Comment

Court Finance and Unitary Budgeting*

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Among the difficulties besetting the courts today is lack of money. In this respect, they share adversity with most public and charitable institutions such as schools, universities, hospitals, parks and libraries. But the fiscal dilemma of the courts is unique in certain respects. They constitute an independent branch of government, critically necessary to the balance of our constitutional system. Yet they are expected to eschew the normal political process and, unlike other competitors for public resources, are prohibited from cultivating their own constituencies and utilizing lobbyists. Furthermore, the judicial systems of most states are heavily dependent on local government for their finance.[1] In these states, the courts must join the unhappy competition for the inadequate revenues of local property taxes.

While available fiscal support is limited, the judicial workload often appears boundless. The squeeze, discernible everywhere, has reached crisis proportions in some localities, resulting in substantial backlogs, frustrated litigants, and demoralized court staffs. Money alone will not solve all of these problems; nevertheless, in many areas, particularly the large cities, more money is plainly essential.

The task of providing the judiciary with adequate funding is first one of problem-recognition and exhortation. This stage is now well advanced.[2] Next, it involves devising better methods for identifying

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1. U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL RELATIONS IN THE CRIMINAL JUSTICE SYSTEM 108 (1971).

2. *Cf.* COMMITTEE ON THE STATE CONSTITUTION, NEW YORK STATE BAR ASS'N, INTERIM REPORTS AND PROPOSALS (1966); CONSTITUTIONAL REVISION COMMITTEE, CITIZENS UNION OF THE CITY OF NEW YORK, POSITION PAPER NO. 8, A STATE JUDICIAL BUDGET (1967);

the financial needs of the courts, presenting them clearly, getting the required appropriations, and administering the funds in an intelligent and responsible manner. This Comment will examine two currently discussed methods of achieving an adequate and rational judicial budget—the constitutional theory of inherent power and the administrative concept of unitary budgeting. We will suggest that it would be unwise for advocates of judicial reform to rely solely on the imperatives of the former without also developing the practical and political advantages of the latter.[3]

I. The Inherent Power Doctrine

The doctrine of inherent power runs essentially as follows: The courts are a constitutionally created branch of government whose continued effective functioning is indispensable; performance of that constitutional function is a responsibility committed to the courts; this responsibility implies the authority necessary to carry it out; therefore, the courts have the authority to raise money to sustain their essential functions.[4]

The doctrine presents the alluring prospect of obtaining funds through writs of mandamus, thus avoiding the bargaining and uncertainty of the legislative process. Even its most extensive formulations, however, have been somewhat ambiguous, never precisely defining the needs to be covered. A court has inherent power, according to a recent formulation, to determine what funds are reasonably necessary for its efficient and effective operation, and to compel the executive and legislative branches to provide such funds.[5] Such statements have raised hopes that the doctrine can be used by courts to achieve fiscal independence.

Substantial reliance upon the doctrine, however, may be shortsight-

GOVERNOR'S LOCAL AFFAIRS STUDY COMMISSION, LOCAL GOVERNMENT IN COLORADO: FINDINGS AND RECOMMENDATIONS 91 (1966); INSTITUTE OF JUDICIAL ADMINISTRATION, THE SUPREME JUDICIAL COURT AND THE SUPERIOR COURT OF THE STATE OF MAINE (1971); SPECIAL COMMITTEE ON THE CONSTITUTIONAL CONVENTION, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, COURT STRUCTURE AND MANAGEMENT (1967).

3. J. CARRIGAN, NATIONAL COLLEGE OF STATE TRIAL JUDGES OUTLINE ON INHERENT POWERS OF TRIAL COURTS TO PROVIDE NEEDED COURT PERSONNEL, FACILITIES AND EQUIPMENT (4th rev. 1968), reprinted in INSTITUTE OF JUDICIAL ADMINISTRATION, STATE AND LOCAL FINANCING OF THE COURTS app. C (Tentative Report 1969).

4. *Cf.* A. VANDERBILT, THE DOCTRINE OF THE SEPARATION OF POWERS AND ITS PRESENT-DAY SIGNIFICANCE (1953).

5. Commonwealth *ex rel.* Carroll v. Tate, 442 Pa. 45, 52, 274 A.2d 193, 197 (1971). This is one of the most common formulations of the doctrine. *See also* Judges for the Third Judicial Circuit v. County of Wayne, 383 Mich. 10, 23, 172 N.W.2d 436, 441 (1969), *modified on rehearing*, 386 Mich. 1, 190 N.W.2d 228 (1971).

ed and unwise. As applied to date, it has been more bountiful in legal rhetoric than in practical consequences. Most of the reported decisions have involved marginal appropriations for ancillary personnel and facilities rather than basic fiscal underwriting.[6] Moreover, the disputes have pitted the judicial system not against the executive and legislative branches of state government, but rather against subdivisions such as counties or municipalities.[7] Thus, the ultimate struggle has been between state and local governments, not between the judicial and legislative or executive branches. Indeed, some decisions have relied at least partially on express or implied provisions of state constitutions and statutes for their arguments. It seems safe to assume that the decisions are often made with a fairly clear idea of legislative sentiment on the issue of judicial funding. The courts thus avoid a direct confrontation with their co-equal partner in state government by requiring only local governments to fulfill their financial responsibilities. In these decisions, the interests of the state executive and legislature are affected neither strongly nor directly enough to move them to the extraordinary action of opposing a judicial determination of a specific case. Outflanked, the county or municipality succumbs.

In the minority of cases where the judiciary has proceeded against the state legislative or executive branch in a direct contest, the issue involved has always been specific, narrow, and relatively minor.[8]

6. Among the most significant uses of the doctrine of inherent power are in cases involving the power of the court to set the salaries of specified court employees; *see* Judges for the Third Judicial Circuit v. County of Wayne, 383 Mich. 10, 172 N.W.2d 436 (1969), *modified on rehearing*, 386 Mich. 1, 190 N.W.2d 228 (1971) (11 probation officers, eight law clerks, and a local court administrator); Bass v. County of Saline, 171 Neb. 538, 106 N.W.2d 860 (1960) (clerks in trial court); Wichita County v. Griffin, 281 S.W.2d 253 (Tex. Civ. App. 1955) (court reporters).

7. In these cases, the action may be brought by a county or municipal court against a county or municipal government, so that initially the adversaries are of equal stature. The final decision in such a case, however, is almost always by the state's highest court and is couched in terms of general judicial power such that the final contest is between the county or municipal government and the authority of the decision is the state's highest court. Thus, in Commonwealth *ex rel.* Carroll v. Tate, 442 Pa. 45, 274 A.2d 193 (1971), which began with the judges of the Philadelphia Court of Common Pleas bringing mandamus against the mayor and city council of Philadelphia, the Pennsylvania supreme court in its decision broadly defined the issues as "(1) whether the Judicial Branch of our Government has the inherent power to *determine* what funds are *reasonably necessary* for its efficient and effective operation; and (2) if the Judiciary has the power to determine what funds are reasonably necessary, does it then have the power to *compel* the Executive and Legislative Branches to provide such funds . . . ." 442 Pa. at 47, 274 A.2d at 194 (emphasis in original). *See, e.g.*, Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963); Carlson v. State, 247 Ind. 631, 220 N.E.2d 532 (1966); Judges for the Third Judicial Circuit v. County of Wayne, 383 Mich. 10, 23, 172 N.W.2d 436, 441 (1969), *modified on rehearing*, 386 Mich. 1, 190 N.W.2d 228 (1971); *In re* Bd. of Comm'rs of Caldwell County, 4 N.C. App. 626, 167 S.E.2d 488 (1969); Commissioner's Court v. Martin, 471 S.W.2d 100 (Tex. Civ. App. 1971).

8. *In re* Appointment of Clerk of Court of Appeals, 297 S.W.2d 764 (Ky. 1957) (power to appoint new clerk of court on incumbent's death); State *ex rel.* Schneider v. Cunning-

Although the state's executive and legislative branches are directly confronted, they are not challenged in any vital way. Acquiescence to the doctrine of inherent power appears to follow from a considered unwillingness to pursue the contest further, rather than any real disability to do so. There is a reluctance to jeopardize the tripartite structure of government over a few dollars for a janitor's or stenographer's salary.

Expansion of the doctrine beyond this limited application would raise significant constitutional and political difficulties. The only available source of financial support for the courts is tax revenue in the hands of other governmental units.[9] The judiciary has no power of the purse: For the courts autonomously to tax on a systematic basis would be clearly objectionable on constitutional grounds. The taxing power is vested in the legislature, as checked by the veto of the executive;[10] so is the power of appropriation.[11] A judicial requisition of funds from a taxing agency, such as a county or city, is in

ham, 39 Mont. 165, 101 P. 962 (1909) (whether the court's lone stenographer should be paid $150 or $200 per month); State *ex rel.* Kitzmeyer v. Davis, 26 Nev. 373, 377, 68 P. 689, 690 (1902) (new chairs and carpeting for the state supreme court's rooms); *In re* Janitor of Supreme Court, 35 Wisc. 410 (1874) (power to appoint janitor).

9. The courts' oldest method of raising revenue—charging fees for their services—is now substantially unavailable and unavailing. Clearly this is so in criminal cases, where most defendants are more or less without money. Gideon v. Wainwright, 372 U.S. 335 (1963); Griffin v. Illinois, 351 U.S. 12 (1956). The general principle which these cases and their progeny establish is that the government cannot deny a defendant the means necessary to defend himself because of his inability to pay the attendant costs. For a general discussion of the theory see U.S. ATTORNEY GENERAL'S COMMITTEE ON POVERTY AND THE ADMINISTRATION OF FEDERAL CRIMINAL JUSTICE, REPORT (1963).

In civil cases, although it might be constitutionally permissible for the courts to revert to a fee system, it would probably be politically imprudent to do so. *Cf.* Boddie v. Connecticut, 401 U.S. 371 (1970); Smith v. Bennett, 365 U.S. 708 (1961). *See also* Goodpaster, *The Integration of Equal Protection, Due Process Standards, and the Indigent's Right to Free Access to the Courts,* 56 IOWA L. REV. 223 (1970).

10. Leahey v. Farrell, 362 Pa. 52, 57, 66 A.2d 577, 579 (Pa. 1949), describes the generally prevailing allocation of power:

> Control of state finances rests with the legislature, subject only to constitutional limitations (citation omitted). The function of the judiciary to administer justice does not include the power to levy taxes in order to defray the necessary expenses in connection herewith. It is the legislature which must supply such funds.

Id.

There is great variety in the specific wording of state constitutions with respect to the taxing power. Indeed, the constitutions of four states—Connecticut, Iowa, Rhode Island, and Vermont—do not contain any clause specifically establishing the government's taxing power.

In practice, however, legislatures in all the states exercise the taxing power. If not otherwise authorized, they may do so under the theory that the power of a state legislature is plenary except as specifically restricted by constitution. Thus the legislature may exercise the power to tax because that power is not otherwise delegated and is not forbidden to the legislature by the state's constitution. R. DISHMAN, STATE CONSTITUTIONS: THE SHAPE OF THE DOCUMENT (1960). For the provisions of specific constitutions see LEGISLATIVE REFERENCE BUREAU, UNIVERSITY OF HAWAII, MANUAL ON STATE CONSTITUTIONAL PROVISIONS 233 (1950).

11. LEGISLATIVE REFERENCE BUREAU, UNIVERSITY OF HAWAII, *supra* note 10, at 263; NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION art. 703 (1963).

essence a judicial arrogation of discretion conferred, for better or worse, on the popularly-elected branches of government.[12] Indeed, the virtue of the doctrine seen by some of its supporters—that it takes the problem of maintaining an adequate court system out of the realm of public debate and political commitment—may also be viewed as an essential vice. No important function of government can be maintained over the long run without public debate, political commitment, and the exercise of community responsibility as expressed by bodies dependent on popular assent.

Unless it is very substantially expanded, the doctrine of inherent power could force court financing into an unworkably narrow framework. This is perhaps the most serious practical difficulty with the doctrine: In order to create a legal duty on the part of any government agency to provide a service or facility, the item must be "indispensable" to the functioning of the judicial system. The only service that can be so regarded is the provision of judicial salaries. Courts can function—indeed, they *have* functioned—with judges and nothing more. Most constitutions recognize the indispensability of maintaining judicial salaries by forbidding any reductions during a judge's term. But none of the cases invoking the inherent power doctrine have involved an infringement on judicial pay. Moreover, under modern conditions—with continuous inflation and steadily swelling dockets —action to grant periodic salary increases and create new judgeships seems more critical than merely maintaining the status quo. Yet no advocate of inherent power would argue that judges can raise their salaries or augment their numbers by writs of mandamus. Such actions, although possibly indispensable to an effective judicial system, clearly fall outside the doctrine's narrow framework. And that framework also omits the vast apparatus of supporting staff and services which are practically essential, if not literally indispensable, to a modern court system.

The doctrine is too limited in another sense: It contradicts a fundamental principle of efficient budgeting, *i.e.*, that any service or facility should be regarded as replaceable by a functionally equivalent, less expensive alternative. A court clerk should be regarded as equivalent to an administrative assistant or a computer programmer, a court reporter to a recording technician and typist, a staff of probation officers to field investigators and staff psychologists. The point is not that all these substitutions, or any of them, should be made—but that

12. *Cf.* Brennan, *Judicial Fiscal Independence,* 23 U. FLA. L. REV. 277 (1971).

they should be objectively considered. An intelligent approach to judicial financing requires some investigation of alternative means of accomplishing essential tasks. But the focus of the inherent power doctrine is solely on how to obtain funds and not at all on how to use those funds in the most balanced, economical way. The doctrine therefore invites the courts to frame their financial problems in the least constructive fashion: in terms of traditional offices and procedures, not current and future functional requirements; budget line items, not the efficient use of financial resources; inherited levels of financial support, not the service demands which they must meet; the courts as an institution outside the political life of the community, not as an expression of the community's ideas and ideals of justice.[13]

This is not to say that the doctrine of inherent power is dead, or empty, or that it should be discarded. When invoked with the authority of the central appellate courts against an agency of local government to fund particular items of a judicial budget that the agency is more or less specifically obliged to underwrite, the doctrine is at least an additional legal basis for a mandamus or comparable order. These situations arise recurrently with regard to budget items whose occurrence or size is difficult to project, *e.g.*, unusually large amounts for jury, grand jury and witness fees arising out of a big trial or special investigation; funds required to pay attorneys' fees for an unprecedented number of criminal indigents; sums required for courthouse security in a case involving sensation or political controversy. The sudden necessity of meeting such requirements can most easily upset the judicial budget of a rural county, where the unwonted expenditure is perhaps also very much unwanted. In these circumstances, the judicial mandate operates as a supplemental appropriation, leaving it to the local government agency to work the expenditure into its own budget revision.

But the doctrine, applied in this manner, is of modest practical consequence, capable of dealing effectively with some small problems but unable to solve the big ones. Indeed, because it employs constitutional rhetoric in procuring the incidentals of office, the doctrine diverts attention from the truly critical budgeting task facing the courts: choosing priorities among goals and objectives, since there will never be sufficient funding to do everything that might reasonably be thought necessary in an ideal system of justice.[14]

13. *Cf.* Hazard, *Rationing Justice*, 8 J. LAW & ECON. 1 (1965).
14. *Id.*

II. Court Finance and Court Administration

The judiciary will always be subordinate to the legislature on significant matters of finance. It is for the legislature to determine which "essential services" the government will provide and to decide the judiciary's share of the common financial shortage. Accepting these political realities, and forsaking the mythology of judicial supremacy and autonomy in financial matters, a court should see its financial problems in a more general context that links budgeting to administration.

This perspective would suggest that the financial problems of the courts are manifestations of their organizational and administrative problems. The fact that they must make episodic forays in pursuit of line item funds is evidence of their failure to anticipate and cope with their workload, manpower and operational problems—the weakness of their planning process. The fact that these initiatives are directed against local government is evidence of the diffuse organization of the judiciary and its dependency on the lowest common denominator of local political support. The fact that the requests are directed at specific line items, such as jury fees or secretarial salaries, rather than overall organizational and administrative requirements, is evidence that the courts generally do not conceptualize their requirements in comprehensive terms.

In this perspective, court finance is simply the fiscal counterpart of court administration. When a court system is administratively and functionally integrated, the budget expresses the means by which the various activities of the system are to be carried out. When a system is not administratively integrated, its budget is a formal, but not functional, document: It simply aggregates expenditures for activities that are only nominally related to each other.

There are judicial systems which exhibit relatively strong administrative management with only a limited degree of budgetary unification. The New Jersey system is a prime example.[15] Conversely, a system may have a relatively loose administrative structure although its financial operations are unified in a single budget. This appears to be the case in Connecticut. The comparative efficiency of these different arrangements can be determined only through intensive case studies of court administration, which are now generally lacking.[16]

15. *See* Schwartz, *The Unification and Centralization of The Administration of Justice*, 51 JUDICATURE 337 (1968).

16. *Cf.* BOOZ, ALLEN & HAMILTON, CALIFORNIA LOWER COURT STUDY, in CALIFORNIA JUDICIAL COUNCIL REPORT app. (1971).

Under any system, a budget is neither a substitute for administration nor a conclusive indication of administrative quality or achievement; it is, however, an indication of the system's administrative potential.

In a system with a sufficiently integrated administrative structure, a budgeting system is an indispensable aid in making management decisions on the use of resources. First, it facilitates planning, since it can be used as a schedule of projected operations expressed in fiscal terms. Second, it permits efficient management of the resources that the legislature has made available, avoiding unnecessary waste, and fulfilling to the greatest extent possible the court's functional and policy goals. Third, it gives a complete and understandable audit of the use of the court's funds. If the budget performs these planning, management and audit functions well, it can stimulate answers to the central questions the courts should be asking: What are we trying to do, and how should we be trying to do it? These answers, formulated and stated in fiscal terms, may be used to prepare responsible and defensible requests for legislative funding. Appropriation requests of this nature simultaneously aid the legislature in discharging its constitutional duty to finance the courts and the electorate in holding the legislature accountable for that responsibility.

III. The Elements of Unitary Budgeting

Unitary budgeting, as implemented in seven states,[17] is a comprehensive system in which all judicial costs are funded by the state through a single budget administered by the judicial branch. The unified budget encompasses all operating expenditures of the court system: salaries, services, equipment, supplies and capital improvements. Such a system relies on state expenditures instead of fragmented local appropriations. As the sole mechanism for allocating resources throughout the entire judicial system, the unitary budget complements other procedures for the central management of the state's courts. Unitary budgeting thus represents a fundamental departure from traditional court fiscal management. It locates in one central authority the ultimate responsibility for planning, channeling, and auditing

17. The seven states are: Alaska, Colorado, Connecticut, Hawaii, North Carolina, Rhode Island, and Vermont. *See* COLO. REV. STAT. § 37-11-8 (Supp. 1969); CONN. GEN. STAT. ANN. § 51-9 (Supp. 1971); HAWAII REV. STAT. tit. 32, § 601-02 (1968); N.C. GEN. STAT. § 7A-300 (Supp. 1971); and R.I. GEN. LAWS § 8-15-4 (1969). For a description of court budgeting in Alaska and Vermont see U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *supra* note 1, at 206; and INSTITUTE OF JUDICIAL ADMINISTRATION, *supra* note 3, at 51. *See also* VT. STAT. ANN. § 21 (1972); Vermont creates the post of court administrator but leaves his duties to be defined by the judiciary.

all judicial expenditures within a state. Under unitary budgeting statutes, authority in court fiscal matters accompanies ultimate administrative authority in the court system. The preparation of a consolidated budget is entrusted to the administrative head of the judicial department; the chief justice may assume the task or designate the chief court administrator to do so.[18]

Budget preparation will include auditing past expenditures, obtaining estimates of current financial needs from each court within the state, preparing estimates of forthcoming operations, and reviewing and revising these budgetary proposals. A final budget is thus the product of a central administration, informed by the constituent units of the judicial system. The central administrative head presents the budget to the appropriate state legislative committee for consideration, before which he serves as the principal advocate for the entire court system.

In a literal sense the resulting budget is a "document containing words and figures which proposes expenditures for certain items and purposes."[19] But it is more—it is an instrument of administration:

> In the most general definition, budgeting is concerned with the translation of financial resources into human purposes. A budget, therefore, may be characterized as a series of goals with price tags attached. Since funds are limited and have to be divided in one way or another, the budget becomes a mechanism for making choices among alternative expenditures. When the choices are coordinated as to achieve desired goals, a budget may be called a plan. Should it include a detailed specification of how its objectives are to be achieved, a budget may serve as a plan of work for those who assume the task of implementing it. If emphasis is placed on achieving the most policy returns for a given sum of money, or on obtaining the desired objectives at the lowest cost, a budget may become an instrument for insuring efficiency.[20]

Thus, unitary budgeting contrasts vividly with traditional methods of court finance, which involve substantial *local funding*, the derivation of revenues from a *multiplicity* of sources, and *inflexible connection* with an expenditure schedule that is only nominally a budget.

Under traditional methods of court finance, the sum of court costs

18. COLO. REV. STAT. § 37-11-8 (Supp. 1969); CONN. GEN. STAT. ANN. § 51-9 (Supp. 1971); HAWAII REV. STAT. tit. 32, § 601-02 (1968); N.C. GEN. STAT. § 7A-300 (Supp. 1971); and R.I. GEN. LAWS § 8-15-4 (1969).
19. A. WILDAVSKY, THE POLITICS OF THE BUDGETARY PROCESS 1 (1964).
20. *Id.* at 1-2.

throughout the state appears in no one budget and is therefore subject to no overall administrative control. Historically, court financial management has been fragmented, reflecting the division of financial responsibility between state, county and municipal governments. The funding of appellate courts has been the responsibility of the state government. At present, every state centrally finances all the expenses of its highest court, and the costs of intermediate appellate courts are fully met by 17 of the 20 states which have them.[21] But at the trial court level, counties bear the major fiscal burden.[22] In half of the states autonomous local governments control at least two-thirds of the expenditures of the entire court system.[23] In such states, there may be budgetary authorities in addition to the counties;[24] and there is little systematic coordination of authority or responsibility among them.

In some states, this fragmentation is compounded within individual counties where court services are funded through a multiplicity of non-judicial budgets as well as through the judicial budget.[25] In these counties, there may be one budget (not administered by the judiciary) for the maintenance of court buildings, a separate non-judicial budget for the county clerk's office, and yet another for probation officers. Each budget is the product of a separate administrative process. And although each budget channels funds into the same court system, it does so without any overall control or direction.

Even where states have assumed part of the expenses of the trial courts, they have usually failed to affect the administrative void. Most states now contribute some portion of the salaries of trial court personnel,[26] but the vast majority of these have not prescribed a uniform budgetary format and procedure.[27] Furthermore, although state subsidies of this kind may have released local funds for the salaries of other court personnel, few states have established a central agency for supervising local budgetary procedures.[28] The result is minimal central administrative control at the trial court level.

21. U.S. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *supra* note 1, at 109.
22. *Id.* at 108.
23. U.S. LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, & U.S. BUREAU OF THE CENSUS, EXPENDITURE AND EMPLOYMENT DATA FOR THE CRIMINAL JUSTICE SYSTEM 1968-69, Table No. 5 (1971).
24. *See, e.g.*, COMMITTEE ON THE STATE CONSTITUTION, NEW YORK STATE BAR ASS'N, *supra* note 2, at 5-6.
25. INSTITUTE OF JUDICIAL ADMINISTRATION, *supra* note 3, at 5-6.
26. *Id.* at 30.
27. *Id.* at 51.
28. *Id.*

IV. Administrative Implications of Unitary Budgeting

Unitary budgeting offers not only a more orderly financial procedure for the courts but also the possibility of improved court management. Its advantages may be summarized as follows:

(1) Unitary budgeting promotes planning in judicial administration;

(2) It permits a more equitable distribution of judicial services within a state;

(3) It facilitates uniformity in job classification of judicial employees;

(4) It provides a mechanism for administration of the system.

A. *Planning*

The courts, like any other institution, must change to meet the needs of the public. Planning for such change is an essential part of effective judicial administration.

Traditional budgeting severely limits the accuracy and efficacy of planning by the courts. A precise statement of the expenditures of the state judicial system's many constituent elements is often impossible to obtain.[29] Costs may be hidden and needs overlooked.

Even where needs are recognized, moreover, the implementation of change is encumbered. In New York, for example, there are more than 60 separate appropriating bodies, each with its own budget, providing funds for the courts.[30] Any reform is certain to involve a significant number of these agencies, yet in the absence of any overall scheme for allocating ultimate responsibility each fiscal authority is free to cooperate, or not cooperate, as it chooses. This makes efficient distribution of judicial resources nearly impossible. A local authority can simply refuse to upgrade or equalize services or to eliminate redundant expenditures. Without a central budgeting mechanism, the implementation of reform is thus largely a matter of optimistic exhortation.

B. *Distribution of Judicial Services*

The quality of justice a person receives should not depend on his residence.[31] Yet in many states court services are neither equal nor uniformly adequate. Some courts are overstaffed; others, understaffed.

29. *Id.* at 4.

30. COMMITTEE ON THE STATE CONSTITUTION, NEW YORK STATE BAR ASS'N, *supra* note 2, at 5-6.

31. A similar concern with disparate service levels has recently been evinced regarding public education. *See* Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

Some judges have adequate assistance; others, little or none.[32] Even where localities do provide the same nominal judicial services, their quality may differ because of disparate salary levels or hiring practices. And the quality of court services varies dramatically according to the locality's ability to pay. Some jurisdictions simply cannot afford the full panoply of judicial and judicially related services without curtailing other social services.[33]

Unitary budgeting offers the prospect of greater uniformity of judicial services by tapping a state-wide tax base.[34] Moreover, it can greatly facilitate planning for grant and contract resources, particularly under federal programs such as those of the Law Enforcement Assistance Administration and the Bureau of Highway Safety. It may also enable localities to use locally raised revenues presently committed to the judiciary for other local services. States might thereby reduce present aid to local governments for non-judicial services[35] or allocate the savings to the judicial districts burdened with poorer services or heavier caseloads.

C. *Personnel Systems*

Within local government, the courts are but one of many county and municipal services to be staffed, in direct competition with such services for funding. Since judicial services do not touch most voters as directly as non-judicial ones (such as schools, streets, police, and sanitation control) local appropriating bodies are ordinarily more sympathetic to the needs of the latter. Adequate court funding, therefore, may depend on the degree to which appropriations for the trial courts can be made politically attractive.

Local financing thus thrusts the courts into local politics. This may explain why in many states patronage plays an important role in the selection of trial court employees and the determination of their number.[36] Patronage in turn blocks the development of uniform per-

32. CONSTITUTIONAL REVISION COMMITTEE, CITIZENS UNION OF THE CITY OF NEW YORK, *supra* note 2, at 2.

33. Consider, for example, the experience of the state of Colorado. In 1965, the state adopted an extensive program of court reorganization, implementation of which required increases of 10 to 20 per cent in the amount of local tax revenues to be spent on the judiciary. As a result, a number of counties had to exercise tight budgetary control over other functions financed from general funds in order to avoid exceeding the statutory general fund mill levy limit. Some counties even had to cut back on non-judicial county functions. *See* GOVERNOR'S LOCAL AFFAIRS STUDY COMMISSION, *supra* note 2, at 2.

34. CONSTITUTIONAL REVISION COMMITTEE, CITIZENS UNION OF THE CITY OF NEW YORK, *supra* note 2, at 3.

35. R. Ehrlich, Unified Judicial Budget 17, 1966 (unpublished paper on file with the Institute of Judicial Administration, New York).

36. *Cf.* GOVERNOR'S LOCAL AFFAIRS STUDY COMMISSION, *supra* note 2, at 94.

sonnel standards, since courts are staffed according to local political considerations rather than occupational proficiency.

Assumption of substantially all court costs by the state under a unitary budget would eliminate this patronage and would enable the central judicial administration to develop a uniform job classification scheme.[37]

D. *Unified Judicial System and Unitary Budgeting*

In the final analysis, the goal of an administratively unified judicial system underlies the call for unitary budgeting. Viewed from a statewide perspective, such a system would permit formulation of priorities, comparison of alternatives, and the allocation of resources in accordance with objectives. Unitary budgeting affords the possibility of efficient administration necessary to create alternatives, choose among them, and implement these choices. Unitary budgeting is thus a method for transforming the presently fragmented judicial system, which reacts to events by "making do," into a unified system that anticipates and copes with change.

V. Limitations of Unitary Budgeting

Unitary budgeting will not, however, solve all the administrative problems of the courts, and it is important to recognize its limitations.

A. *Problems of Structural Definition*

While unitary budgeting promotes planning of the total expenditures of a judicial system, it cannot determine which agencies and services comprise the "judicial system." Some prior decision must be made as to which functions and services, and consequently which expenditures, are to be administered by the judicial system. Is the probation department part of the courts? The juvenile detention centers? Bailiffs and constables? Where a single county clerk's office performs the functions of the clerk of the court, what part of that office's expenditures should be allocated to the judicial system? Very difficult problems of management and coordination can follow the definition of these boundaries, particularly as regards the courts' auxiliary and support services. If these services are placed outside the court system's administrative domain (as delimited by its budget) there is

37. *Id.*

still the problem of coordinating them with the courts. If they are placed within the judicial domain, there is the problem of running them well in a branch of government which is not organized with administrative considerations primarily in mind. In either case, a unitary budget will neither produce complete information on which management comparisons may be made, nor guarantee the public a complete picture of the cost of its courts.

A second definitional problem arises over job classification and salary structures for judicial personnel. With the exception of the judges in a few states, judicial personnel do not move from court to court. Thus, even a financially integrated system will remain compartmentalized to the extent that the local courthouse is still essentially a unique and virtually autonomous unit in terms of its staff. The nature of the work of any staff person will obviously depend on four factors: the amount of business, the number of other staff personnel, the individual's ability, and the organization of his workplace and workflow. These various factors increase the difficulty of standardizing job categories. In the absence of authoritative data, advocates will make a special case for the peculiarities of their particular situations. The effectiveness of such partisanship should decline over time as unification is implemented and standardization truly takes hold. Initially, however, parochialism may influence not only personnel categorization but also general decisions concerning assignment of court resources to local areas.

Another difficulty arises from the fact that unitary budgeting implies substantial uniformity in procedure and court services throughout the state. It may therefore discourage local initiative in providing supporting services at a level above that regarded by the state as minimally sufficient. To reduce this tendency, a state employing unitary budgeting might provide for cost-sharing with localities that establish supplemental court services.

Finally, there is the problem of defining the unit of the judicial system that will be unitarily budgeted. The ordinarily preferable unit is the state. In most circumstances, as a matter of both tradition and political reality, the state is the proper unit for unitary budgeting. It has a population of manageable size, balanced distribution, and strong common interests that create an identity and allow for effective communication. But some states may not fit this general description. They may include several more or less politically autonomous and geographically distinct constituent units—as in states con-

taining both large rural areas and a few major urban centers. Moreover, some states may conclude that it is simply impractical for them to take over full funding of the court system at any given time. In these circumstances, the financial base of the court system, especially the trial court system, would have to remain in local government. The system should reflect this fact by having the principally responsible unit of local government, usually the county, create a unified budget for the court it is supporting. Thus, while defining the proper unit for unification is a crucial question, it must be resolved for each state in light of the specific characteristics of its situation.

B. *Political Factors of Unitary Budgeting*

No budgeting system is immune from the fundamental debate over who gets what, *i.e.*, politics. Once a unified budget has been established, the influence of political pressure on administrative policymaking in the courts should diminish. But at the same time, the internalized bureaucratic politics within the judicial system will no doubt increase. Where a judge previously sought to provide for the needs of his court by influencing a local county supervisor or town chairman, he will now have to do so by influencing the court administrator, chief justice, or planning committee of his fellow judges. This, in turn, implies a change in the types of persuasion that will prove influential, with greater weight given to professional and administratively rational considerations. It also implies that a different type of judge will prove more successful in the pulling and hauling of resource allocation. Again, this change would seem to favor those who talk policy and programs, as opposed to those who talk folkways.

A remote danger in unitary budgeting, but one which cannot be ignored, is that the judicial system will take the inherent power doctrine seriously and try to secure its appropriations by mandamus. At this level, the legislature would find its vital interests and prerogatives threatened, and would very likely ignore whatever order a court might issue. The ultimate outcome of such a conflict is impossible to predict; but certainly it would discredit both branches of government and embarrass judicial financing for some time.

A more likely if less obvious danger in unitary budgeting is its probable tendency toward allocating judicial services among localities on a formula of more or less strict mathematical equality. Such formal equality will be achieved only by ignoring other vital considerations. If differences of need and condition are recognized, service differen-

tials between localities will and should continue to exist. The goal must be sufficiency, not equality of insufficiency. Achieving this goal will require difficult decisions in placing priorities on varying problems and locations. It will certainly entail some subsidization of poor localities by more affluent ones, with all the difficulties entailed by this kind of redistribution. Such decisions should be informed and careful. Unitary budgeting can help them be more so, but it cannot foreclose the possibilities of error, imprudence, or bias.

VI. Conclusion

There are two related respects in which unitary budgeting should be considered and evaluated. The first is as an element of a larger program of administrative reform. In this respect, unitary budgeting can facilitate and monitor reforms, and in that way, further them. The second is as an important reform in itself. Unitary budgeting cannot, in and of itself, secure the revenue necessary for the courts, as advocates of the doctrine of inherent power contend their own theory can. But it is clearly superior to any traditional system of court finance as a mechanism of managing, allocating, and planning. It can make possible a rational, integrated ordering of state-wide priorities, in coping with problems that would otherwise be dealt with more or less fortuitously through many uncoordinated local decisions. At a time when the court systems of the country are under severe pressure to do their job better, these are substantial attractions.