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THE FEDERAL INTEREST IN LEGISLATIVE - ADMINISTRATIVE RELATIONS IN THE STATES

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By most accounts, the Politics-Administration Dichotomy--an early theory of the process of government which neatly separated decision from execution--was mortally wounded during the war years and was finally and formally laid to rest in the 1960s. 1/ And yet, a recent study by the U.S. General Accounting Office (GAO) suggests, as Mark Twain said of his own published obituary, that reports of its demise were greatly exaggerated. 2/

Why? One certain reason has to do with the growth of intergovernmental delivery mechanisms. Beginning in the 1960s and escalating through the 1970s, a distinct and unprecedented nationalization of American public policy has been occurring. 3/ The extent to which the national government has broadened its scope and influence in practically every area of public policy has been well documented. 4/ While there are a variety of techniques available to the national government to achieve this end, intergovernmental delivery mechanisms have clearly been the preferred option, and the grant system the most visible manifestation. 5/ The reinvigoration of the Politics-Administration Dichotomy has been a natural result of this tendency to increasingly rely on sub-national actors to implement nationalized policies. As Dubnick and Gitelson have correctly observed, "at the heart of intergovernmental mechanisms is the assumption that...policy formulation and implementation are separable in fact as well as in theory". 6/

Within state governments, this structural separation has produced some interesting consequences for one particular institution: state legislatures. Unable, or at least uninvited to participate in the nationalized functions of policy determination and formulation, and presumably external to the administrative aspects of policy implementation, state legislatures have become, in a sense, the "odd man out."

The GAO study concludes that several legitimate objectives of the national government are affected when legislatures are removed from the grant system. Yet the national government has, in fact, inhibited legislative involvement, both through the inherent constraints of the categorical grant system and through specific provisions of grant programs which assign traditional legislative responsibilities to the state executive branch. Where legislatures have overcome these inhibitions by defining there own roles in the grant system and, in effect, eliminated the dichotomous decision-execution perception, important Federal interests are better served. Accordingly, GAO has recommended that the national government counter the inherent structural bias in favor of state executives by changing the grant system to permit greater legislative involvement.

THE GRANT SYSTEM DISCOURAGES LEGISLATIVE INVOLVEMENT

It has long been observed that specific features of the grant system can weaken the control of "generalist" elected state officials over their functional bureaucracies. The problems experienced by governors have been recognized for over a decade. 7/ Categorical grants allow state program specialists to gain substantial automony from the governor, often by invoking highly specific national rules and directives as sanctions for administrative actions that may be contrary to state policies or political preferences. State agency officials develop allegiances with their national funding sources and administrative counterparts that can dilute the control of their nominal superiors within state governments.

State legislatures share many of the governors' concerns and problems in controlling grant funds. As ever-increasing portions of the state budget and individual agency actions are directly or indirectly affected by grant funds, legislatures have discovered a variety of problems which affect their ability to effectively allocate state revenues, including:

--potential for duplication, or at least the lack of integration between state and national priorities. By 1980 almost 500 grant programs were in operation, representing a national financial involvement in almost every major area of state activity.

--use of discretionary grant funds which can lead to a bypassing of legislative intent and priorities by beginning programs for which state funds were denied or by expanding programs beyond levels set by the legislature.

--increased state costs arising from grant conditions. Participating in nationally supported programs can lead to higher than expected state funding requirements due to the need to comply with unfunded national mandates or to continue programs for which grant funding declines.

To many observers, these problems threaten the viability of legislatures as "separate but equal" branches of state government and work to erode the accountability of the legislature for significant state policies and programs.

While the above problems argue for increased legislative involvement, that is, legislatures should exert stronger oversight of grant funds, attributes of the grant system tend to discourage legislative involvement by reducing a legislature's incentive to seek a greater role. From the legislative viewpoint, the cost of increased oversight can be very high, while the potential impact and benefit may be quite low.

Legislative oversight can be very expensive. To react to a virtual deluge of grants, each complicated by differing expenditure conditions, administrative requirements, and documentation procedures, most legislatures have to consider a variety of costly and time-consuming improvements to their existing oversight practices. Expanded information systems and additional staff may be needed, and new legislative procedures may be necessary to effectively extend oversight to grant programs.

The impact of legislative oversight is further constrained by the generally limited amount of discretion available within the categorical grant structure. Historically, legislatures have seen very little reason to seek an active role in the grant system, despite the fact that some of the earliest grant programs specifically required legislative action. For example, the Morrill Act of 1862, the prototype of the modern matching grant, required legislative acceptance of federal land grants, and the Smith-Hughes Act of 1917 required the "legislative authority" of the state to accept vocational education grants. 8/ But these early grants, similar to the vast majority of modern grant programs, were intensely categorical, highly constricted by rules, and were thus constraining of any meaningful legislative role. The basic question was whether to accept or reject a particular grant--a question rarely subjected to serious political debate. 9/

Individual legislators are also well aware that many of their decisions can be perceived as negative, rather than positive actions since grant funds may be lost; worse still, grant funds rejected by one state, regardless of any "good government" justification, will probably be reallocated to another state--a interesting form of political blackmail. Despite the increased discretion allowed in a few grant programs, legislators seeking to maximize their impact on public policy often view involvement in grant programs as an inefficient and potentially counterproductive use of limited time. 10/

Grant programs do not recognize traditional legislative roles

In addition to these general concerns, legislatures have been beset by a unique problem as well: the widespread assignment of legislative powers and functions to governors or state agencies. Grant programs typically do not define a role for state legislatures but do give responsibilities to the state executive branch that far exceed the normal executive role exercised for state funded programs. This national allocation of roles and responsibilities may have been a cummulative response to a century of apparent legislative disinterest or, more probably, it may have been based on the perceived need to relate to a single focal point within the state. 11/ Whatever the rationale, such assignments are commonplace and do alter the traditional constitutional relationship between the legislative and executive branches.

In general, priorities for the expenditure of state funds are determined by the legislature through the appropriation process. As a rule, money cannot be spent unless it is appropriated by the legislature. State executive officials cannot unilaterally create a legal obligation for state expenditures unless there has first been an appropriation by the legislature. Although governors can veto appropriation bills, legislatures generally can override gubernatorial vetoes.

Grant programs, on the other hand, assign explicit responsibility to the governor or his designated state agency to decide the state's priorities for the expenditure of grant funds, without any reference to legislatures. Seventy of the 75 grant programs reviewed by GAO 12/ require an executive agency or the governor to prepare and submit state plans or applications for Federal assistance--a process analogous to the submission of agency budget requests to the legislature for eventual appropriation. The specific provisions in grant laws and regulations vary from requiring gubernatorial approval or submission of the state plan to actual designation of the governor as the recipient of the grant. To illustrate:

--legislation establishing the State Energy Conservation program provides that "the Governor may submit to the Secretary, a State energy conservation plan."

--legislation establishing the Urban Mass Transit program designates the governor as the recipient of funds for distribution to urbanized areas under 200,000 in population. The Federal agency indicates in proposed regulations that the governor "shall determine" the amounts available to each local area, following a suggested Federal formula.

--the Older Americans Act establishing the Grants for State and Community Programs on Aging does not prescribe a role for the governor in submitting or approving the state plan. However, agency regulations require gubernatorial approval of the state plan and further state: "The Commissioner does not consider a State plan or amendment for approval unless it is signed by the Governor."

Other programs require the governor to review applications for assistance to local governments as well. For example, the Urban Mass Transit and Intergovernmental Personnel programs both give the governor a specified period of time to review and comment on local applications for assistance.

Finally, a role for the governor in reviewing applications and plans has been required on a cross-cutting basis for most grant programs. The coordination of national priorities with state and local objectives through review and comment procedures was mandated by the Intergovernmental Cooperation Act of 1968. The Office of Management and Budget (OMB), in its Circular A-95, "Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects," administratively designated the governor as the state official charged with this review and comment responsibility. This Circular also established a Project Notification and Review System for each state, providing the opportunity for review of grant applications by a state clearinghouse designated by the governor. Federal agencies can choose to fund proposals opposed by A-95 clearinghouses, but they must state their reasons for doing so. OMB's implementing instructions leave no doubt that these clearinghouses are viewed as the spokesman for the governor and, in fact, were instituted to help the governors prevent their bureaucracies from circumventing gubernatorial policies.

State legislatures, on the other hand, usually have no explicit role in the review or approval of these state plans and applications. While the clearinghouses are to disseminate information on project proposals to appropriate agencies affected, legislatures are not recognized in any part of the A-95 grant review and comment process. Legislative appropriation or approval of grant funds is required by only one of the programs included in the GAO review--the General Revenue Sharing program. This program requires that grant recipients follow their normal budgetary procedures as a condition for eligibility.

In our tripartite system of government, the legislature is the traditional repository of the authority to create public offices and designate agencies to administer programs. Furthermore, the legislature has the discretion to determine whether new functions shall be executed by new agencies or through existing organizations.

Grant programs, however, generally assign these functions to the state executive branch. Seventy-one of the grant programs reviewed by GAO require that a state agency be designated to administer the program, and most often the governor is given this responsibility. The following table identifies the designating entity for these 71 programs; note especially that even direct Federal designation occurs more frequently than legislative designation.

Grant Program Requirements
for State Agency Designation 13/

Designating entity	Number of programs
Governor	41
Federal Government	11
State law (Legislature)	9
Either State law or Governor	8
State Secretary of State	2
Total	71

Lastly, independent oversight by the legislature of executive actions has been a traditional attribute of our system of checks and balances. In recent years, legislatures have increased their capacity to perform this oversight role through the creation of post audit evaluation staffs accountable to the legislature. As of 1979, 40 states had an auditor selected by the legislature. To supplement the auditing staff, many legislatures have also established performance evaluation groups to review program effectiveness issues. 14/

The Federal Government is also concerned with the oversight and evaluation of its grant programs. Thirty-six of the 75 grant programs reviewed by GAO provide for state evaluation of the program. In all cases, however, Federal agency officials indicate that the state agency is responsible for evaluating its own performance. For example, regulations for the State and Community Program on Aging (Title III, Older Americans Act) require that the state agency annually conduct written evaluations of projects carried out under the state plan by local agencies. Officials for only 13 of the 36 programs indicated that evaluations by legislative staff would be eligible for Federal reimbursement, but, for most of these programs, such reimbursement would require state agency approval prior to funding.

To be sure, some grant provisions do implicitly require legislative action. Generally, however, these provisions do not offer a truly practical policy-making role because they are reactive and easily circumvented.

For example, 59 of the 75 grant programs require legislative action because of grant provisions stipulating either a state match or the passage of substantive legislation enabling the state to conform to grant regulations or standards. In effect, the legislature can react to executive grant proposals and plans by either refusing to appropriate required state matching funds

or by rejecting needed enabling legislation. This gives legislatures some leverage, but unlike the state appropriation process, it does not permit the legislature to substitute alternatives for executive proposals. Indeed, failure by the legislature to provide match or enabling legislation usually places the state in jeopardy of losing the entire grant. Legislatures are presented with the unenviable choice of either accepting executive grant proposals which they may find questionable or accepting the political onus of losing grant money. Thus the legislature must pay a high price if it chooses to express its policy preferences in this manner. For example, those legislatures that have not passed certificate of need laws required for the Federal Health Planning Program will trigger the loss of not only the planning grant but also other major grants for health services, such as Medicaid funds.

While matching provisions obviously provide a role for state legislatures, because only the legislature can appropriate state funds to match the grant funds, several grant system rules facilitate executive circumvention of even this role. First, most Federal agencies must honor nonappropriated in-kind resources from grantees as matching shares. In-kind resources can consist of such things as existing state facilities, overhead costs, private volunteers, and donations. State agencies can use in-kind matching resources to satisfy the entire match and not have to depend on an appropriation of state funds by the legislature. Secondly, legislative control can be precluded by matching in the aggregate for the entire state. For the most part, state executives have the flexibility to allocate grant funds to state projects without any match as long as other projects in the state have sufficient overmatch to compensate.

The effects of legislative exclusion: Developing a new Politics-Administration Dichotomy

Grant provisions which assign traditional legislative responsibilities to state executives while simultaneously failing to define any meaningful role for state legislatures have served to discourage legislative involvement. Interpretations of these grant provisions by national and state officials, and possibly by state courts, seem to reflect a belief that since no legislative role is explicitly provided, none is intended. In a sense, this creates a detrimental Politics-Administration Dichotomy for state legislatures: the "politics" of grant programs have been debated nationally, and the state's sole function is the traditional executive branch responsibility to administer programs.

Perceptions by some Federal agency officials of the legislative role in grant programs are at odds with the policy-making role defined for legislatures in state constitutions. This is most clearly seen in opinions concerning legislative appropriation

of grant funds. While none of the grant programs reviewed by GAO explicitly prohibit legislative appropriation, most officials believed that legislatures which use the appropriation process to substantively change state plans and applications may violate grant conditions.

Officials of 65 grant programs told GAO that they would have to ignore legislative objections or changes and fund the governors' proposals in cases where these two branches of state government could not agree. Some officials stated that since only the state executive branch is required by grant provisions to review or approve the state plan, they are legally obligated to fund the executive branch approved plan, regardless of legislative objections. Comments by several of these officials are particularly revealing of the extent to which the assignment of legislative powers to members of the state executive branch creates a perception of no legitimate legislative role. For example:

--an official responsible for grant programs for the aging believed that legislative appropriation of grants under the Older American Act would be "a mockery of the planning process" which clearly provides a strong role for the governor in reviewing and approving the state plan.

--several officials of the Food Stamp program stated that if a legislature disagreed with the governor's plan, they "would expect the governor to spend the money in contradiction of the legislature thus invalidating the legislature's position."

--an official with the Interior Department's Outdoor Recreation program believed that legislatures may act only in a public advisory role in commenting on the state plan.

--the Labor Department's Solicitor has written that legislative appropriation of Comprehensive Employment and Training (CETA) funds could constitute a violation of grant conditions on the grounds that "the governor would be hindered in the exercise of the administrative discretion assigned to him by the Federal statute."

--the Transportation Department's General Counsel has concluded that legislative interference with the expenditure of Urban Mass Transit funds could be precluded on the grounds that Congress has directed that such grants be made directly to an executive officer or agency of the state.

--staff of the Appalachian Regional Commission stated that the governor's of the 13 states in the Appalachian region are the state's sole representatives, and that they alone determine funding priorities.

State legislatures that seek to change the state agency designated by the governor can also run afoul of grant conditions. Officials representing several agencies told GAO that funding would be suspended if the legislature overruled the governor and designated its own agency to administer the grant program.

State executive branch officials frequently share similar beliefs about legislative involvement in the grant system. These beliefs, reinforced by grant rules and regulations, can lead to an overt breach of accountability within the state: grant programs can enable the state executive branch to initiate and operate programs without legislative approval and, in some cases, in direct conflict with expressed legislative intent. For example:

--governors of several states have vetoed attempts by their legislatures to change state plans on the grounds that such actions violate the required planning process which establishes supreme executive authority.

--despite knowledge of legislative opposition, Federal officials approved a planning grant for one state. Faced with legislative refusal to authorize additional personnel positions, these officials worked with the governor to operate the program using personal service contracts.

--a state education department used discretionary grant funds in an instructional project to compensate for a 50 percent cut made by the legislature.

--a state probation and parole agency used grant funds to hire 131 agents after the legislature specifically refused this proposal the year before.

--a state employment services agency expanded a grant funded program despite the fact that the legislature recorded its opposition to this during the appropriation process.

--in one state, agencies spent grant funds for service augmentation that were intended to cover employee insurance costs. According to a legislative study, only a small portion of the $8 million in grant payments for this purpose was actually turned over to the state for group insurance coverage, compounding the state's liability for future fringe benefit funding.

Certainly, such actions provide substance for not only political but also legal battles. In fact, state courts have been called upon to determine whether legislatures have a legitimate role

in the grant system. Notions of the differential roles assigned to state executives and legislatures have been critical to the outcome of several conflicting state court decisions. The highest courts of four states--Colorado, Arizona, New Mexico, and Massachusetts--have prohibited their legislatures from appropriating all or most grant funds, while Pennsylvania and New Hampshire courts have affirmed the authority of their legislatures to appropriate grant funds or to change the governor's designation of a state agency to administer grant programs. 15/

Although these decisions have been explicitly based on state constitutional grounds, they can also be understood as implicitly reflecting a state court interpretation of the nature of the grant system. In these decisions, the courts make basic assumptions about the nature of grants, prompting one legal scholar to conclude that they constitute "disguised Federal law holdings." 16/ For example, the Colorado Court held that legislative appropriation of grant funds constituted "an attempt to limit the executive branch in its power of administration of Federal funds" and thus violated the constitutional doctrine of separation of powers. 17/ The Pennsylvania Court, however, noted that "there remains with each grant the necessity to establish spending priorities and to allocate available monies. This is properly a legislative function...As long as the funds are not diverted from their intended purposes and the terms and conditions prescribed by the Congress are not violated, there is no inconsistency between the provisions of the Federal programs and State legislative administration of the funds." 18/

These conflicting state court decisions have not yet been resolved. Although the U.S. Supreme Court did dismiss an appeal by the Governor of Pennsylvania who sought to overturn that court's decision, the Court's ruling does not appear to constitute a dispositive resolution or provide precedent for other states. 19/

THE STATUS OF LEGISLATIVE INVOLVEMENT

An English philosopher has written that the "nature of a trap is a function of the nature of the trapped." 20/ Another author has suggested that legislative power is like "chastity.... (it) is never lost, rarely taken by force, and almost always given away." 21/ In recent years, state legislatures have rediscovered both principles. The substantial discouragement of the grant system is a "trap" only to the extent that the legislatures permit it to be; inhibition, however profound, does not constitute prohibition. Similarly, legislative powers and functions which have been "given away" can be regained; they are never truly lost. Many legislatures have begun to reassess their responsibilities concerning grant funds and are taking the initiative to define a role for themselves in the grant system. While there is a clear trend toward greater legislative involvement, the methods or approaches developed and the actual degree of oversight achieved remains, understandably, highly variable.

The National Conference of State Legislatures (NCSL) recently completed a 3-year study which clearly identifies this trend. 22/ In its 1980 report, NCSL noted that 26 legislatures attempted to increase their oversight of grant funds in 1978 and 1979, with 16 successfully initiating or implementing control mechanisms. More importantly, NCSL now considers 12 legislatures to have a high degree of oversight of grant funds, an increase from the 7 legislatures so reported in 1977.

NCSL has identified four generalized approaches to achieving legislative involvement. These are:

--formal appropriation of grant funds,

--acccepting or authorizing the receipt and expenditure of grant funds prior to their use by the executive branch,

--participating in developing state plans and reviewing individual grant applications, and

--developing comprehensive information systems to continuously track grant receipts.

A given legislature can maintain what it considers to be an adequate level of involvement by emphasizing one of the above approaches; another, by combining several approaches. An appraoch selected by one state, however, may be totally inappropriate in another due to different political or legal circumstances.

Each of these generalized approaches is also subject to unique implementation, due to relative differences in traditional legislative practices and procedures. As a result, two legislatures may use the same general approach but in fundamentally different ways. For example, while NCSL has identified 22 legislatures which are in some fashion involved in reviewing grant applications, only two exert binding review prior to submission; and in one of these states, the binding review is applicable only during the time when the legislature is formally in session.

Appropriation of grant funds is a similarly variable control mechanism in actual practice. NCSL has identified 38 states which exercise some degree of appropriation control over grant funds during the normal budgetary process. The GAO study included field research in 11 states, and although 9 of the states included grant funds in their appropriation act, actual techniques varied widely. 23/ Three legislatures routinely appropriated specific sums of grant funds to specific programs. Three other legislatures used lump sum appropriations at the agency or division level; for example, a biennial appropriation of $180.8 million to a state bureau with no programmatic specification. In two states, the type of appropriation varied by state agency and grant program.

In one state, lump sum appropriations were made but in fact were open-ended; increases in appropriated levels without legislative authorization were possible.

Legislatures also vary in the extent to which appropriation bills cover all funds received. For example, only one legislature in GAO's sample appropriated all grant funds received by state agencies. In the other states, some grants, such as higher education financing or pass-through grants to sub-state governments, were excluded from the appropriation process. On a nationwide basis, the NCSL survey showed that 31 of 38 states appropriating grant funds exclude grants to state institutions of higher learning. 24/ This is presumably in recognition of the special status traditionally accorded state universities by state governments.

Implementing any control mechanism, of course, merely provides the opportunity for legislative involvement. The existence of a control mechanism does not guarantee effective oversight. Available research suggests that the degree of legislative oversight of Federal grant programs, while increasing, remains relatively low.

Although NCSL has determined that 12 legislatures have achieved a high degree of oversight of grant funds, it has also noted that a nearly equal number, 11 legislatures, have limited or no control over grant funds. Legislative fiscal officers in two-thirds of the states responding to an NCSL questionnaire acknowledged that oversight of grant funded programs is generally not as extensive as oversight of state funded programs. Interestingly, four of the officials who responded in this manner represented states considered by NCSL to have high degrees of legislative oversight. 25/

The actual degree of oversight achieved by legislatures not only varies on a state-by-state basis, but also on a grant program basis within state. The extent to which a legislature may review a particular grant program appears to depend on several factors, including but not limited to:

--the amount of state and grant funds involved,

--the extent to which participation in a grant program commits the state to future expenditures, and

--the amount of state discretion allowed.

For the NCSL questionnaire, the fiscal officers were asked to rank their legislature's oversight of 11 specific grant programs (General Revenue Sharing, 2 block grants and 8 categorical grants) with respect to 5 key program elements: objectives, organization, budget, personnel, and substate fund distribution. Responses to the questionnaire were quite revealing of the current variation in legislative oversight:

--Only five of the programs were subject to a moderate degree of legislative oversight; the other six were ranked as receiving slightly higher than minimal oversight. Not surprisingly, the programs receiving moderate oversight were those which permitted substantial state discretion (revenue sharing and the block grants) or required substantial state financial commitments (Aid to Dependent Children and Medicaid).

--Only one of the program elements, budget, received a ranking of moderate legislative oversight; the other four elements were ranked significantly lower. 26/

GAO's work in 11 states revealed similar variations in legislative oversight. One state legislature exercised no formal control over grant funds, despite the fact that such funding routinely constituted over 25 percent of the state's total expenditures. In another state, the legislature was prohibited by a state court ruling from directly appropriating grant funds.

Legislatures in the remaining states had direct control over grant funds but exercised variable levels of oversight. For these nine states, GAO assessed the degree of oversight for four grant programs: Title XX Social Services block grant; Law Enforcement Assistance Administration (LEAA) block grant to implement the state's law enforcement and criminal justice program; Water Quality Management and Planning project grants (section 208 program); and Title I, Elementary and Secondary Education Act (ESEA) formula grant to improve programs for educationally deprived children. The following table, which presents the number of states in which a specific degree of oversight was achieved for a particular program based on GAO's interviews with legislators, legislative staff, and state agency officials, illustrates that a given grant program will receive different degrees of oversight by different legislatures.

Degree of oversight	Grant Program			
	Title XX	LEAA	Sec. 208	ESEA
Extensive	5	2	2	-
Moderate	2	4	3	1
Minimal	2	3	4	8

Although the current status of legislative involvement in the grant system can be generally described as varied and low, this fact should not mask the significant recent gains that legislatures have achieved. In fact, variability in methods of involvement and degrees of oversight achieved is predictable given (1) the absence of recognition of a legislative role in the grant system coupled with the presence of substantial discouragement, and (2) the widely varying political and legal circumstances and the traditional legislative practices of the states. Diversity in the methods and degrees of oversight is undeniable, but one other fact is also undeniable: there is a clear and growing trend toward stronger legislative influence.

FEDERAL INTERESTS CALL FOR REBALANCING LEGISLATIVE-ADMINISTRATIVE RELATIONS

The question of legislative involvement in the grant system can be addressed in many ways. For example, it is necessary to draw a distinction between the procedural value of such involvement, and its possible substantive effect on policy outcomes. Critics of legislatures frequently argue the latter point, suggesting that, procedural issues notwithstanding, no legislature should be allowed to thwart nationally formulated policies. 27/ Other observers have noted that there is no reason to presume any significant change in policy outcomes because legislative involvement would not make policy-making processes any more political or less rational than they otherwise would be. 28/ It is also necessary to remember that the question can be viewed from two perspectives--national and state. This paper will conclude by considering only the process of legislative involvement as it affects specific Federal interests.

GAO identified four Federal interests (i.e., legitimate objectives of the national government) which could be affected as legislatures become more deeply involved in the grant system. In each instance, it was concluded that increased legislative involvement would enhance, or at least not adversely affect the achievement of these interests.

The national government has a vested interest to assure the accountability of its grant programs. Several actions have been taken, most notably the passage of the Intergovernmental Cooperation Act of 1968, to achieve this specific goal. Accountability can be defined in several ways. Most simply, it implies the ability of the electorate to control the operations of government through their elected representatives. Extended, this suggests a system of "checks and balances" in which the executive branch is held accountable to the legislature for its actions.

Accountability is clearly diminished when executive branch officials can act independent of legislative scrutiny. As a result of the extraordinary discretion and apparent authority enjoyed within most grant programs, state executives have initiated

programs either in direct conflict with expressed legislative intent or without legislative knowledge--and sometimes with the encouragement of their grantor agency counterparts. On the other hand, accountability is enhanced in states where the legislature has increased its oversight of grant funded programs. For example, GAO noted several examples of cost containments and reductions, as well as the elimination of programs where need or effectiveness could not be demonstrated, in those states where the legislatures are actively involved. In many of these states, the legislatures had been quite successful in having their priorities incorporated (either formally or informally) into grant funded programs. This is not to suggest that these legislative priorities were "better" than those suggested by the governor or agency officials; they were, simply, the proper result of the constitutionally defined policy-making process with the states.

Ensuring full state support for grant programs is another important Federal interest. The ultimate success of many grant programs is dependent upon a full state commitment of authority and resources to the program.

If full state support is to be achieved, legislatures cannot be ignored. When legislatures are not involved, needed state actions, such as passage of statutes to conform to national guidelines and appropriation of state funds to continue programs when grant funding declines or terminates, may not be forthcoming. For example, GAO observed several cases where legislatures refused to continue state funding for grant programs where their early involvement or knowledge was minimal. The budget officer for one state where legislative oversight of grant programs was quite extensive stated the case very simply: legislative involvement, while not particularly painless, does lead to a clearer statement of priorities and a stronger commitment by the state, not just a given agency, to specific programs.

A third Federal interest concerns the administrative efficiency of the grant system. Federal agencies generally work with a single state agency to assure effective management and expedite the proper and timely expenditure of funds. Critics of legislative oversight of grants argue that involvement by legislatures will disrupt this process. They point out that legislatures are naturally external to the administrative aspects of the grant system (i.e., application, award, and receipt of funds) and that the continuous flow of grant funds to states during a particular fiscal year prevents any meaningful control, especially in states having part-time legislatures. Thus, the argument goes, even if legislative oversight is appropriate, the inefficiencies of such oversight would overwhelm any potential benefits. 29/

These criticisms are not necessarily valid. The record of legislative involvement to date indicates that such oversight, with its attendant Federal interest benefits, can be achieved without disrupting the timely and efficient implementation of grant programs.

The continuous flow of funds does pose control problems for legislatures, but even in states where the legislatures are not in session full-time the problems have not been insurmountable. In the nine states which exercised some degree of direct appropriation control over grant funds, GAO found that a variety of procedures have been developed to handle grant funding not anticipated at the time of budget preparation. 30/

The efficacy of these approaches in minimizing the unnecessary loss of available grant funds was apparent. Of the state agency officials contacted by GAO, 76 percent reported that they had not lost or experienced delays in the receipt of grant funds due to legislative oversight procedures. Of those officials who answered affirmatively:

--some complained of delays associated with the need to obtain supplemental appropriations prior to spending the grant funds. While none of these officials reported that any awarded grants had been lost, some noted that they may choose to ignore an opportunity to apply for a grant if they consider the potential time delay serious enough.

--some referred to decisions by the legislature to refuse available grants. While these grants were technically "lost," it was not due to legislative procedural delay but a direct decision not to participate for substantive reasons.

--only one official reported a legitimate case where grant funds were lost because the legislature failed to authorize spending quickly enough, but the signficance of this single case is questionable. The amount of lapsed funds was very small, slightly more than one-tenth of one percent of all grant funds received by this agency. Also there is some question whether this loss was due to legislative lethargy or a late agency supplemental appropriation request.

Federal agency officials also indicated to GAO that no loss of funds or serious delays occurred in the now expired Anti-Recession Assistance program as a result of the requirement mandating state legislative appropriation of these funds in the same manner as state revenues. The absence of delays caused by legislative actions is especially significant due to two constraints imposed by this program: (1) funds were to be appropriated by states within six months, and (2) states could not use their special interim control procedures to appopriate funds received when the leigislature was out of session.

Lastly, there is one final Federal interest to consider. Under our federal system of government, the national government should remain neutral with respect to the separation of governmental power determined by the states. In one sense, neutrality means avoiding to the maximum extent practicable any distortion or disruption of the separation of powers distinctions made by the states. The grant system is essentially a cooperative venture in which the national government is assisted by sub-national jurisdictions to achieve certain national objectives. As long as this intergovernmental approach is used, the internal constitutional and political systems of the sub-nationals should be respected.

Federal neutrality does not exist when the executive branch of state government is assigned, unilaterally by the national government, functions and powers normally shared with or exclusively controlled by the legislature. Simply stated, grant programs do not observe the traditional separation of powers within a state. Rather, through the assignment of legislative functions to the state executive branch, grant programs have altered traditional constitutional relationships.

With state funds, legislative approval is required before programs can be initiated or changed. Furthermore, legislatures can initiate new programs or change the priorities of existing ones, usually subject to gubernatorial veto which it can override. In grant programs, a similar legislative role is not contemplated. Under the "authority" of specific grant provisions, state agency officials have warded off legislative oversight efforts and have initiated programs and established state priorities without legislative approval. Even where legislatures have overcome these discriminatory grant provisions, legislative proposals must still receive executive approval, or at least avoid outright executive disapproval before many Federal agencies will consider them. Within the current grant system, legislatures cannot override executive decisions and be assured of continued grant support for their state.

Grant provisions which assign legislative functions to the state executive branch should be justified by a compelling Federal interest. GAO could find no such compelling interest, but, in fact, did find that important Federal interests are promoted when state legislatures are involved in the grant system. While it is certainly true that administrative convenience, and even necessity, call for the designation of a focal point in state government for administrative matters, such a designation should not be interpreted as cloaking its recipient in a garb of Federally conferred responsibility to alter the traditional checks and balances within a state government.

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By structurally biasing the grant system in favor of state executives, the national government has inadvertantly helped to

erode legislative-administrative relationships. If the pace of legislative involvement continues to increase, more intergovernmental tension and conflict is likely to arise as active legislatures confront grant provisions specifying strong executive roles. To achieve legitimate Federal interests in promoting accountability and ensuring continuing state support and commitment for grant programs; and to extricate the national government from its current position of non-neutrality in cases of legislative-executive disputes over grant programs, GAO has recommended:

--to Congress, that a cross-cutting statute be enacted to ensure that grant provisions assigning various administrative responsibilities to state executive officials not be construed as limiting or negating the exercise of powers by state legislatures, as determined by state law, to appropriate funds, to designate agencies to implement programs and to review state plans and applications for grant assistance; and

--to the Office of Management and Budget, that a new directive be issued concerning financial and technical assistance available to state legislatures and that Circular A-95 be revised to specifically allow for legislative involvement.

NOTES

1. For the classic description of the theory, see Frank Goodnow, Politics and Administration (New York: The Macmillan Co., 1900); for examples of counterpositions, see Paul H. Appleby, Policy and Administration (University, Al.: University of Alabama Press, 1949) and Michael M. Harmon, "Normative Theory and Public Administration: Some Suggestions for a Redefinition of Administrative Responsibility," in Toward a New Public Administration, edited by Frank Marini (Scranton, Pa.: Chandler Publishing Co., 1971).

2. The body of this paper is drawn from U.S. General Accounting Office, Federal Assistance System Should Be Changed To Permit Greater Involvement By State Legislatures, Report GGD-81-3, (Washington, D.C.: GAO 1980).

3. Theodore J. Lowi, "Europeanization of America? From United States to United State," in Nationalizing Government: Public Policies in America, edited by Theodore J. Lowi and Alan Stone (Beverly Hills: Sage Publications, 1978), p. 17.

4. Advisory Commission on Intergovernmental Relations, A Crisis of Confidence and Competence, Report A-77 (Washington, D.C.: ACIR, 1980).

5. See M. J. Dubnick and A. R. Gitelson, "Nationalizing Regulation: Four Intergovernmental Mechanisms," and L. M. Salamon, "Rethinking Implementation," papers presented at Annual Meeting of the American Political Science Association, August 1980, Washington, D.C.

6. Dubnick and Gitelson, op.cit., p. 6.

7. An important early documentation of chief executive problems was written by a former governor; see Terry Sanford, Storm Over the States (New York: McGraw-Hill, 1967).

8. Leonard P. Stavisky, "Federal Funding and Educational Policy Making: A State Perspective," Public Administration Review, Vol. 39, No. 6, 1979, p. 588.

9. The typical institutional response of legislatures was to pass general authorization statutes, essentially removing themselves from the grant system and permitting maximum discretion to individual state agencies to apply for, receive and spend any available grant funds; see J. W. Fyock and J. J. Long, "The New Federalism: A Challenge to State Legislative Responsibility," State Government, Spring 1977, pp. 77-82.

10. GAO Report GGD-81-3, op.cit., pp. 10-11.

11. Although the reasons for strong state executive roles in grant programs are usually not spelled out in the legislative histories of grant programs, administrative necessity makes it desirable to designate a single focal point for day-to-day administrative matters; it is also reasonable for Federal agencies to select State executive counterparts as this focal point. The legislative history of the LEAA program illustrates one example where Congress was explicit. In this program, the governor was given authority to direct the state program because Congress felt it would be more convenient and effective to deal with one authority representing the state rather than a body as diverse and pluralistic as a legislature. This sentiment was best expressed in Senator Dirksen's comment that we need "a captain at the top, in the form of the Governor, and those he appoints, to coordinate the matter for a State * * *." Vol. 114, Part II, Cong. Rec. Senate at 14753, 90th Cong. 2d Sess. (May 23, 1968).

12. For a listing of these 75 grant programs, which represented the largest grant programs available to state governments (accounting for over $43 billion in FY 1979), see GAO Report GGD-81-3, op.cit., pp. 64-71.

13. Ibid, p. 16.

14. Richard E. Brown, The Effectiveness of Legislative Program Review (New Brunswick, N.J.: Transaction Books, 1979) pp. 1-8.

15. MacManus v. Love, 179 Colo. 218, 499 P. 2d 609 (1972); Navajo Tribe v. Arizona Department of Administration, 111 Ariz. 279, 528 P. 2d 623 (1974); State v. Kirkpatrick, 86 N.M. 359, 524 P. 2d 975 (1974); Opinion of the Justices to the Senate, 378 N.E. 2d 433 (Massachusetts, 1978); Shapp v. Sloan, 480 Pa. 449, 391 A 2d 595 (1978); Opinion of the Justices, 381 A. 2d 1207 (New Hampshire, 1978).

16. George Brown, "Federal Funds And National Supremacy: The Role Of State Legislatures In Federal Grant Programs," The American University Law Review, Vol. 28, No. 3, Spring, 1979, p. 288.

17. MacManus v. Love, op.cit., p. 609.

18. Shapp v. Sloan, op.cit., p. 605.

19. Shapp v. Sloan, 480 Pa. 449, 391 A 2d 595 (1978), appeal dismissed for want of a substantial Federal question sub. nom, Thornburgh v. Casey, 440 U.S. 942 (1979); see also, George Brown, op.cit., p. 311.

20. Geoffrey Vickers, Freedom in a Rocking Boat (Baltimore: Penguin Books, Inc., 1970) p. 15.

21. David B. Frohnmayer, "Regulatory Reform: A Slogan in Search of Substance," American Bar Association Journal, Vol. 66, July 1980, p. 876.

22. National Conference of State Legislatures, A Legislator's Guide to Oversight of Federal Funds (Denver: NCSL, 1980).

23. GAO Report GGD-81-3, op.cit., p. 6. (States visited were Colorado, Florida, Idaho, Illinois, Michigan, New York, Ohio, Oregon, Pennsylvania, South Carolina, and Vermont).

24. NCSL, op.cit., pp. 58-66.

25. GAO analysis of questionnaire data from a national survey by NCSL in 1979-1980 (48 states responded).

26. Ibid; see also GAO Report GGD-81-3, op.cit., p. 74.

27. James E. Skok, "Federal Funds and State Legislatures: Executive-Legislative Conflict in State Governments," Public Administration Review, Vol. 40, No. 6, 1980, p. 565.

28. Larry Walker, "State Legislative Oversight of Federal Funds: A Review," (pending publication), p. 14.

29. Skok, op.cit., p. 563.

30. GAO Report GGD-81-3, pp. 46-47.