

CSF Notebook

THE CENTER FOR THE STUDY OF FEDERALISM

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FROM THE EDITORS

With this issue editorial responsibility for the CSF NOTEBOOK passes to Ellis Katz and Mark Schneider. The new editorial team wishes to thank Robert Thomas for his stewardship. We hope that the NOTEBOOK will maintain the high standards he established and that, he will continue to contribute, notwithstanding his stepping down from the position of editor.

This issue represents our first effort to present news and useful information pertaining to federalism in an organized, systematic format, intended to make the CSF NOTEBOOK a valuable source for scholars and practitioners alike. It includes news from the recent APSA and IPSA meetings, news and announcements of upcoming events from the APSA section on Federalism and Intergovernmental Relations, the International Association of Centers for Federal Studies, as well as the NOTEBOOK's home base, the Center for the Study of Federalism at Temple University. In addition, recent publications are noted and material of interest reprinted.

The editors wish to take this opportunity to emphasize that the value of the CSF NOTEBOOK increases when it serves as a forum for communication on federalism and related issues. Readers are encouraged to contribute suggestions for items to be included in future issues and to advise us of new publications, upcoming conferences or meetings of interest, and any other relevant news or information.



NEWS FROM THE CENTER FOR THE STUDY OF FEDERALISM

Assistant Director Appointed

The CSF recently created the position of Assistant Director for Development and Program Administration. After an extensive search, Mark Schneider was hired to fill this new post. Mr. Schneider has an A.B. in political science from Vassar College and a J.D. from Vanderbilt University. He has experience across the entire area of funded projects, from locating sources of potential funding to grant proposal writing and program administration.

The creation of the position of Assistant Director, made possible with the support of the Lynde and Harry Bradley Foundation, provides the Center with a full-time administrator and has already increased the efficiency of the office in the short time since the creation of the position. Please feel free to telephone Mark Schneider at (215) 787-1483 if you have any questions or need additional information concerning any CSF project or program.

Upcoming Liberty Fund Conferences

The Center for the Study of Federalism is pleased to be the host institution for three upcoming invitational conferences, sponsored by the Liberty Fund.

November 12-14, 1988 Continuing its series of Bicentennial Conferences, the Center will host a Liberty Fund Conference on the contemporary relevance of the debates between the Federalists and Anti-Federalists during the battle over ratification of the U.S. Constitution. In addition to looking at original source materials, the participants will read specially commissioned papers by Daniel J. Elazar, Donald S. Lutz, Vincent Ostrom, Stephen Schechter, and Michael Zuckert.

May 20-22, 1989 The fourth of a continuing series of Liberty Fund Colloquia focusing on questions of freedom and responsibility in the writings of selected authors will consider "Freedom and Responsibility in the Writings of Joseph Conrad." Previous colloquia have examined the works of Thornton Wilder, Mark Twain, and Sinclair Lewis.

Spring 1989 Working with the Liberty Fund, the Center will produce a three-day workshop on liberty in the American constitutional system for 20 secondary school social studies teachers in Indiana. The Liberty Fund has traditionally sponsored similar seminars for college and university faculty, but this is its first attempt to stimulate this type of discussion among secondary school teachers. Daniel J. Elazar, Ellis Katz, Donald S. Lutz, and Stephen Schechter will participate in the project.

MORE NEWS FROM THE CENTER FOR THE STUDY OF FEDERALISMEarhart Fellowship

Through the generous support of the Earhart Foundation, the Center for the Study of Federalism maintains a fellowship for an outstanding graduate student in political science at Temple University. For 1988-89, the Earhart Fellowship has been awarded to Joseph Marbach. With this support, he has completed the field research for his dissertation, titled *Cities of the Prairie: The Next Generation*, and anticipates receiving his degree this spring. The Center will shortly begin the process of selecting the recipient of the Earhart Fellowship for 1989-90.

Updated Publications Catalog Available

The newly revised and updated Center for the Study of Federalism Publications Catalog rolled off the press just in time for the APSA and IPSA meetings. The catalog includes the latest publications from the Center for the Study of Federalism in the areas of American Federalism/Intergovernmental Relations, American Politics, Civil Community/Local Government, Comparative Federalism, Covenant and Politics/Federal Theory, Policy Studies, Political Culture, State Government and Politics, as well as Study Guides and Research Tools. Back issues of *PUBLIUS*, *The Journal of Federalism*, along with *PUBLIUS* Books and backlist titles from the Center for the Study of Federalism are also listed and available through the catalog. To obtain your free copy of the Publications Catalog, contact the Center for the Study of Federalism.

John Kincaid Named ACIR Executive Director

John Kincaid has been named the new Executive Director of the Advisory Commission on Intergovernmental Relations. His appointment was ratified by the Commission after a unanimous recommendation by the Commission's selection committee. Dr. Kincaid had been ACIR's Director of Research since December 1986 and Acting Executive Director since January 1, 1988.

The selection committee was chaired by Commissioner David E. Nething. The other members were Commissioners John Bragg, David Durenberger, Daniel Elazar, Philip Elfstrom, Robert M. Isaac, Ann D. McLaughlin, and Ted Weiss. Prior to making its recommendation, the committee interviewed four strong finalists, for the position. In selecting the finalists, the committee was assisted by former ACIR Executive Directors William Colman and John Shannon.

Before coming to ACIR, Dr. Kincaid was associate professor of political science at the University of North Texas in Denton. He taught previously at Temple University; St. Peter's College, Jersey

MORE NEWS FROM THE CENTER FOR THE STUDY OF FEDERALISM

City, N.J.; Arizona State University, Tempe; and Seton Hall University, South Orange, N.J. He received a B.A. in political science from Temple University in 1967, an M.A. in urban affairs from the University of Wisconsin-Milwaukee in 1968, and a Ph.D. in political science from Temple in 1981.

John Kincaid is an editor of *PUBLIUS, The Journal of Federalism*, associate editor of the University of Nebraska Press's State Government and Politics book series, and author of books and articles on federalism, intergovernmental relations, and American government. He is the editor of a recent issue of *The Annals of the American Academy of Political and Social Sciences*, on State Constitutional Law, and coeditor of a forthcoming book, *The Covenant Connection: Federal Theology and the Origins of Modern Politics*.

In accepting appointment as ACIR's Executive Director, Dr. Kincaid said that the Commission will continue to emphasize issues of current urgency on the intergovernmental agenda as well as latent issues likely to become important in the near future. In so doing, the Commission will continue to provide the intergovernmental community with up-to-date data on developments in fiscal, political, and judicial federalism.

In announcing the appointment of Dr. Kincaid, ACIR Chairman Robert B. Hawkins, Jr. said, "The Commission has an important and exciting research agenda, and I am delighted that John Kincaid has accepted the responsibility of guiding the ACIR staff in maintaining ACIR's superior analysis of American federalism."

TEACHING FEDERALISM AND INTERGOVERNMENTAL RELATIONS: A CALL FOR SYLLABI

The Center for the Study of Federalism plans to publish a collection of course syllabi, both graduate and undergraduate, on federalism and intergovernmental relations. If you are presently teaching such a course, or have taught one recently, please send us a copy of your syllabus so that we can include it in our collection. Send your syllabus to:

Prof. Ellis Katz
Center for the Study of Federalism
Temple University 025-25
Philadelphia, PA 19122

NEWS FROM APSA SECTION ON FEDERALISM AND INTERGOVERNMENTAL RELATIONS

At its September 2, 1988 meeting in Washington, DC, the APSA Organized Section on Federalism and Intergovernmental Relations elected Ellis Katz as Chair and re-elected E. Lester Levine as Secretary-Treasurer. In addition, it added Robert J. Digler, Daniel J. Elazar, and Kenneth Palmer to the Council. Continuing as members of the Council are: Beverly Cigler, Ellis Katz, John Kincaid, Dale Krane, Donald S. Lutz, and Margaret Wrightson.

As an innovation, the Organized Sections of APSA will put together the official program for the 1989 Annual Meeting. Accordingly, if you wish to propose a panel, or other form of presentation, at the 1989 Annual Meeting in Atlanta, please send your proposal, as soon as possible, to:

Prof. Ellis Katz
Center for the Study of Federalism
Temple University 025-25
Philadelphia, PA 19122

NEWS FROM THE INTERNATIONAL ASSOCIATION OF CENTERS FOR FEDERAL STUDIESState Constitutions Conference in Brazil

The International Association of Centers for Federal Studies was a co-sponsor of a conference in Salvador, Brazil, in August titled *Auto-Organizacao Dos Estados E A Democracia*. The conference focused on the role of state constitutions in federal systems with special emphasis on the process of writing state constitutions within the context of the new Brazilian Constitution. With over 150 participants, the conference featured presentations by:

Raul Machado Horta (Brazil)	Ruben Mario Macedo (Brazil)
Daniel J. Elazar (U.S.A.)	Jean Pierre DeBandt (Belgium)
Rogério Vargens (Brazil)	Murray Forsyth (Great Britain)
Albert Blaustein (U.S.A.)	Joan Rydon (Australia)
Michel Temer (Brazil)	Thomas Hueglin (Canada)
Alberto Pecanha Martins (Brazil)	Gerson Pereira dos Santos (Brazil)
Wayne Selcher (U.S.A.)	Robert N.C. Nix, Jr. (U.S.A.)
Marco Maciel (Brazil)	José Carlos Moreira Alves (Brazil)
George Fragoso Modesto (Brazil)	Cheryl Saunders (Australia)
Sylvio Santos Faria (Brazil)	Marcelo Duarte (Brazil)
Steven Petkov (U.S.A.)	Arx Tourinho (Brazil)
Ellis Katz (U.S.A.)	Waldir Pires (Brazil)
Coriolano Sales (Brazil)	Miriam Souza (Brazil)

MORE INTERNATIONAL NEWS

New Members Admitted to IACFS

The International Association of Centers for Federal Studies recently added four new members: the Center for Constitutional Studies (Brazil), the Groupe Coudenberg (Belgium), the Centre for Federal Studies (Great Britain), and the Intergovernmental Relations in Victoria Program (Australia).

The complete membership list now includes:

Center for Constitutional Studies (Brazil)
Center for the Study of Federalism (U.S.A.)
Center for Research on Federal Financial Relations (Australia)
Centre for Federal Studies (Great Britain)
Centre International de Formation Europeenne (France)
Groupe Coudenberg (Belgium)
Institute of Intergovernmental Relations (Canada)
Institut du Federalisme (Switzerland)
Instituto Brasileiro de Administracao Municipal (Brazil)
Intergovernmental Relations in Victoria Program (Australia)
Jerusalem Center for Public Affairs (Israel)
Sequoia Institute (U.S.A.)
U.S. Advisory Commission on Intergovernmental Relations (U.S.A.)
Workshop in Political Theory and Policy Analysis (U.S.A.)

1989 IACFS MEETING TENTATIVELY SET FOR BRUGE, BELGIUM

The meeting of the International Association of Centers for Federal Studies has been tentatively scheduled for October 26-28, 1989 in Bruges, Belgium. Organized by Groupe Coudenberg in Brussels, the meeting will focus on European federalism. For additional information contact:

Jean Pierre DeLandt, President
Groupe Coudenberg
Rue Brederode 13
1000 Brussels
BELGIUM

NEW BOOKS AND PUBLICATIONS

The American Constitutional Tradition, by Daniel J. Elazar, University of Nebraska Press, 1988, 352 pages, \$32.50

The author examines the same problems addressed by the Founding Fathers in shaping a viable form of government and notes how they reached an enormously inventive solution which, although new, had its roots in an older tradition of Western civilization that can be traced back to the Bible. Key topics include the covenantal roots of the American constitutional arrangement, the various faces of pluralism, the importance of land to American liberty, the enduring values of the Declaration of Independence, and the principles and traditions underlying the state constitutions.

Comparative Federalism: The Territorial Dimension of Politics, by Ivo D. Duchacek, University Press of America, 1987, 370 pages, \$16.50

This reissue is the latest in the Constitutional Government in Theory and Practice series from UPA and the Center for the Study of Federalism. This volume analyzes the various reasons for the different patterns of territorial distribution of political authority in the contemporary world. The focus lies in the comparative analysis of states that are considered to be or claim to be federal in nature.

Human Rights in the States: New Directions in Constitutional Policymaking, edited by Stanley H. Friedelbaum, Greenwood Press, Inc., 1988, 208 pages, \$39.95.

The editor introduces the volume with an overview of the historical relationship between federal and state courts and a discussion of the interplay of national and state legal standards. The contributing authors (G. Alan Tarr, Sue Davis, Mary Cornelia Porter & Robyn Mary O'Neill, Peter J. Galie, Daniel C. Kramer, Susan P. Pino, and Janice C. May) examine the ways in which various state courts have expanded their effective jurisdiction with regard to specific constitutional issues, including state counterpart First Amendment guarantees, women's rights, privacy, and economic due process.

State Supreme Courts in State and Nation, G. Alan Tarr and Mary Cornelia Aldis Porter, Yale University Press, 1983, 288 pp, \$28.50.

Beginning with a general discussion of the work of state supreme courts, the authors use legal analysis, historical research, and interviews with state judges, journalists, and law professors to delineate how three very different state supreme courts (Alabama, Ohio, and New Jersey) operate and how they have developed over the last forty years or so.

PUBLIUS FORTHCOMING ISSUE

PUBLIUS: The Journal of Federalism
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New York Notes

A Guide to *The Federalist*

Revised version of a paper prepared for the Center for the Study of Federalism, Temple University, with the support of a grant from the National Endowment for the Humanities.

Many things can serve more than one purpose. CERTS, so the jingle goes, is two mints in one; it's a breath mint and a candy mint. So, too, *The Federalist* is three documents in one. It is a campaign document, designed to win popular approval among the voters of New York State for the proposed Constitution; a serious work of political thought, analyzing the nature of free societies; and the authoritative commentary on the Constitution, reflecting the intent of the Framers of the Constitution.

The multi-purpose character of *The Federalist* is what makes it such a challenge to read with comprehension. To understand *The Federalist*, one must understand its historical context, the rhetoric (i.e., political language of that time), the political theory of *The Federalist*, the place of that theory in the history of political thought, and how these elements can reinforce one another on the printed page. Based on these criteria, no one can fully understand *The Federalist*, but one can apply these criteria to improve one's understanding of it, and that is the purpose of this guide.

Historical Background

On 21 February 1787, the Congress of the Confederation called for a convention to revise the Articles of Confederation. In the months that followed, all of the states (except for Rhode Island) elected delegates to the convention. That convention, known as the Constitutional Convention, met in the city of Philadelphia from 25 May to 17 September. The product of its summertime efforts was a new Constitution, debated in the Congress, 26–28 September, and sent without approval to the states.¹

By the end of 1787, four states had ratified the Constitution, beginning with Delaware, whose license plates now read "First State" to commemorate its early action. By June of 1788, four more states ratified. Then, on 21 June, New Hampshire became the ninth state to ratify, bringing the Constitution into effect.

New York State was not among the nine required for ratification. In fact, New York did not ratify the Constitution until 26 July 1788, thereby becoming the eleventh to do so. The state legislature delayed the process, first, by waiting until February 1788 to call the convention, and then by scheduling the election for the end of April and the convention for mid-June. But why did the state legislature choose to delay the process? To un-

derstand *The Federalist* as a campaign document, one must first understand why New York State waited so long to ratify.

New York was a reluctant state because neither Federalist nor Anti-federalist leaders were willing to risk an early decision. As the state's minority party, Federalists wanted late elections in the hope of swaying new voters to their side; they wanted a late convention, because they believed they could win over moderate Antifederalist delegates before the convention. And if these two efforts failed, there would be no early defeat in New York to hurt their efforts in other states.

Antifederalists had their own reasons for delay. They were led by George Clinton, the state's first governor, undefeated in every election bid since 1777. Clinton was a smart politician who tried to leave nothing to chance. He realized his forces might have won an early contest, but they also might have lost. He wanted time to assess his statewide strength on this particular issue and to organize the diversity of interests needed to win in a state like New York. He also hoped that, with time, Antifederalists could build an interstate movement for a second constitutional convention. Finally, Clinton did not want New York to be the first big state to say no.²

¹Article 7 of the proposed Constitution requires the "ratification [consent] of the conventions [not legislatures] of nine States [i.e., over two-thirds of the thirteen states]" to establish [i.e., bring into effect] the Constitution.

²For a full account, see John P. Kaminski, "New York: The Reluctant Pillar," in *The Reluctant Pillar: New York and the Adoption of the Federal Constitution*, edited by Stephen L. Schechter (Troy, NY: Russell Sage College, 1985).



How and Why *The Federalist* Was Written

The proposed Constitution was first printed in New York on 21 September 1787, and within a week the debate over its adoption began. A commentary by a Federalist appeared in a New York City newspaper, *The Daily Advertiser*, on 24 September. It was answered three days later in the city's only Antifederalist newspaper, *The New-York Journal* by "Cato" I, the first of seven Antifederalist essays attributed by some to Governor Clinton. Several days later, "Cato" was attacked in a newspaper essay by "Caesar" (possibly Alexander Hamilton), and the debate was well underway, nurturing two basic tools of American campaign politics—the print media and the political party.

The Federalist was an important part of the New York debate, with the first essay appearing on 27 October 1787 two days after the unanswered charges of "Cato" III were published.¹ The decision to write the essays was made by Alexander Hamilton and fellow New Yorker, John Jay. Though little is known about that decision, it is likely that Hamilton recognized the need for an authoritative series of essays in defense of the proposed Constitution to counter the early onslaught of Antifederalists like "Cato," and that *The Federalist* was intended to serve that purpose.

The essays were written by Alexander Hamilton, John Jay, and James Madison under the pseudonym "Publius."² A total of eighty-four essays were printed in New York City between 27 October 1787 and 28 May 1788. The essays were first published in New York City newspapers. They were then widely circulated in other newspapers until January 1788 when it was announced that the M'Lean brothers would print the essays in book form. (The first of the two-volume set was published on 22 March 1788; the second, on 28 May.)

The essays were addressed to the "People of the State of New York," and intended to convince New Yorkers of the necessity of ratifying the new Constitu-

tion. In particular, the essays were intended to show, in Hamilton's words: "The utility of the UNION to your political prosperity—The insufficiency of the present Confederation to preserve that Union—The necessity of a government at least as equally energetic with the one proposed to the attainment of this object—The conformity of the proposed constitution to the true principles of republican government—Its analogy to your own state constitution—and lastly, The additional security, which its adoption will afford to the preservation of that species of government, to liberty, and to property."³

The essays were written on a tight schedule: at first, two were printed each week; later, the schedule was increased to four per week. This did not leave much time for careful study or coordination. As James Madison explains, the essays "were written most of them in great haste, and without any special allotment [assignment] of the different parts of the subject to the several writers, J.M. [James Madison] being at the time a member of the then Congress [of the Confederation in New York City], and A.H. [Alexander Hamilton] being also a member, and occupied moreover in his profession at the bar [i.e., as a lawyer, which occasionally took him up to Albany]."⁴

At the time of their publication, *The Federalist* papers were widely recognized by Federalist and Antifederalist alike as one of the most serious and sophisticated defenses of the Constitution. Federalists generally regarded the essays as the best analysis of the Constitution, though some admitted that they were too "elaborate" and not "well calculated for the common people." (In other words, even friendly readers of the day found them heavy and, at times, difficult reading.)

Today, *The Federalist* is widely regarded as the authoritative statement of the intent of the Framers of the Constitution. It is used by lawyers, legal scholars, and judges to interpret the meaning of particular clauses of the Constitution,

and by theorists to understand the meaning of the Constitution as a whole. However, its impact on its intended audience—the people of New York—was negligible. A majority of New York voters cast their ballot for Antifederalist convention delegates, and there is no evidence that any of those Antifederalist delegates who later decided to switch their final vote for ratification were influenced by *The Federalist*.

How *The Federalist* Begins

With this background in mind, consider how *The Federalist* begins. Read the following sentence from the first paragraph of the very first essay.

It has been frequently remarked, that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force.

Written by Hamilton, this sentence can be read in two ways; namely, as the opening statements of a campaign document and a work of political thought.

As the opening statement of a campaign document, this sentence is a classic "gambit"—an opening move designed to occupy a favorable position (in this case, the "high ground") with a minimal amount of sacrifices. Consider how the same sentence might read in terms of today's political rhetoric:

Once again, my fellow Americans, we have an historic opportunity (presented by my friends and I) to show the world that we are a thoughtful people capable of creating good government by careful planning and popular consent, not by being forced to do it or by accidentally blundering into it.

The opening sentence gains added dimension as a campaign statement when

¹Then, on 8 November 1788, Thomas Greenleaf, the Antifederalist printer, advertised the first pamphlet of . . . *Letters From the Federal Farmer to the Republican*, considered then and today to be one of the best Antifederalist commentaries.

²Many commentaries on the Constitution were written under pseudonym, both to protect the author and to make full use of available symbols. Heroes of the Roman Republic were popular choices, because many were well-known symbols of republicanism. (Plutarch's *Lives of the Noble Romans* was widely read at that time.) Publius Valerius established stable republican government after the overthrow of Tarquin, the last Roman king. The choice of this hero was undoubtedly Hamilton's since he had used that pseudonym nearly ten years earlier.

³*The Federalist No. 1*, pp. 6-7. All quotes from *The Federalist* are from the Jacob E. Cooke edition (Middletown, CT: Wesleyan University Press, 1961), now distributed in paperback edition by Harper & Row.

⁴As quoted in John P. Kaminski and Gaspare J. Saladino, eds., *The Documentary History of the Ratification of the Constitution, Commentaries, Volume I* (Madison, WI: State Historical Society of Wisconsin, 1981), p. 457. This excellent series presents the commentaries on the Constitution in chronological order and with useful annotations and footnotes.

its political context is recalled. The overall context was shaped by the desire to buy time, and what better way to do that than to appeal to the "reflective" nature of the voters? The particular context is the newspapers of New York City and what was being printed that week by the opposition.⁷

As an opening statement of political thought, the first sentence of *The Federalist No. 1* suggests that politicians (and Hamilton was one of the best) do not campaign simply to win the votes of the people, they also campaign to govern; in this instance, to inform the public (and by that I mean giving shape and form to the public mind as well as providing it with bits of information) about the better world that will be possible under the new Constitution. And this involves the selection and use of words not merely as tactics in an overall strategy but also as concepts (ideas) in an overall theory.

In this sense, the opening sentence contains two basic ideas that shape America's theory of constitutionalism.⁸ Hamilton elegantly phrases those ideas but he did not invent them. In fact, they were so much a part of the eighteenth-century American mind that they were widely used by Federalists and Antifederalists, alike.

The two ideas used to introduce *The Federalist* answer the political question: If society is governed by laws, how can laws (and in this instance, the Constitution) be made in a way that the members of society will willingly obey? The answer to this question is, in Hamilton's words, "reflection and choice."⁹

1. **Reflection** is the Enlightenment idea that humankind is a thinking species, capable of improving its lot by thinking before it acts. This idea was shared by both sides in the debate, and it is one of the reasons why the campaign remained a peaceful debate. It was used in *The Federalist No. 1*, but it was also used by Antifederalist "Cato" I: "Deliberate, therefore, on this new national government with coolness; analyze it with criticism; and reflect on it with candour . . . Beware of those who wish to influence your passions, and to make

you dupes to their resentments and little interests . . ." And "Cato" II wrote of the Federalist author "Caesar": "he shuts the door of true deliberation and discussion."

This is not to say that all matters of politics were objects of reason. Reprinted from a Philadelphia statement of 29 August 1787 in the *New Jersey Journal* on 5 September 1787, while the Constitutional Convention was still in session, is an interesting distinction: "The principles of liberty and the principles of government . . . are distinct things: Many understand the former which are matters of feeling, who know nothing of the latter, which are objects of reflection and reason."

2. **Choice** is the republican idea of popular consent. It occurs time and time again throughout *The Federalist* and all other commentaries on the Constitution by Federalists and Antifederalists; and it stands for the complex yet simple notion that people will obey laws of their own making (or by representatives of their own choosing), so long as they have confidence in themselves and their representatives. In the heat of debate, some Federalists accused Antifederalists of pandering to the people, while some Antifederalists accused the other side of forgetting the people. However, virtually all were advocates of popular government; and, rhetoric aside, most were advocates of popular government by some form of elected representation.¹⁰

In sum, then, Federalists and Antifederalists agreed on the need for delay, the worth of cool and reasoned debate, and the goal of government by popular consent. On what did they disagree and how did federalism figure into that debate?

What the Antifederalists Were For:¹¹ A Confederacy of Small Republics

Federalists and Antifederalists were both advocates of popular government in its republican form. Where they differed was in the type of republican society they wanted and the type of federal system they thought best suited to secure that society.

Antifederalists were opposed to the proposed Constitution in its original form; and like any group bound by opposition, it would have been difficult for them to agree on what they were for. It is for this reason that they are remembered as "men of little faith." However, as one reads their writings, one builds a sense that Antifederalists were against the Constitution as proposed because they were for a type of society that they felt would be threatened by the new Constitution; and, as they read what "Publius" had to say, especially in essays such as *The Federalist No. 10*, their fears were undoubtedly confirmed, because "Publius" was quite clear about the different type of society he envisioned.

Much of Antifederalist opinion was united behind the idea that republics had to be small (like ancient Greek city-states, medieval Swiss cantons, or modern American states) to survive. Undoubtedly, part of this opinion was shaped by a desire to preserve the existing status quo. However, another part was an idea which they drew from the French philosopher Montesquieu: the basis of republican government (i.e., popular consent) required a small and intimate setting where citizens (1) knew one another, (2) shared similar habits and values, and (3) did not have the opportunity to become too unequal in their fortunes, because without these three bonds, people would not trust one another enough to agree on anything (including how to protect themselves against tyranny). Note how "Cato" III relies on these same three bonds in his explanation:

The strongest principle of union resides within our domestic [i.e., family] walls. The ties of the parent exceed that of any other; as we depart from home, the next general principle of union is amongst citizens of the same state, where acquaintance, habits, and fortunes, nourish affection, and attachment; enlarge the circle still further, &, as citizens of different states, though we acknowledge the same national denomination, we lose the ties of acquaintance, habits, and for-

⁷Piecing together this context is not as difficult as it might seem. *The Documentary History* noted above is arranged in chronological order, so one can simply look up *The Federalist No. 1* and begin reading the previous documents looking for cross-references.

⁸Constitutionalism is the belief that society should be governed by laws, of which the Constitution is the most fundamental.

⁹*Sic*. There were few established rules of standard spelling in the eighteenth century.

¹⁰In the language of the day, popular government had two species: a republic in which governmental decisions were made by the people's representatives; and a democracy in which governmental decisions were made by the people directly (as in an open-air meeting).

¹¹The heading is taken from Herbert J. Storing, *What the Anti-Federalists Were For* (Chicago: The University of Chicago Press, 1981). This slim paperback reviews Antifederalist political thought and introduces the multi-volume collection of Antifederalist writing, *The Complete Anti-Federalist*, edited by Storing.

tunes, and thus, by degrees, we lessen in our attachments, till, at length, we no more than acknowledge a sameness of species.

"Cato" assumed the existence of a Union (see line 1 of the quote) and of national ties (see line 8). What "Cato" could not accept was the idea of a national government. Like other Antifederalists, "Cato" advocated a federal or confederal union of the states. In the eighteenth century, "federal" and "confederal" were used as synonyms. Both terms referred to relations among equals (in this instance, states) entered into voluntarily by compact or covenant. They could be loose relations (as in an alliance or league) or they could be stronger, as in the perpetual union formed by the Articles of Confederation. However, Antifederalists rejected the Federalist argument that federal relations could exist with a national government in the same system.

Today, we might consider Antifederalist attitudes to be "parochial" and "small town"; and we would be right. But does this make "Cato" wrong?

What the Federalists Were For: An Extended and Compound Republic

Federalists, including "Publius," believed "Cato" was dead wrong. In fact, much of what made the Federalist argument so new to the eighteenth-century mind was (1) the idea that republics should be large and complex, not small and simple; and (2) the constitutional means for accomplishing that task.

In *The Federalist No. 10*, James Madison as "Publius," sets out the reasons step-by-step (i.e., the logic) for a large, compound republic, focusing more on the large-republic element. He resumes this theoretical discussion in *The Federalist No. 51*, focusing on the compound-republic element. In numbers 37 and 39, he considers the constitutional means for securing a large, compound republic. There are other writings where the Federalist experiment is explained¹² but it is Madison's Tenth, like Beethoven's Fifth, which is most frequently required of the

student and, hence, the most widely known. For this reason, let us review Madison's Tenth to discover the reasons for wanting a large, compound republic, and then proceed to numbers 51, 37, and 39 to complete the Madisonian model of republican government.

The Madisonian Model Outlined

The Federalist No. 10 and the Large Republic

1. The greatest danger facing popular government is factionalism, which occurs when a majority or minority unites around a passion or interest adverse to individual rights or the public good. (Why does Madison single out factionalism?)¹³

2. Madison rejects the idea of controlling factionalism by removing its causes (see Figure 1).

a. Controlling the people by denying their liberties, which would be unwise, much like throwing the baby out with the bathwater. (Is factious behavior, as defined by Madison, illegal today? If not, should it be?)¹⁴

b. Telling people how to think, which would not work because no one would listen unless they were forced to

do so, and that option was rejected (see 2[a] above).

3. Madison accepts the idea of controlling factionalism by controlling its effects.

4. The effects of *minority* factions can be controlled relatively simply by the republican principle (of popular consent), by which the majority would defeat the minority faction at the polls. (Did Madison worry too little about minority factions? Was he too tolerant of some of its effects?)

5. The real problem facing popular governments and the "great object" of his essay is how to control the *majority* when it becomes factious.

6. There are two basic ways to control majority factions: control the motives that inspire them and the opportunities for them to organize. These are taken up in (8) and (9) below, respectively, after Madison introduces the distinction between democracies and republics. (Review note 10 in the guide.)

7. Of the two forms of popular government, a republic is more likely than a democracy to control majority factions, partly because democracies are by their very nature inclined toward instability. Also, republics allow for represen-

The Logic of *Federalist No. 10*

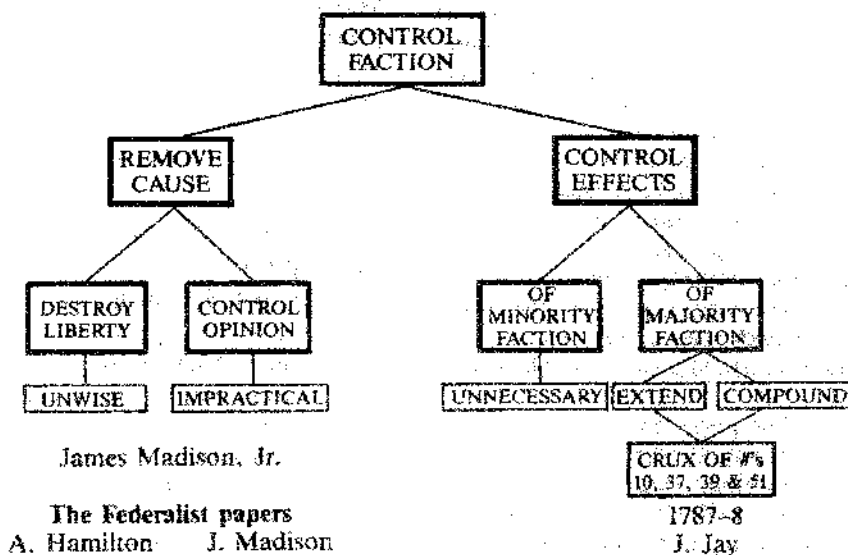


Figure 1.

¹²Hamilton sets out the theoretical argument for a large, compound republic in *The Federalist No. 9*. John Jay, often forgotten in his role as Publius, is credited with writing the more politically persuasive version in a pamphlet entitled *An Address to the People of the State of New York*, signed by "A Citizen of New-York," and published on 15 April 1788.

¹³Number 10 was the first essay that Madison wrote, but, in the reader's mind, it was still the tenth essay written by "Publius." Since Hamilton had spoken of factions in Number 9, and since factionalism was generally accepted as a major danger facing republics, Madison might well have decided to focus on factions as a way of beginning his own case while appearing to continue the argument set out in the previous essay.

¹⁴Suggestion: Compare factious behavior with the laws and cases on seditious behavior as concerns threats to the public safety.

tation and increased size of population and territory. These last two factors are considered below.

8. Republics make it possible to have elected representatives, and good ones can refine the factious spirit that might spread among the majority.

a. Large republics are more likely than small republics to elect good representatives for two reasons:

i. Regardless of their size, all republics need the same number of legislators, in order to avoid the clubiness of too few and the confusion of too many. But in a large republic, there will be more options to fill those seats with qualified people.

ii. Since the size of the constituency is greater in the large republic, it will be less susceptible to deception by unworthy candidates. (Is it harder to fool 100,000 people than 10,000?)

iii. However, on this as on other points, one must strive for the mean. If the constituency is too large, the representative will not be sufficiently aware of local conditions. If the constituency is too small, the representative will be too tied to local conditions and unable to see the larger picture or pursue the national interest. The Constitution forms a "happy combination" that refers "great and aggregate interests" to the federal Congress and "local and particular" interests to the state legislatures. (Is there one optimum ratio of representative to be represented for a national legislature, and another optimum for state legislatures? And is this a guarantor that the states are "closer" to the people?)¹⁴

9. Republics make it possible to increase the size of the citizenry and territory, and larger republics make it less likely that majority factions will form.

a. The larger the society, the greater the variety of parties and interests. (Does Madison seem to prefer a pluralistic society?)

b. The greater the diversity of interests in society, the less likely a majority will have a single passion or interest. Put differently, majorities in large societies are more likely to be coalitions of various interests than a monolithic force of

one interest. (Is this also an obstacle for forming majorities around a single public good?)

c. The larger the number of citizens and territory, the more difficult it will be for those who could form a factious majority to discover one another and come together. (Does this still hold in today's society of telecommunications, electronic media, and supersonic jets?)

10. The Union is more likely to control the effects of faction than are the states composing it.

a. Members of Congress are more likely to possess the enlightened views and virtuous sentiments needed to override local prejudice. (If "Cato" had a localistic "small town" bias, does Madison suffer from a cosmopolitan bias?)

b. The greater variety of parties in the Union as a whole will prevent any one party from outnumbering the others. For example, a factious leader may be able to take over one state but not the Union; a religious sect may become a factious majority in one region, but other sects will prevent its spread; a particular fad or disruptive element or wicked group is less likely to take over the whole system than a part of it.

11. "In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government." Madison fully considered the extent (size) of the Union, but he did not go as far in addressing its "proper structure" (i.e., its compound nature); a matter which is introduced in point ten and continued in *The Federalist No. 51*.

The Federalist No. 51 and the Principle of the Compound Republic

1. Madison continues the theoretical discussion of Number Ten, shifting attention from controlling minority and majority factions to controlling all factions and government itself. At the end of the fourth paragraph, he notes: "A dependence on the people (i.e., on the republican idea of popular consent) is, no doubt, the primary control on the

government; but experience has taught mankind the necessity of auxiliary precautions (i.e., extra safeguards)."

2. Madison identifies three "auxiliary precautions": limited government, framed by laws; divided government, with one "department" (i.e., branch) checked by another; and a compound republic, providing the double security of two sets of limited and divided governments (i.e., federal and state).

3. All three precautions are governed by the same policy of "checks and balances." As Madison notes in paragraph five: "This policy, of supplying by opposite and rival interests, the defect of better motives, might be traced through the whole system of human affairs, private as well as public." (Historians of science find this view of the political world similar to Newton's view of the universe. What do you think?)

4. In a classic statement of human nature, Madison explains the need for auxiliary precautions (see the middle of paragraph four):

a. Ambition must be made to counteract ambition. (Why does Madison single out ambition?)

b. If men were angels, no government would be necessary. If angels governed men, no controls on government would be necessary. (How does this compare with Hamilton's view in *The Federalist No. 6*, paragraph three?)

c. In framing a government of men over men, one must first empower the government to control the people, and then oblige it to control itself. A dependence on the people is the best control over the government, but other safeguards are necessary.

The Federalist No. 37 and the Task of Forming a Compound Republic

1. Madison addresses the difficulties of forming a compound republic.¹⁷

2. The first challenge is to insure a proper balance among three seemingly contradictory principles:

a. Energetic government, which seems to require concentrating power in a single hand.

¹⁴The Constitution specifies in Article I, Section 2 that the number of representatives in the House of Representatives cannot be more than one for every 30,000 people. This means there cannot be two per 30,000, but there could be one per 100,000, reflecting the Framers' fear of localism. In 1929, Congress fixed the number of representatives at 435, and the ratio has steadily increased to one to over 500,000. How does this compare with the ratios for your state legislature?

¹⁷Since the time of the ancient Greeks, political philosophers have focused on ambition (the desire to achieve something important) as the single most important motivation for entering the world of politics.

¹⁸It was common practice up to the Civil War to refer to the federal government as the "general" government, and the term has much to recommend it. It suggests a government of general scope, avoids the status element in the term "central" government, and nicely sidesteps the choice between "federal" and "national" government.

b. Stability, which seems to require a long duration in office.

c. Republican liberty, which seems to require widely distributing power among many hands holding office for short periods of time.

3. The second set of challenges is the task of deciding the proper distribution of authority between general and state governments, and among legislative, executive, and judicial branches.

4. The final set of challenges has to do with mediating the differences between large and small states, and among other combinations of states (e.g., North vs. South, and East vs. West).

The Federalist No. 39 and the New Federalism

1. In this essay, Madison finally gets down to the specific ways in which the Constitution establishes a government that is both republican and federal.

2. In the first six paragraphs, Madison offers a specific definition of republican government and, in textbook fashion, shows how the new government is fully republican in form.

3. Madison then takes on the charge that the Framers should have "preserved the federal form, which regards the Union as a *Confederacy* of sovereign

states; instead of which they have framed a *national* government, which regards the Union as a *consolidation* of the States." (Recall the way these terms were used in 1787: "federal" and "confederal" were synonyms referring to the lateral relations among states.)

4. Madison's answer is a perfect combination of campaign rhetoric and political theory. The new Constitution, explains Madison, keeps the federal element of interstate relations and simply adds to it a national element. The result, Madison cleverly concludes, "is, in strictness, neither a national nor a federal Constitution, but a composition of both."

5. Madison's answer nicely elaborates the Constitution as a compound of federal and national elements:

a. The ratification of the Constitution is a federal act, with the people electing delegates and the delegates voting on the Constitution, both as members of their respective states.

b. The source of powers for the new government is partly federal and partly national, with the House of Representatives elected nationally, the Senate elected by the states (i.e., federally), and the President elected by an Electoral College which accumulates a national majority on a state-by-state basis.

c. The operation of the new government is national, because it acts directly on the individual citizen.

d. The extent or scope of the new government is federal, because it is supreme not over all things but only with regard to the enumerated powers granted to it, while the states remain supreme within their respective sphere.

e. Finally, the amendment process is neither wholly federal, nor wholly national, requiring special majorities of both the Congress and the states.¹⁸

Conclusion

Federalism, then, occupies a critical position in *The Federalist*, both as a campaign document and a serious work of political thought. In one master stroke, Madison preempts the federal principle, taking it away from the sole preserve of Antifederalist opposition, while at the same time redirecting it toward the goals of building a new nation and expanding the republic. In this effort, Madison provides a bridge from the way federalism had been defined to the way federalism is understood today.

— Stephen L. Schechter, Executive Director, New York State Bicentennial Commission

¹⁸Readers interested in identifying other occurrences of terms like "federal" and "national" in *The Federalist* can consult Thomas S. Engeman, Edward J. Eiser, and Thomas B. Hoffler, eds., *The Federalist Concordance* (Middletown, CT, 1980), which lists all key words in their contextual occurrences.

CSF Notebook

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NEWS FROM THE CENTER FOR THE STUDY OF FEDERALISM

ACIR RELEASES CASEBOOK ON STATE CONSTITUTIONAL LAW

The U.S. Advisory Commission on Intergovernmental Relations has recently published State Constitutional Law: Cases and Materials, compiled by Robert F. Williams of the Rutgers University School of Law, Camden, New Jersey. This is the first major collection of court cases, law review articles, and other materials ever to be made available on a broad range of state constitutional law affecting the 50 states. State constitutional law is being "rediscovered" by a growing number of scholars and practitioners in the legal and political communities. This work fills a gap in the literature and highlights a new development in American federalism. Justice William J. Brennan, Jr. commented: "I'd been hoping for some time that a casebook would be published. With the growing interest in reliance by state courts on their own constitutions, it's been very badly needed."



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MORE NEWS FROM THE CENTER FOR THE STUDY OF FEDERALISM

SELECTION PROCESS FOR 1989-90 EANHART FELLOWSHIP

Thanks to the generous support of the Earhart Foundation, the Center for the Study of Federalism maintains a fellowship for an outstanding graduate student in political science at Temple University. The 1988-89 recipient, Joseph Marbach, will graduate this spring. Nominations and applications are now being accepted from candidates for the 1989-90 year. Interested individuals should contact Ellis Katz at the Center for the Study of Federalism.

ASPA PLANS FEDERALISM PANELS AT ANNUAL MEETING

More than a dozen panels on federalism-related issues are planned for the national conference of the American Society for Public Administration, to be held in Miami, April 8-12, 1989. Among the problems to be addressed are the intergovernmental aspects of infrastructure finance, resource management, international competitiveness, mandating, tax reform, and rural economic development. In addition, Terry Busson of Eastern Kentucky University will assume the position of chairman of the ASPA Section on Intergovernmental Administration, taking over from outgoing chairman David R. Beam of Illinois Institute of Technology.

APSA AND SPOOR DIALOGUES PRESENT SUMMER SEMINAR AT DARTMOUTH

The William H. Spoor Dialogues on Leadership Program at Dartmouth College and the APSA announce a summer teaching-research seminar on "leadership in the American federal system and in American state politics" to be held June 25-29, 1989. Sessions will be devoted to different research perspectives on leadership in American state and national politics and government, as well as on the interactions among these leaders and how these research developments can best be presented to students. The Spoors Dialogues Program will bear the costs of participants' dormitory rooms, board, and seminar materials and supplies. For additional information, contact: Professor Richard F. Winters, Dartmouth College, Nelson A. Rockefeller Center for the Social Sciences, Hanover, NH 03755

NATIONAL ASSOC. OF ATTORNEYS GENERAL STUDENT ARTICLE COMPETITION

The National Association of Attorneys General State Constitutional Law Clearinghouse invites law and graduate students to submit, by April 28, 1989, an article for consideration for Volume 2 of Emerging Issues in State Constitutional Law. The winner will be awarded a prize of \$1,000. An original and four copies of an article on any issue of importance to state constitutional law, in double-spaced typed manuscripts not exceeding 40 pages (with minimum 1" margins) and following a law review and Blue Book citation format, will be considered. Footnotes may be either at the end of the manuscript or at the bottom of the pages. Interested applicants should mail by March 3, 1989 a MORE

MORE NEWS FROM THE CENTER FOR THE STUDY OF FEDERALISM

postcard of intention to submit an article to: SJI Project, Article Competition, National Association of Attorneys General, 444 North Capitol Street, Suite 403, Washington, DC 20001.

FEDERALISM AND INTERGOVERNMENTAL RELATIONS SYLLABI COLLECTED

The request for syllabi for courses in federalism or intergovernmental relations contained in the last issue of the CSF Notebook resulted in the collection of a number of syllabi from a variety of courses. Ellis Katz has accumulated these syllabi and will maintain them as a resource for future reference. If you are interested in receiving a copy of a syllabus for a particular course, contact the Center for the Study of Federalism. Also, if you have not yet sent a copy of your syllabus, it is not too late to do so.

LIBERTY FUND CONFERENCE PAPERS AVAILABLE

In November, 1988, the Center for the Study of Federalism, with the support of the Liberty Fund, conducted a colloquium on the contemporary relevance of the debates between the Federalists and the Anti-Federalists. Copies of the papers presented at the conference are now available from the Center for the Study of Federalism. Daniel J. Elazar, "Contrasting Conceptions of Freedom and Responsibility in the Federalist and Anti-Federalist Writings"; Donald S. Lutz, "The Federalists in Intellectual History"; Vincent Ostrom, "Hamilton's Theorem, Coexisting Governments, and Jurisprudential Puzzles"; Stephen L. Schechter, "Antifederalism and the Idea of Liberty in Clintonian New York"; and Michael Zuckert, "Liberty and Responsibility in The Federalist". Contact Mark Schneider.

NEWS FROM THE INTERNATIONAL ASSOCIATION OF
CENTERS FOR FEDERAL STUDIESCONFERENCE ON "AUTONOMISM AND FEDERALISM" SET FOR SPAIN

The Research Group on Pluralism, Federalism and Democracy of the Centro de Investigacion y Formacion Europea/Universidad Complutense, Madrid and the Center for the Study of Federalism, in cooperation with the Institut d'Estudis Autonòmics, Barcelona, have scheduled a conference in Madrid and Barcelona. The tentative dates for the conference are May 24-26, 1989. The conference will bring together scholars from North America and Europe to discuss emerging issues of federalism as applied to developments in Spain and the European Community. For additional information, contact Ellis Katz (Philadelphia) or Cesar Diaz-Carrera (Madrid).

NEW ACTING DIRECTOR AT QUEEN'S UNIVERSITY

Ronald L. Watts has been named acting director of the Institute of Intergovernmental Relations at Queen's University, Kingston, Alberta, Canada. Watts replaces Peter Leslie who accepted a position at the Federal Provincial Relations Office.

MAILING ADDRESSES FOR IACFS MEMBERS

As reported in the last issue of the CSF Notebook, the IACFS recently added four new members. Listed below are the mailing addresses and contact persons for each member organization.

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Workshop in Political Theory
and Policy Analysis
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Indiana University
Bloomington, IN 47401
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NEW BOOKS AND PUBLICATIONS

American Federalism and Public Policy: How the System Works, by Thomas Anton, Philadelphia, Temple University Press, 1989.

This is a study of the ways in which the federal, state, and local governments share responsibility for policies, producing a system that combines uniformity and diversity. While numerous empirical studies in recent years have detailed particular examples of reforms in federalism, there has been no widely accepted theory by which to evaluate the significance of those details. The author synthesizes the particulars to discover what is true in general about the state of American federalism, using a "benefits coalition" conceptual framework on which to organize the discussion.

Australian Federalism, edited by Brian Galligan, Longman Cheshire, Melbourne, 1988.

This book provides an overview of the federal system in Australia in the post-war years and includes sections on federal theory and institutions, the states and international affairs, and the states and economic policy. Its approach is interdisciplinary and it reviews scholarly commentaries on the system and explores alternative theories and perspectives.

Comparative State Policies, edited by Brian Galligan, Longman Cheshire, Melbourne, 1988.

This book emphasizes the considerable policy-making role of the Australian states and their substantial influence on national policy. It outlines similarities and differences between the states focussing on state policy structures, processes, and outcomes. It includes chapters on education policy, human services, the promotion of industry, minerals, and energy, and housing policy.

MORE NEW BOOKS AND PUBLICATIONS

Democracy in Latin America: Colombia and Venezuela, by Donald L. Herman, Westport, Conn.: London, Baker, 1988.

Although Venezuela is formally a federal system and Colombia has a long tradition of decentralization, there is no reference in this collection of articles to either federalism or decentralization. There are short paragraphs dealing with the question of regionalism but that is all. Granted, federalism in both Venezuela and Colombia has had to confront problems of regime instability but even so these omissions tell us about the character of the book. Although the authors avoid the issues of federalism and decentralization, some information and both subjects can be gleaned from the book by close reading.

Promoting Democracy: Opportunities and Issues, edited by F.M. Goldman and William A. Douglas, London, Baker, Democracy for the World, a project for the Robert Maynard Hutchins Center for the Study of Democratic Institutions, 1988.

This book is addressed to a very serious question, namely, the role of the United States in promoting democratic governments around the world. Its authors are serious students of the subject and the sponsoring center is well known for its efforts. This book covers the role of political parties, labor, business, cooperatives, diplomats, and philanthropies. It examines a long list of NEW democratic issues. Nowhere does it consider the possibility of utilizing the great American principle of federal democracy or federalism as part of the promotion of democracy. Nor does it show any awareness of the character of federal democracy, the fundamental American theory of democratic government as distinct from any other kind. This would be surprising if it were not typical. With a few exceptions, in Americans' efforts to promote democracy around the world since World War II, they have totally neglected federal democracy or federalism. This work is a case study of how this is so.

Campaigns, Congress and Courts: The Making of Federal Campaign Finance Law, by Robert E. Mutch, Praeger, 1988.

This is a case study devoted to a federal activity in the course of which it perforce deals with contributions to state and local campaigns. As such, it has a partial, one might say peripheral, interest to students of federalism.

Recent Publications from the U.S.
Advisory Commission on Intergovernmental Relations

The following publications have recently been released by the U.S. Advisory Commission on Intergovernmental Relations (ACIR). They are available from the ACIR office, 1111 20th Street, NW, Washington, DC 20575.

A Catalog of Federal Grant-in-Aid Programs to State and Local Governments: Grants in FY 1987, 1987 (M-153) \$10.

Assisting the Homeless: State and Local Responses in an Era of Limited Resources. Papers from a Policy Conference, 1988 (M-161) \$10.

MORE PUBLICATIONS FROM ACIR

Changing Public Attitudes on Governments and Taxes, 1988 (S-17) \$10.

Constitutional Reform of Federalism: Statements by State and Local Government Association Representatives, 1988 (M-164) \$5.

Devolution of Federal Aid Highway Programs: Cases in State-Local Relations and Issues in State Law, 1988 (M-160) \$5.

Federalism and the Constitution: A Symposium on Garcia, 1987 (M-152) \$10.

Federal Preemption of State Banking Authority: Good or Bad for the Nation's Dual Banking System? A Roundtable Discussion, 1988 (M-162) \$5.

Fiscal Capacity of the States, 1989 \$5.

Interjurisdictional Competition in the Federal System: A Roundtable Discussion, 1988 (M-157) \$5.

RECENT PUBLICATIONS FROM ACIR (cont.)

Is Constitutional Reform Necessary to Reinvigorate Federalism? A Roundtable Discussion, 1987 (M-154) \$5.

Local Revenue Diversification: Local Income Taxes, 1988 (SR-10) \$5.

Metropolitan Organization: The St. Louis Case, 1988 (M-158) \$10.

Perspectives on Federalism, 1976-1988, 1989, \$10.

Significant Features of Fiscal Federalism, 1989 Edition, Vol. I, 1989 (M-163) \$15.

State Constitutional Law: Cases and Materials, 1988 (M-159) \$25.

State-Local Highway Consultation and Cooperation: The Perspective of State Legislators, 1988 (SR-9) \$5.

State Regulation of Banks in an Era of Deregulation, 1988 (A-110) 10.

The Organization of Local Public Economies, 1987 (A-109) \$5.

ARKANA FOR THE POLITICS ADDICT

Arkansas Politics & Government: Do the People Rule? by Diane D. Blair. University of Nebraska Press. 362 pages. \$25.95 hardbound, \$15.95 paperback.

By Alan Ehrenhalt

State politics is an addiction. It is not one, admittedly, that strikes many people in this country, not even most of those who profess an interest in political affairs. Millions of people who followed every twist and turn of this year's presidential campaign could not care less what is going on in Sacramento or Albany, let alone Bismarck or Carson City.

State politics addicts are people with an intense curiosity about differences. They learned a long time ago that the Deep South is different from the Rockies. What they want to know is what makes Alabama different from Mississippi, or Wyoming from Montana. They are waiting for someone to tell them, as Diane D. Blair tries to in her new book on Arkansas, why that state produces politicians so different from the ones elected elsewhere in the Deep South.

Maybe, by the standards of most of us, state politics addicts are a little strange. But if that is the case, they have also been lucky. People who ask themselves endless questions about state politics have been able to feast on some of the most impressive works written

about this country in the past 50 years.

In the closing days of World War II, John Gunther traveled the nation for six months running and then returned home to write *Inside U.S.A.*, a thousand pages of riveting prose that still belongs on anyone's list of the most perceptive books about America in the 20th century. A few years later, V.O. Key Jr. published *Southern Politics*, a massive achievement in state-by-state analysis that may be the most admired book in modern political science. In the 1970s, Neal Peirce retraced Gunther's steps and issued nine large volumes, none as graceful as Gunther's but each comprehensive and scrupulously fair.

The first three decades of the post-World War II era marked what may be the modern low point in the reputation of states as political entities; a whole succession of writers portrayed state legislatures and politicians as ignorant, corrupt and trivial. Frank Trippett, writing in 1967, launched his book, *The States: United They Fell*, by proclaiming that "in almost every important way, the American states are in some dubious

condition."

Gunther, Key and Peirce were driven to a large extent by intellectual curiosity; Trippett, a veteran state-house news reporter, was writing out of exasperation. What matters to the state politics addict is that all of them are interesting. States, like people, can be at least as much fun when they misbehave.

Today, states and their legislatures do not often misbehave the way they did during Trippett's time in the press galleries. But they are no less interesting for that. Somehow, in the 1980s, state politics and government have managed to acquire a respectable degree of competence and professionalism without entirely discarding the diverse collection of quirks and individual differences that make the subject fasci-

nating in the first place. Mississippi and Alabama are still different, even if they are no longer different in their old-fashioned in-

famous way. It would be nice to have John Gunther around to trace the changes and do for state politics in the 1980s what he did in the 1940s.

We don't have John Gunther. But it is good to be able to say, in his absence that Professor Daniel J. Elazar and the Center for the Study of Federalism at Temple University have undertaken a massive and valuable project: a series of individual books tracing the political history and culture of each one of the 50 states. And it is equally good to be able to say that Diane Blair, associate professor of political science at the University of Arkansas, has set a splendid example with a book on her home state that manages to be both scrupulous in documenting its eccentricities and provocative in its search for explanations.

We learn from Blair that, in 1837, in the very first legislative session, the speaker of the House made a name for himself by murdering one of the members on the House floor after they had disagreed over the use of wolf scalps as a form of taxation. We also learn that the state highway commission is still required by law to have five members, each from a different congressional district — a mathematical impossibility since there are now only four districts in the state. Arkansas solves this problem the way most states would: by ignoring the law.

Blair's book is full of larger questions as well, and she does her best to answer them. Why has Ar-

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December 1988



Diane D. Blair

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kansas been so slow to do something about its inadequate educational system? Because the two dominant political blocs in the state were wealthy planters, who did not use the public schools, and hillbillies, in whose set of values schools played little role. Why has Arkansas, in the past 25 years, produced such a large supply of raw political talent? Because, according to Blair, politics was the best route to prominence for bright young people in an underdeveloped society.

Blair tries valiantly to answer what may be the

state's most intriguing electoral riddle: why moderate-to-liberal Democrats have won so many recent statewide elections. During the 1970s and 1980s, while Democratic candidates in neighboring states have carefully kept their distance from the leaders and policies of the national party, Dale Bumpers, David Pryor and Bill Clinton have won a string of elections for governor and U.S. senator in Arkansas without avoiding or apologizing for the national party.

The book offers a variety of novel theories to explain this. One is that Arkansas

is so backward that it has been slower than neighboring states to embrace Republicanism. Another is that the state is small enough for skillful and personable politicians to win on the basis of sheer friendliness. A third stresses the influence of the *Arkansas Gazette*, the influential liberal newspaper that is read statewide. All these ideas are provocative; none is quite satisfying.

This book will never be a big seller. Neither, it is safe to say, will any of the other 49 volumes that will comprise this series when it is completed (Alabama and

Nebraska have already appeared) sometime early in the 21st century. James Michener notwithstanding, it is unreasonable to expect large numbers of people to read a book full of details about a state they do not live in.

But there will be some, enough for all the authors in this series to embark on their work with the knowledge that an audience exists beyond the borders of the place they are writing about. In the case of Diane Blair's book, that audience will find the material not only informative but readable and fun. □

LOCAL GOVERNMENT FINANCE IN CHINA

(The following article, an excerpt from a paper prepared by Professor Roy Bahl, for the World Bank, appeared in REVENUES: Research & Policy Notes Concerning Public Finance in Developing Countries, Vol. 4, No. 1. REVENUES is a publication of the Metropolitan Studies Program of the Maxwell School at Syracuse University. It is reprinted here with permission.)

Local government finance in China is very complex but it also presents an interesting contrast to the approach taken in most market economies. Because China is such a large country, it is perhaps not surprising that the fiscal system is quite decentralized. Central, provincial and local governments share a common set of taxes with policy decisions made by the central government but with tax assessment and collection left to the local governments. The structure of shared taxes gives local governments substantial inducements to adjust their taxing and spending behavior but is also gives them access to Productive tax bases.

Local Government Structure

Even though China's governmental system is unitary rather than federal, there are three distinct levels of government. It is misleading and a mistake to view the provincial government and the local governments (municipalities, counties, public utility companies) as "the local government sector." In fact, the structure and workings of China's fiscal system vary from province to province, at the discretion of the provincial government.

Within the city or municipal area, there is considerable decentralization in the responsibility for delivering government services. One way to think about the division of fiscal responsibility and financing is to picture the municipal government as having three sectors--the general municipal government services sector; the public service companies; and municipally-owned business enterprises.

Municipal expenditures consist of expenditures for general municipal services and various forms of transfers to public utility, public service and business enterprises. Revenues consist of shares of the sales and profits taxes on all municipally-owned enterprises, and on collectives and private businesses; shares of the sales tax on Provincial and Central enterprises; the urban maintenance and construction tax (a sales tax surcharge); and a number of other taxes and fees of lesser revenue importance.

Local Government Finances

Local governments in China have little independence in matters of structuring their tax system and are constrained by higher level mandates in deciding on the level and composition of expenditures. All tax rates and bases are set centrally, hence provincial and local taxes in China are central government taxes whose revenues are allocated wholly or partially to provinces, municipalities and counties. This does not mean that subnational governments have no impact on spending or revenues. In fact, provincial governments have the responsibility to design and implement the system of Provincial-Local sharing, and local governments are responsible for tax administration. Moreover, both levels influence the operations of their enterprises.

LOCAL GOVERNMENT FINANCE IN CHINA (cont.)

Provincial governments can alter the tax sharing arrangement for each municipality within the province, give grants to local governments in any way they choose, and are responsible for approving the budgets and financial plans of municipal and county governments. Moreover, because they set the tax sharing rates, they may indirectly affect municipal tax collections. Municipal governments control tax collection and assessment with what appears to be a minimum of direct central or provincial supervision. This responsibility puts a very powerful policy instrument in the hands of local government, and there is evidence that they use it.

Subnational fiscal autonomy in China includes a direct impact on the growth of the tax base. For example, production quotas of municipally-owned enterprises can be increased and new firms can be formed. Subnational governments can also take fiscal actions to affect the efficiency and/or profitability of operations of their state-owned enterprises (SOEs). They may do this directly with tax rate relief measures or they can institute measures to increase the cost basis of an enterprise's income position, e.g., by allowing full deductibility of loan repayments. The more important recent practice is "contracting" whereby the local government may negotiate an annual tax payment from an enterprise and subject any excess to a lower marginal rate.

This dimension of local fiscal autonomy highlights a fundamental difference between the role of local governments in China and in market economies. In most western countries local governments have substantial control over the tax rate but virtually no control over the growth in the tax base. Local governments in China are in somewhat the reverse position. They have little say in nominal tax rate determination but can have a substantial direct effect on the growth of local enterprises.

Autonomy on the expenditure side of the budget is in several respects limited. For example, in Zhejiang Province the provincial government and all local governments combined may spend no more than 55 percent of the total amount of taxes collected in the Province. The local budget must be approved at the provincial level, the prices of many inputs (including labor) are fixed centrally, and public employment levels are determined outside the control of the local government.

Taxation and Tax Sharing

China's revenue sharing system is primarily a division of sales and profit taxes among the central, provincial, and local governments. Whereas in most countries the taxes are collected by the central government and then allocated to the subnational governments, in China they are collected by the local governments and "shared up" to the higher levels.

Taxes in China can be divided into several categories according to the disposition of their yield: those of the central government (e.g., customs duties, sales and profit tax collections from centrally-owned enterprises) or the provincial government (taxes collected from provincial enterprises); those shared among central, provincial and municipal governments (notably profit and sales taxes), and those that are assigned exclusively to the municipal government (the urban maintenance and construction tax). The sales and profits taxes together usually account for 80 percent or more of municipal government revenues.

LOCAL GOVERNMENT FINANCE IN CHINA (cont.)

The profits tax is levied on the gross profits of SOEs, collectives, and private businesses according to three different rate schedules. A top rate of 55 percent is applied to large and medium sized SOEs. There is also an excess profits tax, known as the "adjustment tax." A third "tax" on profits is an earmarked contribution for the central government energy and transportation projects. These three taxes lead to a tax burden that is often 70 percent or more of gross profits.

China's uniform national sales tax, administered by municipal and county governments, is the most productive tax in the system. It has three components. The product tax, which yields about one-third of all national revenues, is a gross receipts tax on domestically produced and imported commodities. The operations tax is essentially a sales tax on services and on retailers. It is charged on a gross receipts basis for most activities. The third component is the value added tax, but it is levied only in certain sectors of the economy.

Each provincial government decides on the rate of tax sharing between the province and the local government. The central government mandates that the energy and transportation fund contribution accrues to the center and that municipal governments may not share in the taxes collected from enterprises owned by higher level governments. A case study of the sharing formulae in Zhejiang Province showed that the sharing formulae for all locally collected taxes led to the municipal governments retaining about one-third of all taxes collected. The provincial government can, and often does, vary the sharing rate among local governments within the province to achieve equalization and other objectives.

There is one major "local tax," the urban maintenance and construction tax. The rate and base are centrally determined at 7 percent of total sales tax liability for municipalities (5 percent for towns and 2 percent everywhere else). The tax accrues entirely to the collecting local government and is earmarked for urban maintenance and construction.

Though the public utilities do attempt to recoup a portion of costs through user charges, rates are well below efficient levels. Moreover, water, sewerage and gas (LPG) charges, bus fares and housing rents are all linked inextricably to wage policy. Cost recovery is a much bigger matter than simply raising the level of the user charge.

Local governments in China cannot run a deficit and cannot borrow. There is no regular grant program to support capital projects or current expenditures; there is no mechanism or formal program for lending to local governments; and there are no guidelines for local governments to develop beneficiary financing schemes. However, the municipally-owned enterprises can borrow and in some cases the municipal government has pledged its general revenues to secure the loans. And on an "experimental" basis, there is now some innovative use of credit financing and self-financing schemes.

Intergovernmental Fiscal Relations

There are three important dimensions to the system of intergovernmental fiscal relations in China. The first is central-provincial government relations. The second is the system of provincial-municipal tax sharing which was outlined above. The third is the system of horizontal fiscal relations within the province, the method by which the provincial government allocates fiscal

LOCAL GOVERNMENT FINANCE IN CHINA (cont.)

resources among its counties and municipalities.

The central government determines that a specified share of all taxes collected in each province is to be passed to the central government. In theory the share is fixed for a period of years and is generally meant to reflect the difference between fiscal capacity and expenditure needs. The variation across provinces is wide: from Shanghai's retention rate of about one-fourth of tax collections to several provinces which are allowed to retain all collections and receive an additional payment from the center.

An important dimension of intergovernmental relations is the degree to which the provincial government redistributes taxable capacity, e.g., from rich to poor counties or from urban to rural areas. The most powerful fiscal tool which the province can use is that it may vary the tax sharing ratios for each local government, apparently without central government approval, and on an ad hoc basis. In Zhejiang Province the rate actually varies from higher income areas turning it nearly all over, to lower income areas keeping it all.

Issues, Problems and Options

While the fiscal system in China has some very great strengths as regards local government financing, it is also beset by some serious problems. Moreover, the system is likely to change in order to accommodate the general economic reform that is underway. Among the most important problems facing the local governments are: (1) revenue adequacy and growth; (2) nonneutralities in the tax structure and tax sharing system; and (3) tax administration weakness.

As is the case with local governments in most countries, Chinese municipalities are strapped for revenue. A combination of a backlog in infrastructure needs and increasing urbanization has put great pressure on local budgets. Moreover, the overall elasticity of the profit and sales taxes may be relatively low--a structural problem that is possibly exacerbated by weakness in the tax administration system. Among the options presently under discussion in China are autonomous local taxes and, in particular, the institution of a local government property tax.

The Chinese system of taxation and tax sharing includes a number of penalties and incentives that might draw out undesirable actions from enterprises and from local governments. These distortions include:

- o A low tax sharing ratio may reduce the incentives of the local government to efficiently collect taxes;
- o The absence of borrowing and self-financing mechanisms creates a bias against infrastructure investments because the full cost is shifted onto the general public and to current beneficiaries;
- o The very high rate of taxation of profits provides a disincentive for local managers to maximize profitability;
- o The high tax rates give an incentive for evasion and avoidance to the firm and perhaps to the local government who owns the enterprise.

Based on available evidence and *a priori* reasoning, one might infer that tax administration is a problem which the Government of China is now facing and must continue to reckon with. The system is very complicated and therefore not easily administered. There are three different sales taxes levied on different types of sales at more than 60 different rates. The profits tax has three LOCAL

GOVERNMENT FINANCE IN CHINA (cont.)

different rate schedules, includes six different taxes on profits and the use of profits, and provides special treatment for incentive firms. The adjustment tax must be computed separately for every firm.

Record keeping could also be a problem. One side of the problem is the inadequacies in the books of accounts kept by the firms liable for tax. It is virtually certain that small firms do not keep books of account that would allow assessment of modern sales and income taxes. The other side of the record keeping problem is that the master file kept by local governments tends to be in a manual form and is very difficult to monitor. Finally, there are questions about whether the local government administrative staffs are of adequate size and well enough trained.

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