

# THE IMPLICATIONS OF CHANGING FEDERALISM: THE COUNTY VIEW

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## Introduction

The changing relationships among federal, state and local governments—which currently are ongoing, as we experience a “New Federalism”—have been a process of evolution, driven in part by political or public demand for more efficient, less costly government. Never in the history of county governance have there been greater demands on county leaders. . . or greater opportunities for developing new solutions to the challenges of the 21st Century.

Historically, county service delivery reflected traditional relationships in which counties were administrative arms of state government (Lawrence and Degrove). Under this design, counties provided limited services, fulfilling state purposes locally (Lawrence et al.).

The rationale for this assignment related to geography. Counties cover every state. They generally are large, compared to municipalities. And, all but two states (Connecticut and Rhode Island) have county or county-like government.

There is great diversity among the 3,043 counties in the United States. County government functions vary considerably from state to state.

But key areas of responsibility include such things as land records, elections, administration, property tax assessment and collection, law enforcement, judicial administration, emergency management and transportation, businesses licenses, welfare and other human services, education, comprehensive planning, parks/recreation/culture, environmental programs, zoning/development control, promotion of economic and industrial development, Cooperative Extension programs, and drainage control.

In fact, large urban counties may provide as many as 100 or more different services, many considered “municipal” (Ciglar). These urbanizing counties are a unique hybrid, created as a result of their shifting roles and responsibilities.

While counties often provide municipal services *to* the unincorporated areas within their borders, counties also are challenged to serve in a coordinating capacity *with* the municipalities, in order to avoid duplication of services and increase service-delivery efficiency. This emphasis on the need for greater efficiency in government as it relates to service delivery is one of the challenges that accompanies the streamlining of governance in the 1990s and beyond.

With the shifting of federal programs and responsibilities to the states, counties are becoming the recipients of “intergovernmental mandates,” especially in areas related to environmental protection, human services and corrections. With the growth of population and the regionalization of problems related to such issues as water supply, pollution, solid waste disposal and economic development, counties are being challenged to become regional problem solvers.

An understanding of the changing roles of county government is particularly important in view of the appearance of the new federalism, which is developing as a result of the devolution of the federal government and which involves new, emerging relationships among federal, state and local governments.

### **‘Devolution’ of the Federal Government: The ‘New Federalism’**

The beginnings of an historic shift of governance in the United States are becoming more apparent. Indicators of this transference of power and responsibility from the federal government to the states is evidenced through discussion and through creation of block grants, reduced aid, elimination of regulations, and the creation of legislative reform initiatives such as the federal welfare reform act.

The relationships among federal, state, county and other local governments also are in the process of change. Responsibilities for service delivery, for program development and implementation, as well as (and, most importantly) for the allocation of financial and other resources are unclear or undefined.

### **Changing Roles of Counties as a Result of the New Federalism**

New forms of state-county relationships are and will be reflected in key adaptations requested and/or assumed by counties and granted or offered by the states. They include: home rule, revenue diversification and flexibility, limits on state mandates, the ability to transfer powers and establish intergovernmental agreements, and the assumption of greater intergovernmental roles and responsibilities by the counties.

### **Illustrations of Change in State-County Relationships**

■ **Judicial Service.** Counties have witnessed large-scale transfer to the state of their once-considerable functional and financial responsibilities for judicial services. Counties traditionally provided administrative support to state courts; however, many also operated their own courts. Judicial services tended to be decentralized in a large number of courts (often operated locally) until the 1960s, when advocates of court reform prevailed in a number of states (Berkson and Carbon; Hays).

The early court reform movement of the Progressive Era proposed “unified” court systems, to substitute state control for local delivery, control and financing of judicial services (*American University Law Review*; Flango). States began adopting unified courts in the 1940s, although not all features were adopted uniformly.

By the late 1970s, observers estimated that well over half the states had unified court systems (Gazell).

Despite concerns about the loss of local control, many officials seek full state funding for the state court system, so as to provide fiscal relief for local governments (Tobin). In Florida, for example, lack of full state funding of the state court system is a major financial concern for county governments.

Rapidly increasing costs of indigent defense, juvenile justice and electronic technologies also have contributed to county fiscal stresses. In fact, they have begun to compete with concerns regarding state funding for courts (Tobin).

With the new federalism and block grants, there is greater flexibility for local government—but also an opportunity for disparate appropriation of resources among appropriate local governmental entities. Most recently, for example, in passing its Criminal Justice Act, Congress failed to distinguish between the responsibilities of governmental entities in the implementation of local law enforcement and court systems. As a result, federal dollars for criminal justice were being allocated to local jurisdictions on the basis of population and high crime rates alone, rather than with consideration of the division of responsibility and actual costs to the governmental entities (counties) involved.\*

■ **Jails.** County responsibility for operating and financing local jails dates back to 13th Century England (Jordan; Monahan and Steward). In 1984, the Advisory Commission on Intergovernmental Relations (ACIR) reported that counties operated local jails in 44 states.

Since then, there has been a major shift to strict state control, as a result of the imposition of state authority over the structures and the conditions of confinement in county jails. Compounded by state influence over the size of local jail populations, this shift has led to fiscal stress, prompting counties to seek adjustments—including increases in financial aid and technical assistance—to help meet new state criteria.

State involvement with local jails emerged in the 1970s, in response to federal court orders subjecting conditions of confinement in prisons and jails to constitutional review. States mandated standards and instituted enforcement programs that limited

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\* In June 1996, the National Association of Counties cited U.S. Justice Department findings that identified 592 counties potentially eligible to apply for certification as “disparate jurisdictions” under the safety-valve provisions of the Local Law Enforcement block grant program. With this designation, the disparate counties potentially were eligible to challenge their existing funding formula allocation. NACo maintained that allocations of federal funds not only should target high crime areas but also should consider the real division of responsibility between local governments in dealing with violent crime. NACo advocated a balanced approach to criminal justice funding that utilizes actual criminal justice expenditure data as the best way to measure governmental responsibility in systematically distributing federal funds.

county discretion by establishing minimum standards for facility design, employee qualifications, inmate classification, housing, food, recreation and inmate medical care.

County compliance costs can be substantial (Wayson et al.; Florida ACIR). The “spillover” of state prisoners into county jails—as well as the stricter law enforcement of recent years—has added burdens that have led to demands for expanded state financing (Bureau of Justice Statistics). While the most common form of aid is reimbursement for housing state prisoners, many assistance programs deal with aspects of local corrections not directly related to jails—e.g., work-release, electronic monitoring and community service.

■ ***Health and Human Services.*** State-county relationships in providing health and human services are varied and subject to change, particularly when viewed in light of recent legislation relating to welfare reform. The federal government, states and counties are all involved in “social safety net” programs. Generally, however, the states rely on counties to implement federal and state health and welfare programs. Beyond that, counties and large municipalities frequently cover health and human service needs not addressed by the state or federal governments.

The partnership between states and counties is becoming more complex—and more strained. For example, the federal government expanded eligibility and coverage for intergovernmental programs such as Medicaid. States and local governments now must pay their portions of increased coverage and eligibility. . . or risk losing the programs. Many states have passed on the costs to their local governments, thereby increasing local fiscal stress.

Jeopardized by unprofitable operations and hospital closings, rural health care also illustrates the strains between states and counties. States and counties have initiated efforts to help rectify rural health care problems (Landes). But state regulations raising the level of required services—such as emergency medical services—make it difficult to deliver and pay for programs that meet state standards.

While control of health services has been shifting to the states, human services programs have been moving toward local delivery and control (Agranoff and Pattakos). Many counties participate in such programs as nutrition centers, special transportation for the elderly, protective services and shelters, and alcohol and drug abuse programs. What has emerged in the delivery of local human services is county reliance on special districts and authorities, plus joint management with municipalities.

### **Mechanisms for Coping With the New Federalism**

To enable counties and other local governments to meet growing needs, states often have granted or offered home rule, revenue diversification, limits on state mandates, local ability to transfer powers and to establish intergovernmental agreements, and use of intergovernmental commissions. These tried-and-tested

options are most desirable. County leaders are challenged to serve increasingly as an intergovernmental coordinator—particularly in the consolidation of services—as resources become more scarce at the local level. Thus, for example, cities may contract with the county for the provision of police protection, or they may participate in a countywide radio dispatch of police and fire personnel.

■ **Home Rule.** One of the broadest powers requested by counties is home rule: the state constitutional or statutory authority to undertake (on a local initiative) any of a series of reforms in structure, functions and/or revenue capacity (Turner). Although a variety of options is available for implementing home rule, the primary vehicle is the adoption of a locally framed and approved county charter.

County home rule first emerged at the turn of the century and was proposed as a remedy for the patronage, corruption and incompetence then found in many counties. More recent efforts in this area have stressed local government effectiveness and efficiency. Rigid governmental structures and a restricted scope of functional and fiscal authority often have frustrated county attempts to cope with increasing demands for urban services, as well as with decreasing discretion and control over “core” services.

With *structural home rule*, counties can provide for a unified executive office, usually with an elected or appointed chief executive. Structural home rule allows the county to reorganize, professionalize and adjust its organization as needed to meet increasingly complex demands.

*Functional home rule* allows counties to provide a broad and changing array of services that are not mandated by the state, but desired by local citizenry. Such services might include libraries, mass transit, flood control, parks and recreation, and industrial development. Discretion to provide these services has been essential when counties have had to respond to demands for services typically provided by municipalities.

*Fiscal home rule* involves greater county authority over taxation and long-term debt issuance. Fiscal home rule is needed to provide counties with budgetary stability, to satisfy the increasingly strict regulatory criteria of state mandates, to deal with the changing responsibilities that result from the devolution of the state and federal governments, and to fund the emerging diversity of functions demanded by citizens.

■ **Local Revenue Diversification and Enhancement.** Paralleling the push for local home rule, counties have benefited from state assistance authorizing revenue diversification and enhancement. The U.S. Bureau of the Census documented a shift away from reliance on property taxes and toward increases in state aid between 1957 and 1986 (National Association of State Budget Auditors). State aid expanded into areas not traditionally funded by state resources, including corrections, housing and transit.

Some states have allowed counties to impose local sales taxes and income

taxes. According to a U.S. ACIR report, 31 states had allowed such taxation by 1987 (U.S. Advisory Commission on Intergovernmental Relations). More than 1,243 counties now use this revenue source, including all the counties in at least 10 states.

While generally more common among municipalities, the *income tax* is used by counties in a few states. Typically, the local income tax is a wage or payroll tax. In Maryland, for example, the local income tax is based on the percentage of state income tax liability. In Indiana, it is based on a flat rate of federal “adjusted gross income.”

Other revenue sources counties use to expand their options include *special assessments*, *user fees* and *impact fees to finance growth* (Leithe and Montavon).

In 1986, the federal General Revenue Sharing Act for local governments was terminated. Ironically, with the birth of “new” block grant programs and the consolidation of categorical programs in 1996, county governments are finding themselves once again the recipient of “*revenue sharing*” funding.

The shift of funding resources and programs to the states from the federal government may create new challenges for county leaders as they struggle to assure that program funding does indeed filter down to the service-delivery level, rather than stop or remain at the state level. Funding formulas also will become a greater source of concern as county service-delivery providers establish new roles in relationship to their public and private counterparts.

Other reasons for expanding statutory authorization for revenue diversification include: (1) compensation for property exempted from local taxation, (2) property tax relief and (3) the disbursement of state funds according to measures of local need. Documentation of the plight of rural and/or non-metropolitan areas with limited revenue options has helped (U.S. Advisory Commission on Intergovernmental Relations).

■ ***Countering State Mandates.***\* As more responsibility and resources are given to the states by the federal government through establishment of the devolution or new federalism process, America’s counties and other local governmental entities are becoming concerned about the possibility of increased state mandates and decreased revenue sources. Interest in state mandates has been heightened by (1) the fiscal pressures on states and local governments, (2) federal retrenchment in many domestic programs, (3) state and local tax reductions and other limitation measures initiated by voters, and (4) the changing relations between state and local governments (Fix and Kenyon; U.S. Advisory Commission on Intergovernmental Relations). Mandates on counties have been particularly severe in jail operation, health and human services, and environmental regulation and local governments

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\* The meaning of the term “mandate” varies. Definitions can be broad, as in “any constitutional, statutory, or administrative action that either limits or places a requirement on local governments” (U.S. Advisory Commission on Intergovernmental Relations 1988).

The recent enactment of legislation limiting unfunded federal mandates for state and local governments has “sensitized” decisionmakers at all levels of government. Of course, the long-range effectiveness of such legislation remains to be proven.

The U. S. General Accounting Office (GAO) has reported that most states require an estimate of the local cost burden of the state’s mandates. Many states also require mandated reimbursement; however, only a handful of states do so by constitutional provision.

The GAO found that state constitutional requirements are more effective in limiting unfunded mandates. There may very well be a greater demand nationwide for constitutional protection from unfunded mandates at the state level as local governments—particularly counties—cope with new roles thrust upon them by the new federalism.

■ ***Service-Delivery Coordination.*** Another evolving trend in county government’s delivery of services is the result of a demand for greater efficiency in and variety of programs, combined with less available financial or related resources. Service-delivery coordination at the county level is an opportunity for counties to coordinate with other local governments and with the private sector in discharging responsibilities.

The U.S. ACIR examined service-delivery arrangements for local coordination in service delivery and found an increase in coordinative efforts, including (1) more intergovernmental service contracts, (2) joint service agreements and (3) intergovernmental service transfers (U. S. Advisory Commission on Intergovernmental Relations). Trends indicate an increase in authorization for local contracting in which one government pays the other for a particular service. . . and an increase in contracting for service among counties and private service provider entities. The use of intergovernmental service arrangements has increased the flexibility of counties to meet service demands during this period of a changing federalism.

## **Intergovernmental Roles and Responsibilities of County Governments**

With the emergence of a new federalism and its increased demand on counties to be significant service providers and political entities, counties are becoming major players in the intergovernmental arena.

Unlike regional governments—which are comprised of various local governments—counties may be more truly intergovernmental governments, for they often have multiple functions, identities and responsibilities. A single county can at once be a full-service local government, a quasi-state agency and a regional actor.

Counties’ increasingly important role as coordinators of service delivery or developers of countywide resource-sharing systems underscores the opportunity

for county governments to become major leaders and brokers in the establishment of proactive, cooperative relationships among all levels of government.

## Conclusion

The major challenge facing U.S. counties is multifaceted. Balancing the federal budget while simultaneously reducing the national debt is a major priority of the current Congress. Consequently, the remaining years of the 20th Century will inevitably reflect significant reductions in federal revenue and resources made available to state and local governments. As a result, counties will be challenged to develop innovative solutions to an expanded demand for services, using less revenue and resources. If they hope to succeed, county leaders will be compelled to develop their leadership skills in the intergovernmental arena.

The critical roles the counties perform in the states' service delivery and administrative structure argue for greater empowerment of counties and more effective intergovernmental relations. As the "government of the future," counties must be considered equal partners in the intergovernmental equation that makes up the new federalism—equal partners with a fair and equitable share of rights, responsibilities and resources.

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