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TERRANCE SANDALOW

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Ever since the publication of Marquis Childs' *The Middle Way*, Americans of liberal persuasion have tended to point to Sweden as a model, a nation which simultaneously has achieved rapid economic growth, eliminated poverty, and maintained individual and political freedom. Swedish cities, and especially Stockholm, are reputed to be among the best planned in the world. Yet, for all the admiration that has been expressed, there has been surprisingly little investigation by Americans of the legal and governmental framework within which the Swedes have accomplished so much.

The modest aim of this paper is to report the major outlines of Swedish law relating to local government and, at least in a preliminary way, the means by which Sweden has attempted to strengthen its local governments and to accommodate national and local objectives. In Sweden, as in other modern nations, the centralizing tendencies of an industrial society have enhanced the power of the national government vis-à-vis local government. Nevertheless, the tradition of strong local government is a long one and local governments continue to play an important role, sharing with the national government responsibility for many of the programs which bear most directly upon the lives of their residents. The study of local government, accordingly, may significantly contribute to an understanding of the Swedish governmental system and the means by which Sweden has attempted to meet the needs of its citizens.

I. THE NATIONAL GOVERNMENT

Although Sweden has a parliamentary system of government at the national level, its organization differs sufficiently from that in England, the parliamentary system with which Americans are most likely to be familiar, that a brief canvass of those of its features important to description of the system of local government may be useful, especially since relations between local governments and the national government are a central concern of this paper.

A. The Riksdag

Legislative authority at the national level is shared by the Riksdag (the Swedish parliament), and the "King-in-Council" (the Gov-
Either the Government or any member of the Riksdag may, in theory, introduce legislation; in practice, however, legislation almost invariably originates with the former. Private members' bills serve primarily to initiate investigations, amend government proposals, or to set forth the programs of opposition parties. An apparent consequence of the fact that legislation rarely originates with private members' bills is that local legislation—legislation applicable only to one or a limited number of local governments—is virtually unknown in Sweden.

Until this year, the Riksdag was bicameral. The members of the First House, who served eight-year staggered terms, were elected by the councils of secondary communes, one of the two major types of local government units into which the country is divided. The Second House was directly elected from twenty-eight districts, generally corresponding to secondary communal boundaries and in a few instances to those of larger cities. Members of the Second House served four year terms. In both houses, election was by a system of proportional representation, with the number of seats allocated to each constituency dependent upon (but not directly proportional to) its population.

A constitutional amendment, which became effective during the past year, establishes a unicameral Riksdag, with the Second House (in a somewhat modified form) as the surviving body. There is a possibility that abolition of the First House may diminish what is generally regarded as the very considerable influence of local governments in the Riksdag, by depriving them of the opportunity to elect some of its members. Yet, it is by no means clear that such a reduction of influence will occur. In the past, a substantial number of the members of both houses have served in some official capacity at the local level, and many of these have simultaneously held local office while serving in the Riksdag. The tendency of these members toward sympathetic understanding of the problems of local governments and a degree of cohesiveness in support of them is reflected in the fact that they are at times referred to as a "fifth party" in the Riksdag. Neither national nor local officials with whom I raised the ques-

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2. See note 27, infra.
3. See p. —, infra.
4. For a more detailed description, see Andrén, Modern Swedish Government 52-56 (2d ed. 1966) [hereinafter cited as Andrén].
5. Calmfors, Rabinovitz and Alesch, Urban Government for Greater Stockholm 72 (1968). Thus, in the 1966 Riksdag twelve of twenty one members of the First House and thirteen of the thirty members of the Second House from the Stockholm region had served in a communal council. Id. at 73.
6. Those who serve simultaneously in the Riksdag and in local councils

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tion suggested that the influence of this “fifth party” was greater in one house than in the other, nor that the First House had been more responsive to local governments than the Second. The apparent reason for this similarity, notwithstanding the difference in election procedure, is the existence of strong party discipline in the Riksdag, which seemingly has permitted the Government to gain acceptance of measures likely to be unpopular with locally oriented members.7 With this background, it is difficult to predict what effect the change in the structure of the Riksdag will have on national-local relations, but knowledgeable observers with whom I spoke do not anticipate any.

B. The Executive

As in other constitutional monarchies, executive power is exercised in the name of the King, but decisions are effectively made by a government (consisting of eighteen Councilors) which enjoys the confidence of the parliament (Riksdag).8 Eleven of the Councilors are also designated heads of departments;9 the remainder, whose number is limited by law to seven, serve without portfolio. These departments, unlike the British ministries, are small units, normally consisting of no more than 100 persons (including clerical staff). In general, the departments are not responsible for day-to-day administration of legislation, a task which is typically in the hands of theoretically independent central boards staffed and headed by civil servants. There is, for example, a Social Welfare Board, a National Board of Urban Planning, and a Highways Board. Although each of the central boards is assigned to a department, they are not in theory under the supervision of the Councillor who heads the department. The Instrument of Government provides, rather, that “the administrative boards . . . shall obey the King's orders and commands,”10 which has, of course, come to mean that they are subject to direction by the King-in-Council, i.e., the Government as a collectivity.11 As might be anticipated, the actual independence of the central boards from depart-

7. See, e.g., the “block commune” legislation, described at p. —, infra.
8. See Andrén n.4 at 118-20.
10. Andrén, n.4 at 128.
11. The formal separation of the Government and the central boards may be of some importance in explaining the success of the Swedish ombudsman, an institution which has received a good deal of attention in the United States in recent years. It is at least a plausible hypothesis that the
mental control has eroded. Nevertheless, the formal separation is thought by Swedish observers to increase somewhat the independence of the central boards and to permit Councillors to devote more time to long-range policy planning than in systems which make the latter directly responsible for routine measures of program implementation.

Sweden is divided into 24 provinces (län) which provide the primary framework for decentralized administration of national authority. Each province has a governor (lanshövding) who serves as the national government's representative in the province. The governors, who are appointed for life, are selected from among high-level civil servants and prominent political figures, but in the latter cases are expected to, and usually do, retire from active political life upon their appointment. They are responsible for local administration of a large number of national programs, but most importantly, for the purposes of this paper, they are charged with supervision and oversight of local governments.12

II. THE COMMUNES13

Swedish local government has ancient origins. Its modern form, however, was established by the Municipal Administration Act of 1862 which instituted the present system of communal government. There are two major types of local units, generally referred to as primary communes14 and secondary communes (landsting kommuner). Except for the three largest cities of Stockholm, Göteborg, and Malmö, all land within the country is included within both a primary commune and a secondary commune.15 Each is responsible for different

12. See pp. —, infra. For a more detailed discussion of the organization of provincial administration, the scope of its responsibilities and its relations with the central boards, see Andrén, n.4 at 139-42.

13. See, generally, Swedish Institute for Cultural Relations with Foreign Countries, Local Government in Sweden (1968); Andrén, n.4 at 209-34.

14. Primary communes are further differentiated between urban and rural units (städer and landskommuner) and some rural districts, which have become urbanized but not granted city status, have been denominated boroughs (köpingar). Although differences among these categories persist, their importance is steadily diminishing and is not substantial at the present time.

15. In these three cities, the governing body of the primary commune

1971] SANDALOW: LOCAL GOVERNMENT IN SWEDEN 769
functions, however, and in the performance of these functions is not subject to supervision by the other, though, as discussed below, each is to some extent subject to supervision and control by the provincial governor.

A. Secondary Communes

With a few exceptions, the boundaries of the secondary communes are the same as those of the 24 provinces into which the county is divided for the purpose of decentralized national administration. Although their powers and responsibilities are not as broad as those of the primary communes, which have been described as "the backbone of Swedish local self-government," the secondary communes have important areas of responsibility. Their most important duties, accounting for more than three-quarters of their current expenditures, are in the area of public health. The secondary communes operate hospitals, mental institutions, dental care programs, mother and child welfare programs, and visiting nurse programs. In addition, they have responsibilities in the areas of education (primarily with respect to adult education) and social welfare, though with respect to each, in contrast with public health, their expenditures are significantly less than those of the primary communes. 17

B. Primary Communes

1. Communal boundary reform

As of 1969, there were approximately 900 primary communes, ranging in population from 300 to 800,000. The number has been dramatically reduced during the past two decades and during the next few years will be reduced even further, to approximately one-third of the present number. Consolidation is expected to serve a variety of purposes, all of which are concerned with strengthening the ability of the local units to carry out more effectively the planning and service functions which are so significant a part of the responsibility of governments in the modern industrial nations, and especially in Sweden.

The process of consolidating primary communes commenced in 1939 when the Riksdag petitioned the Government for appointment of a commission to investigate the local boundary question. There were, at the time, some 2,500 primary communes, including a large serves also as a secondary communal council. See also pages 774, 775, infra with respect to the scheduled changes in the Stockholm region.


17. Ibid.
number of rural districts with populations substantially under 1,000. The inadequate resources of these local units at a time of dramatically expanding public expectations and governmental provision of services led to increasing dissatisfaction with them and a growing consensus that larger units were necessary. Accordingly, the Commission (which was appointed in 1943 and reported in 1945) recommended a large scale amalgamation of the smaller communes into larger units, the minimum population of which would be from 2,000 to 4,000. A majority of the local units, when polled, favored the recommendation, and legislation establishing procedures for amalgamation was enacted by the Riksdag in 1946. The procedure adopted provided for the conduct of hearings and for the formulation of tentative plans by each of the provincial administrations, followed by submission of the plans to the governing bodies of both the secondary and primary communes. Final plans, incorporating any modification made after such submissions, were then sent to a national administrative authority, the Crown Lands Judiciary Board, for comment and, if necessary, further hearings. Final approval then rested with the Government. The process was completed and the several plans put into effect in 1952, resulting in a 60% reduction in the number of local units, from 2,500 to approximately 1,000.

The time-consuming process by which consolidation was achieved, from legislative recognition of the problem in 1939 to implementation of a legislative solution in 1952, illustrates well a feature repeatedly emphasized by students and practitioners of Swedish government—the efforts made prior to the enactment of important legislation to develop a consensus by thorough investigation of all aspects of the problem and by providing repeated opportunities for a hearing to all those who may be interested. Although World War II and its aftermath may have diverted attention from the need for local government reform and thereby slowed the process down somewhat, important reforms are typically preceded by protracted discussion, often over a period of many years. Establishment of a “metropolitan government” for the Stockholm region, to cite another illustration, will have taken over thirty years from the time that it was initially proposed.18 It seems fair to conclude, as one student does, that the “process of reaching compromises and, if possible agreement . . . on the whole is a characteristic feature of the Swedish pattern of government.”19


19. Andrén, n.4 at 189. See also, Anton, note 8, supra. The effort to involve all who may be interested does not mean that widespread public participation is the norm. Indeed, quite the opposite is true. Id. at 32; Anton, “Politics and Planning in a Swedish Suburb,” 35 J. Am. Inst. of Planners 253 (1969).
One of the advantages frequently claimed for the protracted study which typically precedes major legislative reform is that it increases the likelihood that future difficulties will be anticipated. The 1952 boundary reforms, however, very quickly proved inadequate, and in 1960, the government established another commission to examine the problem of local governments. That Commission, which reported in 1962, found that as a result of migration nearly 50% of the rural districts had, within ten years of the 1952 reform, fallen below the minimum population which had then been set. Moreover, the Commission concluded, that population was itself too low to permit adequate performance of local responsibilities.

Several factors contributed to this conclusion. Although the Commission, after analysis of the various functions of communal government, concluded that the necessary minimum population differed among the several functions, none required for efficient performance a minimum population less than 5,000-6,000 and most required at least 8,000-10,000. Units as small as those contemplated by the 1952 reform, moreover, had inadequate fiscal and human resources to carry out programs to which the nation was committed. During the past several decades there has been a strong effort to standardize the level of governmental services throughout the country, especially in the sparsely settled, poorer northern communes. Teachers' salaries, for example, are uniform across the country (with only minor variations for cost-of-living differentials). The small tax base of the less populous communities, even with the increasing financial assistance provided by the national government, had proved inadequate to support these services at the level which more populous communes were able to afford and which the nation as a whole desired. Maintenance of these service levels by the smaller communes posed difficulties even apart from their precarious financial situation. The smaller local units had experienced difficulty attracting and retaining competent personnel, at least in part because they offered only limited opportunities for career advancement. That difficulty was intensified by a shortage of qualified personnel. A smaller number of more populous units, it was thought, would be able to make more efficient use of the available supply and thereby serve more adequately those who resided in the currently smaller local units.

Expanded primary communes would also facilitate long range planning. Although the 1932 boundary reform had to some extent rationalized communal boundaries, some of which had existed from the Middle Ages, many districts were still too small for adequate planning. It was, for example, thought desirable that each unit should have an urban center for its various functions, a condition which apparently could not be satisfactorily met in some of the existing communes.

A possible solution to these problems which would have avoided
the need for extensive redrawing of communal boundaries would have been to transfer some of the functions of primary communes to the much larger secondary communes. That solution was rejected, apparently on the ground that although it might have been feasible prior to the 1952 reform, it would not any longer be so because too many primary communes were by 1962 adequately performing functions which would have had to be moved to the secondary communes. The possibility that the secondary communes might perform such functions only for those primary communes which were not capable of doing so, as illustrated in the United States by the Lakewood plan, seems not to have been seriously considered.

Accordingly, the Commission recommended that plans should be drawn for the creation of so-called block communes (kommunblock). These plans were to provide the framework for intercommunal cooperation and for consolidation on a voluntary basis. The plans, which (as in the 1952 reform) were drawn by the provincial administrations, were accepted by the government in 1963-64. The guiding principle in the drafting of the plans was that no block should have less than 8,000 inhabitants, but although the emphasis appears to have been upon the elimination of the smallest communes, the plans as ultimately drawn did not merely provide for bringing all communes to that minimum level. A substantial number of communes were consolidated into blocks well above that minimum.

Although one observer has written that the "natural resistance from local districts against merging their interests and in the long run their identities into larger units was by and large broken already with the 1952 reform," the pace of consolidation, when the communes were left to voluntary action, was slow. The failure of the voluntary legislation to achieve more rapid consolidation led the Government to propose and, in the spring of 1969, the Riksdag to enact legislation making the consolidation compulsory no later than 1974.

The vote in the Riksdag was along party lines, the governing Social Democrats supporting the legislation and the opposition bourgeois parties opposing it. The division reflected the traditionally greater responsiveness of the latter to the local units, a tradition which perhaps owes as much to the fact that the Social Democrats have had responsibility for governing the nation for four decades as it does to ideological differences between the parties. In any event, it is noteworthy that the opposition parties on the whole did not dispute the desirability of consolidation, but argued only that it should be allowed to proceed on the voluntary basis which had been established in 1962.

Several factors may have contributed to the general acceptance

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21. Andrén, n.4 at 216.
of communal consolidation, a program which Americans especially will recognize as having an explosive potential. Initially, the redrawing of communal boundaries appears to have been accomplished with little, if any, "gerrymandering," or at least so I was told by an opposition member of the Riksdag. The substantial exclusion of partisan considerations, apparently attributable to the traditionally non-political role of the provincial administrations which were charged with drawing up the consolidation plans, deprived opponents of what might have become the basis of a major criticism of the program. Secondly, and more clearly of significance, is the fact that Sweden lacks the racial and ethnic divisions which are so salient an aspect of American political life. With but a very few exceptions, moreover, primary communes within the major urban areas are not segregated along economic and social lines. Although citizen identification with local units may develop, the impact of consolidation upon the lives of most persons is not, therefore, likely to be or to be perceived as being as great as would similar action in the United States.

2. Metropolitan Government for the Stockholm Region

Although the transfer of functions from primary to secondary communes was rejected for the nation as a whole, that solution has been adopted for the special problems of the Stockholm region, the largest and most rapidly growing of the metropolitan areas in the country.

The Greater Stockholm area—which is comprised of Stockholm and 28 surrounding communes—as of the end of 1965 had a population of approximately 1,250,000, of which 63% or slightly under 800,000, resided in Stockholm. By the year 1990, the population is expected to rise to 1,700,000, with 700,000 in Stockholm and 1,000,000 in adjacent communes. The need for an integrated government for the region has been recognized for some time, but only within the past several years has the adoption of legislation establishing such a scheme been politically feasible. The initial step—taken in 1968—was the appointment of a single governor for Stockholm and for the province surrounding it (which contained the 28 suburban communes). The second step—scheduled for 1971—involves the creation of a new secondary commune encompassing Stockholm and the suburban communes. (Heretofore, Stockholm has performed the functions of a secondary commune). The new secondary commune, in addition to having responsibility for the functions performed by all secondary communes, will be responsible for regional planning, planning for water

23. For a history, see Anton, n. 18 supra.
24. Regional planning has heretofore been carried on under a number of different governmental arrangements. Initially, a regional planning agency was established under legislation providing for the formation of such an agency in any area in which the government determines that regional plan-
supply and sewage disposal, and mass transit. In addition, a new building company is to be established under the control of the new secondary commune to engage in the construction of housing and other land development activities.

3. Powers of Primary Communes

Primary communes perform many of the same functions performed by local governments in the United States. Perhaps the most notable exception is that since 1965 the police system has been operated exclusively by the national government. Primary communes are, however, responsible for the operation of primary and secondary schools, recreational and cultural programs and facilities, fire protection, land use planning, sanitation, health and safety regulations, public utility services, publicly-owned housing, and various social welfare and health care programs.

The powers of the primary communes are all derived from national legislation, but are conventionally divided into two classes, a general grant of authority to the communes to handle their "own affairs" and special legislation dealing with particular subjects. The former, which dates in its original form to the Municipal Administration Act of 1862, now reads:

The municipality shall, in accordance with the rules of this Act, handle its own affairs inasmuch as the handling thereof does not, according to current law, come under the jurisdiction of another administrative body. For certain municipal affairs, special legislation will apply.

The legislation provides that each primary commune within the regional planning area is entitled to one representative on the agency's governing board for each 25,000 (or fraction thereof) of population. During 1969, in what was recognized as an interim measure, the agency was transferred to a federation of Stockholm and the surrounding secondary commune which had originally been established to deal with mass transit problems in the region.

25. The new secondary commune will not, at the outset, have operational responsibilities in these areas, but a well-placed official with whom I spoke predicted that it would acquire them in the not very distant future.

26. Building companies have been established by many communes—Stockholm has established four—to carry on land development activities. The companies, which are entirely controlled by the communes, engage in activities which the communes might engage in directly, but which can be carried on with greater freedom by use of the corporate form. See Swedish Institute for Cultural Relations with Foreign Countries, Local Government in Sweden 2 (1968).

27. Terminology may at this point be confusing to Americans. "Special legislation" in Sweden means legislation dealing with a particular subject, not legislation applicable to a limited number of local units. "Local" or "special" legislation in the American sense, though not constitutionally prohibited, is unknown in Sweden, except that statutes concerned only with Stockholm may at times be enacted.

28. Swedish Institute for Cultural Relations with Foreign Countries, n. 26 supra.
The language of the general grant is reminiscent of that used in grants of home rule to American municipalities, but its legal effect differs markedly from that of the latter. Governmental organization within the commune is, for example, established by other sections of the current Municipal Administration Act (1955) and by special legislation and is, thus, outside the authority conferred by the general grant. Similarly, primary communes may not exercise either regulatory or taxing authority under the general grant. In effect, then, the general grant empowers communes to provide services and expend funds for the benefit of their inhabitants. In a country in which positive government is of substantial and increasing importance, this is, obviously, a significant grant of authority. Under it, local units have been held to have power, illustratively, to provide utility services; to construct and operate harbors; to provide cultural and recreational facilities and services, such as libraries, theaters, stadiums and swimming pools; to provide housing for their inhabitants and to engage in other types of real estate development; to grant scholarships; and to encourage social activities by providing clubrooms and other facilities.

Although the main thrust of the general grant is reasonably clear, borderline cases inevitably occur which require reference to general principles for their resolution. Several principles have emerged, none of which appear to be clearer or more satisfying than those which have developed in the United States for dealing with the analogous interpretive problem under home rule grants. One such principle is that the communes must exercise their power in the public interest, not for private advantage. The requirement that the public interest be served does not mean that large numbers of the public must be benefited by an expenditure. An earlier version of the general grant, which empowered the commune to “take care of common matters of order and economy,” had been interpreted by the courts to mean that “a local decision should benefit, if possible, the majority of the district population, or at least a very substantial number of persons, or a considerable part of the district.” The modified language now in effect was intended to eliminate this requirement, but the principle that the public interest must be served remains. In consequence, communes may not generally grant financial assistance to private enterprises. As in the United States, however, there are significant exceptions to the rule. The communes may, for example, spend their funds to attract and retain industry in order to avoid unemployment in the area.

A second principle of some importance is the principle of “locality,” which purports to require that an expenditure will specially benefit

30. Andrén, n.4 at 218.
residents of the commune in a way which differentiates them from residents of other communes. The principle is easier to state than to apply, as will be appreciated by American lawyers who have struggled with the analogous rule which exists in this country with respect to the levy of special assessments. The "locality" principle was, for example, recently invoked by a leading expert in communal law in advising a commune that it could not lawfully donate funds to support cancer research. Yet, my informant, the lawyer who gave the advice, thought that the donation might well be upheld if it were not for the support of a hospital, even though not located in the commune, to which communal residents might be sent for treatment. The distinction between these expenditures, if there is one, is elusive at best.

A third limiting principle on the power of communes under the general grant is that they may not engage in a business for profit. In view of the extensive involvement of the communes in commercial ventures—housing, real estate assembly and rental, utility service, etc.—the limitation seems to be significant more for the effect which it has upon the operation of such enterprises than in determining whether the commune may engage in an activity.

A final limiting principle, no less important for not being entirely clear, is that there are matters which by common understanding are simply not the concern of local units. In part, this limitation, unlike those discussed above, is rooted in the language of the general grant which, it will be recalled, authorizes the communes to handle their own affairs "inasmuch as the handling thereof does not, according to current law, come under the jurisdiction of another administrative body." But the principle seems to go beyond the exclusion of the commune from activities which the government has clearly assigned elsewhere. The lawyer mentioned above, for example, had little doubt that a commune could not lawfully conduct a referendum on a matter of foreign policy, as a number of American municipalities have done (or attempted to do) recently in connection with the Vietnam war. International relations, he thought the courts would almost certainly hold, are the exclusive concern of the national government, although in his own view such an approach is too simplistic. Communes often engage in activities which have international implications, so that, he thought, a more particularized analysis is required in each case to determine whether the power is one that may be appropriately exercised by a local unit.

Enforcement of these limitations upon the exercise of communal power under the general grant is left entirely to private initiative. No prior approval of local decisions by national officials is necessary, nor does any national official have standing to challenge a decision once

32. The same conclusion was unhesitatingly expressed by a member of the Supreme Administrative Court to whom I put the question.
made. Any resident or taxpayer of the commune may, however, appeal a decision to the provincial governor and, if unsuccessful there, to the Supreme Administrative Court. Three main grounds upon which such an appeal may be based are set forth in the Municipal Administration Act: (1) the decision was not made in accordance with prescribed procedure; (2) the decision exceeds the power of the local unit; or (3) it infringes upon the rights of the appellant. Each of these grounds, it will be noted, calls for a judgment as to whether the communal decision is in violation of law. Only if such a violation is found may the decision of the local unit be set aside. Neither the provincial governor nor the Supreme Administrative Court may substitute its judgment on matters of policy for that of the local officials. Nor may either substitute a decision for that of the local officials; the action must either be sustained or set aside. These limitations upon the review of local action under the grant are likely to be viewed by an American lawyer as so "natural" as not to be worthy of special note. Yet, as discussed below, they differ markedly from the generally prevailing rules governing review of local and administrative action in Sweden. The differences, in the view of Swedish observers, are an important factor in retaining a measure of communal independence from the national government.

An estimate of the significance of the rules governing review of local action under the general grant may be facilitated by comparison with the rules for review of action by the commune under special legislation. Many of the most important activities of the communes, including education, land use control, health care, and social welfare programs are governed by such legislation. Expenditures for these activities constitute the largest part of communal budgets. Special legislation may be mandatory, imposing duties upon the communes, or it may merely authorize the exercise of certain powers by them but specify the manner in which they are to be exercised if the commune wishes to do so. In either event, the legislation may specify in some detail matters such as governmental organization within the commune for dealing with the subject and expenditure levels, as well as defining the limits of the power which must or may be exercised. Not infrequently, legislation largely bypasses the communal governing body by providing for the appointment of an independent committee to administer national statutes and regulations, although the governing body may, in such cases, be empowered to appoint members of the committee and thereby to some extent influence its work.

In general, advance approval by national officials is not required prior to the exercise of powers conferred by special legislation. There are, however, some important exceptions. Thus, town plans, with

34. Id. at 104.
which all land development in densely populated areas must con-
form, must be approved by the provincial governor and long term
loans (or short term loans which exceed five percent of the local tax
base) must receive the advance approval of the Government. In all
such instances, the reviewing authorities are in theory not limited to
examining a local action for a determination of its consistency with
law. Approval may be withheld as well for reasons of policy.

Decisions which do not require advance approval by national of-
officials may be appealed, generally within three weeks of the time they
are made, along the same route as appeals under the general grant of
power, i.e., initially to the provincial governor and thence to the Su-
preme Administrative Court. Although the communes, are in theory,
viewed as acting on behalf of the national government when exercis-
ing powers conferred by special legislation, appeals may not be ini-
tiated by national officials. As in the case of the general grant, en-
forcement is left to private initiative. The notion that local units
act as agents of the national government in exercising the powers
granted by special legislation is more significant in defining the scope
of review once an appeal has been filed. In such cases, in contrast
with those which arise under the general grant, both the provincial
administration and the Supreme Administrative Court are empow-
ered to review the discretion exercised by local officials as well as
to determine whether their action is in violation of law. The reviewing
authorities are, in theory, entirely free to substitute their ideas of
appropriate policy for that of the local officials and, as a corollary,
to enter a new decision, not merely to sustain or set aside the local
decision, as in the review of powers exercised under the general
grant.

There are, thus, at least in theory, substantial differences in the
scope of review of local action under the general and special grants.
The question whether these differences are as important in practice
as in theory is a difficult one for an outsider to assess, especially if,
because of unfamiliarity with the language, he lacks access to primary
materials. Analysis of the reviewing function in the two situations
and conversations with Swedish judges and lawyers do suggest, how-

35. See The National Board of Urban Planning, Towards New Planning
and Building Legislation in Sweden 2 (1968).
36. If the local decision is set aside or otherwise modified by the governor,
the commune may appeal to the Supreme Administrative Court.
37. National authorities are not, nevertheless, entirely without means to
influence local units in the exercise of these powers. Central boards fre-
quently provide technical assistance to the communes, helping to shape in
the process the manner in which the latter exercise their powers. Additional
leverage is provided by the extensive system of grants-in-aid, eligibility for
which may depend upon local acceptance of national standards. See Andrén,
n.4 at 234.
38. See Herlitz, supra note 31, esp. at 105-06.
ever, that the differences may be less significant than might be anticipated by attention to theory alone, although a firm conclusion is not possible without more extensive inquiry.

Initially, it is clear that conceptions of policy are an important factor in the interpretation of the general grant. The statutory language provides no guidance to the reviewing authorities. Some content is provided, however, by legislative history, especially the report of the Commission which recommended amendment of the general grant to its present language. Swedish courts traditionally have looked to such reports as an important source of guidance in the interpretation of statutes. Inevitably, nevertheless, questions arise which were not anticipated by the Commission or which, though anticipated in general terms, arise in unique factual settings. In either event, the judgment which the reviewing authority must make is not easily distinguished from that made by it in reviewing the wisdom of a local decision under special legislation. A case described by Herlitz will illustrate the point. The governing body of a rural commune decided to grant a loan, provide free land, and confer certain other benefits upon an industrial enterprise. The provincial administration affirmed the decision, but on further appeal it was reversed by the Supreme Administrative Court which found that the measures were "not so important for combating unemployment within the rural district that they can be regarded as concerning a matter with which the municipality may concern itself." The local decision was accordingly set aside as in excess of communal power. Although cast in legal terms, the court's assessment of the situation to determine whether there was adequate justification for bringing the case within an exception to the general prohibition upon aid to private enterprise involved considerations similar to those it might have taken into account were it reviewing the wisdom of the local decision.

The question whether the theoretical differences in the scope of review under the general and special grants of power are of practical significance may be approached from the opposite direction as well. Just as questions of law concerning the extent of communal power under the general grant may turn upon the reviewing agency's views concerning the wisdom of the decision to exercise such power, there is reason to suspect that reviewing agencies operate under self-imposed limits in cases in which they are in theory entitled to review discretionary decisions of local officials. The extent to which this occurs is difficult to determine, at least without far more systematic inquiry than I was able to undertake. On the one hand, a member of the Supreme Administrative Court with whom I raised the question indicated that the court did not hesitate, in an appropriate case, to sub-

stitute its judgment for that of local authorities. Other knowledgeable observers, however, suggested that reviewing authorities often deferred to local decisions though they are not by law required to do so. A prominent Stockholm attorney, one of a very few lawyers specializing in land use controls, said that he would never appeal the refusal of local officials to grant a dispensation from a town plan because he thought it would be futile to do so. Similarly, an official in the Department of Finance, whose office advises the Government on requests for approval of local bond issues, said that the primary questions investigated are the legality of the proposal and whether the municipality is spending too much money on the proposed facility. Very little attention is given, at the present time, to the question whether the facilities are needed or to other policy issues. Such matters were given more attention in the past when the communes were smaller and in the Government's view required closer supervision, but as the communes have grown in size and competence, the Government has as a matter of policy tended to leave all such decisions to them.

Fragments such as these are obviously inadequate to justify a conclusion, let alone a firm one. They do suggest the possibility, however, that the authority of national officials to review discretionary determinations by local officials may be exercised with more restraint than required by legal theory and that there may be a tendency on the part of reviewing authorities to develop principles as to when reversal of a local decision is or is not justified. Such an approach to the exercise of the power of review would, of course, tend to approximate the scope of review under the general grant, where review is in theory solely on questions of law.

C. Communal Finance

1. Taxation

Nearly 50% of the revenues of primary communes are raised by taxation, more than 20% are from central government subsidies, and nearly one-third from other sources, primarily revenues from local enterprises and user fees. Secondary communes are more heavily dependent on tax revenues, with nearly 75% of their income derived from that source and the balance almost evenly divided between government grants and other sources. In both types of communes, the most

41. Dispensation from a town plan may be granted by the provincial administration (or local officials, if the power has been delegated to them) if the proposed development would not substantially interfere with carrying out the remainder of the plan. A decision denying dispensation may be appealed to the Supreme Administrative Court; that court may not itself grant dispensation, however, but only recommend that the Government do so. Power to grant dispensation has been delegated to Stockholm.

important source of tax revenue is the income tax which is levied upon the inhabitants of the commune and upon commercial enterprises engaged in activities within its boundaries.\textsuperscript{43} There is no \textit{ad valorem} taxation of property. The commune in which the land is located is, however, always entitled to levy a tax on 2\% of its assessed value as income even if actual income from the property is lower.\textsuperscript{44} The communal income tax, which (unlike the national income tax) is proportional not graduated, is staggeringly high by American standards. In 1969, the average communal tax rate was 20.24\%, of which approximately one-third was collected for secondary communes.\textsuperscript{45} Each commune is, however, free to set its own level of taxation and the rate does in fact vary widely, with a range of approximately 4 percentage points in either direction from the national average.

The relative lack of dependence of the communes on taxation of industry—approximately 10\% of communal revenues are derived from this source—suggests that suburban communes in the metropolitan regions might be tempted to pursue land use policies which exclude industry.\textsuperscript{46} The added tax revenue might well be less significant than the adverse neighborhood effects associated with the industry. Planners and economists with whom I raised the question were, however, in complete agreement that no problem of this type had developed. Two older and wealthy suburban communes in the Stockholm area have pursued such a policy, but elsewhere, my informants were agreed, industry was welcome. Communal politicians, I was told, do not fully understand the economics of the situation and continue to pursue policies which reflect the problems of an earlier era, when it was necessary to attract industry as a means of providing jobs.

2. \textit{Government Grants}

Government grants to the communes fall into two main categories, "functional grants" (\textit{driftbidrag}) and "equalizing grants" (\textit{skatteutjämningsbidrag}). Functional grants which constitute approxi-

\textsuperscript{43} The income of those enterprises which are engaged in activities in more than one commune is apportioned according to a formula adopted at the national level upon the basis of the amount of activity carried on within each commune.
\textsuperscript{44} Swedish Institute for Cultural Relations with Foreign Countries, \textit{Taxes in Sweden} 2 (1969).
\textsuperscript{45} The effective local tax rate is somewhat lower since deductions from income are allowed for various items, including national taxes, interest, etc.
\textsuperscript{46} Such a policy would not be feasible for communes outside metropolitan areas because of the need of their residents for jobs and the greater difficulty which would be associated with residing in one commune and working in another. Such a policy would also be unfeasible for the "central city" in a metropolitan area because it contains so large a percentage of the area's population and cannot, therefore, pursue policies which might adversely affect employment in the region. Neither consideration need affect suburban communes, however.
mately three-fourths of the amount granted to the communes, are used in a number of areas and may represent all or a major part of the cost of locally operated programs.47

Equalizing grants are made according to formulas designed to redistribute resources from wealthier to poorer communes. There are three different programs. The most important of these (skattersättning), as measured by the amount distributed, is designed to assist communes with a lower than average tax base.48 The grant to which each commune is entitled is computed by calculating the additional tax base which the commune would have if the per capita income of its inhabitants were equal to the national average, adjusting this sum upward for the northern communes and downward for the southern communes, and applying the commune's own tax rate to the resulting figure. The formula is as follows:

\[ A = CTR \times (P \times SMTI \times GR) - CTI \]

where,
- \( A \) = the amount of the grant
- \( CTR \) = the communal tax rate
- \( P \) = the population of the commune
- \( SMTI \) = the mean per capita taxable income in Sweden
- \( GR \) = the guarantee rate49
- \( CTI \) = the communal tax base, i.e., the aggregate income subject to taxation by the commune

No conditions are imposed upon the subventions under this program; the government does not even inquire into the legality of communal expenditures. In effect, therefore, the government simply assumes a role equivalent to that of a communal taxpayer, without, however, even having the power of a local taxpayer to challenge communal expenditures.

A second program (skattelindringsbidrag), substantially smaller than the first, provides additional grants for communes with a tax rate in excess of the national average.50 The grants, which as under the first program are available to the communes as of right, are calculated by multiplying the difference between a commune's tax rate and the

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48. The total cost of the program for the year 1969 was 1,300 million Swedish kroner, somewhat under 5\% of communal income from all sources and approximately 3\% of national expenditures. (1 Skr equals approximately $.19).
49. The guarantee rate, which differs for different parts of the country, was apparently included in the formula to provide an additional subsidy for the sparsely settled, northern communes. At the present time, the guarantee rate is 125\% for the northern communes; 110\% for the central communes; and 90\% for those in the south.
50. Approximately 135 million kroner were distributed under this program during 1969.
mean tax rate for all communes by one-tenth of that difference and then applying that figure to the commune's tax base. The formula is as follows:

\[ A = (CTR - SMTR) \times \frac{1}{10} (CTR - SMTR) \times CTI \]

where,
\[
\begin{align*}
A &= \text{the amount of the grant} \\
CTR &= \text{the communal tax rate} \\
SMTR &= \text{the mean tax rate for all communes} \\
CTI &= \text{the communal tax base, i.e., the aggregate income subject to taxation by the commune.}
\end{align*}
\]

Both formulas, by varying the amount of the government grant with a commune's tax rate, presumably provide some incentive for local expenditure. There appears to be no concern on the part of the government that the incentive will lead to excessive local expenditures or demands upon the national treasury, apparently because it is believed that there are adequate protections against excessive expenditures or demands in the fact that government payments will be limited by the amount of the tax rate upon local inhabitants. Nevertheless, a commission is currently investigating the grant formulas. The Government believes that there is still too large a difference among the tax rates of the communes and has proposed as a goal that similar kinds of services should be financed by a similar tax rate in all communes. It is recognized that there will be some differences in tax rates among the communes because of differing local choices as to the level of services to be provided. In general, there is no intention of interfering with such local choices. Complete equalization of local tax burdens for similar programs is, however, plainly the policy to be promoted by the government in the years ahead.

**Conclusion**

Both Sweden and the United States in recent years have moved toward an awareness that if government is adequately to serve the needs of its citizens, strengthened institutions of local government are required. Sweden, on the whole, has moved more vigorously than the United States to meet that need. Facile attempts to borrow from the Swedish experience in designing "solutions" for the current

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51. Additional sums are payable to those communes which have a tax rate substantially in excess of the national mean. A small sum of 10 million kroner is available under a third program for payment to communes in emergency circumstances. This is the only one of the three general fund grant programs under which the government has any discretion and an attempt is made, prior to awarding funds, to ascertain whether the expenditures for which the grant is needed are lawful and otherwise appropriate.

52. There are exceptions, however. The government is, for example, determined upon a policy of complete standardization of the educational system.
crisis in urban government in the United States are as likely to mislead as to be productive, for the two nations differ markedly in demographic characteristics, geography, economic situation, and political institutions—differences which affect profoundly the nature of the problems created by urbanization in each nation as well as the feasibility and political acceptability of "solutions" offered for those problems. Thoughtful examination of the Swedish reforms, with careful attention to the framework within which the reforms were made, may nevertheless shed light upon the appropriate directions for reform in the United States.