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# **Rethinking Maine government: The past, the present, and the future**

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*The budget difficulties faced by Maine and by most other states have prompted a national search for better ways to deliver government services. In Maine, a conference entitled "Rethinking Maine Government" was held at the University of Maine on January 5-6, 1993 under the auspices of the Margaret Chase Smith Center for Public Policy. MPR has selected three of the presentations at that conference for this issue (and likely will include other selections in future issues). Anthony Cahill challenged the 400 legislators, state government officials and business leaders attending the conference to think in terms of a "revolution" in rethinking Maine's state government. Donald Nicoll was the co-chair, along with Merton Henry, of the Special Commission on Governmental Restructuring. Kenneth Palmer provided a historical view on previous efforts to reorganize Maine government.*

## **The myths of 'broken' government: Moving beyond the conventional wisdom**

*by Anthony G. Cahill, University of Maine*

### **Introduction**

Maine's state government, like nearly all other state governments across the nation, entered the last decade of the century feeling the winds of change at its back but apprehensive about nearly everything associated with that change. Elected and appointed officials have been buffeted by divergent and often competing forces of change. Greater demand for action on increasingly complex problems are coupled with a rising resistance to increased taxation at all levels of government, resulting inevitably in fewer and fewer federal dollars directed to the states. Citizens appear to be unsettled and angry (although they are often not clear about the specific target of their anger). From Washington, "states' rights" has now become "states' responsibility," as the federal government redefines and restricts its role to narrower circles of policy.

In this new economic and political environment, political officials pay increased homage to the new holy grail of the public sector: more efficient government. The conventional wisdom holds that the problem of government is attributable to the increasingly inefficient way in which government fulfills its traditional role of providing services. If the problem is defined in this way, the logical answer is to make government more efficient.

Efforts to pursue this goal have dominated academic literature as well as discussions in government circles. The uncomfortable notion of doing more with less takes on many guises, including "improving efficiency," "eliminating duplication," "cost-effectiveness," "efficiencies of scale," "regionalization," "consolidation," "professionalization" and simply "good government." It is difficult to argue with efforts to ensure careful and prudent management of public resources

by improving the quality or reducing the cost of delivering services. These are important issues and deserve discussion and action. However, by themselves, they are incomplete.

It is sometimes necessary to look at problems and solutions backwards and ask, "If that is the solution, what is the problem?" In this context, if efficiency and cost-effectiveness are the solutions, then the problem must be that government has become like a mis-firing car engine: It worked fine, but needs a tune-up, after which it will work fine again.

While efforts to "tune the engine" of Maine state government should be applauded and encouraged, such tinkering is not by itself enough. Public discussions about restructuring government must go beyond improvements in the ways we manage the traditional functions of government to discuss why we restructure. If not, these discussions run the very real risk of making what policy theorists call "an error of the third type:" solving the wrong problem, but solving it very well.

### **Changes in the social compact**

We are quite possibly in the beginning stages of another American revolution. This is not as far-fetched, radical, or alarming as it might sound. While change is difficult to see from a particular point in time, change in the Republic has never been particularly slow, steady, or evolutionary. It has tended to be exactly the opposite. If we are indeed witnessing a revolution, then it is one of many that has occurred in our history.

At least four times since the armed rebellion against the British crown in the 1770s, we have been in revolt - not armed rebellions, but constitutional and philosophical revolutions, revolutions of ideas. Each of these revolutions has radically altered the way in which we govern ourselves. They have changed our collective notions about government and the social compact that governs the relationship between each individual citizen and government. The social compact defines what people expect from their government and what kind of government citizens are willing to support, both politically and financially. The compact defines what actions government may take, and it defines a point beyond which government cannot go in solving problems and still retain the support of the people. The social compact defines what problems or issues are so clearly in the public interest that they should be the target of public action. It defines the autonomy that governments at all levels should enjoy in defining public problems and public solutions.

Prior revolutions have not had discrete beginnings and endings that are marked each year with parades and ceremonies. There are no equivalents of the "shot heard round the world" or the surrender at Appomattox Courthouse. However, each has been as radical and as far-reaching as that first armed rebellion.

Changes in the social compact have occurred in two main areas. First, a remarkable realignment of responsibilities occurred among levels of government, federal, state and local. In almost every case, change expanded the authority for the next higher level of government and diminished the power and authority for the level of government below. Second, there was a rethinking of what problems are solvable. Only after that did the issue of whether or not government is the proper

vehicle to tackle them get addressed. In each of the prior revolutions, the number and type of problems that were considered "solvable" (and solvable by public action) increased.

The concentration of responsibility and the enlargement of problems considered solvable by public action have occurred from the very beginning of the Republic.

At the first watershed, the Articles of Confederation were replaced in 1789 by the Constitution, which established delegated powers for the federal government. A second long period of revolutionary activity began in 1819 with the *McCulloch v. Maryland* decision by the U.S. Supreme Court. This decision expanded the power of the national government to establish banks with a (then) revolutionary concept of "implied powers" held by the federal government. The period ended with the Civil War, which established the supremacy of federal power and the inability of the states to withdraw from the compact. The process of states gaining power and authority over local governments culminated in 1868, when Dillon's Rule established that local governments were "creatures of the state" that exist at the sufferance of the state and "...have no independence beyond what the state grants them" (Henry 1992: 375).

A third revolution occurred in the 1930s, when the real threat of economic chaos and the imaginary threat of the "red menace" combined to thrust the federal government at last into domestic policy. Roosevelt's "Hundred Days" radically altered our expectations of what government should and could do, and set in motion concerted national action in numerous policy areas, including health and welfare, employment, education, and the environment.

A fourth period of revolutionary activity occurred in the 1960s, when Kennedy's New Frontier and Johnson's Great Society programs dramatically extended yet again the problems considered "public" and the authority of government to solve them. Engaging in what was referred to (in a positive way at the time) as "social engineering," government began the long and difficult tasks of reshaping America's cities, eliminating poverty, ensuring proper nutrition, and ending discrimination.

### **The fifth American revolution**

The complexity and size of contemporary government is due not to some nefarious plot to strip power from the citizenry but rather to the number and complexity of problems that we as a public community assumed could be solved by public action. Those who decry the size and complexity of government and who wonder how it got this way need look no further than the mirror.

What change can we expect in the fifth American revolution? What does the revolution hold for state governments and local governments?

The extraordinary suspicion and distrust that so many citizens now have of government cannot be attributed solely to perceived or real inefficiency, duplication or waste. Rather, Americans are losing their faith in promises of greater efficiency as a means of restructuring government. The mistrustful eye that so many Americans cast on government is due to a nagging, as of yet only half-spoken, belief that government has not lived up to the promises that it has made in the last

half-century. The belief that government could solve any problem or accomplish any task has disappeared.

This is not simply a cry to reduce inefficiency or duplication. It is the expression of real doubt in the ability of American governments to fulfill the functions they have been assigned in decades and centuries past.

The most visible victim of the current revolution is the federal government. Unlike the previous four revolutions, Washington is now more concerned with shedding responsibilities than with taking on new ones. The traditional dependency between the states and the federal government has been broken. Over twenty years of experience demonstrates that the change in the role of the federal government is not temporary. Even an administration and Congress controlled by Democrats - traditionally the most optimistic about the ability of government to solve problems - will not bring us back to the days of "can do" federal government. This new attitude is the result of executive, legislative and judicial decisions reaching back to the Nixon administration. In the absence of an economic crisis even more serious than the current one, we will not soon see the renewal of an activist, interventionist federal government.

The decline in federal financial support of state and local governments is a symptom of the federal government's increasing inability to generate sufficient revenues. It is also a symptom of a significant shift in attitudes. A federal commission examining problems of local governments recently expressed the opinion that "*there are no 'national urban problems,' only an endless variety of local ones*" (Wood, 1991:99). Alice Rivlin (1992, p. 317), the first director of the Congressional Budget Office and a member of the Clinton administration, endorsed the process of dismantling federal authority and national expenditures on a wide range of familiar problems:

Improving education is a challenge that cannot be met at the national level....Street crime, drug use, and teenage pregnancy are all examples of problems that the federal government can deplore but cannot fix. Social services, housing, community development, and most infrastructure are also activities... for which the national government has no special aptitude and which it has no demonstrated ability to carry out effectively.

These startling assessments are made by people of power and influence within the traditionally-interventionist federal government. Perhaps these admissions of failure by the federal government will even be cheered by those who take enjoyment in seeing an officious, arrogant and distant federal government humbled.

### **The impact on state government**

For state governments, the past centralization of authority at the federal level was a double-edged sword. On the positive side, states were relieved of sole responsibility for political and fiscal solutions to increasing numbers of very thorny problems. On the negative side, however, this upward-rise of responsibility did not mean that state governments were relieved of all responsibility for the problems in question. The federal government simply assumed some or all responsibility for defining a solution. "Downward" mandates to force collective action (with or without funding) were perceived as a permissible (and, even occasionally as a beneficial) tool.

The return of power to the states will present Maine and other state governments with increasingly hard choices. State and local governments must in the future increasingly address alone these very same problems that have heretofore been viewed as "national" problems.

There are still a number of domestic issues, such as solid waste, in which the federal government will demand some form of primacy. Even in these issues, however, state and local government will get little or no financial assistance. Moreover, for every issue subject to federal primacy, there will be ten more in which public action, if it comes at all, will originate in the states. For example, a few states have created *de facto* national automobile emission standards more stringent than the federal government. The recent retreat by the Supreme Court in the matter of federal supremacy relative to nuclear waste is another. To succeed in the fifth revolution, states must

...be forced to stand on their own to a greater extent than they have been, to function as polities and not as middle managers, to take the lead and not merely respond to Washington-based initiatives (Elazar 1987:8).

### **Thinking the unthinkable**

We will also need to "think the unthinkable." Are there any issues that should not be tackled *by government*? What will be the consequences of abandoning public action on them? Can government and the social community live with those consequences?

The definition of a compelling public interest which leads to government action does not necessarily make a judgment about the worth of particular social goals. That definition must come to grips with hard, unpalatable facts. No conceivable increase in revenues from more efficient and effective budgeting will save enough resources to fund expansions of current programs, to create new ones, or possibly even to maintain current programs. Government may be forced to choose not to do things which it believes to be worthwhile and valuable.

A second, equally fundamental, question presents itself. Are there policies or functions that are so essential to the public good and the commonweal that we are willing to tolerate inefficiency in providing them? What roles of government are so essential that even if we could do it more cheaply at some unknown cost in delivery, we should not do so?

Such questions are at the least unsettling and perhaps even frightening. Both questions entail considerable political danger for elected and appointed officials. They may be criticized by an electorate caught between more traditional (if changing) expectations and an unwillingness to provide increased revenues. These questions challenge the conventional wisdom of both the right and the left. But the greater danger may be that every government function suffers because we refuse to prioritize.

## **Re-examining the links between state and local governments**

Just as the relationship between the federal and state governments is rapidly changing, so too must the dependency relationship between the state and local governments be systematically reevaluated. This assessment must define problems that are sufficiently important that they should be tackled on a statewide basis. Conversely, are there traditionally state level services that we may wish to turn over localities to fund or not fund as they wish, and at levels and in ways they wish?

Such an examination need not be only a way for state government to shed political and fiscal responsibilities. It should also justify the use of state-wide resources on those issues that are to be sufficiently important to retain state-level involvement. Citizens are asking, ever more sharply, why any particular problem is a *public* problem. The response must not simply be a defense of the traditional role of government, but an articulate assertion of what is the public's business and what is not.

## **Reforging the upward links between state governments and the federal government**

The authority given to the federal government under the Constitution and interpreted by the Supreme Court under "implied powers" of the federal government has at times obscured the inherent power of the states. As state governments reassess their role, their political leaders and citizens might engage in a discussion of how to assert the power of the states on the national government.

Just as unfunded mandates from the state to local governments have been partially addressed in Maine, the issue of the state-to-federal relationship can be addressed. Looking outward, not inward, to solve problems and engaging in the unprecedented levels of interstate cooperation can be complicated. It is always difficult and sometimes impossible.

## **Towards the "responsible government"**

In defining the essential, pivotal role of government, the concept "responsible government" (Bebout 1954; James 1992) may be useful. A "responsible government" carves out a distinct role in *policy* and not in the *delivery* of services. In that role, government develops policies with regard to the adequate, equitable provision of services. It serves as the "guarantor" and overseer of services, but not necessarily the provider. In this role, government's critical responsibility would be to regulate the conditions under which services are provided. This includes a component that has too often been forgotten: evaluation of the provision of services, however provided. Government would determine unmet needs and would examine if those needs should be met through public action. It would develop criteria for delivery, including equity and fairness, and it would evaluate the providers of services, no matter who those providers may be.

## Conclusion

Issues of efficiency and effectiveness - questions of "how" - are critically important to government's ability to retain (or regain) the trust of citizens. But even so, "how" is less important than "why." Things that are not worth doing cannot be cost-effective, no matter how well they are done.

"Why" is clearly a more difficult and frustrating question. In ordinary times, answers to "why" are self-evident. The unspoken social compact serves as a common bond that allows government to operate.

But these are not ordinary times, no matter how much we wish them to be. Changes in this social compact have been occurring for several years, and possibly longer. A movement beyond the scope of organized politics will likely reshape our political system. Maine's government, like other state and local governments, is in the early stages of an inevitable restructuring.

This leads to a last, crucially important point. As we discuss why, our elected and appointed servants must be far more proactive. Attitudes and policies that are fundamentally reactive, that look inward, will serve neither governments nor citizens well.

As officials redefine the appropriate government role, they cannot be defensive. If an issue deserves and requires public attention, we must have leaders - not managers - who clearly articulate the need. To evaluate the public sector solely on the basis of efficiency and cost-effectiveness would be a terrible mistake and would diminish its basic purpose of "conciliating the irreconcilable" (Elazar, 1987:9).

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