecuniary wants of the Union." The power of Congress to tax for future purposes must be left unrestricted: "Its future necessities admit not of calculation or limitation; and upon the principle, more than once adverted to, the power of making provision for them as they arise ought to be a capacity to provide for future contingencies as they may happen; and as these are illimitable in their nature, it is impossible to safely limit that capacity." (For a more developed discussion of the disagreement between Madison and Hamilton, see Heritage Foundation Issue Bulletin No. 59, "The Balanced Budget: An Economic and Constitutional Review.")

In the context of the Butler case, the question whether Congress' power to spend for the general welfare was limited or unlimited was specified into the question of whether Congress could institute a program of transfer payments for farmers, that is to say, whether Congress could regulate agriculture -- such power to regulate agriculture not being one of the enumerated powers of Article I, Section 8.

The Court endorsed the Hamiltonian view as "the correct one,"[19] meaning that the discretion was left to Congress to decide when to spend for the general welfare. Nevertheless, having proclaimed a general power of congressional spending, the Court struck down the Act as an unconstitutional invasion "of the reserved rights of the states":

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17 at 58.
18 at 62.
19 at 66.

> It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the federal government....From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such as are conferred, are reserved to the states or to the people. To forestall any suggestion to the contrary, the Tenth Amendment was adopted....If, in lieu of compulsory regulation of subjects within the states' reserved jurisdiction, which is prohibited, the Congress could invoke the taxing and spending power as a means to accomplish the same end, Clause 1 of Section 8 of Article I would become the instrument for total subversion of the governmental powers reserved to the individual states.[20]

Justice Stone, writing in dissent for himself, Justice Cardozo and Justice Brandeis, while agreeing with the majority concerning the Hamiltonian view of spending for the general welfare, maintained that Congress could indeed attach regulations to spending. "If the expenditure is for a national public purpose, that purpose will not be thwarted because payment is on condition which will advance that purpose."[21] In the spirit of Massachusetts v. Mellon, Stone mentioned the voluntariness of the regulatory effect: "the farmer at his own option promises to fulfill the condition."[22] Nevertheless, Stone did not maintain that the power to spend for the general welfare was absolutely unlimited. He formulated three principles of restraint on Congress' power: "One restriction is that the purpose must be truly national. Another is that it may not be used to coerce action left to state control. Another is the conscience and patriotism of Congress and the Executive."[23]

The Court's overturning of the Agriculture Adjustment Act left Roosevelt's New Deal in constitutional limbo. To the rescue came Professor Edward Corwin, the most prominent constitutional scholar of his time and among the greatest constitutional scholars of American history. In an address delivered to the annual meeting of the Association of American Law Schools[24] almost exactly one year after the Butler decision and five months before the critical Steward and Helvering decisions, infra, Corwin attacked the Butler decision and, more importantly, formulated a Twentieth Century version of constitutional federalism, "cooperative federalism," that he presented as a means of getting around the Butler conclusions.

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20 at 68, 75.
21 at 86.
22 at 86.
23 at 87.
24 and published in 8 American Law School Review 687, 1937.

After a brilliant survey of the history of governmental federalism, Corwin concluded that the Tenth Amendment's reservation of powers to the states was not an inevitable roadblock to New Deal-type legislation providing for federal grants to the states. The roadblock could be removed by having the national government and the state governments "cooperate" for common objectives. This could be accomplished by combining the taxing and spending power of the Congress, that is, "the greater financial strength of the National Government," with the reserved powers of the states, that is, "the wider coercive powers of the states."[25]

Summarizing the main arguments leading to his conclusions:

* Corwin cited contemporary political science sources that purported to demonstrate that federal grant-in-aid programs already in effect did not "break down state initiative and devitalize State policies."[26]

* Corwin cited contemporary history to show that federal grants did not "mean the growth of an immense bureaucracy in Washington, which in turn will threaten our dual system." Instead, national-state cooperation will "diffuse bureaucracy in preference to concentrating it at the national capitol."[27]

* The Massachusetts v. Mellon conclusion that the states may employ "the simple expedient of not yielding" answers the "contention that this type of legislation is coercive with respect to the States."[28]

* Corwin cited with approval the Butler Court's endorsement of the Hamiltonian view of a general power to spend for the general welfare.

* Any congessional legislation can pass constitutional muster as long as it is for the "general" welfare, is based on "the voluntary principle," and provided that "the terms stipulated by the act for state cooperation are designed to make such cooperation better promotive of the main purpose of the act and are not intended to foist policies upon the cooperating states which are not relevant to the purpose."[29]

Ten months after the Butler decision, President Franklin Roosevelt was re-elected by a landslide. Four months later, in February of 1937, Roosevelt precipitated a national uproar by

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25 at 700.
26 at 701.
27 at 701.
28 at 702.
29 at 703-704.

proposing his Court-packing plan. Two months later, the Supreme Court heard oral arguments in two cases challenging the constitutionality of what is still the most significant piece of domestic legislation ever enacted, the Social Security Act.

In Steward Machine Company v. Davis and Helvering v. Davis,[30] Justice Roberts, the author of the Butler decision, switched sides and joined the justices who supported the New Deal; the Butler holding itself was rendered a dead letter; Corwin, although not mentioned by name, saw the main points of his speech promulgated as constitutional law; Justice Stone's dissent in Butler received vindication; and the Social Security Act was upheld in separate 5-4 and 7-2 votes.

In Steward, a challenge was made to the unemployment compensation section of the Act which provided for a federal tax on employers that was then paid out of the Treasury to the unemployed. The distribution of unemployment compensation was to be administered by the states, provided that the states "voluntarily" enacted their own statutes that complied with national regulations. A taxed employer in participating states could also receive a federal tax credit for amounts paid into the system.

In Helvering, the plaintiffs challenged the constitutionality of the old-age benefits section of the Social Security Act which provided for payroll deductions from employees and another tax on employers in order to pay out benefits to the aged.

Both cases were brought on essentially the same federalist grounds: the various provisions of the Social Security Act invaded the powers reserved to the states by the Tenth Amendment. Additionally, the Court in Steward considered, and rejected, the Butler-type contention that the tax was not a true revenue measure but a disguised attempt to regulate employment, an area belonging to the states.

Justice Cardozo wrote the opinion in both cases. He noted with approval that, in both instances, Congress had not tied the Act's provisions for taxing to the Act's provisions for spending of the revenues raised from the taxes. Thus, in Helvering, "the proceeds of both taxes are to be paid into the Treasury, like internal-revenue taxes, generally, and are not earmarked in any way."[31] In this way, Cardozo disposed of the controlling conclusions in Butler. Nevertheless, one part of the Butler opinion was affirmed with great effect by Cardozo. The victory of a "general" congressional power to spend and tax for anything "general," subject only to the discretion of Congress, was complete:

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30 Consecutive decisions beginning at 301 U.S. 548.

31 at 635. A similar statement appears in Steward at 592.

> Congress may spend money in aid of the "general welfare."...There have been great statesmen in our history who have stood for other views. We will not resurrect the contest. It is now settled by decision. United States v. Butler, supra....The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be known through a formula in advance of the event. There is a middle ground or certainly a penumbra in which discretion is at large. The discretion, however, is not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment. This is now familiar law....Nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation. What is critical or urgent changes with the times.[32]

So, with regard to spending, the Court placed what has become a permanent discretion in the hands of Congress. With regard to the Tenth Amendment, the reserved powers of the states, and federalism, the Supreme Court seemed to conclude that the urgent demands of the Depression had overwhelmed them all:

> The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve.[33]

> When money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the states. So the concept be not arbitrary, the locality must yield.[34]

With the Social Security Act as a model, the Court seemed to regard federalism not as a separation of powers between the national government and the state governments, that is, a separation of authority to act, but, rather, simply as a traditional separation of attention -- the national government having customarily dealt with a certain range of public issues and the state governments having concerned themselves with other issues. But this merely customary system had to change because of new national, homogeneous exigencies:

> The subject matter of taxation open to the power of Congress is as comprehensive as that open to the power of the states....[35]

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32 Helvering, at 640-641.
33 Steward, at 586.
34 Helvering, at 645.
35 Steward, at 581.

> It is too late today for the argument to be heard with tolerance that in a crisis so extreme the use of the moneys of the nation to relieve the unemployed and their dependents is a use for any purpose narrower than the promotion of the general welfare.[36]

> The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided...unemployment is an ill not particular but general...the ill is all one....[37]

> The problem is plainly national in area and dimensions. Moreover, the laws of the separate states cannot deal with it effectively....Only a power that is national can serve the interests of all.[38]

Thus, the solution was to recognize the new common problems and blend together the authorities of different levels of government:

> Supporters of the statute say that its operation is not constraint, but the creation of a larger freedom, the states and the nation joining in a cooperative endeavor to avert a common evil....The Social Security Act is an attempt to find a method by which all these public agencies may work together to a common end.[39]

Finally, Cardozo seemed to be acutely observant in noticing a fact about the relationship between the states in the 1930s: individual states were reluctant to impose taxes in order to use the revenues to create state programs of unemployment compensation, old-age benefits, etc., for fear that such taxes would drive out their citizens to other taxless states. In other words, the states competed against each other to keep state taxing and spending at a minimum. Cardozo saw that a national initiative like the Social Security Act could break this competition of financial austerity. The Social Security Act reordered not only federal-state relations but also the relations between states:

> But if states have been holding back before the passage of the federal law, reaction was not owing, for the most part, to the lack of sympathetic interest. Many held back through alarm lest, in laying such a toll upon the industries, they would place themselves in a position of economic disadvantage as compared neighbors or competitors.[40]

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36 Steward, at 586-587.
37 Helvering, at 641.
38 Helvering, at 644.
39 Steward, at 587-588.
40 Steward, at 588.

> In the tender of this credit Congress does not intrude upon fields foreign to its function. The purpose of its intervention, as we have shown, is to safeguard its own treasury and as an incident to that protection to place the states upon a footing of equal opportunity.[41]
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> A system of old age pension has special dangers of its own, if put in force in one state and rejected in another. The existence of such a system is a bait to the needy and dependent elsewhere, encouraging them to migrate and seek a haven of repose.[42]

Although the federal courts have handed down hundreds of decisions concerning the issue of federal-state relations, the cases considered above still control the fundamentals of Twentieth Century "cooperative federalism." In this age of aggressive re-interpretation of the Constitution by the Supreme Court, probably no other field of constitutional law has remained so static. Since the Steward and Helvering cases, the kinds and numbers of national programs directing monies -- and with them, regulation and control -- to the states have increased almost geometrically. The effect on the finances of both the national and the state governments has been profound. The effect on federalism has been even more profound.

Today, there is a federal grant or entitlement program for purposes of only minimal public importance. Additionally, it cannot really be said that any powers of government are reserved exclusively to the states any more. The best status that the states can manage now is a sharing of certain powers with the national government. And, of course, numerous powers have become reserved exclusively to the national government. For still other areas of public concern, the national share of the power has become the controlling share -- whether financially or by means of regulation.

If a true federalism is to be resurrected, and President Reagan has declared his determination to do so, some of the questions that must be asked are the following:

* Has the Corwin prophecy for cooperative federalism been fulfilled? Corwin thought that cooperative federalism would combine the greater "financial strength" of the national government with the "wider coercive powers" of the state governments. But, today, the coercive powers of the states, that is, their regulatory and other legal/governmental powers, have been supplanted by the like power in the national government -- so that both the financial and coercive powers have been transplanted to the centralized

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41 Steward, at 591.
42 Helvering, at 644.

government. Can this be justified by Corwin's historical and constitutional arguments?

* Even Cardozo argued that the states must "maintain their statehood...without impairment."[43] In their frantic competition for federal dollars, a competition that has had the additional consequence of causing the states to vastly increase their own taxes and spending, have the states preserved their constitutional sovereignty and integrity? Are the state governments merely wards of the Congress today? Are they merely "recipient institutions?" Would Justice Stone, dissenting in Butler and arguing for the New Deal, agree that contemporary spending programs do not "coerce action left to state control?"

* After more than fifty years of continuing creation of imaginative, new ways for the national government to control the states, is the Massachusetts v. Mellon formula, the "simple expedient of not yielding," still meaningful in any way? Is it still "simple?"

* What is the real constitutional status of the myriad of national spending programs? What percentage of congressional spending is for the "general" welfare? What percentage is for minute, specific, and "particular" welfares?

* Which is "supreme": the national government or the document that elaborately provides for a federalist system of governments, the Constitution?

NATIONAL AID TO STATE AND LOCAL GOVERNMENTS

Cooperative Federalism in the Twentieth Century

The first significant law granting funds to the states from the national treasury was the Morrill Act of 1862, which instituted the system of land grant colleges. This first law brought with it the first minimum federal regulations of state affairs. Land owned by the national government was given outright to the states, who were allowed to sell the land in order to use the proceeds for the establishment of colleges devoted primarily to agriculture and science. State annual reports to Congress were required and every college established pursuant to the Act was required to institute a program of military instruction -- what we know today as the ROTC program.

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43 Steward, at 597.

Through the end of the Nineteenth and into the Twentieth Century, various grant programs, including the first providing direct cash payments to the states, were enacted: special aid for the blind, agricultural aid, aid to state veterans' home, more aid to colleges, and others.

With the unprecedented income derived from the new national income tax, a result of the ratification of the Sixteenth Amendment to the Constitution in 1913, the Congress initiated a new series of grants to the states. In 1917, the enactment of the Smith-Hughes Act (vocational education, still substantially unchanged today,) began the national patronage of education curricula and programs by Congress. As has already been mentioned, the passage of the Maternity Act of 1921 precipitated the Massachusetts v. Mellon case, the first modern inquiry into the constitutionality of national grants-in-aid to the states. Having won a formidable vindication from the Supreme Court, the effect of which continues to this day, the Congress was emboldened by the notion that the American federalist system did not prohibit the enactment of a host of new national programs. The invention and mass production of the automobile stimulated the passage of the first truly comprehensive, nationwide assistance program, aid to every state for highway construction.

Both the types of grants to states and the administrative regulations relating to them began to grow. This period saw the creation of discretionary grants, that is, grants that could be awarded solely at the discretion of some official in the executive branch; grants that required the prior approval of state plans by the requisite federal agency; grant fund distribution to the states based on an apportionment formula; and various requirements such as progress reports, prior examination of proposed state projects, and audits.

As tax revenues and congressional spending rose, the congressional power of the purse underwent a change in kind. The numerous and aggressive initiatives of the New Deal began another quantum leap in the amounts and types of government spending. The New Deal, of course, precipitated the landmark decisions in Butler, Steward, and Helvering, already considered. Although many of the New Deal programs were temporary, they did accustom the country to national intervention in what had previously been strictly local concerns. Grant funds began to be distributed according to mathematical formulas that took into account such factors as demography, the financial burden and capacity of each state, and other economic and business statistics. With the passage of the Social Security Act in 1935, funds and regulations of the national government were introduced into the fields of old age assistance, aid to the blind, aid to dependent children, unemployment compensation, maternal and child health, crippled children, and child welfare. The Act provided for complete national funding of state unemployment compensation programs with the national government sharing the costs of the other programs with the states. Additionally, this period saw the creation of the first direct grants to

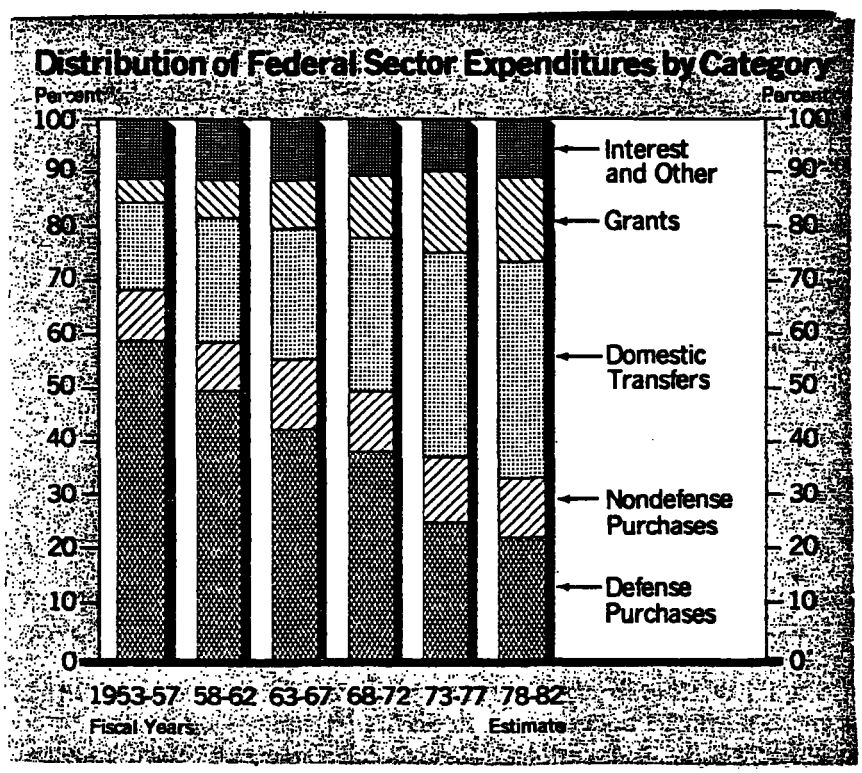
cities and localities, that is, grants that bypassed the political authority of state governments.

The Great Society and its continuation to the present day was the last significant period in national grants to the states. The numbers and kinds of grants increased dramatically. And the most significant development was the new severity and inflexibility of the regulations attached to the grants. Major new grants were launched in the fields of education, welfare, and employment. The financial and regulatory power of the national government entered the fields of environmentalism and consumer affairs for the first time.

Government Finances and Federalism

Expenditures of the national government are of five kinds: direct transfer payments to individuals; defense purchases of goods and services, including the salaries of military personnel; all non-defense purchases of goods and services -- primarily the administrative costs, including salaries of the civil service, of operating the government; interest paid on the federal debt and outstanding loans; and grants-in-aid to state and local governments. (The last category includes revenue sharing and countercyclical aid.)

From the following table, it can be seen that, over the past thirty years, defense expenditures have substantially declined as a percentage of the total budget; interest payments and non-defense purchases have remained roughly the same; domestic transfer payments to individuals have increased about 250 percent; and grants to states and localities have increased about 350 percent.



From Special Analysis, Budget of the United States Government, Fiscal Year 1982, p. 48.

The last ten years have seen the tripling of grants to states and localities:

Total Federal Aid to States and Localities - FY 1971-1980

1971	$29.8 billion	1976	$59.1 billion
1972	35.9	1977	68.4
1973	44.0	1978	77.9
1974	46.0	1979	82.9
1975	49.7	1980	91.5

(Includes general revenue sharing and countercyclical aid.)

Source: Federal Aid to States, Fiscal Year 1975; Federal Aid to States, Fiscal Year 1980; Department of the Treasury

When the fiscal year 1980 totals are broken down by function, it can be seen that federal aid to states is concentrated in the fields of transportation, education, health, and other welfare services:

Federal Grant-in-Aid Outlays by Function
(in millions of dollars)

Function	Actual 1980
National defense	93
Energy	499
Natural resources and environment	5,362
Agriculture	569
Commerce and housing credit	3
Transportation	13,087
Community and regional development	6,486
Education, training, employment, and social services	21,862
Health	15,758
Income security	18,495
Veterans benefits and services	90
Administration of justice	530
General government	160
General purpose fiscal assistance	8,478
Total outlays	91,472

Source: Special Analysis, Budget of the United States Government, Fiscal Year 1982, p. 249

The Department of Health and Human Services administers nearly one-third of all grants:

Federal Grant-in-Aid Outlays by Agency
(in millions of dollars)

Agency	Actual 1980
Funds appropriated to the President	710
Department of Agriculture	6,446
Department of Commerce	1,114
Department of Education	7,122
Department of Energy	390
Department of Health and Human Services	28,553
Department of Housing and Urban Development	7,847
Department of the Interior	1,210
Department of Justice	513
Department of Labor	9,952
Department of Transportation	12,987
Department of the Treasury	7,324
Environmental Protection Agency	4,603
Community Services Administration	1,726
Other	974
Total outlays	91,472

Source: Special Analysis, Budget of the United States Government, Fiscal Year 1982, p. 250

According to the latest compiled figures (from Government Finances in 1978-79, Bureau of the Census, 1980), state and local governments together receive 18.6 percent of their total revenue from the national government. This is their largest single source of revenue. The six other sources of revenue for state and local governments are:

Sales taxes	18.3 percent	Charges and miscellaneous	15.5 percent
Other taxes	16.4	Insurance trust revenue	9.6
Property taxes	16.0	Utility and liquor store revenue	5.6

By comparison, in 1960, when the total revenues of all state and local governments were only $60.3 billion, the percentage of that revenue contributed by the national government was slightly less than 10 percent. The following table shows some financial aspects of government federalism in 1978-79. When state and local revenues from the national government are separated, it can be seen that state governments receive 22.1 percent of their revenues from the national government while local governments receive 8.8 percent of their total revenues from the natonal government.

(In millions of dollars)	Total State & Local Governments	State Governments	Local Governments
Revenue, Total	404,933.6	247,004.3	234,630.1
From Federal Government	75,163.8	54,548.1	20,615.7
Public Welfare	22,487.4	22,313.2	174.2
Education	12,300.4	10,709.8	1,590.6
General Revenue Sharing	6,851.4	2,260.9	4,590.5
Other	33,524.5	19,264.2	14,260.3

Source: Governmental Finances in 1978-79, Bureau of the Census, p. 18. Note: The sum of the revenues of state and local governments does not equal the total because the net duplicative transactions between levels of governments are excluded.

Categorical Grants

There are three types of grants to state and local governments: categorical grants, block grants, and general revenue sharing.

Most federal grants are categorical. They are designed to provide aid for very specific purposes. Often, the details of the administration of categorical grants are designed by Congress itself; they are written into law and not left to the executive branch. Very little freedom is left to state and local governments as to how the categorical money can be spent. Categorical grants carry a heavy burden of federal regulation.

Categorical grants are normally divided into two sub-types: formula grants and project grants. Formula grants are in turn divided into allotted formula grants, formula-project grants, and open-ended reimbursement grants.

Allotted formula grants are defined by the government's expert on federalism, The Advisory Commission on Intergovernmental Relations (ACIR), as those

> made available automatically to eligible recipients who meet the requirements and conditions established by statute or regulation; the grant is considered to be an entitlement. One frequent requirement is the preparation of a state plan that must be approved by the responsible federal agency official. The applicable statute or regulation issued pursuant to the legislation details provisions that are to be included in the state plan.[44]

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[44] Categorical Grants: Their Role and Design, Advisory Commission on Intergovernmental Relations, 1977, p. 9.

An example of this kind of grant is the Urban Mass Transportation Capital and Operating Assistance Formula Grant of the Department of Transportation, autorized by the Urban Mass Transportation Act of 1964 (49 USC 1601 et seq.) and subject to the regulations of 49 CFR 601.2. In fiscal year 1980, $1.375 billion was paid to local government entities approved by the governor of the relevant state for assistance in acquisition, construction, and improvement of urban mass transportation systems and for expenses to operate such systems. The payment formula is 80 percent federal and 20 percent local for construction projects and 50-50 for operating projects.

For formula-project grants, "limitations are placed on the amount available for funding project applications from potential grantees in the state. For the grant programs that combine project grants under a formula allotment grant, the formula is used to determine the amount for any state, and part of the allotment is used to make grants on the basis of individual applications from potential applications, while the remainder is available on a regular basis."[45] An example of this kind of grant is the Coastal Energy Impact Program-Formula Grant of the Department of Commerce, authorized by the Coastal Zone Management Act Amendments of 1976 (16 U.S.C. 1451 et seq.) and subject to the regulations of 15 CFR, Part 931. In fiscal year 1980, $33 million was allocated to state governments of coastal states who then passed the money through to localities who had suffered environmental damage from oil spills or energy-related activities. Each state's entitlement is determined by a specific "formula" which limits the number of "projects" that a state can fund. Of the total congressional appropriation for a year, the formula prescribes 2 percent of the total for the state of minimum eligibility and 37.5 percent for the total for the state of maximum eligibility. No state or local contribution is required; the federal government funds 100 percent of each certified project.

For open-ended entitlement grants, "the federal government matches all approved expenditures without limit as to absolute amount; therefore, no allocation formula is involved. However, this automatic entitlement feature makes them more akin to formula-based than to project grants."[46]

An example of this is the Veterans' State Nursing Home Care Grant of the Veterans' Administration, authorized by 38 U.S.C. 641-643. Eligible beneficiaries are veterans not acutely ill, who nevertheless need nursing care or other medical care. The federal government pays one-half the cost of care or $12.10 per diem, whichever is less. But there is no time limitation as to how long a veteran may receive such care. Thus the grant is "open-ended." In 1980, $22.4 million was appropriated for this program.

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45 Ibid.
46 Ibid.

Project grans are "non-formula grants for which potential recipients submit specific, individual applications in the form and at the times indicated by the grantor agency and which are not subject to state-area formula distributions."[47] Nearly two-thirds of all federal grants are project grants, but these grants consume only a third of all federal grant dollars.

An example of a project grant is the Family Planning Project Grants of the Department of Health and Human Services, authorized by Title X of the Public Health Service Act (42 U.S.C. 300) and subject to the regulations of 42 CFR 59. State and local governments and non-profit agencies are eligible to design and submit specific and detailed proposals for federal funding of projects providing contraceptive goods and services, infertility services and special services to adolescents. If the applicant and the proposed project meet the approval of HHS, the applicant may receive between $20,000 and $1,000,000, depending on the proposal. In fiscal year 1979, 248 submitted projects were approved and funded. Congress appropriated $138 million for these grants in the same year.

According to the latest available statistics, the federal grant system had developed in the following way by 1978:

	Number of Formula Grants	Number of Project Grants	Total Grants
Cumulative through 1962	53	107	160
Added, 1963	8	13	21
Added, 1964	10	30	40
Added, 1965	19	90	109
Added, 1966	9	40	49
Added, 1967-1978	71	42	113
Total as of 1978	170	322	492

Sources: Fiscal Balance in the American Federal System, ACIR Volume 2, 1967, p. 151; A Catalog of Federal Grant-in-Aid Programs to State and Local Governments: Grants Funded FY 1978, ACIR, February 1979, p. 1.

The following table shows that federal grants are concentrated in the fields of education, health and welfare, and in the fields of energy and environment. Not coincidentally, these fields are also the ones in which most of the new grants have been created over the past fifteen years.

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47 Ibid., p. 103.

Categorical Grant Programs, By Budget Subfunction and Grant Type: FY 1978

Budget Subfunction	Formula	Project	Total
Department of Defense-Military	2	3	5
General Science and Basic Research	---	1	1
Energy	3	3	6
Water Resources	2	5	7
Conservation and Land Management	4	9	13
Recreational Resources	5	5	10
Pollution Control and Abatement	10	25	35
Other Natural Resources	1	3	4
Agricultural Research and Services	5	4	9
Mortgage Credit and Thrift Insurance	---	2	2
Other Advancement and Regulation of Commerce	---	2	2
Ground Transportation	23	13	36
Water Transportation	2	---	2
Mass Transportation	1	7	8
Air Transportation	2	1	3
Other Transportation	1	---	1
Community Development	---	5	5
Area and Regional Development	6	30	36
Disaster Relief and Insurance	---	9	9
Elementary, Secondary, and Vocational Education	29	41	70
Higher Education	6	4	10
Research and General Education Aids	6	15	21
Training and Employment	15	8	23
Other Labor Services	1	---	1
Social Services	13	34	47
Health	9	69	78
Public Assistance and Other Income Supplements	15	12	27
Hospital and Medical Care for Veterans	4	1	5
Criminal Justice Assistance	3	10	13
General Property and Records Management	---	1	1
Other General Government	1	1	2
Totals	170	322	492

Adapted from: Table 1, p. 2, A Catalog of Federal Grant-in-Aid Programs to State and Local Governments: Grants Funded FY 1978, ACIR, February 1979.

Revenue Sharing and Countercyclical Aid

As part of his "new federalism," President Nixon in 1972 proposed the creation of two new programs of aid to state and local governments: general revenue sharing and special revenue sharing. The latter proposal, a program to consolidate numerous

categorical grants into six basic block grants, was rejected by Congress.

Enacted into law as the State and Local Fiscal Assistance Act of 1972, the general revenue sharing plan included the following three fundamental purposes:

* Each year's appropriation was allocated to the states according to a formula taking into account each state's population, urban population, tax collections, and private per capita income.

* One-third of each state's entitlement was allocated to the state government with the remaining two-thirds going to local governments within each state.

* General revenue sharing was established as a general aid program with no restrictions as to how state governments could spend the funds. Local governments were required to use the funds only for "priority expenditures," although these expenditures were broadly defined, e.g., transportation, public safety, capital expenditures. But local governments were prohibited from using general revenue funds for education and welfare expenditures.

Since the inception of general revenue sharing, state and local governments have received the following amounts:

1973	$6.636 billion	1978	$6.823 billion
1974	6.106	1979	6.848
1975	6.130	1980	6.829
1976	6.243	1981	4.57 (Reagan revision)
1977	6.758	1982	4.57 (Reagan proposal)

In the lame-duck session (1980), the 96th Congress finally renewed the authorization for general revenue sharing, but changed the program in an important way. Revenue sharing to state governments was dropped for fiscal year 1981 -- to be renewed in fiscal year 1982 at a substantially reduced level. All revenue sharing funds in 1981 were earmarked for local governments.

President Carter had requested $5.156 billion for general revenue sharing in fiscal year 1981. President Reagan's request for a reduction of the amount to $4.57 billion has just been passed by Congress. Additionally, for fiscal year 1982, he has proposed the same level of funding, $4.57 billion, and this proposal has already been endorsed by both house of Congress in their first budget resolutions. Reagan has also cancelled the renewal of state revenue sharing for 1982.

In fiscal years 1977-1979, there was still another program of national aid to the states, the countercyclical program, a fund designed to help relieve the effects of the 1975-76 recession

on the states. Administratively, the countercyclical assistance program was almost identical to general revenue sharing although the primary emphasis was on aid to distressed cities. President Carter proposed a re-authorization of the program for fiscal year 1980, but the Congress refused to go along. For the three-year period, states and localities received a total of $3.17 billion.

FIVE BLOCK GRANTS

The relatively recent phenomenon of block grants falls somewhere between the strict requirements of categorical grants and the permissive character of revenue sharing. ACIR regards five characteristics as essential to block grants:

1) Federal aid is authorized for a wide range of activities within a broadly defined functional area.

2) Recipients have substantial discretion in identifying problems, designing programs and allocating resources to deal with them.

3) Administrative, fiscal reporting, planning and other federally-imposed requirements are kept to the minimum amount necessary to ensure that national goals are being accomplished.

4) Federal aid is distributed on the basis of a statutory formula which results in narrowing federal administrators' discretion and providing a sense of fiscal certainty to recipients.

5) Eligibility provisions are statutorily specified and favor general purpose governmental units as recipients and elected officials and administrative generalists as decisionmakers.[48]

Although a few categorical grants have some of the characteristics of block grants, Congress has established only five bona fide block grants, all of them in recent years. The following outline describes the original administrative characteristics, and subsequent changes, of each.

THE PARTNERSHIP FOR HEALTH ACT

In 1966, President Johnson signed into law the Partnership for Health Act (PL 89-749). The Act, passed with the purpose that it would become the major source of national assistance for

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[48] Block Grants: A Comparative Analysis, ACIR, 1977, p. 6.

health services, established the system of state and area-wide health planning agencies, consolidated seven categorical grants into one project grant, and created the first modern block grant (Section 314(d)). The following nine health formula grants, the first having been established in 1936 and the last in 1965, were consolidated into a single block grant for public health services: general health, tuberculosis control, cancer control, heart disease control, chronic diseases and health for the aged, radiological health, dental health, home health services, and mental health.

Specific provisions relating to the administration of the Section 314(d) block grant were:

* The states were required to submit for HEW approval a state plan for comprehensive health services. The plan could include programs similar or identical to those of the abolished categorical grants plus additional programs.

* At least 15 percent of the funds had to be spent by the states on mental health programs. This, of course, was a "categorical" element in the block grant.

* Administrative authority was vested in state health and mental health departments with no required "pass-through" of funds to local agencies.

* Funds were allotted to each state based on financial need and population. The national government paid between one-third and two-thirds, based on state per capita income, of the cost of each state's public health plan.

* The total appropriation was not significantly higher than the combined total of the nine abolished programs.

Since its passage, the Partnership for Health Act has been amended in the following significant ways:

1967, PL 90-194

* The Act was amended to require that 70 percent of each state's funds be used for services in local communities.

1970, PL 91-515

* A specific requirement that each state spend part of its funds for drug and alcohol abuse was inserted into the law.

1972, PL 92-255

* The 1970 amendment was further specified by the requirement that states license drug treatment facilities and expand drug abuse programs in the fields of mental health and other fields.

1975, PL 94-63

* After much debate about whether to require the states to use a certain percentage of the block grant funds for hypertension treatment programs, Congress decided not to include hypertension in the block grant, but instead passed a separate hypertension program in categorical grant form. This followed the history of the Act since its inception in 1966, as Congress had created a number of new health programs that could have expanded the scope of the block grant but instead were established as categorical grants.

* Because of its determination to oversee the use of federal monies and ensure that the priorities of the states were coincident with those of Congress, the Congress added provisions requiring new reporting and accountability procedures.

1978, PL 95-626

* Congress tightened the performance requirements on the states by requiring more detailed outlines concerning how federal monies would be spent.

* The formula for allotting grants to the states was made more detailed also.

THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT

Title I of the Safe Streets Act (PL 90-351) was the first block grant to be established as a new program. No existing crime prevention programs were consolidated to form it. Its important provisions as passed in 1968 were:

* The Law Enforcement Assistance Administration (LEAA) was established to administer the Act.

* The governor of each state was required to set up a state planning agency to develop a comprehensive criminal justice plan. This agency would distribute the federal money to localities.

* Planning Grants. Each state agency would receive a basic planning-fund allotment of $100,000, plus

another allotment based on its population. Forty percent of the planning funds had to be passed through to local agencies. LEAA would pay up to 90 percent of the planning costs for each state agency.

* The law established a program of categorical formula grants, totally funded by LEAA, for training, research, and education.

* Action Grants. (Block Grants). Each state was to receive action grants based on its population, with 75 percent of the funds to be passed through to local governments. Only one-third of each state's grant could be used for salaries of personnel. LEAA would pay up to 75 percent of the costs for organized crime and riot control projects, 50 percent for construction projects, and 60 percent for other projects.

* At their discretion, states could use the block grants for any or all of thirteen purposes, including public education, methods and programs of police protection, training of law enforcement personnel, etc.

1971, PL 91-644

* Congress added three new purposes for which Safe Street funds could be used.

* Congress increased the federal share for some projects from 60 to 75 percent.

* States were required to pay at least 25 percent of the non-federal portions of local projects. This was done to force state governments to give more of their own money to high-crime urban areas.

* Congress altered the state-local matching requirements for individual projects in order to force the states to give more money, rather than in-kind services, to crime-ridden cities.

1973, PL 93-83

* Congress added the improvement of criminal justice to the list of law enforcement programs for which states could spend the block grant funds; increased the federal funding share to 90 percent for all projects, except for construction projects which remained at 50-50; added new requirements for the approval of state plans, including a requirement that each state establish a program for juvenile justice; ordered the states to pay half of all non-federal costs of local governments.

1976, PL 94-503

* Congress allowed the states to use block grant funds for programs designed to improve court procedure and efficiency; added numerous new requirements for the approval of state plans, including requirements for additional juvenile justice and drug offender programs, anti-crime programs for the elderly, and several new reporting, accountability, and evaluation requirements; added new formula requirements for state allotment of the funds to localities.

1979, PL 96-157

* Instead of expanding the block grant, Congress created still another grant program to be administered by LEAA: "national priority grants," a strictly-controlled categorical program for state and local projects that LEAA officials have determined to be particularly successful.

* Additionally, Congress established an alternative formula, based on a state's population, crime rate, criminal justice expenditures, and its tax burden. Thus, states could qualify for their block grant funds under the new or the old formula.

* Finally, Congress created a "mini-block grant" program that specifically earmarked part of each state's block funds directly to qualifying cities, counties, and regional combinations thereof.

THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT (CETA)

In 1973, Congress consolidated seventeen[49] manpower and employment programs, administered by six different cabinet departments and one agency into CETA (PL 93-203), a quasi-block grant with elements both of both revenue sharing and categorical grants.

* Title I of CETA provided for block grants to state and local governments for comprehensive manpower services, including employment, training, counseling,

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49 Vocational Rehabilitation, MDTA Institutional and On-the-Job Training, U.S. Employment Service, Neighborhood Youth Corps, Job Corps, Concentrated Employment Program, Job Opportunities in the Business Sector, Work Incentive Program, Civilian Skill Training, Operation Mainstream, Public Service Careers, New Careers, Special Impact, Opportunities Industrialization Centers, Work Experience and Training, Community Work and Training, and Adult Basic Education.

placement and other services. Cities and counties, or combinations thereof, with a population of at least 100,000 became eligible to be "prime sponsors," that is, eligible to receive and distribute the CETA block funds. State governments were authorized to receive and distribute funds as sponsors to localities of less than 100,000 population. Sponsors were required to prepare comprehensive plans with detailed provisions (very much like categorical grants) assuring that funds would be directed primarily to the neediest unemployed, underemployed, and disadvantaged. Nevertheless, each sponsor was authorized to decide whether its plan would include programs similar to or identical with, the abolished programs, or entirely new programs.

* Federal funding for each state's block grant was based on the following formula: 50 percent of the funds were allotted to each state according to previous levels of manpower funding under the old categorical grants, 37.5 percent based on the number of unemployed persons in each state, 12.5 percent based on the number of low-income adults in each state.

* By comparison, the other titles providing for manpower programs were not included in the block grant. Title II provided for public service jobs in areas of high unemployment. Title III authorized manpower services to special groups, e.g., Indians, youth, migrant workers, etc. Title IV continued the Job Corps program at the Labor Department. Additionally, one year later, Congress, reacting to the 1974 recession, amended CETA with a new Title VI, a grant program providing public service jobs (not manpower and training services) for the unemployed.

1978, PL 95-525

* Congress extended Title I of CETA (along with the other titles) with the basic administrative structure intact. Nevertheless, in response to reports about widespread abuse of CETA funds by local officials, Congress added a number of restrictions and regulations concerning the local distribution of CETA benefits to eligible recipients.

THE HOUSING AND COMMUNITY DEVELOPMENT ACT

In 1974, Congress established another block grant (PL 93-383) by consolidating six of HUD's community development programs: urban renewal; model cities; open space; urban beautification and historic site preservation; neighborhood facilities; water and

sewer facilities; and public facilities loans. No housing programs were consolidated into the block grant, Title I (of eight titles) of the Act.

* Title I bypassed state governments entirely and authorized automatic entitlement block grants to cities, or twin cities, with populations in excess of 50,000 and to urban counties with populations in excess of 200,000. The amount of each city's or county's grant was based on a complex formula that factored in each community's population, poverty, and extent of housing overcrowding.

* For the first three years of the block grant, communities were guaranteed the equivalent amounts of funds that they had received under the abolished categorical grants.

* Eighty percent of the block funds were allocated to urban areas, with 20 percent to rural areas. A portion of the funds earmarked for rural areas was allocated to state governments, who in turn could distribute the funds to qualified rural communities.

* Title I provided a list of thirteen eligible activities for which block funds could be spent. In order to be approved by HUD, state plans for community development had to demonstrate a commitment to seven specific objectives, namely, the objectives of the abolished categorical grants. Communities had the authority to choose among the activities although they were required to give maximum emphasis to the needs of low- and moderate-income families and to the elimination of slums and urban blight.

* Communities were required to maintain development programs that were being funded.

1977, PL-95-128

* In a major amendment to the program, Congress decided to require recipient governments to include housing programs in the block grant programs -- whereas the original legislation had specifically excluded housing in order to concentrate on community and neighborhood development activities. Thus, property acquisition, rehabilitation and construction of housing were included as eligible activities. Recipient communities were required to report in detail on the condition of housing before their block grants were released. Additionally, communities were permitted to deposit their block funds in a private financial institution in order to establish a revolving fund for the financing of rehabilitation activies.

* Congress created an alternative formula for the allocation of block funds to communities. The new formula was based on age of housing, poverty, and population growth. Communities could choose between the formula and the original formula.

* A new categorical grant, urban development action grants, was created. These grants, awarded at the discretion of HUD, were designed for severely distressed cities in order to assist them in preventing neighborhood deterioration.

1979, PL 96-153

* In amendments to various housing and community development programs, Congress concentrated on the categorical programs, especially the action grant program. Nevertheless, regarding the block grant program, Congress earmarked more funds for smaller cities and compensated for that by transferring monies from HUD's discretionary grants into the block grants program.

1980, PL 96-399

* Congress redistributed more funds between the block grant and categorical programs and earmarked block funds to communities not qualified under the basic entitlement formula.

TITLE XX OF THE SOCIAL SECURITY ACT

In 1974, Congress reformed the largely disorganized system of federal subsidies of state social welfare services by inaugurating another block grant, Title XX of the Social Security Act (PL 93-647), the provisions of which have remained unchanged to the present day.

* Title XX provided block funds to state governments and authorized them to design their own social welfare programs aimed at five goals: 1) economic self-support for individuals; 2) personal self-sufficiency; 3) family and child services; 4) reduction of inappropriate institutional care; and 5) provision of appropriate institutional care. States were required to offer at least one service under each of the five goals, at least three services to those aged poor receiving social security benefits, and to offer birth control services to families receiving AFDC benefits.

* The national government would pay 90 percent of birth control services and 75 percent for all other

services. At least 50 percent of the services had to be designed for the benefit of welfare recipients.

* The new title required the submission of prior plans and annual reports to HEW for approval.

* States were barred from using the block funds for: 1) medical services; 2) construction of facilities; 3) long-term room and board; 4) education; 5) hospital and nursing home care; 6) cash payments to individuals; and 7) day-care services not meeting federal standards.

* Block funds were allocated to states according to population.

SUMMARY AND CONCLUSION

It can be seen from the brief description of the five block grants of recent years that Congress has never really "let go" of the strings attached to the purse. Block grants, like all other federal grants and programs, have been established by Congress to implement national goals. Even when Congress has begun with the intention of providing a true form of "assistance," rather than control, to the states, it has always seemed to tighten the control in subsequent years. The Title XX block grant has remained as the "purest" block grant in existence. As has been shown, the CETA and community development block grants have been substantially amended since their inceptions. Indeed, CETA has always been a highly controversial program, the object of much criticism, especially from conservatives. It has occupied the attention of Congress almost every year since its beginning.

The Partnership for Health, CETA, and community development block grants consolidated small collections of categorical programs. The Safe Streets block grant created an entirely new program. Title XX provided a new source of funding for programs already underway. Partnership for Health and Safe Streets are minor programs and have been so since their creation. Safe Streets, a program long criticized as being totally useless, is now being phased out, along with its parent agency, the Law Enforcement Assistance Agency. The community development block grant is only a minor part of the budget and activities of the Department of Housing and Urban Development. CETA is a major national program, but it constitutes less than 25 percent of the total budget for the Department of Labor. Title XX, another major program, still represents only about one and a half percent of the budget for the Department of Health and Human Services.

It can be seen that the Congress has never had a serious commitment to providing mere financial assistance to state and local governments. The financial assistance has always been a means of implementing a public objective that had been declared "national" by the Congress. Consequently, with regard to the

extant block grants, Congress has created them with many categorical elements. Over the past fifteen years, the irony has been that, in the areas of the five block grants, Congress has also created numerous categorical grants that could easily have been made part of the block grants.

In addition to the numerous categorical elements that can be discerned in the five block grants created over the past fifteen years, there are other federal strings attached to block grants. Indeed, these strings apply to general revenue sharing as well. By law, no federal program can escape the authority of some of the most powerful of all national means of regulating the affairs of the states. These are civil rights laws, environmental laws, general administrative regulations of the Office of Management and Budget, and other laws and regulations of comprehensive scope. These laws, both prescriptive and proscriptive, ensure the compliance of the states with far-reaching national social goals promulgated by Congress. The Office of Management and Budget published the entire list of fifty-nine general policy and administrative requirements in The Federal Register of November 7, 1981 (page 74416). The list can be summarized as follows:

* Nine civil rights laws enforced by the Departments of Justice, HHS, HUD, Labor, and the Architectural and Transportation Barriers Compliance Board.

* Sixteen environmental protection laws enforced by the EPA, CEQ, Departments of Interior, HUD, and Commerce, the Waters Resources Council, and the Advisory Council on Historic Preservation.

* Three laws relating to industry and the economy enforced by the Departments of Commerce and Defense, and the General Services Administration.

* Three health and welfare laws enforced by the Departments of Agriculture, HHS, and HUD.

* Two "minority participation" laws enforced by the Interagency Commission on Women's Business.

* Three labor laws enforced by the Department of Labor.

* One natural resources law enforced by the Department of Energy.

* Two laws relating to public employees enforced by the Office of Personnel Management.

* Twenty-one administrative and procedural laws and regulations enforced by the Office of Management and Budget, the General Accounting Office, the General Services Administration, and the Departments of Treasury and Commerce.

As can be seen from the part of this paper outlining the current scope and number of categorical grants, the list of "national goals" prescribed by Congress is very extensive. Since the New Deal, Congress has not only created large-scale national goals by means of such statutes as Social Security, Medicaid/ Medicare, and the Elementary and Secondary Education Act, but has almost, especially in the past twenty years, given every organized interest group its own federal program. The politics of the formation of these programs often involves interest groups, some large and some small, who initiate a campaign to transform some social or economic problem into a public, governmental problem. These groups gain some kind of acceptance and logic from the national media and from the academic community; develop the specifics of a governmental solution to the problem; make no attempt whatsoever to ask state and local governments whether they want or need the program; succeed in persuading the Congress to enact their program as a "national goal," complete with the requisite financial inducements, that will be perpetuated on states and localities; and, in the end, assume the federal and state executive branch jobs administering the programs and, additionally, form private groups that become the recipients of grant funds.

The Department of Education seems to be a particularly good example of the results of this kind of politics. Well over fifty percent of the budget of the Department goes to two large-scale national goals: Title I of the Elementary and Secondary Education Act and the various programs of loans and grants to post-secondary students. Much of the rest of the budget goes to programs that together form a list of federally-approved education interest groups and a history of their successes in Congress: the developing institutions program, environmental education, consumer education, the Women's Educational Equity Act, the PUSH program, educational television and radio, Ethnic Heritage Studies, the program for teachers' centers, metric education, population education, Indian education, bilingual education, arts education, museum services, library services, education for the public service, lifelong learning, migrant education, the law school clinical experience program, Model Intercultural Centers, etc.

Ronald Reagan's first presidential initiative resulting from his longstanding advocacy of a renewed federalism has been his proposal for consolidation of ninety-seven health, education, and social services programs into six block grants. He has asked the Congress to consolidate forty-five education programs into two block grants, one directed to state education agencies and one directed to local education agencies; twenty-five health programs into two block grants, one for general health services and one for preventive health services; twenty-five welfare programs of various kinds into a social services block grant; and a consolidation of the low-income energy assistance and emergency assistance programs into a hardship assistance block grant. President Reagan's block grant proposals are broader and more fundamental than those of the Nixon era. These proposals represent a major attempt to

reverse the Twentieth Century's flow of power to Washington. The specifics of these block grants will be considered in forthcoming papers.

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