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### Francesco Palermo & Karl Kössler's Comparative Federalism: Constitutional Arrangements and Case Law (book review)

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Jim Gardner  
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**Comparative Federalism: Constitutional Arrangements and Case Law**, by Francesco Palermo and Karl Kössler. Oxford: Hart Publishing, 2017, 504 pp., \$135, hardcover

*Reviewed by James A. Gardner  
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In an increasingly crowded field, this new book on comparative federalism stands out for its iconoclasm, for its illuminating and entertaining selection of illustrative examples, but most of all for a significant methodological breakthrough that makes the book both more useful and more coherent than most of its predecessors.

At first glance, the book seems conventional enough. It begins with coverage of foundational concepts, including federalism and regionalism; examines the historical development of the federal state; introduces long-standing debates in the field; and provides an overview of some of the different choices that federal states have made in their internal organization. But the book eventually veers off in a very different direction; its heart is a series of chapters that focus on how different federal states approach a set of distinct yet commonplace problems: protection of human rights, provision of social welfare and healthcare; protection of the environment; immigration; and external relations. It is here that Palermo and Kössler (P&K) earn a substantial payoff for a significant and innovative contribution to the field.

By far the most common problem plaguing the study of comparative federalism is the difficulty of choosing the level of generality at which to address the subject. One common reaction is to launch into excessive abstraction. At its most extreme, this tendency manifests itself in an insistence that no analysis of the phenomenology of federalism can begin without a proper definition of the term and then proceeds to make clear that the term is incapable of definition to the author's satisfaction. Another common pathology of abstraction is an insistence that meaningful analysis requires construction of models so complex and comprehensive as to account for every variable conceivably relevant to the configuration of federal states: history, politics, demography, law, language, culture, ideology, sociology, and so on. Alas, such a model is impossible reliably to construct, especially in a field subject to a difficult small-N problem. At the other end of the spectrum, scholars sometimes descend vertiginously into dense factual detail about how things are done in states X, Y and Z, but leave the reader in the dark as to what the comparison purports to demonstrate or how it illuminates our understanding of the phenomena described.

P&K avoid these pitfalls by developing a pragmatic, inductive, problem-centered method of inquiry, one that effectively guides the level of abstraction of their analysis, producing an unusual degree of coherence and meaningful comparative analysis. Their approach rests on three key moves. First, they commit firmly to a specific teleology of federalism: its purpose,

they claim, is the effective management of pluralism (pp. 6, 449). Second, they contend that all states today, however organized, face a common set of problems: promoting social welfare, providing healthcare, protecting the environment, dealing with pressures of immigration, and so forth. Third, they posit that a state's form of organization influences the range of its potential responses to those problems — what P&K call a state's toolbox. The toolboxes of federal states, on their account, vary according to how federal states divide powers, grant or withhold subnational autonomy, structure fiscal relations, institutionalize subnational participation in national policy making, undertake intergovernmental relations, and so forth.

With this conceptual framework in place, P&K build their analysis around the following question: how, they ask, can a state solve the characteristic array of modern problems while *also* delivering the benefits that federalism potentially offers — i.e., while also *effectively* managing the particular brand of pluralism that the state happens to contain? This framing of the problem nicely captures the choices federal states actually face on the ground. Such states must deal with the same problems that all contemporary states face, but under conditions that may require tradeoffs between efficacy and the successful management of internal pluralism. Federalism thus appears, in this analysis, as a kind of side-constraint on a state's ability to handle routine problems.

P&K's approach neatly solves many of the methodological difficulties over which other works have frequently stumbled. Clear specification of a teleology of federalism, combined with clarity about the contents of the federal toolbox, together generate principles of salience. These principles of salience both demand a certain level of specificity to build the analysis, and simultaneously provide constraints of relevance. The result is an account of the facts of specific cases that is sufficiently rich to be informative, but sufficiently parsimonious to avoid irrelevance. Of particular interest here is P&K's inclusion of numerous examples drawn from judicial resolution of intrastate conflicts over the particularities of local federal arrangements.

The problem-focused method also goes a long way toward allowing comparisons that are meaningful. P&K proceed inductively, looking at how federal states actually respond to a series of commonly encountered problems. This approach allows them to demonstrate persuasively that federal states often respond differently to the same problem by deploying different tools, or by deploying the same tools in different ways. This in turn suggests that these states are responding to different domestic conditions of pluralism, requiring divergent managerial approaches to the specific problems of pluralism they contingently confront. But P&K also show that other kinds of problems have been found by different federal states, in sometimes very different historical or institutional circumstances, to require the *same* tool, used in the same way. For example, environmental regulation seems, as a matter of contingent fact, to have produced a convergence in approach: all states under study have found it necessary to allocate primary responsibility to the national government. These are very powerful results.

The clarity and coherence of this approach allows P&K to take a refreshingly simple path through their analysis. They deny, for example, not only that federalism can be defined with

scientific precision, but that the absence of such a definition in any way impedes the possibility of meaningful analysis (p. 64). Because they are not bound to the simplifications of a model, they are free to concede the enormous complexity of forces that shape federal states: unique historical circumstances and inheritances, path-dependent evolution of institutions, the unique characteristics of social and political pluralism within that particular state, and so on. As a result, their accounts of conditions in individual states are unusually thorough, accurate, and persuasive.

If there is anything I would have liked to see more of, it would have been exploration in greater detail of the specific conditions of pluralism in the states under study, and further analysis of whether those states are in fact successfully managing the conditions of pluralism that prevail there. But this may be too much to ask for a single volume that already makes such a valuable contribution to the literature.