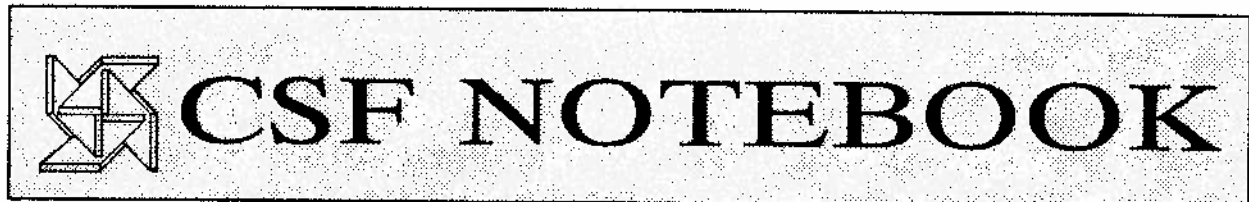


THE FEDERALISM REPORT

Volume 17, Number 4
Summer 1992

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FROM THE EDITOR

The Center can now be reached at the following BITNET address: V2026R at TEMPLEVM. We would like to establish a directory of BITNET users. Please contact the center through its BITNET address with your address.

The 1992-93 Center for the Study of Federalism Publications Catalog is still available upon request. Please call (215) 787-1480, or write to the Center for your copy.



CENTER FOR THE STUDY OF FEDERALISM, TEMPLE UNIVERSITY
1616 WALNUT STREET * SUITE 507 * PHILADELPHIA, PA 19103

INTERNATIONAL VISITORS TO THE CENTER

The Center continues to attract visitors from throughout the world who are interested in learning more about the American political system in general and American federalism in particular.

Recent visitors have included: **Mr. Pieter Hendrik Terblanch Kleynhans**, Director, Office for Indemnity, Immunity and Release, Department of Justice, Pretoria, Republic of South Africa; and **Commander Abajebel Tahiro**, **Mr. Asefa Wedajo Melka**, **Dr. Ashenafi Mamo Wolde-Mariam** and **Dr. Fecadu Gadamu**, all members of the Council of Representatives of Ethiopia.

UPCOMING CONFERENCES

The Works of Bernard Malamud

The Center will host an upcoming invitational literary colloquium sponsored by the Liberty Fund on "Freedom and Responsibility in the Writings of Bernard Malamud." It is scheduled for September 12-14, 1992 and will be held at the Hotel Sofitel in Minneapolis, MN. The works that will be read include *The Assistant*, *The Fixer*, *The Magic Barrel*, *The Natural*, *A New Life*, and *The People*. The colloquium will explore Malamud's examination of the dilemmas of individual freedom and responsibility which take place in an urban and metropolitan context.

Federalism and Rights

The centerpiece of the Center's 25th anniversary will be a public conference organized on the theme of "Federalism and Rights." Funding for this conference has been provided by a grant from the National Endowment for the Humanities. The conference will be held in Philadelphia at the Hilton Hotel and Towers from November 14-16, 1992. It will investigate the relationship between federalism and rights in the United States and other federal systems. Underlying all of the conference's deliberations will be the question: How does federalism promote or undermine individual rights? To answer this question, the conference will undertake a systematic investigation of five major considerations: 1) the theoretical relationship between federalism and rights; 2) the tension between group rights and individual rights in federalism; 3) the historic interplay between federalism and rights in the United States; 4) the ways that federal systems understand the sometimes competing claims for diversity and for individual rights; and 5) current issues involving federalism and rights, both within and without the boundaries of the United States.

The co-directors of the conference are Ellis Katz of Temple University and G. Alan Tarr of Rutgers University. The conference is being co-sponsored by the U.S. Advisory Commission on Intergovernmental Relations, the Philadelphia Bar Association, and Rutgers University, Camden Campus.

For more information, please contact the Center at (215) 787-1480.

FEDERALISM AND RIGHTS PRELIMINARY AGENDA

Saturday, November 14, 1992

6:00 p.m. Dinner
7:00 p.m. "Federalism and Rights"
Mr. Talbot "Sandy"
D'Alemberte, President,
American Bar Association.

Sunday, November 15, 1992

9:00 a.m. Plenary Session
"Federalism and Diversity,
and Rights"
Professor Daniel J. Elazar,
Temple University and Bar
Ilan University; commentary
by *Professor Donald*
Kommers, Notre Dame
University.

10:00 a.m. Plenary Session
"The United States
Constitution, Federalism and
Rights"
Professor Michael Zuckert,
Carleton College;
commentary by *Dr. John*
Kincaid, U.S. Advisory
Commission on
Intergovernmental Relations.

12:30 p.m. Luncheon
1:15 p.m. "Can the Center Hold?
Federalism and Group
Rights in Canada"
Professor Irwin Cotler,
McGill University Law
School

3:00 p.m. Workshop
"Would a Federal
Arrangement for South
Africa Promote or Inhibit
Individual Rights?"
Professor Bertus de Villiers,
Human Services Council;
commentary by *Professor*
Clement Keto, Temple
University.

3:00 p.m. Workshop
"Federalism and Rights at
the American Founding"
Professor Jean Yarbrough,
Bowdoin College;
commentary by *Dr. Robert*
Licht, American Enterprise
Institute.

3:00 p.m. Workshop
"Federalism and the
Protection of Rights: The
State Constitutional
Perspective"
Honorable Ellen Peters,
Supreme Court of
Connecticut; commentary by
Professor Robert Williams,
Rutgers University.

7:00 p.m. Dinner
8:00 p.m. "Federalism and Rights in
the Soviet Union: Problems
and Possibilities"
Alexander Granberg, State
Advisor to the President,
The Kremlin, Russian
Republic.

Monday, November 16, 1992

- 9:00 a.m. Workshop
"Is Federalism the Solution to Protecting the Rights of Racial and Religious Minorities?"
Round table discussion.
- 9:00 a.m. Workshop
"Negative Rights, Positive Rights and Contemporary Federalism"
Professor Harold McDougall, Catholic University; commentary by *Professor Burt Neuborne*, New York University Law School.
- 9:00 a.m. Workshop
"The Fourteenth Amendment, Federalism and Rights"
Round table panelists -
Professor Earl Maltz, Rutgers University;
Professor William Nelson, New York University;
Professor Paul Finkleman, Brooklyn Law School.
- 10:45 a.m. Workshop
"Supranational Federalism and Rights in the European Community"
Honorable Koen Lenaerts, Judge of the European Court; commentary by *Professor Rafael A. Porrata-Doria, Jr.*
- 10:45 a.m. Workshop
"Modern Constitutional Theory, Rights and Federalism"
Professor Gary Jacobsohn, Williams College; commentary by *Professor Alan Tarr*, Rutgers University.
- 10:45 a.m. Workshop
"Property Rights and Contemporary American Federalism"
Professor Carol Rose, Yale University; commentary by *Professor Michael Libonati*, Temple University Law School.
- 12:30 p.m. Luncheon
- 1:15 p.m. "Does Federalism Secure or Undermine Rights?"
Professor A.E. Dick Howard, University of Virginia.

Admission to all sessions is free and open to the public.

Meals:

Dinner, November 14	\$40.00
Lunch, November 15	\$25.00
Dinner, November 15	\$40.00
Lunch, November 16	\$25.00
Conference Materials	\$20.00
Special Discount Package (includes all meals and materials)	\$120.00

FEDERALISM AND RIGHTS

**"HOW DOES FEDERALISM
PROMOTE OR UNDERMINE
INDIVIDUAL RIGHTS?"**

**with speakers from Canada, India, Russia, Yugoslavia
and the European Community as well as the United States**

NOVEMBER 14-16, 1992

Philadelphia Hilton and Towers
Broad and Locust Streets
Philadelphia, Pennsylvania

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TEMPLE UNIVERSITY**

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Rutgers the State University of New Jersey at Camden
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THE CENTER FOR THE STUDY OF FEDERALISM (215) 787-1480

Supported by a grant from the National Endowment for the Humanities

BOOK REVIEWS

Federal India: A Design for Change. By Rasheeduddin Khan. New Delhi: Vikas Publishing House, 1992.

Professor Khan, one of India's most distinguished political scientists, former director of the Centre for Political Development at the University of New Delhi, former member of India's upper house, and presently Director of the Indian Institute for Federal Studies which he founded, has written a manifesto which, as its subtitle indicates, is a design for changing Indian federalism through increasing state autonomy and grassroots self-government. While his book is particularly relevant to Indian audiences, it is firmly set within the context of federalism studies and offers students of federalism the additional perspective of federal nationhood as one of the building blocks of successful federal polities.

Professor Khan and his colleagues were among those who developed the idea of federal nationhood as a sociological even more than a governmental category some two decades ago in the context of their experiences in the Indian subcontinent. Federal nationhood is more than mere pluralism and is not simply multinationalism or multiculturalism. Rather it consists of what might be referred to as culturally constitutionalized divisions within a people or nation whose components recognize both their common nationality or peoplehood and their separateness, as reflected in the permanent religious, caste, and linguistic divisions in India. Or, in another example which I first heard discussed by Professor Khan and his colleagues in India fifteen years ago, federal nationhood exists among the Arabs who, while seeing themselves as the Egyptians, Syrians, Libyans, Lebanese or whatever, also see themselves just as firmly to be Arabs.

It may be that federal nationhood is a particularly Asian or at least South Asian (including southwest, south, and southeast Asia) form of federal expression. That, in itself, deserves to be explored. One hopes that Professor Khan's new institute will, *inter alia*, study this phenomenon even as it pursues its major goal of strengthening Indian federalism through the recasting of its federal polity.

DANIEL J. ELAZAR

Temple University and Bar Ilan University

Bargaining Under Federalism: Contemporary New York. By Sarah F. Liebschutz. New York: State University of New York Press, 1991. 237 pp. \$16.95.

Sarah F. Liebschutz, Professor of Political Science and Public Administration at the State University of New York, College at Brockport, has written an informative and interesting look

at the workings of federalism. Her contribution to this area of study is in the form of a book entitled **Bargaining Under Federalism: Contemporary New York**.

Professor Liebschutz's book gives the reader a realistic look at the conditions that exist in the modern federal-state relationship. Using New York as a case study, the reader is provided with some large issues that may not be so readily apparent were the study done on a smaller state. Additionally, the resources that the author has been able to utilize in writing this book make the reader believe that she really does have some unique contributions to make and some new ways of looking at the issues. This book is the first such that looks at American Federalism from the perspective of a single state.

As a study of New York specifically, Sarah Liebschutz is able to cover some of the problems faced by an individual state and how these problems are either exaggerated or effectively dealt with through the federal-state relationship. States do not always have the ability to control factors that originate in policy from the federal government. As such, **Bargaining Under Federalism** demonstrates how sometimes the state reacts to policy that it is dealt rather than simply acts on its own set of policies. This is a very big part of the function of a state and critical to fully understanding the dynamics involved in the relationship that has evolved between Washington and (in this case) New York.

Bargaining is a fundamental feature of this dynamic relationship. This bargaining is how policies are developed, altered, stymied, and implemented. Further, effective bargaining make the difference between having influence and not. It is critical for a state to play this role if it is to protect its interests. Professor Liebschutz has written a book that shows just how important this all is to a proper understanding of federalism.

The Social Dimension of 1992: Europe Faces a New EC. By Dr. Beverly Springer. New York: Praeger, 1992. 177 pp.

Many books and articles have been written about the importance of the 1987 European Single Act that set into motion the creation of the European Community's single internal market scheduled for completion by the end of 1992. One of the best of these books is Ernst Wistrich's **After 1992, the United States of Europe** (1989) which, like most of the earlier studies of the 1992 initiative, concentrates on the economic forces driving European integration. Dr. Beverly Singer's **The Social Dimension of 1992** focuses on an area that has not been covered extensively in the EC literature, that of social forces. As Dr. Springer, a professor of international studies at Thunderbird, the American Graduate School of International Management in Arizona, points out, the 320 million consumers who are also citizens and voters in the twelve member states of the EC must be convinced they will benefit from a more powerful EC. Until now, the EC has had little impact on the daily lives of ordinary Europeans, since national governments provide

social assistance and protection. However, as the national governments pool their sovereignty within the EC, Europeans will look increasingly to the EC for social policies.

Dr. Springer's book will be especially valuable for sociologists, international management specialists, and political scientists interested in the process of European integration. It is lucid, well written and empirically rigorous with a large number of readily comprehensible bar charts to demonstrate trends in the social arena. Based on the extensive use of primary sources and interviews, the book begins with an overview of the history and organization of the EC, and examines major developments in employment and social policies. For example, Dr. Springer speculates that Margaret Thatcher is no longer prime minister in the United Kingdom because of her frequent opposition to EC policy, including social policy. This opposition came to be an embarrassment to more European-oriented members of the Conservative Party.

Dr. Springer devotes a chapter to the impact of EC social policy on European women. She is of the opinion that female employees may be more at risk by the formation of the single market than are male employees. This is because proposals for women (e.g., a program to help women establish businesses, a directive to assure equal treatment for women in social security programs, a directive on parental leave) are only voluntary; they do not yet have the force of law. Slightly over 76 percent of European women work in the service sector. Their pay is only 31 percent that of men. French women are the most liberated in the EC, Dr. Springer writes. Among the reasons for this are the widely available public child care centers provided by the French government.

In regards to labor issues, Dr. Springer describes in exceptional detail the basic dichotomy splitting the EC: should employees be allowed to codetermine corporate policy as in Germany, The Netherlands, Denmark and France, or should labor unions have only the right to bargain collectively with management as in the UK, Ireland and Italy? This is the essence of the debate over industrial democracy, a debate that has raged within the EC since British entry in 1973. The Council of Europe has not been able to adopt the Fifth Directive establishing codetermination as the EC model for labor-management relations because of British opposition.

Dr. Springer also devotes a good amount of discussion to the issue of migrant labor in the EC. Whereas in the 1970s, foreign workers were primarily from southern Europe, today, most are white-collar employees of transnational corporations. They want their qualifications to be assured throughout the EC. A new approach based on mutual recognition of training has been adopted for the needs of the internal market. There are regulations for a more uniform standard of education and training throughout the EC. Article 57 of the Single European Act grants the authority for the mutual recognition of diplomas, certificates, and other formal qualifications. Such uniformity should help to advance European integration.

The social dimension, writes Dr. Springer, complements the economic focus of the internal market and binds people within the EC to feel more European and less nationalistic. Denmark's

recent rejection of the Maastricht Agreement may have undermined this argument. However, Dr. Springer stresses that the Social Charter is not EC law and does not mandate a course of action for either governments or employers. The major barrier to implementation of a social agenda for the EC is the provision requiring unanimity. The European Trade Union Confederation (ETUC) supports unanimity. Denmark demonstrates the fragility of unanimity to advance the internal market concept. However, Denmark has had consistently low perceptions of the EC since entry in 1973 (-60 percent). Dr. Springer, like Ernst Wistrich, nonetheless, notes a stronger European sense among residents of the EC with approval ratings as high as 76 percent on the Continent outside Denmark and the UK. For example, the EC flag now is sold throughout the EC in souvenir shops. Despite the Danish rejection of Maastricht, European integration in the economic and social spheres most likely will continue to advance, albeit slowly.

STEPHEN E. MEDVEC

Adjunct Professor, Holy Family College

The New American Community: A Response to the European and Asian Economic Challenge. By Jerry M. Rosenberg. New York: Praeger, 1992. 187 pp.

This work proposes a new American economic community as a response to the rise of the European Community and the increasing domination of the Asian market by Japan. Although some may be familiar with this type of proposal, this work presents the ideas and issues in an interesting and well done form. The author develops a strategy and structure for such an American community to represent the largest economic market in the world. He proposes a massive free trade zone including all of the western hemisphere, which would not only revitalize the economic position of the United States, but would raise the standards of living of all nations in this hemisphere.

Some of the most interesting aspects of this work are related to the fact that it deals with contemporary issues in a new way. For example, the chapter entitled, "A Healthier Community," deals with public health, disease, and controls. In this chapter, the author demonstrates how this new American Community would be better equipped to deal with common health concerns than have previous unilateral attempts. This is a typical presentation of the issues for the reader.

On the way to this new community, a series of accords will work the change that is needed to bring about the goals. As incremental change is made, other goals can be set. "Barriers will fall, common standards set." If this sounds overly idealistic, the book is anything but. Rather, it is optimistic. While the likelihood of future successes may be down the road some way, they are nonetheless attainable. At least one believes they are after reading this book.

While enormous hurdles exist for the New American Community - for example, deep disparities in wealth, technological advancement, and democratic development - there are tremendous possibilities and positive signs. Here Jerry Rosenberg lays out a workable structure, plan, and treaty for the Community. A plan that would truly unite all the Americas. His work should prove to be of interest to both scholars and policy makers from economics, political science, and international relations.

PUBLIUS

Publius was the pen name used by Alexander Hamilton, John Jay and James Madison in 1787-1788 when they published 85 articles entitled *The Federalist* in defense of the federal republic created by the new American Constitution. Accordingly, it is an appropriate name for a journal devoted to the increase and diffusion of knowledge about federalism and intergovernmental relations.

SUBSCRIPTIONS

Subscriptions should be sent to *Publius*, Department of Political Science, University of North Texas, Denton, Texas, 76203-5338. Regular \$25; Sustaining \$30; Library and Institutional \$35; Student and Retired \$20. Foreign postage \$5 additional. Single issues \$10. Reprints of articles \$2 each. Please make checks payable to CSF: Publius.

PUBLIUS:

The Journal of Federalism
Volume 22, Number 3
Summer 1992

Articles

- The State of American Federalism, 1991-1992
by *Ann O'M. Bowman* and *Michael A. Pagano*
- Federalism in a Conservative Supreme Court
by *Charles Rothfeld*
- The Federal Role in State Fiscal Stress
by *Steven D. Gold*
- City Finances and the National Economy
by *Roy Buhl*, *Jorge Martinez-Vazquez*, and *David Sioquist*
- ISTEA: A New Direction for Transportation Policy
by *Robert Jay Dilger*
- JOBS Implementation in 1991: The Progress of Ten States
by *Irene Lurie*
- Medicaid in the 1990s: Trends, Innovations, and the Future of the "PAC-Man" of State Budgets
by *Carol S. Weissert*
- Rural Development Councils: An Intergovernmental Coordination Experiment
by *Beryl A. Radin*
- Water and Federalism in the 1990s
by *Zachary A. Smith*
- The Federal Formula and the Collapse of the USSR
by *Gregory Gleason*
- Australia's New Federalism: Recipes for Marble Cakes
by *Kenneth Wilshire*
- The Status of State Governments in Nigerian Federalism
by *Eghosa E. Osaghae*

ANNUAL INVENTORY OF RESEARCH AND PUBLICATIONS RESULTS

As a service to its members, the Center for the Study of Federalism takes an annual inventory of members' current research activities and publications. The following are additional responses to the inventory found in issue 17:3 of *The Federalism Report*.

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Current Research Activities

1. "Federal Offloading and the Consequences for Intergovernmental Relations in Canada, 1982-92" *A program of research whose purpose is to explore the phenomenon of "fiscal offloading:" that is, the claim of provinces in Canada that the federal government's program of deficit reduction and expenditure restraint is being unfairly concentrated on fiscal transfers to the provinces, and is also associated with the withdrawal of federal programs and other funding which increase pressure on provincial treasuries. In addition to quantifying these effects, considerable attention will be paid to the processes and institutions which have attempted to manage this "fiscal crisis." Research began in January 1992 and should be completed in December 1992. An outline for research program is available on request from the author at the above address.*

Recent Publications

1. CONSTITUTIONAL COMMENTARIES: AN ASSESSMENT OF THE 1991 FEDERAL PROPOSALS (Kingston: Institute of Intergovernmental Relations, 1992), 132 pp.

Collection of papers and commentaries presented at a one-day conference organized by the Institute held on November 30, 1991; purpose of the conference was to provide political and legal analysis of the proposals outlined by the Government of Canada in its September 1991 document "Shaping Canada's Future Together: Proposals;" a companion volume was produced from an associated conference held the day before. Copies are \$12 from the Institute of Intergovernmental Relations.

2. DISTRIBUTION OF POWERS AND FUNCTIONS IN FEDERAL SYSTEMS (Ottawa: Supply and Services Canada, 1991), 49 pp. *Commissioned by the Privy Council Office, Government of Canada, this study provides an overview of the distribution of constitutional powers and government functions in 15 federal (or near federal) systems. In particular, it identifies the various forms and devices that have been employed to distribute such powers and functions, and it surveys the actual allocations of jurisdiction for specific subject matters between the two levels of government. These examples are considered with a view to their relevance to the current constitutional debate in Canada. Copies are available from Federal-Provincial Relations Office, Government of Canada, 59 Sparks Street, Room 206, Ottawa, CANADA, K1A 0A3 Tel: (613) 957-5051.*



INTERNATIONAL ASSOCIATION

Centre for Federal Studies M.A./Diploma in European and Federal Studies

This degree is offered by the Centre for Federal Studies, a self-financing research centre which was established in 1988, and which is located administratively in the Politics Department.

The course is a one-year taught Master's course beginning in October, designed for suitably qualified graduates in Politics, Law, Public Administration, International Relations, History, or other related degrees. Applicants whose first language is not English will be required to show proficiency in the use of English. The course is also available: a) on a two-year part-time basis; or b) over nine months (October-June) for those seeking a Diploma rather than a Master's Degree.

The course is designed to give students an understanding of the nature of federal government, by examining the experience of federalism in Europe and elsewhere, and to provide them with a thorough knowledge of the structures and working processes of the European Community. It has developed out of the research and consultancy interests of the members of the Centre for Federal Studies and is particularly appropriate for students considering careers in European and international organizations, and in the civil service, public administration and the media.

The curriculum has five components: 2 compulsory core courses, two courses chosen from a range of options, and - for those proceeding to the MA - a dissertation.

For further details on the M.A./Diploma program and/or an application form, please contact Ms. Penny Parry, Centre for Federal Studies, The University, Leicester LE1 7RH, United Kingdom
Tel: (0533) 522714 or 522702.

ANNUAL MEETING

The annual meeting of the IACFS is scheduled to be held on Wednesday, 12 August, 1992 in Melbourne, Australia. Minutes from this meeting will appear in the next issues of *The Federalism Report*.

FEDERALISM AND INTERGOVERNMENTAL RELATIONS UPDATE

ELECTION OF SECTION OFFICES

Members are encouraged to attend the section's annual business meeting scheduled to be held on Thursday, September 3, 1992 at 5:30 p.m. At this meeting the following section officers will be chosen:

Section Chair (1992-94)
Executive Council (1992-94), three members
Executive Council (1992-95), three members

A nominations committee consisting of Section Chair Donald S. Lutz, Section Secretary Dale Krane and former Section Chair Ellis Katz will present a slate of candidates based on nominations received prior to the annual meeting. In addition, nominations will be solicited from the general membership at the business meeting.

The current section officers are:

Section Chair:	Donald Lutz (outgoing)
Section Secretary/Treasurer:	Dale Krane (1990-94)
Executive Council:	Daniel Elazar (outgoing) Kenneth Palmer (outgoing) Robert Dilger (outgoing) Stephen Schechter (outgoing) Robert Thomas (outgoing) Diane Blair (outgoing) Samuel Gove (1990-93) Ronald Watts (1990-93) Deil Wright (1990-93)

SECTION AWARD

The Section will present its annual award to an individual for his or her "significant contribution to the field of federalism and intergovernmental relations" at the 1992 business meeting. Previous award recipients have been Daniel J. Elazar (1990) and Vincent Ostrom (1991).

EVENTS AT APSA ANNUAL MEETING

Section 13. Federalism and Intergovernmental Relations

CHAIR: Sarah F. Liebschutz, *State University of New York, Brockport*

- | | | |
|-------|---|--|
| 13-1 | Roundtable on Parties and Elections:
Preliminary Findings from the Center
for the Study of Federalism | Saturday 10:45 a.m. |
| 13-2 | The Present and Future of Canadian
Federalism | Saturday 1:30 p.m. |
| 13-3 | Graduate Student Roundtable: Research
in Progress in Federalism | Sunday 10:45 a.m. |
| 13-4 | Preemption: Federalism Under Siege? | Thursday 1:30 p.m. |
| 13-5 | Federalism, Nationalism, and Ethnicity | Friday 3:30 p.m. |
| 13-6 | Federalism and Civil Rights | Thursday 8:45 a.m. |
| 13-7 | Mandates and Their Implementation | Saturday 3:30 p.m. |
| 13-8 | Federalism and Contemporary Policy Issues | Saturday 8:45 a.m. |
| 13-9 | Federalism, State Politics, and Policy | Sunday 8:45 a.m. |
| 13-10 | Managing Intergovernmental Relations | Saturday 3:30 p.m. |
| | Business Meeting | Thursday 5:30 p.m. |
| | Reception
(co-sponsored by the Center for the Study of Federalism) | Thursday 6:30 p.m. - 8:00 p.m.
Parlor B |

Please make every effort to attend as many panels sponsored by the Section as possible. The number of future panels that the Section will be allocated is based on panel attendance at this year's APSA meeting.

Section members are also invited to attend the wine and cheese reception on Thursday at 6:30 p.m. immediately following the business meeting. This reception will celebrate the 25th anniversary of the establishment of the Center for the Study of Federalism.

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