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## Review of Constitutional Dynamics in Federal Systems: Sub-National Perspectives, edited by Michael Burgess and G. Alan Tarr

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**Constitutional Dynamics in Federal Systems: Sub-national Perspectives**, edited by Michael Burgess and G. Alan Tarr. Montreal: McGill-Queens University Press, 2012, 338 pp., [price?]

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In this intriguing volume, editors Michael Burgess and G. Alan Tarr invite the reader to consider the workings of federalism not from the vantage point of the federal state, but from the point of view of the subnational units of which such states are comprised. In thirteen chapters, the editors take the federalism tourist on a journey across Europe and North America that stops only briefly in the national capitals before plunging into less familiar but no less interesting destinations such as Massachusetts and Colorado, Bavaria and Bremen, Voralberg and Burgenland, Luzern and Zurich, the Republika Srpska, Jura, the Walloon Region, Quebec, Scotland, Catalonia, Friuli-Venezia Giulia, and many others. In the hands of knowledgeable local guides, readers receive concise reports concerning the autonomy available to subnational units under federal constitutions, how that autonomy has been exercised and consolidated, policy relations and disputes with central governments and, where applicable, the processes and key content of subnational constitutions.

What distinguishes this volume from many others examining intergovernmental relations in federal states is a specific focus, whenever possible, on subnational constitutions as vehicles to which states, provinces, and regions can resort to influence the behavior of central governments, and even to alter substantively the nature of intergovernmental authority and relationships. As a collection, the book makes essentially four claims, of increasing power and ambition. The first

two claims, relatively modest and not atypical of such studies, concern the ability of subnational units to influence the nature and even the structure of federal relations from below. The second two claims go further, contending for a special place for subnational constitutions in the processes of federal constitutional evolution.

First and least controversially, the volume claims that much can be learned about the operation of federal systems by examining the behavior of subnational units – for example, their claims of constitutional competence, the actions they take toward central power, and the way in which they choose to institutionalize local self-rule. The book succeeds admirably on this count.

The chapters provide rich detail on the activities and decisions of subnational units of the federal states examined, shedding light on the ways in which national and subnational power interact. Some of the most illuminating chapters deal, paradoxically, with instances in which subnational units have refrained from exercising authority otherwise available to them.

Chapters by Gerald Baier and Francesco Palermo, for example, explain the very different reasons why Canadian provinces and Italian regions have declined to adopt fully formed subnational constitutional documents. Those developments provide an interesting contrast to decisions made by Spain's Autonomous Communities, which, as Carles Viver relates in his chapter, have in some cases been extremely eager to draw down authority made available to them by the central state constitution, leading them occasionally to press as far as possible the limits of available subnational authority, and sometimes beyond those limits.

The book's second claim is that the workings of federal systems can be altered not only by collective decisions taken at the federal level, but also by decisions made individually by subnational units; and that in so doing, subnational units are sometimes capable in effect of

altering the federal constitution itself. This claim, too, is made good in several of the chapters. Jens Woelk's chapter on Bosnia-Herzegovina, for example, describes how subnational programs of state-building and ethnic preferences in the Republika Srpska and the Federation of Bosnia and Herzegovina have undermined the federal constitutional goal of long-term integration. And in his chapter on the United Kingdom, Stephen Tierney argues that careful local preparation and a subsequent series of escalating claims by Scotland, Wales, and Northern Ireland for additional devolution of powers have resulted in an ongoing process of modification to the British constitution.

The volume's remaining contentions focus closely on subnational constitutions in particular rather than on the broader category of subnational actions in general, and here the claims become considerably more ambitious. First, the volume contends that subnational constitutions are significant components of the "constitutional architecture" (p. 3) of federal states – that national and subnational constitutions are component parts of a kind of interpenetrating network of constitutional law that may function as a single mechanism of collective self-rule in a federal state. The volume's final and strongest claim is that the contents of subnational constitutions therefore have a special status in influencing the constitutional rules that govern federations. The upshot of this claim appears to be that subnational units may be able to affect the shape of the federal state by manipulating their own constitutions, and that in at least some circumstances such leverage might even exceed that available through other commonplace but less formal avenues of subnational influence such as intergovernmental negotiation or party politics.

On these counts, the results are less definitive. Chapters on the United States (by John Dinan) and Switzerland (by Nicolas Schmitt) show clearly that innovative policies adopted in subnational constitutions sometimes migrate to federal constitutions, but it is not clear that this kind of influence is achieved through some kind of hard constitutional linkage rather than by more conventional processes of policy diffusion, or that similar results might not be obtained through subnational innovation at the level of legislative policy. Although the possibility of minoritarian innovation is surely one of the advantages of subnational autonomy, the phenomenon of successful subnational policy innovation and subsequent diffusion does not necessarily imply any special significance to subnational constitutions as agents of change.

Viver argues that the adoption of competencies by Spain's Autonomous Communities in subnational constitutional documents has in substance changed the Spanish constitution in ways that could not have occurred through other means. Yet it seems equally correct to say that Spanish devolution has not changed but rather has merely fulfilled the model anticipated by the central constitution through the invocation of opportunities that it explicitly makes available. The Canadian case laid out by Baier, moreover, suggests that in at least some circumstances subnational units can influence the content of the federal constitution more effectively by negotiating directly over its terms than by investing in influencing it indirectly through adjustments to their own provincial constitutions. In Germany, too, as Arthur Gunlicks demonstrates, subnational units have found it more expedient to address their complaints through efforts directed to reforming the central constitution than through resort to subnational constitutions, though such efforts have been less successful than in the Canadian case.

These considerations only suggest, however, that additional analysis and research on these topics would be highly useful. Constitutions are ordinarily conceived primarily as mechanisms of internal political self-restraint. This volume raises the intriguing prospect that such documents might also have an offensive function permitting them to serve as distinctive, and perhaps as distinctly efficacious, vehicles for the external assertion of subnational influence. To assess this claim, it could be useful to broaden the scope of inquiry. In some federations, subnational units either lack altogether the authority to write their own constitutions, or lack autonomous control over the subnational constitutional authority they possess. It would be interesting to know whether subnational units in these states are any less successful in influencing the exercise of national power, the nature of intergovernmental relations, or the ultimate constitutional allocation of authority than their counterparts that possess the tool of subnational constitutional reform, and what tools and mechanisms of influence they are able to invoke.

Scholars interested in these and similar questions will be amply rewarded by reading this interesting, well-conceived, and stimulating volume.