

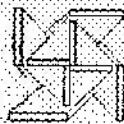
THE FEDERALISM REPORT

— Volume 20, Number 2

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CSF NOTEBOOK

FROM THE EDITOR

This has been a very active year for the Center. We have held seven conferences ranging from Spanish Federalism to civil community. In this issue, we will focus on many highlights from various projects. More detailed information on any project you find in the Federalism Report can be obtained by contacting the Center.

The Center's 1994 Activities Report is available upon request by contacting the Center. Feel free to request a copy and bring yourself up to date on our recent activities.

CENTER NEWS

ACIR NAMES KINCARD KESTENBAUM FELLOW

The Advisory Commission on Intergovernmental Relation, on June 17, 1994, named John Kincaid as 1994-1995 Kestenbaum Fellow in recognition of his service. The Commission also adopted a resolution thanking Dr. Kincaid for his service as Executive Director of ACIR since 1988. The Commission noted that he upheld the

highest principles of public service, fairness, and diversity... brought the Commission through... unprecedented... challenges... worked successfully to ensure a continuing output of extraordinarily high quality work despite the most severe constraints in fiscal resources, and...upheld the credibility and objectivity of the Commission's research, strengthened the staff, increased productivity, helped pioneer new research fields, improved relations with constituent groups, and established the Commission's international presence. (reprinted from *Intergovernmental Perspective*, vol. 26, no. 3, p. 9)

JAMES LUTHER ADAMS, SOCIETY FOR THE SCIENTIFIC STUDY OF RELIGION, DIES

Professor James Luther Adams, one of the founders of the Society for the Scientific Study of Religion, died in July at the age of 92. Both a brilliant and a compassionate man, Adams devoted his life to the work of a theologian, a social theorist, and a university teacher. He was the leading modern theorist on the importance of voluntary associations in society, organizations which he viewed as decisive for the formation of character in persons and of ethical values in society. His deep loves were for his family, his church, his academy, and his music. Besides helping to found SSSR, he was a founder of the Society of Christian Ethics and of the Illinois chapter of Americans for Democratic Action. One critic called him "the smiling prophet" in recognition of his penchant for harpooning pretense with wit and without meanness. All who knew him will miss him. (reprinted from *SICK Newsletter*, December 1994)

RECENT PUBLICATIONS

NEW MEXICO GOVERNMENT. Third Edition. Paul L. Hahn, N. Chris Garcia and Gilbert K. St. Clair, Editors. Albuquerque: University of New Mexico Press, 1994.

After two successful printings in 1976 and 1981, *New Mexico Government* has been completely revised and updated to respond to dramatic changes in the state's cultural, economic, environmental, demographic and social character. The authors examine governmental changes over the last decade, which include the reorganization of New Mexico's executive branch, judicial reform, and the erosion of the dominance of the Democratic Party. They also explore drastic changes in the state's demographic patterns over the last several decades. They predict that during the 1990s minorities groups will become a majority of the electoral pool, leading to a further alteration of the political landscape. However, despite these important changes, the authors conclude that upon close examination of New Mexico's political process and governmental service delivery "the more things change, the more they stay the same."

The third edition of *New Mexico Government* contains new chapters on the media and regulatory politics. The volume remains the most concise explanation of the processes of New Mexico's state government and is an excellent introduction for students and general readers.

FEDERALISM IN TAXATION: The Case for Greater Uniformity. Daniel Shavirio. Washington, DC: The AEI Press, 1993.

Daniel Shavirio's study of local, state and federal taxation is one of a series of research monographs undertaken by the American Enterprise Institute's Regulation and Federalism Project. The purpose of the series is to examine the advantages and disadvantages of American federalism in important areas of contemporary regulation. To date four books have been produced in the AEI series.

Shavirio argues that as fiscal trading partners seen as the European Community move toward greater uniformity in taxation, the United States is

moving in the opposite direction within its own borders. While claiming that complete centralization of authority over taxation would be undesirable, Shaviro contends that the balance of the present system of federalism in taxation is askew.

Federalism in Taxation reaches several conclusions concerning the existing state of federalism in taxation. First, variation in state and local taxes impugn locational neutrality and amount to a de facto tariff within the borders of the United States. Second, the argument that benefits to the state and local political process as a result of federalism in taxation outweigh the harm to locational neutrality, is persuasive in reference to levels of taxation but not with regard to tax base design.

Shaviro makes several suggestions to rectify the present imbalance in taxation. First, Congress should inspire the states to use partly or wholly uniform tax bases for business and possibly personal income taxes. Second, make greater use of tax credits and uniform allocation rules where taxpayers have a multijurisdictional presence. Finally, when levying taxes that seem directed principally at outsiders, to use rates no higher than those applying to comparable in-state levies. In the absence of Congressional action, Shaviro proposes that the court system adopt a principle barring discrimination against outsiders and interstate commerce.

GRASSROOTS TYRANNY: The Limits of Federalism. Clint Bolick. Washington, DC: CATO Institute. 1993.

As members of the 104th Congress race to decentralize power from Washington, Clinton Bolick warns them to consider the consequences. In *Grassroots Tyranny: The Limits of Federalism*, Bolick argues that the return of power to local and state government does not guarantee the realization of the original intent of federalism. Rather, it may result in some of the most egregious violations of freedom.

Bolick, a former Justice Department lawyer in the Reagan Administration, uses Grassroots Tyranny to study the development of Constitutional safeguards for individual liberty and how they have been disregarded. He then shows how lack of respect for liberty has resulted in abuses at the local level. Bolick attempts to reinforce his arguments

through the use of case studies in the fields of private property, freedom of speech, economic liberty, privacy and equality under the law. Finally, he offers several suggestions of how the United States can reinvoke federalism.

Bolick cites the astounding growth of units of government as a primary culprit in the perversion of the ideals of federalism. He says that of 82,000 units of government, most are local and many are hidden from public scrutiny. There increasingly powerful local governmental agencies such as regional authorities, regulatory agencies and planning boards are usurping power from democratic institutions. While virtually unknown to the public, Bolick claims these units of government wield vast control over people's daily lives. As a result, Bolick says there "is a constant expansion in the amount of government power that is beyond the direct control of the citizenry, rendering local democratic processes largely impotent in curbing abuses of power." (p. 99) This is "grassroots tyranny."

Bolick blames the rise of grassroots tyranny on the demise of the traditional principles of federalism. He castigates both liberals and conservatives for practicing "situation federalism" contingent on who holds power and the ends to be achieved. He condemns conservatives for regarding states rights as an end unto itself and liberals for favoring centralized power.

To guard against "grassroots tyranny" Bolick concludes that we must utilize Daniel J. Elazar's principle that the primary intent of federalism is liberty. In order to ensure that all levels of government promote liberty, Bolick calls for a reemphasis of safeguards laid out in the Constitution. He claims that we cannot follow the ideological special interests who base their construction of federalism on only the 10th or the 14th Amendments. Rather, a new effort must be made to unite the two Amendments with the 9th. The balancing of the three Amendments guarantees that all levels of government have a moral imperative to preserve the two cornerstones of federalism: decentralization and individual rights.

Four specific actions are proposed by Bolick to ensure the balance of Constitutional federalism. First, the Judiciary must make a presumption in favor of liberty. Second, the Judiciary must have a

preference for decentralized government. If these first two objectives are accomplished, it will allow the community, in the form of voluntary institutions, to substitute consensually shared values for the current political rules. Finally, Bolick claims that since theoretical models rarely translate fully into reality, citizen education is a necessity. He cites the need for the continuation and growth of watchdog groups to ensure that the best interest of individual liberty is being served.

Bolick's strength clearly lies in his understanding of the Constitutional design of federalism. His explanation of the development and interaction of the 9th, 10th and 14th Amendments is thorough. He also provides a good analysis of how the Constitution has been disregarded by ideologies. However, Bolick's weakness lies in his journalistic case studies of grassroots tyranny. He fails prey to his major criticism of liberals and conservatives. He uses selective federalism based on ideology. Bolick's case studies are often driven by his libertarian positions rather than an unbiased concern for the state of federalism. Bolick is concerned about government's infringement on individual liberty, and rightly so. However, his libertarianism calls for stodgy, uniform government imposed from above by the courts and the Federal government. His government based on fear of majoritarianism does not allow for one of the main purposes of federalism to allow individual communities to adapt their government to specific local traditions and values.

Despite these criticisms, *Grassroots Tyranny* is a good introduction to how the Constitution provides a balance of power between federal, state and local government to ensure liberty. Bolick's achievement is that in a political environment focusing on rapid decentralization, he succeeds in calling attention to government's ability to create tyranny at all levels. All responsible new efforts at reinvigorating federalism must take this into account.

J. Wesley Leckrone (Temple University)

Covenant and Polity in Biblical Israel

Biblical Foundations and Jewish Expressions: The Covenant Tradition in Politics, Volume I

Daniel J. Elazar

Covenant was once the subject of many theological treatises. However, the author claims that covenants of the Bible are the founding covenants of Western civilization. They have their beginnings in the need to establish clear and binding relationships between God and humans and among humans. These relationships are primarily political in character in that they were designed to establish lines of authority, distributions of power and systems of law. In *Covenant and Polity in Biblical Israel*, the first of a trilogy, Daniel J. Elazar addresses political uses of the idea of covenant, the tradition that has adhered to that idea, and the political arrangements that flow from it.

This volume of the *Covenant Tradition in Politics* consists of an in-depth exploration of biblical sources of the covenant tradition, its development in Scripture, and subsequently in Jewish history and thought. It traces the interconnections between ideas, culture, and behavior as well as between peoples and generations. Among the topics covered are covenant as a political concept, the Bible as a political commentary, the post-biblical tradition, medieval covenant theory, and Jewish political culture. This is a seminal work by a master political scientist, in a tradition ranging from Max Weber to Aaron Wildavsky.

Available at the Center for the Study of Federalism for \$49.95 plus shipping & handling.

*** ANNUAL INVENTORY ***

As a service to its members, the Center takes an annual inventory of members' current research activities and publications. The result of the inventory will be published in a forthcoming issue of *The Federalism Report*. Please fill out this form and return it to the Center at your convenience.

1. Name
2. Institutional Affiliation & Address
(University and Department, Governmental Agency, etc.)
3. Title and Position
4. CURRENT RESEARCH ACTIVITIES - For each project, please provide the following:

Project 1

- (a) Title:
- (b) Description:
- (c) Information Contact:
- (d) Starting Date/Completion Date:
- (e) Availability of Final Report (address):

Project 2

- (a) Title:
- (b) Description:
- (c) Information Contact:
- (d) Starting Date/Completion Date:
- (e) Availability of Final Report (address):

5. RECENT PUBLICATIONS - For each publication, please provide the following:

- Project 1
- (a) Title:
 - (b) Journal or other publication source:
 - (c) Description:
 - (d) Availability of reprints (address and cost, if any):

Project 2

- (a) Title:
- (b) Journal or other publication source:
- (c) Description:
- (d) Availability of reprints (address and cost, if any):

6. Center for the Study of Federalism Activities

- (a) What services would you like the Center to provide for its members?
- (b) What topics would you like to see included in the APSA's Section on Federalism and Intergovernmental Relations at the annual American Political Science Association Meetings?
- (c) Would you be willing to serve as a reader for Public manuscripts? Yes No
If yes, please indicate your area of specialization and interest.
- (d) Would you be willing to review books for Publics? Yes No
If yes, please indicate what topics you would like to review.

Russian Federalism and State Constitutionalism

G. Alan Tarr
Rutgers University-Camden

Under the Russian Federation Treaty and under the Russian Constitution, the republics and regional governments within Russia have authority to develop state constitutions or charters. In October and November 1994, I visited Russia under the U. S. Information Agency's Freedom Support Advisors Program to participate in a symposium on constitutional design in Tomsk and to provide technical assistance on the design of the Tomsk *oblast* (region) constitution. The experience revealed a range of distinctive and important issues now developing in Russian federalism.

To understand these issues, one must understand two distinctive features of Russian federalism. First, Russian federalism entails what Daniel Elazar has labelled asymmetrical federalism, i.e., the component units of the federal system do not have equal powers and prerogatives. The component units of Russian federalism include the republics, the regions (*oblasts* and *krayes*), and the autonomous *oblasts* and *okrugs*. The powers of these subjects of the Federation, as they are called in Russia, are partially defined by the Federation Treaty and by the Federal Constitution. Second, the situation is complicated by the fact that under Article 66 of the Federation Constitution, subjects of the Federation can enter into bilateral treaties with the Federation government, whereby powers could be transferred from the Federation governments to the subject of the Federation or vice versa. At the time of my visit to the Tomsk *oblast*, it had provisionally endorsed a draft treaty with the Federation government specifying the division of authority between them in a manner that somewhat enhanced the powers of the *oblast*. (Of course, these bilateral treaties could complicate Russian federalism immensely, for - depending on what was negotiated - one might end up with substantial differences in power and prerogative among *oblasts* as well as, for example, between republics and *oblasts*.) With these considerations in mind we turn to constitution-making in the Tomsk *oblast*.

At the time of my visit, three partial drafts of a constitution had been prepared. The first was developed in the face of heated opposition from the President's Representative to the *oblast*, and the group developing it ceased operation when the regional legislatures were disbanded in October 1993.

The second and third drafts were developed by separate working groups, the former with the support of the new regional legislature (*duma*) in 1994. The differences between the versions of these two drafts had narrowed over time, and it appeared that a consensus would ultimately form behind a single draft.

One major issue involved the exact status of the document being prepared: was it a constitution or a charter? Underlying this theoretical issue was a crucial political question regarding the nature of Russian federalism. If the document was a constitution, that would imply that the regional unit possessed some independent power rather than merely that power delegated by the Federation government. If the document was a charter, however, then the relationship of an *oblast* to the Federation government would resemble that of an American city to a state government.

A second set of issues involved the economic relationship between the *oblast* and the Federation. Under the Soviet regime, property was owned by the State, and despite privatization considerable property remained in the hands of the government. But which government? Therefore, the *oblast* constitution included as a basic feature an elaboration of the economic base of the *oblast*. Also contentious was the issue of taxation. *Oblast* officials complained that Moscow received too much in the way of tax revenues and distributed too little. Thus, a major concern of *oblast* constitution-makers was to elaborate a stable source of revenue that would remain within the *oblast*.

A third set of issues involved the structure of the *oblast* government. How much legislative control of the executive should there be, and what forms should it take? Should there be a fully elaborated *oblast* judicial system, and if so, what was its relation to the Federation courts? Was the *oblast*'s decision on this latter issue already determined by the decision of other *oblasts* about whether or not to construct their own judicial system?

A fourth set of issues involved relations between the *oblast* government and various units of local government. This relationship was complicated by Articles 130-133 of the Federation Constitution. These Articles guaranteed national constitutional status to institutions of local government, prevent local determination of their structure, and grant them various powers. The Tomsk constitution-makers recognized the status of these units of local government by creating a bicameral *oblast* legislature.

in which one house would give each local government a single seat. The more contentious issues involved the scope of oblast control over local governments, the division of responsibility between oblast and local governments, and the appropriateness of ensuring local governments a tax base so that they could fund their own budgets. Among the proposals under consideration was the creation of a special judicial body to resolve disputes between the local and oblast legislatures.

A final issue involved the process by which the constitution would become authoritative. All participants agreed that the constitution would need the endorsement of the oblast legislature, but there was no consensus on two further questions. Should the constitution be submitted to the populace for ratification through a referendum, or was legislative

endorsement sufficient? Those viewing legislative endorsements as sufficient worried about possible rejection by a politically disaffected public, while those supporting popular ratification argued that it was demanded because the constitution introduced substantial changes in the form of government. Also, did the constitution require approval by the Federation government before it could take effect?

As this account should make clear, state constitution-makers are grappling with basic constitutional issues in a context of considerable uncertainty and with little experience in the art of constitution-making. However, my meetings in Tomsk convinced me that the constitution-makers in that oblast at least are fully cognizant of the complexity of the issues they are addressing and capable of resolving them successfully. ■

AVAILABLE NOW!

Federalism and the Way to Peace

Essays by

Daniel J. Elazar

This book contributes fresh perspectives on the variety and flexibility of federal ideas, well beyond any specific constitutional framework.

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Center for the Study of Federalism

Improving Civil Community

The First in a Series of Conferences on Building Civil Community in the Cities of the Prairie Sponsored by The Center for the Study of Federalism with the support of The Bradley Foundation

December 10, 11, 12, 1994, Pueblo, Colorado

Sustaining civil community requires a future generation of civic-minded citizens and leaders who appreciate the meaning of community, understand how community institutions work, and are willing and able to invest of their time or money in making those institutions work for civic ends. Why has this very elemental thesis become so far-fetched? How do we restore it?

On December 10, 1994, twenty delegates representing eight Cities of the Prairie and five members of the project research team met in Pueblo, Colorado for a thorough examination of civil community. As indicated elsewhere in our report, we decided to use the term "civil community" for three reasons: (1) it emphasizes the political and governmental side of community life, (2) it reminds us of the importance of civility, and (3) it can embrace a city, a county, or an entire metropolitan region as appropriate to the community in question. The focus of the conference was on the present state of civil community--as well as how to improve its future--in each of the cities of the prairie. The conference was designed and structured to promote an open and honest conversation among all participants to enable them to seriously address yet clearly identify, philosophical and practical strategies that they could apply to the challenges facing their particular civil community.

Keynote Address

Saturday, December 10, 1994

Welcome and Opening Remarks on Improving Civil Community

Daniel J. Elazar began by noting that modern technology and mass media give citizens access to more information and news of national and world events than ever before. At the same time, this "mass society" has replaced most of local civic participation. As a result, citizens know more about world events than they do about events on their own street. Citizens have begun to live vicariously through the global society, thus eliminating awareness and involvement in traditional civic life. With little or no personal contact with one's neighbors there is little tangible or acknowledged consequence for those actions that may disrupt civil community. This

escalating "privatization of the spirit" combined with increasing pressures on local governments to modify their policies and practices to satisfy state and federal mandates has noticeably changed the interests and practices of today's citizens. There is a growing non-partisan awareness of this situation as well as a sincere desire to seek ways to revive civic responsibility.

Civil communities need to have three crucial elements: (1) a strong private sector, (2) a responsible governmental sector, and (3) a healthy public, nongovernmental voluntary sector. Civil society relies on these three "legs of a stool." Without one leg, the stool falls and civil society falls. Civil community in the United States can be revived, and challenges can be met by partnerships among these three sectors. According to Elazar, the American model of governance requires six elements to foster a tradition of successful government and community interaction: (1) Multiple local governments exist to provide social services and other local services; (2) federal and state government offices serve and provide for the needs of local communities; (3) public, nongovernmental agencies provide for local needs that are not met by government (e.g., chambers of commerce, hospital development boards, associations); (4) local political organizations are established to mobilize the community; (5) private interests have shifted from selfish pursuits to address the needs of the community; and (6) constitutional documents and the structure and form of government have served as an effective framework for what are appropriate rules and laws, and acceptable norms.

The proper balance of those six elements along with the three legs of the stool contribute to the success of a civil community. The challenges and adversities of civic life are more easily met and overcome because of this balance. Leaders emerge

and further contribute to the health of the community. Without these criteria, citizens are demoralized and civil community will falter.

Session I

Sunday, December 11, 9:00-10:30 a.m.
Civic Virtue and Civic Education

Session One, moderated by project coordinator Stephen Schechter, was devoted to civic virtue and civic education as it relates to civil community. Civic virtue includes two main parts: personal virtue and public virtue. Personal virtue controls an individual's relationship to oneself, a higher being, and others; public virtue controls an individual's relationship to his/her community(ies). Each side of virtue must exist to achieve a certain level of civic virtue. And each contains its own set of expectations—expectations of the individual by the community and of the community by individual behavior.

Three expectations of individual behavior were identified: (1) membership in community-based organizations or associations; (2) a willingness to serve and preserve the community with acts of neighborliness such as property upkeep and local school participation; and (3) a willingness to abide by the laws of society, in other words, a respect for the "rule of law."

Expectations of the community in relation to the individual are a complement to the first list: (1) the community itself should foster a sense of community; (2) the community should be open and responsive to individuals willing to serve; and (3) the community is obliged to have "good" laws.

The moderator posed the following challenge and questions:

How has migration, the media, diversity of cultures, suburbanization, and mass society affected civil community? What is the current state of civility in your community? What has been done or is being done in your community to promote civility? What can we learn from the host city of Phoenix?

Initial discussion centered around the media and its significant role in a civil community. Participants noted that their local media provide prime space and air time in which residents can openly criticize public officials and organizations. These radio programs and newspaper columns, according to attendees, are the most popular features in their

respective markets, and they increasingly damage their civil community. A focus on negative reporting and excessive criticism deters people from taking part in their civil community through the usual means of volunteerism and seeking for public office. Duluth, Minnesota, encountered such a trend and took steps to rectify the situation. Consultants were hired to conduct a study of how to improve community relations. They found that a call-in radio talk show was having a profoundly negative effect on the community and recommended that it be taken off the air. The radio station agreed to this.

Decatur, Illinois, is taking another approach to combat the media's negative effects on civil community. A cross-section of citizens formed a committee to meet with the local newspaper to discuss how the news is reported and the effect it has on the community. The committee also may offer suggestions for improving reporting and coverage of sensitive issues.

Attendees also noted that the media can be seen as a positive vehicle for building civil community. For example, popular call-in radio talk shows allow city officials to answer and address questions, complaints, and concerns of citizens. The city manager from Decatur viewed this as a productive method for reaching all citizens of his community.

Reaching all citizens is a common concern among attendees. They are especially concerned with the division of community into a lower tier versus an upper tier. Duluth delegates offered some suggestions for reaching all members of a community; for example, training neighborhood residents to be leaders of neighborhood associations, creating suitable jobs for youths, and designing a program whereby community organizations, associations, or individuals may "adopt" a park in their community. Duluth receives financial assistance from the city and community organizations to support these programs.

Gangs, violence, and drugs were a topic of much frustration at the first session. Gangs are seen as not only a point of uncontrollable violence, but as a substitution for a healthy civil community. They fulfill the criteria of a community. Participants agreed that in order to be able to reach and connect with the youth within these gang-communities, individual needs must first be met by the civil community and through education.

Session II

Sunday, December 11, 10:45-12:00 p.m.
Public Benefaction and Volunteerism

Session Two addressed volunteerism and public benefaction. Pueblo businessman and civic leader Bret Kelly moderated this session and began with a brief overview of Pueblo and its history. The early 1980s saw Pueblo at the high point of its economic crisis with 19.7 percent unemployed. There was much animosity between the business and labor communities. In 1986, the public passed a referendum to levy an additional half-cent sales tax targeted to job creation and economic development. By 1994, the economic situation had vastly improved and the unemployment rate had plummeted to 4 percent.

Kelly attributes this turnaround to a few factors. First, in 1979 Francis King, a prominent citizen, donated a valuable art collection to the city of Pueblo with no strings attached. Shortly thereafter, a foundation granted \$1.2 million to the Arts Center to house this art collection. Kelly attributes part of Pueblo's new attitude of civic pride to these two philanthropic initiatives. Furthermore, he stressed that volunteers are called upon to perform limited, short-term tasks that can be completed within a reasonable amount of time. Kelly also stressed the impact and importance of receiving a large donation as the cornerstone of a fund-raising campaign.

Participants focused this discussion on public benefaction as it relates to economic development. In the Quad Cities, Illinois, after citizens voted against combining the cities into one "Super City," local communities decided to raise funds on their own for economic development projects. The Super City proposal would have combined the Quad Cities into one large entity, making it the second largest city in Illinois next to Chicago. This proposal was defeated at the grassroots level. Although the media was generally in favor of the proposal, the combination of interests encompassed most of the population and was able to defeat the proposal.

A council of mayors in the Quad Cities meets monthly with industry representatives to discuss current economic development activities. Labor-management relations have been steadily improving with help from the private sector, and money has been raised by the private sector to supplement public funds for economic development. Likewise, Decatur is also involved with fund-raising campaigns for economic development. Two

economic development agencies exist in Decatur; one is a city department and the other is a nonprofit agency called the Community Investment Corporation of Decatur. The latter receives federal grants and private donations and serves as a check on the activities of the government department.

Successful economic development projects help to lead a community to a healthy employment market. However, participants remain frustrated with citizen's ill-conceived belief that manufacturing jobs are the *only* good-paying jobs. Large industry manufacturing employment is no longer available in many of these cities. The disillusion with and dissolution of manufacturing jobs have led cities to engage in efforts to maintain a skilled labor force, concentrate on attracting a more diverse assortment of smaller industries, and improve their amenities base in order to attract and keep those new industries. Although attraction of smaller industries keeps unemployment low, these jobs may be lower paying than large scale manufacturing jobs. Some participants recognize that governments need to assist working families. It is also important, however, to realize that absentee ownership of industry is common and managers and key officials may not be willing to contribute to the community in which they are located as readily as community-based companies. Civic responsibility may be neglected in such instances.

Participants stressed that community-based offices should reflect their constituencies and should make a sincere effort to move beyond token inclusion. True citizen participation and volunteerism cannot be achieved without proper representation; and without citizen volunteers, civil communities will fail. Barriers to participation need to be removed in order to strengthen the third leg of the stool.

Session III

Sunday, December 11, 1:30-2:45 p.m.
Community Agenda Building and Mobilization

Patricia Kelly, civic leader and former city councilwoman from Pueblo, moderated this session and began with an overview of the reasons citizens participate in Pueblo. The average citizen's loss of faith in government has led to healthy demonstration of participation in agenda setting. When a need is identified, citizens have initiated projects and efforts to address the situation. Agenda setting is increasingly done by private means with money raised and earmarked for specific projects. As a

result, groups are being left out of the process because of their inability to mobilize sufficient funds.

The majority of this session was then devoted to discussing strategic plans—their worth and impact. Most of the participants had been involved with recent strategic planning and "visioning" efforts in their cities. There were many different opinions regarding visioning:

- * Achievement of goals should not be a factor in developing a strategic plan.
- * Successful planning needs a common enemy; e.g., special interest groups.
- * A good plan should not be geared to one administration, rather it should be based on comprehensive citizen participation and transferable from one administration to another with little effort.
- * A plan should outline a community's values, needs, and wants, and vision for the future; "who we are, what we do, where we are now, where we are going, and how we get there."
- * Strategic plans are vehicles to get all citizens involved and make them feel involved. Often the means and the process are as beneficial as the ends.
- * Strategic plans are often viewed as uniform, static documents. Even without strategic plans, communities will see where there are needs and mobilize to address them. The needs will only be addressed when funding is available.
- * It is important to realize who is asked the questions. Often, major groups are left out thus jeopardizing the authenticity of a comprehensive strategic plan.

Session IV

Sunday, December 11, 3:00-4:30 p.m.

Public Leadership and Positive Implementation

Discussion leaders Karl Nollenberger and Mayor Gary Doty of Duluth began this session as a continuation of the last session. Duluth has been involved in a major visioning effort which seeks to reach significant portions of the population. A team of thirty individuals devised a method of how to put together their version of visioning. The first step identified was a need to hold an event to generate interest in the process. The event chosen was a kick-off party in which everyone in the city was invited. Attendees were encouraged to add their thoughts for the future of Duluth to a bulletin board set up by the visioning committee. Post-it notes were made

available for all residents to write and post their comments, ideas, and suggestions. The city and multiple sponsors footed the \$22,000 bill. The entire visioning project is slated to continue throughout the next two years until September 1996.

Duluth's future has a different kick than it did in the mid-1980s. They have successfully diversified their employment base, enhanced their tourist industry, created more jobs, and rehabilitated old housing and built new units. This turnaround has led to a positive attitude toward the city by its residents. The Duluth officials believe that leadership has played a part in this change, but also they believe that citizens are not easily led astray, that citizens are capable of making intelligent, well-informed decisions, and that leaders merely take these cues and follow through.

The leadership approach in Duluth fits with its political culture and the city's characteristics. Culturally, homogeneous communities, such as Duluth, bound by public spirit rely on the process to work efficiently. The community is called upon to reach the "right" decision. Therefore its leaders can assume the role of delegate-taking their cues from the public. Leaders assume that the community as a whole will serve as a check on its own actions and the most acceptable idea or solution will be reached. The more heterogeneous communities of Illinois, however, must choose between a "clash of interests" or leaders who make the decisions for them. Leaders of these communities are entrusted to collect information from all parts of the community and make a decision that suits the needs of the entire community. Leadership style is dictated by the community and although communities may change, political cultures endure. Families and schools pass along political culture and community values.

Participants cautioned that leadership can be easily manipulated or led astray. Avoidance of issues, second-guessing the public, and collecting only a portion of the views on the issues, are traps of which good leaders should be wary. Also, leaders should be alert to the unwillingness of groups to follow. One participant summed this up as a crisis of "followership."

Conference participants also distinguished consensus versus competition and confrontation. The solution of the 1990s focussed on consensus led by citizen-led organizations. The solution of the year 2000 is leading towards individual giving, private action, and competition and confrontation.

Session V
Monday, December 12, 9:00-10:15 a.m.
Taming the Beasts

This session was dedicated to the discussion of special interest groups and their impact on civil community. Jim Bacon, City Manager of Decatur, Illinois moderated the session and began with some suggestions for working with special interest groups. First, all special interest groups must be identified and a thorough inventory must be done. Second it is crucial to determine who are the leaders of these groups. Public officials need to be aware that the leaders may not always be found in an organization's top positions. Third, public officials then need to engage the leaders in an open dialogue in a non-threatening environment to determine what their specific concerns are. Bacon cautioned that it is important to make the distinction between concerns and positions. Discussions between government officials and special interest groups should focus on concerns rather than positions. He, unlike the attendees from Duluth, believes that large planning meetings are too structured and tend to put participants on "good behavior." Finally, the public official should determine how the special interest fits into the larger scheme of the entire community.

Further specific suggestions were made by co-moderator David Livingston, a community leader from Decatur, to address concerns of special interest groups. In Decatur, the local chapter of the NAACP is a member of the city's Chamber of Commerce. A city staff person serves as a representative and liaison for the approximately twenty neighborhood groups of Decatur. The media is alert to special interests through the previously mentioned community/media committee meetings. And the local television news station has a creator program which makes a special effort to include members of interest groups.

There was a general consensus that the media in medium-sized cities pose a different set of problems than the media in a small or large city. Participants agreed that the electronic media in their respective cities tend to take their cues from the print media. Television news programs are not as thorough as newspapers and seek out stories rather than in-depth coverage of major stories. Due to lack of "big" stories or the inability of reporters to determine what should be a big story in a medium sized city, issues and specific events are blown out of proportion and covered to excess. In Asper, Colorado, a small city, the city and county council meetings are televised and

broadcast live locally by volunteers. The meetings are shown simultaneously at a tavern across the street from the meeting space. Officials and lawyers will view the proceedings from the bar and will only join the meeting as they are needed. Although this type of media/government/community interaction works well for a small community like Asper, it could not work in medium-size cities. Participants agreed that there would be a tendency to grandstand for the camera, thus giving further incentive to blow issues out of proportion.

Participants offered some tactics for dealing with the media. Some feel that it is a public official's choice to talk to the media. When reporters do not behave responsibly or appropriately, they should be banished or even reported to the FCC. In the Quad Cities region of Illinois this approach can be used because there are three major newspapers. It is not as easy to challenge the print media with only one major newspaper servicing an area. A second approach used is training and orientation sessions for new media personnel led by public officials. A brief session is arranged where background and concerns are discussed.

Other concerns related to special interest groups were expressed. More and more people from interest groups are getting elected to public office, namely city councils. This has an impact on policy development and interactions with city managers. With a diversity of interests represented on city councils it becomes increasingly difficult for a city manager to be responsive to the council and all of their concerns. Council members need to be made aware of and understand the needs of the entire civil community as a whole, and how to balance special interests with the needs of the community rather than focus on their own special interest. On the contrary, the influx of special interests in public office has in some instances created a new political environment steering people toward collaboration. There is the realization that no single special interest can "win" and some regions are "in it together." Efforts are made to regionalize services and plan strategically with all stakeholders represented.

An interesting response to special interests takes place in Illinois state government. Legislation can be initiated by special interest groups by the "agreed bill process." Special interest groups can initiate this process to address specific concerns. Principals actors, both party leaders of the legislature, and other relevant persons are invited to a meeting to draft legislation that will be introduced and passed in

the state legislature and signed into law by the governor with little or no objection. After the bill is drafted, a public hearing is held, however, all necessary concerns should have already been addressed during the agreed-bill process. If all concerns are not met, and powerful groups are left out, this process can be halted and reconvened.

Session VI

Monday, December 12, 10:30-12:00 p.m.

What is To Be Done?

The closing session served as a summary and initial planning session for the next Cities of the Prairie conference. Participants conveyed an excitement about the proceedings of the conference and a genuine enthusiasm for the next conference to be held in Duluth, Minnesota, in summer 1995, contingent upon funding. Participants offered suggestions for future conferences:

- * Representatives from the religious community should be included. It would have to be determined which religious communities and which level of hierarchy should be invited.

- * Likewise, representatives from the media should be invited. Media representatives should be persons from editorial boards rather than reporters.

- * There should be a session devoted to crime and its impact on civil community.

- * Perhaps medium-size cities other than the original Cities of the Prairie could be examined for comparative purposes.

- * A list of "100 Ways to Improve Civil Community" could be developed either as preparation for future conferences or as a result of a conference.

- * Participants agreed that the format of the conference was conducive to productive discussions. A suggestion was made to add a different type of discussion for one session, namely a panel discussion centered around occupations allowing professionals from different cities to fully explore the similarities and differences of their positions.

- * It was also suggested that every community should map its civil community and subcommunities. This would prove to be a valuable tool to bring about awareness of community as a whole.■

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IACFS

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CENTER TO HOST IACFS MEETING SEPTEMBER 11-13, 1995

The Center for the Study of Federalism will host the next meeting of the IACFS in conjunction with an international conference "From Statism to Federalism: The New International Relations" that will bring together scholars currently studying various aspects of the paradigm shift. This conference will allow scholars to compare their research findings and report on recent developments in their nation-states or regions where federal and confederal arrangements are being instituted. These scholars will be drawn from an international network of research centers committed to studying federal and regional systems. This conference will also enable researchers to clarify, define and operationalize the various arrangements that have been described. This is a necessary first step in furthering our understanding of this emerging paradigm.

The papers delivered at the conference will be collected, edited and published, either as an issue of *Publius: The Journal of Federalism* or as a free

standing volume if a book contract can be negotiated. This volume will lay the ground work for continued study of the confederal system as it emerges.

The conference will be held in Philadelphia, PA, where the Center for the Study of Federalism is located. Its format will feature five plenary sessions designed to set out the principal themes of the conference and examine the most significant developments of the paradigm as it is emerging internationally. During the workshop, specific national or regional developments will be examined. These workshop sessions will feature presentations by scholars currently doing research in these areas. They will lead the ensuing discussion.

Through the conference, participants will be able to present findings of their research to both further develop their own research agendas as well as encourage further research in the field. ■

The Courts and First Nation Jurisdiction:
Delineating the Legal Limits of a Third Order of
Aboriginal
Government in Canada's Federal System

by

Dr. Christopher McKee
Department of Political Science,
University of British Columbia
Vancouver, British Columbia

Introduction

In both Canada and the United States, the pursuit by indigenous peoples for a greater measure of autonomy has been met with varying degrees of success, and often the approaches used have been different. The Indian nations in the United States have traditionally used the courts in their struggle for greater legal and political independence, while Canada's First Nations have been more apt, particularly in recent years, to pursue similar ends through the intergovernmental negotiating process, most notably the highly visible constitutional reform process.

Doubtless, the extent to which American Indian nations have benefitted from litigating claims against non-native governments is a debatable point; but, in Canada, apart from some early victories before the Supreme Court of Canada, which resulted in stronger recognition in law of aboriginal title and rights to the treaty-making process, it is clear that First Nations have experienced some rather discouraging results in the judicial forum, especially in relation to claims made under Canada's Charter of Rights and Freedoms.

The inability of aboriginal groups in Canada to make substantive gains through litigation was evident in the 1993 British Columbia Court of Appeal ruling in *Delgamuukw*. The arguments put forward by counsel on behalf of the Gitksan and Wet'suwet'en people were wide ranging; indeed, they covered a series of issues involving claims to ownership and jurisdiction to over 22,000 square miles of traditional territory in northwestern British Columbia. In the end, however, the Court's decision was mixed for Gitksan and Wet'suwet'en: while the Court recognized the existence of certain aboriginal rights that had not been extinguished prior to British Columbia's entrance into the Canadian federation in

1871 (rights which were characterized as *sui generis* in nature), the claims for ownership of and jurisdiction over the territory were dismissed.

While much of the ruling was received favourably by many First Nations in the province and hailed as an improvement over the lower court's finding of several years earlier, what did not receive much discussion (if any) was the Court's view on the limits of First Nation jurisdiction within the context of Canada's federal distribution of powers. Such a paucity of discussion is remarkable because, unless this aspect of the decision is reversed on appeal by the Supreme Court of Canada, or unless First Nations can secure a new set of governmental powers through the intergovernmental negotiating process (powers which will be largely independent of federal and provincial governments), the desire by most First Nations to be recognized as a third order of government within Canada's federal system appears impossible.

The Gitksan/Wet'suwet'en Claim to Jurisdiction (Self-Government)

In *Delgamuukw*, counsel for the Gitksan and Wet'suwet'en people based its claim to a right to jurisdiction upon an alleged unextinguished right to control the lands and natural resources of their aboriginal territory, and to govern this area and its inhabitants according to the laws of Gitksan and Wet'suwet'en. This implied the ability to develop peculiar institutions for the regulation of the ownership and management of those natural resources, as well as an inherent right to self-government, exercisable through their own institutions, to preserve and enhance their social, political, cultural, linguistic, and spiritual identity. Moreover, counsel made it clear that while they were not challenging the validity of any specific federal or provincial law, their jurisdiction would take priority over any provincial law.

The Court's Majority Opinion

The Court's majority dealt with these claims by first discussing the interface between native traditions and federal and provincial law. Provided there was no conflict between these authorities, the Court held that there would be "...no reason why the Indian people [should not] agree to continue or revive such traditions." However, the Court saw the Gitksan and Wet'suwet'en claim for jurisdiction in

much broader terms; terms that would extend First Nation regulatory authority in other matters that might trench upon the legislative powers of the federal and British Columbia governments.

On this basis the Court began a rather lengthy exposition of the scope of First Nation "jurisdictional" powers within the context of the Canadian federal system. For the Court, such rights of self-government, which includes the power to make general laws governing the land and resources of the territory, could be described only as legislative powers. Such powers would limit the province's legislative jurisdiction in the territory, and thus create a third order of government in Canada.

This finding was inconsistent with the nature and scope of the distribution of legislative powers enumerated in sections 91 and 92 of the Confederation Act of 1867, since these sections were exhaustive of legislative power in Canada. For the Court, there was little doubt that under the 1867 Act the powers distributed to federal and provincial authorities covered the whole area of self-government within Canada. Consequently, it would be subversive of the entire Act to assume that any point of internal self-government was withheld from Canada. Moreover, and to remove any doubt First Nations were subject to federal legislative control, the Court cited section 91 of the 1867 Act, which assigns legislative competence to Ottawa for "Indians and lands reserved for Indians."

The Court's separate majority opinion adopted a slightly different approach to the question of aboriginal jurisdiction. In agreeing with the earlier findings of the trial judge, the Court held that when the Crown imposed English law on all inhabitants of the colony of British Columbia and, in particular, when British Columbia entered the Canadian federation in 1871, the aboriginal people became subject to the legislative authorities in Canada and their laws. Thus two orders of government were established at federation in 1871, and this division of governmental powers between Canada and the provincial governments left no room for a third order of government.

The Indian nations in the United States have traditionally used the courts in their struggle for greater legal and political independence, while Canada's First Nations have been more apt to pursue similar ends through the intergovernmental negotiating process...

Such a view was consistent not only with A.V. Dicey's the definition of parliamentary supremacy, but also with the Supreme Court of Canada's 1990 landmark ruling in *Sparrow*. Consequently, the Gitksan and Wet'suwet'en claim to jurisdiction failed; and their claim to the right to control and manage the use of lands and resources in the territory failed as well, since they could not establish the necessary ownership needed to support such a jurisdiction.

The Need for Negotiations

Despite the Court's findings, expressed in both the majority and dissenting opinions was the recommendation that intergovernmental negotiations should be the proper forum for determining the precise scope and content of First Nation jurisdiction and the concurrent rights to self-government and self-regulation. Indeed, as the Court made clear:

"The establishment of some form of Indian self-government beyond the regulatory powers delegated by the Indian Act is ripe for negotiation and reconciliation. Undoubtedly, at the heart of all discussions will be the extent to which Indian self-regulation and other levels of government can co-exist."

This exhortation by the Court is significant, since it suggests not only a reluctance to resolve the myriad conceptual and operational problems associated with self-government, but that it appears to affirm the current vehicle with which British Columbia is attempting to inject a degree of certainty and content into this long-standing quest by the province's First Nations.

By notable mention is the work of the British Columbia Treaty Commission, which was established in 1993 to forge "modern-day" treaties between the province's First Nations and the Canadian governments. Unlike other Canadian provinces, only a small portion of British Columbia is covered by treaties. *Intra-alic*, such a void led to a series of native blockades and court injunctions impeding a variety of natural resource development projects. The

Commission's work is in its infancy at present, with 44 First Nations indicating their readiness to negotiate framework agreements. However, if the mandate of the Commission is fulfilled, the level of uncertainty that exists when the courts and confrontation are the chosen options to settling long-standing issues should be reduced.

Working in conjunction with the Commission's efforts are a series of interim measures agreements, designed to balance the conflicting interests of the parties to claims until formal treaty negotiations are concluded. Numbering close to 100, these agreements are based on the recognition of aboriginal title, which protects the *sui generis* collective rights of the First Nations to possess, occupy and use the lands and resources of their homelands. In addition, interim measures agreements are seen not only as important early indicators of the sincerity and commitment of the parties to the negotiation of treaties, but also as guidelines for the management and use of natural resources. However, each agreement stipulates no prejudice to the rights of the parties in any pending litigation or during the subsequent treaty negotiations.

Conclusion

The results of *Delgamuukw* made it clear that First Nations should not entertain any illusions about the efficacy of the judicial process in advancing their goal of collective autonomy. The expectations of the Gitksan and Wet'suwet'en peoples for a set of governing institutions that would be legislatively equal to the federal and provincial orders of government were dashed when the Court articulated its vision of the nature and scope of legislative power in Canada.

While the limited success enjoyed by many First Nations before the courts has been attributed to specific limits of the Canadian legal imagination, it is also plausible that the Court's reluctance in *Delgamuukw* to award any real form of legislative power to First Nations had much to do with the seemingly endless number of views on the meaning of self-government. Doubtless, aboriginal spokespeople have been relatively consistent in demanding recognition of a form of self-government that is inherent, constitutionally entrenched and, to some extent, sovereign. But even these characteristics lack in specificity. Indeed, if there is any intellectual agreement surrounding self-

government, it is that it will entail fashioning different arrangements for each First Nation, based on that Nation's peculiar socio-economic characteristics. Thus, until such time as First Nations in British Columbia negotiate their specific forms of self-governance within the context of modern-day treaties, they would be best to avoid litigation altogether, lest they put at risk some potentially useful, future bargaining chips.⁵⁸

INTERNATIONAL POLITICAL SCIENCE ASSOCIATION 1995 ANNUAL CONFERENCE

CALL FOR PAPERS

10th Annual Conference

Comparative Federalism and Federation Research Committee. "Sea Turtle Inn", Atlantic Beach, Florida, U.S.A. Thursday, October 5 to Saturday October 8, 1995. Cost: Registration \$45 U.S. (Payable in Advance) Accommodation and Meals: \$75 U.S. per day.

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1. Entrenched "Charters" of Rights and Freedoms in Federal Constitutions;
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Paper Proposals should be sent to:

Lloyd Brown-John, Chair, IPSA Research Committee on Comparative Federalism, Department of Political Science, University of Windsor, WINDSOR, Ontario, CANADA N9B 3P4, Office telephone: 01 (519) 252-4232 Extension: 2369 Office FAX: 01.519.973.7694

Should you wish to contact me in home phone, note that as of March 1, 1995 the numbers are:

Private Telephone: 01 (519) 322-4563

Private FAX: 01.519.322.5966 Please have all Paper Proposals to the Chair of the Research Committee before May 15, 1995.

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SECTION NEWS

1. The Annual Business Meeting

The Annual Business Meeting of the Section on Federalism and Intergovernmental Relations will be held on Thursday, August 31, 1995 at 5:00 p.m. Immediately following the meeting, the Section will be sponsoring (with Center for the Study of Federalism) a wine and cheese reception. ■

2. 1995 Section Program Chair

Dale Krane is our Section's program chair for the 1995 APSA annual meeting, to be held in Chicago. If you would like to organize a panel, present a paper, or serve as a panel chair or discussant, please contact him at the Department of Public Administration, University of Nebraska at Omaha, Omaha, NE 68182-0276. Phone: 402-554-2595. Fax: 402-554-2682. E-mail: dkrane@unomaha.edu. ■

3. Nominations Sought for 1995 Distinguished Scholar Award

Robert J. Dilger will chair the Distinguished Scholar Award Committee for 1994-1995. In addition to our 1994 recipient, Samuel H. Beer, Daniel J. Elazar,

Vincent Ostrom, Deil Wright, and Martha A. Derthick have received our Sections' Distinguished Scholar Award. Please send your nominations for the 1995 award to: Dr. Robert J. Dilger, Institute for Public Affairs, 316 Woodburn Hall, West Virginia University, Morgantown, WV 26506. Phone: 304-293-5432. ■

4. Nominations Sought for Best Paper Award

Michael A. Pagano will chair the Best Paper Award Committee. If you would like to nominate a paper presented at any panel at the 1994 APSA meeting in the field of federalism and intergovernmental relations, please send nomination(s) to Dr. Michael A. Pagano, Department of Political Science, 218 Harrison Hall, Miami University, Oxford, OH 45056. Phone: 513-529-2010. Fax: 513-529-6939. ■

5. 1995 Section Workshop

"The Role of the States in National Health Reform."

The crushing defeat of President Clinton's health reform proposals means that the national government is unlikely to attempt comprehensive health system reform until—at the earliest—the beginning of the next century. This failure has inevitably caused

health reformers to look more favorably upon the states as the vehicle for major health system reform. Indeed, those universal health insurance advocates who wish the United States to adopt the Canadian system explicitly assume the states will be the locus of authority just as the provinces are in the Canadian health system.

Students of federalism in the United States know that an important role for the states in social policy is the norm rather than the exception. They also know, however, that federalist systems differ and that equating American states with Canadian provinces is an error.

The purpose of this workshop is to try to bring the insights of federalist scholarship into the analysis of health policy-making. Political scientists specializing in health policies will analyze the "big" issue of universal health insurance and the more "routine" issue of intergovernmental issues in health professionals education, administrating the widely varying (borrowing the social typology) encompassed by the term health policy. Leading health policy officials will discuss the intergovernmental management and policy issues they face each day in trying to create and implement health policy. The result of the workshop will hopefully be a clearer realization of how a sophisticated understanding of federalism can improve both the theory and practice of healthy policy-making.

This shortcourse will be held on Wednesday afternoon, August 30, 1995, 12:00 to 5:00 in the Sullivan room (2nd Floor) of Roosevelt University 430 S. Michigan Avenue, Chicago, IL (Roosevelt is two blocks north of the convention hotel).

Name and Affiliation of Presenters: Leonard Robins, School of Policy Studies, Roosevelt University; Carol Weisert, Department of Political Science, Michigan State University; Laura Sandtrow, Deputy Commissioner for Policy and Planning Illinois, Department of Health; Patrick Flanagan, Deputy Commissioner for Policy and Planning Chicago, Department of Health; Virginia Gray, Department of Political Science, University of Minnesota.

6. Nominations Sought for Section Officers

The Section needs to elect a new secretary-treasurer and three new council members at the 1995 meeting. Theodore Pedelshi, Chair of the Nominations Committee, welcomes your nominations. Please send them to Dr. Theodore B. Pedelshi, Department of Political Science, University of North Dakota, Box 3715, University Station, Grand Forks, ND 58201. Phone: 701-777-1553, Fax: 701-771-5070. *

7. Candidates Sought for New Section Award for Best Book

In 1994, the Section created an award for the best book on federalism and intergovernmental relations published at least ten years ago which has made a lasting contribution to the study of federalism and intergovernmental relations. There is no mandate for this award to be made annually. However, since 1995 is the first opportunity for the Best Book Award to be made, Section members are strongly encouraged to submit nominations. The purview of the Distinguished Scholar Committee includes this award. Please send your nominations to Dr. Robert J. Bigler. Deadline: April 15, 1995.

* PLEASE NOTE *

Our readers are encouraged to submit articles for publication in future issues of *The Federalism Report*. If you are interested in presenting an open piece or have a research note that you would like to share with the scholarly community interested in federalism and intergovernmental issues, please contact the editor.

The deadline for the Spring issue is April 30, 1995.

* If you are interested in advertising in *The Federalism Report*, we offer half-page ad space at a rate of \$60.00 per advertisement. The deadline for the Spring issue is April 30, 1995. Please say when copy is submitted. If you have any questions regarding our advertisement policies, please contact Paul Neel at (213) 204-1486.

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