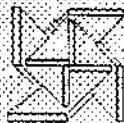


THE FEDERALISM REPORT

Volume 20, Number 4
Fall, 1995

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CSF NOTEBOOK

FROM THE EDITOR

The Center is pleased to welcome Susanna Cobucci as a visiting scholar for the 1995-1996 academic year. Ms. Cobucci is an assistant professor at the University of Milan. During her time at the Center, she will be studying American and comparative federalism. If you would like to discuss research items with her, please call her at 215/204-1480.

REVIEWED
RATED D

CSF VISITORS

■ **Mr Arturo Langton**, Member of Congress, Leader of National Renewal Party, from Chile visited the Center on July 11, 1995. Mr Langton was on a twenty-one day study tour sponsored by the USIA. His primary interests were to study decentralization and the U.S. judicial System.

■ The Center for the Study of Federalism hosted seven Mayors and three university officials from Turkey for a three week study tour from June 10 - June 30. The visitors studied local government reform and the United States Federal System. The study tour began in Philadelphia and then moved to Washington, D.C., Albany, New York, Minneapolis, Minnesota, and Pueblo, Colorado. Visits included meetings with government officials, research institutes, and community leaders. The participants included:

Mr. Adil Aygul
Mayor of Manisa Province

Mr. Necati Cenitkaya
Governor of Manisa Province

Mr. Nazim Culca
Mayor of Tire City

Dr. Arif Fesoy
Mayor of Corum Province

Mr. Haldun Brook
Mayor of Ozdere City

Mr. Yasin Hocayigit
Mayor of Terzutlu City

Dr. Mehmet Pantur
Mayor of Karkagac City

Dr. Sureyya Sakinc
Celal Bayar University, Manisa

Dr. Tuna Taner, President
Celal Bayar University, Manisa

Dr. Cengiz Yilmaz, Vice President
Celal Bayar University, Manisa

Mr. Erol Koseoglu
Interpreter

Mr. Onur Toker
Interpreter

■ "Democratic Process in the United States"
September 27 - October 26, 1995

The Center hosted four government officials from Thailand to provide an overview of the historical and political context of the framing of the Constitution and discuss its basic provisions, focusing on the issues of limited versus implied powers for the national government, and individual liberties.

Participants:

Tesaporn Sungkaew
Advisor to the Minister of Public Health

Ekkaphet Polson
Member of Parliament/
Solidarity Party

Phumin Leethongkraesert
General Doctor

Precha Suwannathat
Executive Member Democratic Party

The Center was happy to have hosted many visitors during two recent conferences held in September. The annual meeting of the International Association of Centers for Federal Studies and a one day conference on regionalism allowed us the opportunity to see many old friends

FEDERALISM AND REGIONAL POLICY IN RUSSIA AND THE USA

AKADEMIGORODOK, MAY 29 - JUNE 4, 1995

CONFERENCE SUMMARY PREPARED BY JOSEPH MARBACH AND PAUL NEAL

This was the first of three planned seminars designed to develop the capacity of the Siberian International Center for Regional Studies (SICRS) as a training center for Russian public officials in creating and executing public policy with in the framework of a federal system.

After an initial visit by Dr. V. Seliverstov and Mrs. S. Bestuzhevna to the Center for the Study of Federalism in January, 1995, a preliminary list of topics was developed. The Center then identified experts with whom it is associated to develop presentations for these topics. The Center's team consisted of Joseph Marbach, Seton Hall University; Paul Neal, Center for the Study of Federalism, John Kincaid, Meyer Center for the Study of State and Local Government; Michael Pagano, Miami University; and Mary Kay Falco, Florida Advisory Commission on Intergovernmental Relations.

The team arrived in Moscow on Friday, May 26, 1995. We departed for Novosibirsk on Sunday, May 28, 1995. An organizations' meeting was conducted later that afternoon. During this meeting last minute changes to the schedule were made and the qualifications and positions of the Russian participants were reviewed. The U.S. team was also informed that the SICRS had invited a number of non-Russian individuals to participate in the seminar. Among them was a delegation of Americans working as contractors with KPUM Pen Merwick for the US Agency for International Development, which included: Robert Refuse, Gregory Brock, and Thomas Gainer. I Hania, a visiting scholar from the U. of Tel Aviv, Hughes, a visiting scholar from the London School of Economics and Political Science and a government official from Kazakhstan also participated.

The Russian participants included representatives from three Moscow-based governmental agencies including the President's Council, the Federation Council and the Ministry of Nationalities. During the course of the conference, it became apparent why representatives of these agencies were included. The delegates from the President's Council (Leonid Smirnov, Alexei Lavrov, Alexei Novikov) have a firm understanding of the principles of federalism. Their presentations were very informative in explaining the challenges facing Russia's transition to a federal system

and in comparing it to other federal systems. According to Dr. Seliverstov, they will be included as trainers in future seminars. This would strengthen the Russian presentations at these seminars.

Irina Urusova, an advisor to the Federation Council is a lawyer by training. Her understanding of federalism is more limited than that of those from the President's Council, however it is greater than most Russian officials. She is in a position to influence the manner in which intergovernmental policies are crafted by the Council. Including and further educating her will serve as an important step in furthering the goal of enhancing the reputation and effectiveness of future seminars.

The Ministry of Nationalities was represented by Anatoly Usatcov, Yuri Datalchikov, and Viacheslav Masskov. This Ministry is searching for a purpose to justify its continued existence. It may find this purpose in training regional and local leaders in intergovernmental administration. Many of the challenges that are facing Russian federalism are related to the nationality question. While federalism often breaks down when issues of nationality emerge such as is occurring in Chechnya, the urgency facing Russia may force that country to adopt innovative approaches to the problem. If this is the case, the Ministry of Nationality must be staffed by personnel who have a thorough grounding in federal principles. It remains unclear, however, whether the seminar in the program will gain sufficient support from within the Ministry to provide this grounding.

The largest audience for the conference included regional officials and academics from the Russian Academy of Sciences. The regional officials will serve as the first class of practitioners trained under this program, while the academics will eventually assume the task of training such public officials.

The American presentations during the seminar included a review of the basic principles of the American federal system. In plenary sessions on the first day, Marbach reviewed the historical development, articulating the constitutional basis and the rule of law, Kincaid addressed the fiscal aspects of American federalism, his presentation was augmented by Refuse who discussed the specifics of how governments in the US raise revenues; and Neal spoke on the structure and role of the American states in the federal system.

On Tuesday, May 30, Marbach discussed the interstate relations and the political use of regional associations in the US, Pagano reviewed the techniques employed by local governments to promote economic

development, and Kitaaki addressed the way in which conflict is managed in our system. In the afternoon the group was divided into two concurrent sessions. As these sessions, Brock spoke on education in the US, while Payano addressed infrastructure investment.

On Wednesday, June 1, the group was again divided into two. At the first session Neil examined state legislatures. In the second Patonier spoke on municipal regulation of development. For the afternoon, the group convened in a plenary session where Patonier described the principles of American local government.

Throughout the conference, the various Russian participants addressed the various challenges facing Russia's transition to a federal system. These challenges include:

- * the process of developing dual constitutions specifically how oblasts and republics draft their charters and constitutions in the absence of any guidance from the national government or respect for the provisions of the national constitution.
- * a-symmetrical federalism which refers to the fact that republics enjoy more autonomy than do other subjects of the federation (oblasts and krais).
- * the nationality problem which stems in part from the artificial creation of ethnically-based republics and results in a-symmetrical federalism.
- * the lack of any tradition of local self-government
- * the need for significant economic reform.
- * an overhaul of the intergovernmental fiscal system.

There still remains a lack of understanding regarding what federalism is and how it operates. A good portion of the seminar addressed these basic questions, in essence covering ground that was discussed in previous seminars. However, since the composition of the audience was significantly different, this review became necessary. The stage has now been set for future seminars, conducted for the audience that attended this conference, to explore specific details of implementing a federal system. The next conference, which will be held in October 1995, will address the problems of constitutional design. This is a very timely subject as many of the oblasts and republics are engaging in this activity. *

RECENT PUBLICATIONS

Regional Integration and Industrial Relations in North America. Maria Lourdes Cook and Harry C. Katz, Editors. Ithaca, NY: Institute of Collective Bargaining, Cornell University, 1994.

This collection of essays from a workshop on "Regional and Industrial Relations in North America" held at Cornell University during October 1993 provides a comparative perspective on industrial relations and the effects of regional economic integration in the United States, Canada, and Mexico. Scholars from these North American countries analyze the recent evolution of industrial relations in their countries and discuss the implications of regional and trade integration, with an emphasis on the effects of the North American Free Trade Agreement.

America's Newcomers: An Immigrant Policy Handbook. Ann Marra, Editor. Denver and Washington: National Conference of State Legislatures, 1994.

This handbook is a compilation of work produced by The Immigrant Policy Project of the State and Local Coalition on Immigration. It explores the issues of general immigration and immigration policy in the United States; immigration health issues; employment and training programs for immigrants; community relations and ethnic diversity and the effects of declining targeted assistance for refugees and immigrants. For the student of federalism, *America's Newcomers* offers an especially helpful chapter analyzing both the effects of federal policy changes and fiscal outbacks on the fifty states and the state's policies toward immigration. In addition to a large and current bibliography of immigration literature, the handbook offers a listing of public policy contacts in all fifty states.

BOOK REVIEW

The American Federal System: Federal Balance in Comparative Perspective. Franz Gress, Detlef Fiebchner and Matthias Haines, Editors. Frankfurt am Main and New York: Peter Lang, 1994.

Current trends of federalism are succinctly presented in this volume adapted from a January 1994 conference sponsored by the Center of North American Studies of Frankfurt University. The American federal system is the focus of the research, however, several chapters discuss proposals for future comparative discussions of intergovernmental relations in the United States and Germany.

The scholars agree that American federalism is experiencing a "resurgence of the states", albeit tempered by the fiscal and regulatory power of the federal government. What emerges in *The American Federal System* is a picture of resurgent state activity under the umbrella of federal government regulations. The authors argue that the states have been forced to pick up the financial slack because of the federal government's need to scale back its unrestrained growth. Despite this decrease in the growth of federal government expenditures, the states are still hampered from fully realizing their innovative potential by increased federal mandates and regulations. The scholars disagree over whether this new era of American federal relations should be titled coercive (John Kincaid), cooperative (Ellis Katz), or post-cooperative federalism (David Walker), but do concur that the states face a difficult battle in shedding the burden of federal oversight in the near future.

In its comparative chapters, *The American Federal System* shows that the recent history of German federalism provides a stark contrast to the dynamic resurgence in the United States. Unlike the American states, the German Lander wield little power, either individually or collectively, in relation to the federal government. Rather, the national government defines the boundaries of federalism. The trend of German government has been to promote national conformity rather than emphasize diversity. This emphasis on equal living conditions, combined with Germany's involvement in the European Union, has prevented the Lander from developing a parallel movement to the "resurgence of the states" in the United States.

The American Federal System provides two distinct services to the political science community. First, it provides an excellent, concise, analysis of current and historical trends of American federalism. Second, it discusses perspectives for future comprehensive, comparative analysis of the German and American federal systems.

J. Wesley Leckrone
Temple University

UPDATE LAW-RELATED EDUCATION

American Bar Association Special Committee on Youth Education for Citizenship

Fall 1995/Vol. 19, No. 3

*Federalism—What Is It?
Where Might It Take Us?*

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**Arizona's Health Care Cost Containment System:
State Innovations to Accommodate Federal Mandates**

by Richard E. Chard, M.P.A.
and Robert G. Wilson

INTRODUCTION

In 1965, with the passage of Medicaid legislation, the Federal Government assumed its most ambitious undertaking since the New Deal. Medicaid is a federal-state health care financing program for the medically needy and medically indigent. Given acceptance of federal Medicaid funds, states are mandated to provide acute care services as well as long-term care for low-income households. However, eligibility criteria, and the mix and generosity of benefits vary enormously from state to state. In 1982, Arizona, as the last state to adopt a Medicaid program, sought to create a managed care approach rather than the traditional fee-for-service plan adopted by the other 49 states. Given the mandatory income eligibility standards set by Congress for health care qualification, Arizona has frozen its poverty level at 1982 standards to exclude a fairly high percentage of its otherwise eligible candidates while the counties continually transfer financial responsibility for their wards to the state.

LEGISLATIVE HISTORY MEDICAID:

Medicaid was enacted in 1965. Unlike Medicare, its sister legislation, Medicaid was an optional joint federal and state program—states were not required to participate. However, once a state did, the federal government offered matching grants ranging from 50 percent to nearly 80 percent of program costs (Aaron 1991, 64). Receipt of the federal funds was contingent upon the states' provision of certain benefits to specified populations. Mandatory services included:

- ✓ Inpatient and outpatient hospital benefits
- ✓ Laboratory and X-ray services
- ✓ Skilled nursing facility care for people over age 21
- ✓ Home health care for those eligible for skilled nursing facility care
- ✓ Early periodic screening, diagnosis and treatment for those under age 21
- ✓ Family planning services and supplies
- ✓ Physician services, and nurse midwife services (Aaron, 1991, p. 64).

Mandatory services and, at state discretion, optional services were available to two classes of recipients. Participating states were required to provide benefits to the *categorically needy*, including recipients of cash assistance under aid to families with dependent children (AFDC) and supplemental security income (SSI), a cash assistance program serving the poor aged, blind, and disabled. States could serve the

medically needy, if they wish. The medically needy include anyone that the state wished to cover who was in one of the categories covered by AFDC or SSI, and whose income or assets exceeded the eligibility limits for each assistance but whose income was less than 133% of the maximum AFDC payment for families of the same size. A state could also define as medically needy, and thereby extend Medicaid, to pregnant women and infants with incomes up to 185% of the federal poverty threshold.

In 1965, the Social Security Administration assembled a task force to define poverty. Ideally, the group wanted a definition of a minimal decent existence, to include adequate food, shelter, clothing and amenities, but it ran up against a problem of subjectivity. Because it was difficult, if not impossible to determine what *adequate* housing, clothing, or recreation was, the task force reasoned that it could call on objective knowledge of basic nutritional requirements, integrate that knowledge with the realities of food preferences in the United States, and reach a dollar figure for the cost of a minimal, but adequate diet.

Assuming that the proportion of the typical family's budget spent on food is the right proportion, the group would be able to determine a total budget for poverty-level existence. The core calculation for the poverty line is simply:

$P-DP = I$ is the dollars in income that equals the poverty line

D is the dollar cost of an adequate diet

P is the typical proportion (0-1) of a family budget spent on food

Previous studies indicated that thirty-three percent of the typical American family's budget accounted for food costs; therefore, an income at the poverty line consisted of an amount roughly three times the cost of an adequate diet, adjusted for inflation and family characteristics such as size and location.

The dietary requirements were established by the National Academy of Sciences, National Research Council in the recommended dietary allowances. The cost was based on the Department of Agriculture's economy food plan originally developed in 1961. Melly Orshansky, who was in charge of the development of the poverty measure, used a 1955 survey as basis for the estimate that one-third of a family's post-tax income spent on food. The federal poverty level, which was set at \$6,970 in 1993 (Fischer 1993, A-2), was used to determine disjoined system of county-run health care programs.

The county-based incipient health care system was part of an integrated system of health care services for the poor, the other provider was the Indian Health Service. In spite of a state-determined minimum threshold, the county

systems varied widely with great disparities in the level of care offered, the range of services available, and the qualification standards established. For example, Pima County covered dental care as part of their indigent health care plan, while other counties provided an austere benefits package. Finally, facing state-imposed restraints on their taxing abilities and the rapidly rising costs of health care, the counties appealed to the state government for assistance. Furthermore, realizing that through their taxes, Arizonans continued to support a nationwide Medicaid system without Medicaid funding benefiting themselves, the state was provided additional impetus to finally join the Medicaid system.

In response to this fiscal crisis and its subsequent decision to accept federal Medicaid dollars, Arizona developed its personalized Medicaid program, the *Arizona Health Care Cost Containment System* (AHCCCS). The only prepaid Medicaid system in the country, it relied upon a strict capitation and global budgeting structure to mitigate the effects of the volatile health care market. AHCCCS used this Health Maintenance Organization (HMO) approach designed to provide quality care while minimizing costs. This approach utilized a physician service group to provide patients with a broad range of medical services for a fixed premium. Under *managed care*, primary care physicians acted as gatekeepers to screen patients before referral to specialists or costly procedures. Similar to the effects caused by the insurance, or third-party payer dilemma, free health care provision offered no incentives to ration usage of costly specialist services and exorbitantly priced procedures. Although AHCCCS placed some restrictions on freedom of choice when members chose a health plan or a primary care physician, this did not adversely affect the quality of health care they received. Even though it contained costs, to some extent, by reducing overutilization, further cost savings to the state was achieved by other means. The most noticeable of these was Arizona's freezing of the poverty rate at 1982 levels to exclude a significant portion of the medically indigent from AHCCCS.

The new HMO-based approach required that Arizona apply to the Health Care Financing Administration (HCFA), the federal agency that oversees the Medicaid program, for waivers. In the spring of 1982, AHCCCS was approved as a three-year demonstration project. AHCCCS officially began operating on October 1, 1982 and has since been given continued extensions to continue operating and receiving federal funds under demonstration status by HCFA. Then in December 1992, AHCCCS received an additional

extension of one year—until September 1994. At that time the program may become permanent, or it may continue under experimental status. Arizona on the other hand, gave AHCCCS permanent status in 1987 (*Ibid.* 376-377).

When Arizona proposed the AHCCCS plan it was at a time when HCFA was seeking to limit costs. Because federal Medicaid expenditures had geometrically risen from \$5 billion at its inception in 1965, to \$72 billion in 1980 (Congressional Budget Office 1992, xi), AHCCCS's proposed cost saving structure provided a perfect experimental condition for testing whether an HMO could reduce Medicaid costs. Arizona had no Medicaid program at the time that AHCCCS was proposed, and thereby provided HCFA with a perfect situation in which to try an HMO model. As Dr. Ronald J. Vogel, a University of Arizona health economist and former HCFA employee noted, the Health Care Finance Administration was anxious to try the HMO model during the late seventies and early eighties because of the 1,340 percent increase in federal Medicaid costs noted *supra*. Arizona's application for the AHCCCS waiver was therefore seen as a serendipitous event (Vogel, 1993).

As the state continues to take an ostrich approach to its rapidly growing poor population by fixating the poverty index at 1982 levels, a significantly larger percentage of these disenfranchised citizens, who would otherwise be eligible for Medicaid in other states, are being denied health care benefits.

In 1982, Congress required the Department of Health and Human Services to develop a new system of paying hospitals under Medicaid. The old system reimbursed hospitals according to the audited cost of services determined after the patient's discharge. In 1984, the Department introduced a reimbursement system in which the payment a hospital received was set prospectively based on each patient's primary and secondary diagnosis at the time of admission. The HCFA artificially established a schedule of fees for a set of diagnosis related groups (DRGs). Hospitals could not bill for any amount above the DRG. The purpose of DRGs was to reduce costs and limit the growth of public health care expenditures. Although cost-based reimbursement offered an incentive for hospitals or doctors to control costs and limit overutilization of superfluous procedures under the DRG system, hospitals tried harder to cut costs because they, rather than HCFA, reaped the savings.

The DRG system was based on a *Scientific Management type time and motion study* of hospital stays conducted by Bob Fetter, an industrial engineer. By reviewing the medical payment records maintained by the Social Security Administration from the inception of Medicare and Medicaid in 1966, Fetter was able to determine an *average length of stay* for approximately five hundred procedures, which were termed Diagnostic Related Groups.

(1993, *Ibid*). From an economic viewpoint, it's argued that DRGs "provide incentives for the hospital to be internally efficient and to take advantage of...economies of scale..." (Feldstein 1992, 287). However, some health care analysts argued that although DRGs reduced the outlays for hospital expenditures, the cost was actually shifted to increased outlays for skilled nursing facility care. The statistics on growth of expenditures for long-term and convalescent care seemed to support this assertion. (*Ibid* 1992, 288-289). Therefore, a more cost-containing approach was in fact, the use of strictly controlled global budgeting, wherein hospitals were given a certain fixed dollar amount per year to treat a certain population. This is the system employed by AHCCCS and it is generally viewed as the most cost-effective approach to publicly financed health care.

The importance of the AHCCCS waiver was phenomenal when viewed in a political context. As discussed above, Title XIX of the Social Security Act established a strictly fee-for-service Medicaid program. Further, additional Congressional mandates limited other methods of cost containment, such as Medicaid contracting with HMOs. The grant of the waiver by HCFA in 1982 was a hallmark example of a public agency using its discretionary power to skirt specific guidelines established by Congress. This was perhaps a classic example of the struggle for federalism; however, a paradox was also presented--a public agency created by Congress was given the power to grant waivers to states exempting them from Congressional attempts to intervene in their affairs. In spite of this, the crucial effect of the waiver was in the form of a realization by Congress that a strict fee-for-service plan may not have been the ideal model for containing costs. Since the approval of the AHCCCS waiver, Congress has enacted legislation to ease restrictions on the use of HMO models by Medicaid plans.

In the early part of 1982, the Health Care Financing Administration approved the Arizona Health Care Costs Containment System as a three-year demonstration project under section 1115 of the Social Security Act (AHCCCS Overview, 1993, p. 3). In the fall of 1982, the AHCCCS program was enacted by the Arizona Legislature. Although the initial waiver expired in 1985, HCFA has granted AHCCCS repeated extensions.

Since its enactment, AHCCCS has been revised only once, in 1987, during the first regular session of Arizona's Thirty-Eighth Legislature. The new provisions included limiting the individual county-to-state AHCCCS financial contributions to an amount not greater than 33 percent of the federally matched Medicaid expenditures for that county in fiscal year 1984 (Arizona Legislature 1987, 1138). The greatest beneficiary of this revision was Pima County, which saw its required contribution to AHCCCS reduced by approximately 31 percent, from more than \$16

million to just over \$12.7 million (AHCCCS Overview 1993, 7). Further changes enacted with this legislation included:

- ✓ Time limitation for county determinations of eligibility for AHCCCS coverage, skilled nursing facility care, and home health care
- ✓ Allowances for rural hospitals to act as and be reimbursed as skilled nursing facilities for a period not to exceed forty-five days
- ✓ Nursing home certification standards
- ✓ Limitations on hospital rate increases and billings
- ✓ Coverage of mental health services and psychotherapeutic drugs
- ✓ Stringent rules to counter waste, fraud and abuse. (Arizona Legislature 1987, 1132-1197).

Initially, the portions of the contributions to AHCCCS by the counties was established by statute in which the counties were required to contribute 50 percent of their annual health care expenditures for 1980 or 1981, whichever was less. However, counties which offered a more complete basic benefits package and took better care of their indigent population were responsible for a larger per capita percentage of AHCCCS costs, while those counties that spent less on indigent health care prior to AHCCCS paid a smaller portion within AHCCCS were essentially free riders of the additional services rendered once AHCCCS was implemented. The former counties, in essence, picked up the slack, receiving fewer services than were available in their previous packages. The trade-off for them was the ability to significantly reduce their overall indigent health care expenditures.

One of the counties most affected by this was Pima County. With dental care as part of their indigent health care system, costs were higher than any other county, based on effective tax rates. When AHCCCS began, those costs remained in tact, although the services were no longer provided by AHCCCS. An additional mandate stated that any services previously offered, but not administered through AHCCCS, must be retained at county expense. Although the cost of dental care was used to determine Pima County's 50 percent contribution, even though AHCCCS did not provide the service, Pima County had to administer a dental program with additional county funds. Thus, Pima County was paying 50 percent more than the cost of its original dental program.

Benefits Package:

- ✓ Doctor's office visits and specialist care, if necessary
- ✓ Hospital, laboratory, and X-ray services
- ✓ Emergency medical, dental, mental health care, and emergency transportation
- ✓ Pregnancy care and family planning services, but not abortion or abortion counseling
- ✓ Pharmacy services and medical supplies

Realizing the long-term cost saving benefits of providing early and periodic screening, diagnosis and treatment (EPSDT) programs for children under age 18, AHCCCS included the following child services in addition to those listed above:

- ✓ Complete physical, optometric, and hearing exams, with glasses and hearing provided, if necessary
- ✓ Immunization and nutritional information

FREEZING THE ELIGIBILITY MANDATE:

Since the cost of residual services, such as dental care, cannot be reduced, the state focuses its manipulative efforts on the poverty level index while the counties play with administrative loopholes in order to reduce their respective costs. Given both the federal and state poverty levels at the time AHCCCS was implemented in 1982, the federal poverty level has grown respectively with the increase in the Consumer Price Index (CPI). Arizona's level has remained constant. Since 1982 the average increase in the CPI has been 5.7 percent, therefore, in real terms, the AHCCCS income eligibility levels have actually been reduced. In 1993, the AHCCCS income limit was a mere 35.12 percent of the federal poverty level (Fischer 1993, A-2). Clearly, a person could be living far below the federal poverty level, and taking account Arizona's relatively low cost of living, would not qualify for AHCCCS. To put the issue in perspective, an Arizonan working full-time and earning a minimum wage of \$4.35 per hour would equate to an annual salary of \$8,840.00. In 1990, for a family of four, this full-time worker fell below the federal poverty level, yet he and his dependents were not eligible for AHCCCS. In order to qualify for medical services under AHCCCS income guidelines, a person with a family of four could not work over 24 hours per week in a minimum wage position. Unfortunately, there is little incentive to raise the state AHCCCS poverty index. This would result in inflated program costs due to the increased number of persons eligible. Administration sources say that adjusting the state poverty level to equal the federal poverty level would automatically qualify an additional 186,000 people for AHCCCS, an overall increase of 33.6 percent, or an increased expenditure of \$1.1 million. Governor Fife Symington recently proposed a plan that would end this manipulation of the poverty level by changing the standard under which people are enrolled in AHCCCS. By raising the state eligibility income to match the federal poverty level, those individuals aforementioned working poor, who are now excluded, would qualify for AHCCCS. Conversely, this plan would eliminate all or part of the state's medically necessitated indigent (MNDI) program, leaving approximately 15,000 people from AHCCCS. (These 15,000 Arizonans are primarily those who become poor due to catastrophic illness.)

Since it has been virtually impossible to eliminate or reduce services mandated under AHCCCS, counties have sought out loopholes in legislation not apparent to the general public, and manipulated those as a means of cost reduction. As Senator Fulbright noted:

There is an inevitable divergence, attributable to the imperfections of the human mind, between the world as it is, and the world as men perceive it.
(Speech in the Senate, March 27, 1964)

Although this observation was made nearly three decades ago, it typified public agency responsiveness to public pressures aroused by the media. A prime example of this was the recent inclusion of liver transplants under the AHCCCS program. In 1992, when a single mother, covered by AHCCCS, developed complications requiring a liver transplant, she was informed that this procedure was not covered. No sooner did the local print and broadcast media stimulate public sympathy did the AHCCCS administration buckle under the pressure to include costly liver transplants.

Because it is the counties' responsibility to administer the program and thus determine eligibility, the counties focus their cost cutting activities on identifying people who could otherwise qualify for AHCCCS, but who are admitted as county wards. This requires an elaborate and active system on the part of the county health care administration. Given the number of employees required, this can be costly. The incentive comes from the fact that the county reduces the cost burden by 67 percent for each patient it can transfer from its system to the state's AHCCCS system.

Hospitals are required, by law, to inform the counties of the status of incoming emergency patients within 12 hours of admittance. The counties respond with their own eligibility requirements, under the guidelines stipulated by AHCCCS. Pima County uses an electronic mail system linked with each hospital, and has a team of nurses on staff, and on call, who are dispatchable to the hospitals to oversee the progress of eligibility determination. An initial screening is done to determine possible qualifications for federal programs, such as AFDC, Food Stamps, and SSI, which would automatically qualify an individual for AHCCCS. In the absence of these immediate qualifications, a process known as *spend down* can reduce a patient's income to meet eligibility standards for AHCCCS. Once this is accomplished, the paperwork can be done. Under AHCCCS payment rules, the system will pay for the day the eligibility paperwork was accomplished as well as the 48 previous hours. All costs incurred prior to this must be paid by the county. This provides the counties with an incentive to perform eligibility requirements as quickly as possible.

Given the cost saving benefits inherent in AHCCCS through its HMO modeled structure, states and counties are

still forced to cut costs via other means. Utilizing a system of Health Maintenance Organizations and Prepaid Provider Organizations (PPOs), AHCCCS saved approximately \$4 million annually. However, the use of general practitioners as gatekeepers to expensive specialists and costly procedures provided the most striking result. AHCCCS realized a per capita cost increase rate of 3.8 percent, while other fee-for-service Medicaid programs experienced a growth rate of 18.6 percent (AHCCCS Overview).

While these cost restraints have proved somewhat effective, the state AHCCCS Administration, as well as the county-owned and contracted hospitals and clinics that directly administer the program, have been forced to game the system in efforts to control their health care expenditures. These disturbing methods contradict the humanitarian purpose of the Medicaid program and catch payment responsibility in an endless loop of transfers.

If this trend continues, the percentage of poor Arizona residents ineligible for AHCCCS will continue to grow. An uneducated argument would highlight these individual's qualification for federal assistance programs, and their ensuing automatic qualification for AHCCCS. Nevertheless, this argument lacks accountability of single men, some *working poor* families, and impoverished homeowners.

The county's evasion of responsibility to their constituents via payment transferring to the state, while reducing their health care expenditures, does not abate the plight of the state health care administration. In fact, their own expenditures are unnecessarily parlayed by employing the administrative specialists used to interview patients in their twelfth hour attempt to enroll them into AHCCCS. Thus, the cost saving technique actually serves only to inflate administrative costs for both the state and county governments.

Given that the rate of increase of public health care expenditures outstrips even the phenomenal rate of increase in private health care expenditures while still leaving thousands of citizens uninsured, it is apparent that the Medicaid and AHCCCS systems are not functioning adequately. From a policy perspective, universal access and cost control represent the penultimate. The traditional fee-for-service Medicaid programs achieve universal access at the expense of cost containment, while AHCCCS achieves cost containment at the expense of universal access. Although these two ambitions are naturally diametrically opposed, the traditional, or precent, implementation infrastructure serves to further polarize the two ideals. The original Health Care Financing Administration goal, set when Medicaid was enacted, was to provide universal access. Soon after, the goal was expanded to encompass not only

universal access, but quality care as well. Experiencing the drastic leaps in health care expenditures in the 1970s, HCFA supplemented the two previous conflicting goals, with yet another-cost effectiveness- creating a contradictory ideal. This habit of expanding the goals, rather than redefining them, has led to the financial disparity experienced by the Medicaid system. Therefore, to realize the true goal of publicly financed health care--to provide a basic universal access and the social and economic benefits that such care provides--we recommend that the goals of HCFA contain the following:

- ✓ Fostering high ratios of general practitioners to specialists
- ✓ Provide disincentives for overutilization of health care
- ✓ Promote the rationing of health care

Two distinct but effective approaches could attain these goals by either expanding the current nationally-oriented system, or promoting a possible federalist design. By taking Medicaid as it currently exists, and instilling the redefined goals listed above, states, and in the case of Arizona, states and counties, would be subjected to penalties for failure to comply. In this system, categorical grants, used to fund Medicaid programs within the states, would be based on current standards of population and average per capita income. Given a five year demonstration period, states would be granted carte blanche in delivering health care to its uninsured while adhering to the federally mandated goals. Failure to meet these objectives would result in withdrawal of federal funding.

Another approach would incorporate the same national goals, but adhering to federalist ideals, would allow local governments--states and counties--more autonomy in health care administration and financing. The state-based approach would involve no federal mandates attached to a block grant, giving states more flexibility in addressing local concerns. This would require termination of the county based system. Otherwise, the competition for funds could possibly exacerbate the conflict between the counties and the state. However, in Arizona's case, using the expected responsiveness of the counties, as the local government of the people, a possible federal-to-county matching grant program would allow a greater emphasis on local needs while directly meeting the aforementioned national goals. Even the retained goals and alternative methods of channeling federal dollars to local governments, the United States will never achieve a truly comprehensive health care system for either its poor or its general population, without attacking the inherently drastic increases in health care costs at their source. At some point, we as a nation must face the seemingly inutimao task of defining a limit to publicly financed health care.*

THE GEOMETRY OF STATE AND LOCAL POWER UNDER HOME RULE

Daniel B. Rodriguez
Boalt Hall School of Law
University of California, Berkeley

At the core of state constitutional theory lies a puzzle. A standard axiom of state constitutional law is that states, and not local government units (counties, cities, special districts, et si), are sovereign. Local governments exist at the sufferance of the state; and it is therefore to the state constitution and, where the constitution is silent, to the relevant state political authorities, that local governments must look to determine the nature and scope of their authority. It is an axiom of state constitutional law that there is no reservoir of inherent local power within the structure of state constitutional law. At the same time, in those states that have established a constitutional system of municipal home rule, there is a sphere of sovereignty in which local governments may exercise power without preemption by the state. In the area of "local affairs," then, local governments are declared to be supreme, and their power plenary. In the area of "statewide concern," by contrast, states and local governments continue to function within the structures of traditional pre-emption law, that is, local laws which conflict with state laws fail because of the well-established constitutional principle of state supremacy. Therein lies the puzzle. How can states be regarded as simultaneously supreme and not supreme? And what are to we make of a constitutional structure which carves out a sphere of sovereignty for local governments whose existence is entirely conditional, and so a century of state constitutional theory and doctrine teaches, on state authority?

This puzzle is at the heart of a long line of judicial decisions in so-called "home rule" states. In hundreds of decisions, state appellate courts have grappled with questions concerning the scope of "local affairs" and the respective powers of state and local governments where these two spheres of government come into conflict. In some instances, state courts have attempted to define the category of local affairs in order to separate out issues of trans-local or "statewide" concerns. The aim here is to establish a geometry of state and local power in order to establish a set of coherent boundaries. Sometimes the boundaries established by state courts have been built around notions of comparative constitutional competence, thereby focusing upon the question of which level of government is better able to deal with this particular issue; other times, the courts have established a definition of "local affairs" that attends to local decisionmaking that has external effects, that is, effects upon jurisdictions beyond the city or county borders. Such decision-making has been regarded, in decisions that take this tack, as not merely local but, instead, statewide and therefore

beyond the scope of local government's home rule powers. Other courts have eluded altogether the inquiry into what are local affairs, choosing instead to defer to state legislative judgments concerning the appropriate boundaries between local and statewide issues. This approach tends to reject the notion that there is any truly sovereign sphere in which local power is supreme. The question of sovereignty becomes essentially subsumed within the question of preemption—i.e., whether and to what extent there is a "true" conflict.

The failure of state courts over the past century to find a consistent and analytically sophisticated way of tackling this puzzle is, I would argue, a consequence of a larger failing, a failing to develop an adequate theory of state constitutionalism. A more complete theory would help us understand the proper constitutional relationship between state and local governments. It would also aid courts and legislatures in developing the proper legal mechanisms to resolve conflicts that arise between state and local governments. At bottom, my project represents an effort to look critically at state and local authority through the lens of constitutional theory.

An obvious analogy to use in exploring this relationship is constitutional federalism as developed in American constitutional theory, especially from the perspective of the framers of the United States Constitution. With principles of American constitutional federalism firmly in mind, we might better understand the dimensions of constitutional relationship between state and local governments. In other senses, however, issues concerning the concept of federation as illustrating the nature of national/state relationships are historically and theoretically distinct from issues of "localism" that are raised in connection with state/local relationships under state constitutions. Thus, the extent to which federalism provides an analytical window into issues raised by home rule and conflicts between state and local governments under state constitutional regimes depends upon whether there is a true analogy between federal/state relations under the U.S. Constitution and state/local relations under the 50 separate state constitutions.

To understand and explore the puzzle I described at the beginning of this proposal, we have to begin by re-examining the basic principles of state constitutionalism. The question of whether states preserve a sphere of sovereignty—a "reserved" power—recurs throughout American constitutional history. In current writing, it tends to be answered in two ways, neither of which sheds much light on the essential relationship between state and local power under state constitutions. One answer is that all power in the American constitutional system can be delegated to the federal government is, in the words of the 10th Amendment, "reserved to the states respectively or to the people" and that this is taken to mean that the exercise of such power is

determined by state governments under their respective constitutional regimes. Seen in this light, the nature of home rule power under state constitutional law is delineated by paying close attention to American constitutional theory and, in particular, the theory and history of federalism as encoded in the 10th Amendment and in the structural provisions of the federal constitution. As a practical matter, the so-called "sovereignty" of local governments that secesses protected under municipal home rule evaporates in the face of a constitutional theory of federalism which recognizes truly only two relevant sources of legal power--the states (including any agents the state chooses to create to perform tasks) and the national government.

Another perspective emphasizes that American constitutionalism is rooted in popular sovereignty and, therefore, accords power to "we the people." It is suggested, therefore, that power is reserved to the people qua people of the states and not to the bodies politic which stand in for the people as representative governments. It is not clear what implication this view has for the relationship between state and local governments under constitutional home rule. Perhaps the notion that the federal constitution preserves (ratifies?) a sphere of popular sovereignty argues in favor of a broad domain of municipal home rule. After all, wouldn't popular sovereignty be ensured most effectively by smaller units of government? Or perhaps "we the people" speak only through our state representatives and, therefore, it is to the political structure of the state government and to decisions of state institutions that we are to look to determine the scope of local affairs under municipal home rule.

Ultimately, neither of these two contemporary perspectives on constitutional theory addresses adequately the question of how to understand and to construe state constitutional provisions that assign powers to local governments under the rubric of "home rule." The fundamental questions of state constitutionalism remain unanswered: Do the assignments of home rule powers to local governments under various state constitutions jibe with an underlying theory of state constitutionalism which separates political units of government (state/local) into delineated spheres, spheres in which those units exercise plenary power? Or are these assignments of home rule power inconsistent in fundamental ways with a theory of state constitutionalism which insists that there is only one sovereign sphere of government, the state?

These comments are meant only to suggest avenues of further analysis and inquiry. I would appreciate comments and suggestions from readers of the *Review*. ■

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**Federalism Research Centre
Research School of Social Sciences
Australian National University, Canberra**

The Centre's research program is broadly focused on federal issues, as its name implies. Since the launching of New Federalism in a series of Special Premiers' Conferences in 1990, federal issues have been prominent on the national agenda, and central to the public policy concerns of the Commonwealth and State and Territory governments. Although only partly successful, the New Federalism of the 1990s has spawned a significant number of institutional innovations in intergovernmental relations requiring monitoring and evaluation. As well as critically assessing these Commonwealth and State initiatives for making Australia's complex system of intergovernmental arrangements and relations more efficient, the Centre has also focused its work on national responses to globalization which impact upon Australia's federal system and entail an international federalising process. In addition, the Centre's research program has a major focus on constitutional issues and has played a substantial role in the Research School's centenary decade project, Reshaping Australian Institutions: Towards 2001 and Beyond.

The Centre is interdisciplinary in its mission and staffing, with its research efforts concentrated more or less equally in politics and policy on the one hand, and economics and fiscal matters on the other hand. Having pioneered the study of fiscal federalism as the Centre on Federal Financial Relations, the Federalism Research Centre has continued to work on issues of fiscal federalism because these remain highly

significant and contentious with all governments. A highlight of the year was the inaugural Russell Mathews Lecture to honour Professor Mathews' personal contribution in the Centre and to the study and practice of fiscal federalism. It was given by Professor Mathews on this favourite topics "Fiscal Equalisation: Political, Social and Economic Linchpin of Federation" and is available in published form.

With the hiring of Dr. Richard Cornes and appointment of two Adjunct Professors, Perry Shapiro and Tom Courchene, the Centre has developed a further major research focus on the economic theory of federalism, an area which remains relatively underdeveloped. Richard Cornes has continued work on the second edition of his book, *The Theory of Externalities, Public Goods and Club Goods* (Cambridge University Press) with Professor Todd Sandler who was a Visiting Fellow during 1994. His current research program, involving some joint work with Professor Emilio Silva, also a Visiting Fellow during 1994, is formally modeling the implications for federal structures of the difficulties faced by the Centre in monitoring the costs associated with activities of state governments.

The Centre broadened its program in the late 1980s, signified by its change in name, and developed two major areas of research on federal politics and institutions which it has pursued in the 1990s: Intergovernmental Relations and the Constitutional System. In both cases, the Centre moved in advance of public opinion and has played a major role in academic research and public discussions in these areas. Professor Galligan has been the coordinator of both the Constitutional Systems and Intergovernmental Relations streams in the school's larger Reshaping project. His Book *A Federal Republic: Australia's Constitutional System of*

Government was completed during the year and published by Cambridge University Press in 1995. A highlight for the Constitutional Systems stream was an international conference organised by Professor Galligan and Professor Peter Russell of Toronto on Redesigning the State which was attended by some 20 overseas speakers. The revised papers are being prepared for publication by Federation Press.

Over the years, the Federalism Research Centre has provided a supporting collegial network and a base for visiting scholars and officials from around Australia and overseas. During 1994 the Centre hosted eight visiting fellows, four from overseas and four from other Australian Universities, as well as five shorter term Centre visitors.

The Centre was reviewed during 1994 by a committee established jointly by the University and Commonwealth and State governments which concluded that the Centre 'had built a strong international reputation' and 'maintained an extensive research output'. The Committee reported in late July and recommended continued funding for the Centre at the ANU. The Commonwealth subsequently decided, without giving any reasons, that it would cease funding the Centre after 1995 and the states have followed suit. So 1995 will be the last year of the Centre's life, at least in its traditional form.

In early July Professor Galligan accepted a Chair in Political Science at University of Melbourne to be taken up in early 1995. ■

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Federalism and the Way to Peace

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

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SECTION NEWS

AMERICAN POLITICAL SCIENCE ASSOCIATION SECTION ON FEDERALISM AND INTERGOVERNMENTAL RELATIONS

MINUTES OF THE 1995 ANNUAL MEMBERSHIP MEETING

Chair Report

The Section met for its 1995 annual membership meeting on Thursday, August 31, 1995 in Chicago, Illinois. Sarah Liebschutz (SUNY-Brockport), Chair, presided. Twenty-four members were in attendance. The minutes of the 1994 meeting were approved as published in *The Federalism Report* (Fall 1994).

Sarah Liebschutz reported that the APSA Organized Section Committee has established a \$2 surcharge to be added to Section dues in order to cover the cost of mailings to international members of the Association.

Financial Statement

Dale Krane (University of Nebraska at Omaha), Secretary-Treasurer, submitted the annual statement of revenues, expenses, and fund balance for review and approval by the members. Revenues for 1994-95 were \$1,641.60 (dues rebates, short course fees, and rebates from APSA sale of the Section mail list). Expenses were \$262.02 (short course awards, stationery). The fund balance at the end of the fiscal year was \$1,967.14. The financial report was accepted.

The Chair thanked Professor Krane for his five years of service as Secretary-Treasurer, and presented him with an autographed copy of David Walker's *The Rebirth of Federalism*.

1995 Program

In his capacity as section representative on the 1995 APSA Program Committee, Dale Krane reported on the section's program. The Section was allotted four panels. An extra panel was obtained by requesting a session sponsored by the Center for the Study of Federalism. Another session was co-sponsored with the Native American Studies Group.

1995 Short Course

Although Professor Leonard Robins (Roosevelt University) did a superb job organizing the short course on health policy, it had to be cancelled because of low enrollment. Sarah Liebschutz expressed the Section's appreciation for the time and hard work that Professor Robins had devoted to preparation for the short course.

Future Short Courses

Robert Dilger (West Virginia University) moved that the Section try to hold another short course at the 1996 meeting in San Francisco, provided that Section members from the west coast who agree to arrange the short course believe it will be feasible and draw sufficient attendance. In addition, whether or not a short course is held in 1996, the Section

should sponsor a short course at the 1997 meeting in Washington, D.C., and the topic should be the "State of Federalism." Motion Passed.

Anderson Dissertation Award

Sarah Lickschuer led a discussion of the William Anderson Award for the best dissertation in the field of state and local politics, Federalism or intergovernmental relations. The award was established in 1975 by University of Minnesota faculty to honor their long time colleague.

The national APSA Council has decided that all dissertation awards will be at least \$500. The endowment for the Anderson award is currently \$2,700 below what is needed to sustain an annual award of \$500. It was also pointed out that the APSA President appoints the members of the award committee.

Joseph Zimmerman (SUNY-Albany) moved that the Section attempt to raise the required funds and to work with the APSA Council and President to reform the award on its original purposes of federalism and intergovernmental relations. After discussion. Motion Passed.

Bernie Radin (SUNY-Albany) moved that the Section Chair appoint a committee to implement the previous motion. Motion Passed.

Distinguished Scholar Award

The Section's award for "Significant Contributions to the field of Federalism and Intergovernmental Relations" was presented to Professor David E. Walker (University of Connecticut). Professor Walker served as the Executive Director of ACIR for many years and directed numerous studies that have had substantial impact on policy decisions at levels of government. He is also the author of two major texts on American Federalism.

Best Book Award

The Section's first award for the "Best Book On Federalism and Intergovernmental Relations" was presented to Professor Daniel J. Elazar (Temple University) for his book entitled *American Federalism. A View From the States*. First published in 1966, this text, without a doubt, fits the criterion for the award which honors a book "published at least ten years ago and has made a lasting contribution to the study of federalism and intergovernmental relations."

Best Paper Award

The Section's award for the "Best Paper in the field of Federalism and intergovernmental relations presented at the

previous year's APSA annual meeting" was presented to Richard E. Deeg (Temple University). The title of his paper is "Germany's Länder and the Federalisation of the EC."

1996 Program

Professor Joseph Zimmerman will be serving as the section's representative on the 1996 APSA Program Committee. He discussed options for various formats, noting that at least one of the section's panels must be germane to the theme of inequality.

Council Elections

The Chair thanked Professors Beverly Cigler (Penn State-Harrisburg) and Joseph Zimmerman for their work on the Section Executive Council.

Professor Ted Pedeliski (University of North Dakota) presented a slate of candidates for the unfilled positions on the Section's Council. The following members were elected for three year terms on the Council: David Beati (Illinois Institute of Technology), Ann Bowman (University of South Carolina), and Carol Weissert (Michigan State).

Michael Pagano (Miami University) was elected to fill the four year term as Secretary-Treasurer.

Respectfully submitted,
Dale Krane, (outgoing) Secretary-Treasurer

CALL FOR PAPERS

57TH Annual Pennsylvania
Political Science Association Meeting

April 12 and 13, 1996
Lafayette College
Easton, Pennsylvania

The Pennsylvania Political Science Association invites proposals for papers to be presented at its 1996 meeting. Proposals should be sent directly to the individual listed below. Proposals should be received by January 31, 1996. Proposals received later may be considered. Questions of a general nature concerning the program or regarding proposals in subject areas not identified among those here should be directed to Professor Joseph Melotsky, Department of History & Political Science, St. Francis College, Loretto, PA 15948.

Political Theory: Professor Gordon Henderson, Social Science Division, Widener University, Chester, PA 19013

American Governmental Institutions: Professor James H. Lennartz, Department of Government and Law, Lafayette College, Easton, PA 18042 1780

American Public Policy: Professor James Renze, Department of Political Science, Washington and Jefferson College, Washington, PA 15301

Judicial Politics and Constitutional Law: Professor Bruce Auerbach, Department of Political Science, Albright College, Reading, PA 19612

State and Local Government: Professor Craig Whedon, Department of Political Science, Villanova University, Villanova, PA 19085

Women and Politics: Professor Kathleen Iannollo, Department of Political Science, Gettysburg College, Gettysburg, PA 17325

Pennsylvania: Politics, Public Opinion and Public Policy: Professor Kathleen McQuaid, Department of Political Science, Mansfield University, Mansfield, PA 16602

International Relations: Professor Philip Briggs, Department of Political Science, East Stroudsburg University, East Stroudsburg, PA 18301

Comparative Politics: Professor Zachary Irwin, Division of Humanities and Social Sciences, Penn State Erie/The Behrend College, Erie, PA 16563

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